

Wednesday 26 May 2021

Regulations fail to allay concerns that Your Future Your Super legislation will harm members

The release of draft regulations relating to the Government's Your Future Your Super legislation has done nothing to allay concerns that the legislation will cause more consumer harm than good and not deliver on its objectives, **the Australian Institute of Superannuation Trustees (AIST)** said today.

[AIST's submission to Treasury](#) warns that, in addition to the legislation being overly reliant on regulations, the draft regulations themselves are silent on crucial issues impacting the retirement outcomes of millions of Australians.

"This leaves significant areas of uncertainty that make member outcomes unclear and implementation highly problematic," **AIST CEO Eva Scheerlinck** said. "In particular, there are no draft regulations at all to provide clarity and guidance around the entire of the Best Financial Interests Duty Schedule, which introduces an extreme Ministerial power to ban investments and extensive new duties and penalties for trustees."

Ms Scheerlinck said while AIST supported the objectives of the legislation, the package suffered from fatal flaws that would result in significant unintended member detriment.

"These flaws stem largely from the extent to which the package differs from the recommendations made by both the Productivity Commission and the Hayne Royal Commission," Ms Scheerlinck said.

A key concern of AIST's is that there is no requirement either in the legislation or regulations for all super products to be tested. The legislation and draft regulations carve out many "Choice" products, containing more than \$500 billion in assets from performance testing. This leaves members vulnerable to being stapled to poorly performing funds.

Only last week, APRA's deputy chair, Helen Rowell, noted at AIST's conference that there was a wider range of investment performance outcomes in Choice products compared to MySuper products, "particularly at the poorer-performing end of the spectrum."

"On the one hand we have the industry regulator shining the spotlight on poorly performing Choice products, while on the other, we have legislation that not only allows many of these products to escape scrutiny, but will also staple members to them," Ms Scheerlinck said.

Other key concerns outlined in AIST's submission on the draft regulations include:

- The definition of a stapled fund should include that members should not be stapled to underperforming funds.
- There is no detail on what investments will be prohibited through the regulation-making power; the record-keeping obligations and contravention of those obligations; and what is required for a trustee to meet the reverse burden of proof.

- A number of measures in the draft regulations are not related to the Bill at all and so are untested, having not been subject to the Senate Inquiry or submission process. These new measures, which are material to member outcomes, are the annual member meeting requirements, changes to section 68A and portfolio holdings disclosure.

AIST also notes that the draft regulations were not released in time to be considered by the Senate Inquiry into the Bill, reducing the efficacy of its inquiry, particularly given the depth of outcomes that are reliant on these regulations.

Media enquiries: AIST Senior Media Manager, Janet de Silva 0448 000 499

AIST is the peak body for the \$1.5 trillion profit-to-member superannuation sector which includes industry, corporate and public sector funds