



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

18 October 2018

Mr Mark Fitt  
Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Fitt,

**Re: Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018**

**In brief:**

AIST offers conditional support for this Bill, however we point out that the Bill goes against international best practice by exempting product manufacturers, as well as relying on a flawed disclosure and reporting framework. AIST believes that further carveouts are not in fund members' best interests. AIST is also uncertain what might constitute a trigger for a target market review.

Thank you for the opportunity to provide feedback in respect of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* ('the Bill'). AIST supports all serious proposals to ensure that ASIC is able to achieve the objective of reducing the proliferation of products which are not in the best interests of members. We are able to offer conditional support for this Bill, noting that the Bill both includes a specific carveout for product manufacturers which is out of sync with international trends as well as resting on a flawed disclosure and reporting framework to which many systemic carveouts have been made. AIST is concerned that yet another proposal includes carveouts to the legislative framework, and (once again) is not in members' best interests.

We have divided this submission into two sections. First, we deal with our specific concerns regarding the Bill, given this is the focus of the Committee. Secondly, we outline how the Bill cannot work meaningfully or efficiently given that it rests on a flawed disclosure and reporting framework.

## 1. Our specific concerns regarding the Bill

The Bill does not include product ‘manufacturers’, so they are excluded from the target market or product intervention proposals. Product manufacturers could be, for example, investment managers. The Financial Services Royal Commission has witnessed many examples where related parties such as investment managers have not acted in members’ best interest. This – coupled with the European inclusion of product manufacturers in similar legislation – drives AIST to query why such a carveout has been proposed. All components of the product manufacturing and distribution chain must both take responsibility for products and be held accountable for products. This carveout is part of an ongoing systemic set of carveouts from the legislative framework which we outline in the second section. In the end, it is consumers who are detrimented.

Accordingly, our key concerns stated in our earlier submissions to Treasury remain:

- The Bill does not cover *all* the key entities which create and distribute products, with investment management companies and product providers, which in turn provide information to platforms, exempted from ensuring that the products they develop and sell are suitable.
- International best practice has not been followed. The European MiFID II requirements oblige product providers and parent entities to determine ‘target markets’. AIST once again queries why these entities have been carved out from the proposals.
- The Bill needs to be assessed alongside other proposals such as the APRA member outcomes test. We have advocated this before, and this assessment still has not happened. AIST is concerned that legislative proposals are put forward which are not examined in a holistic manner.
- There is insufficient guidance regarding what triggers might drive a target market review. This should be included in any Explanatory Memoranda.
- The concept of ‘target market’ is based on the notion that the consumer is gaining a product which is suitable for them. Target market reviews should accordingly include examining product take-up rates and consumer outcomes. This concept is currently not included in the Bill – and should be, in order to better protect consumers and bring the Bill into line with international trends.
- The Bill does not provide clarity regarding the timeliness of ASIC intervention or the alteration or otherwise of consumer rights or impacts on the stability of the superannuation system. AIST advocates that the Bill should be amended to provide this clarity.

## **2. The Bill cannot work meaningfully given a flawed disclosure and reporting framework**

Our main concern is the lack of information at both a system and product level across all superannuation products. Given this, while a product intervention power is indeed a step towards products which may better suit members, it is difficult to see how such a power can work meaningfully. There are presently over 40,000 competing superannuation products covering MySuper, choice, platform, non-platform, current and legacy superannuation products, and yet uniform disclosure and reporting is not a feature of what should be a level playing field. Without uniform disclosure or reporting, the regulators are not in a position to analyse whether the vast majority of these products are in consumers' best interest. We do not believe that there is sufficient disclosure and reporting to enable ASIC to compile the evidence it would need to investigate specific products. What hope can members have if the information they need is not even available to regulators?

AIST considers that a more substantive way to address product proliferation and inefficiencies would be:

- To align Choice product disclosure with MySuper;
- To task APRA with the collection of disclosed data so that it may be analysed. From such data, APRA would be able to determine whether there is any:
  - Lack of value to members;
  - Potential detrimental impact of various institutions using related party providers;
  - or
  - Potential detrimental impact of conflicts of interest.

As issues related to a lack of transparency or an inability to undertake system or institutional analysis are repeatedly identified by inquiries including the Financial Services Royal Commission, the Productivity Commission, as well as inquiries undertaken by ASIC and APRA, we are concerned that these fundamental gaps in the disclosure and reporting framework remain.

Since our previous submissions to Treasury, there have been several important and relevant developments regarding transparency, comparability and accountability which are immediately relevant to this Bill:

- The Productivity Commission found that the substantial proliferation of investment choices in the choice sector complicates decision making and increases fees without boosting returns. The Commission commented on the difficulty of analysing performance given the lack of data, that an analysis by asset class was not possible, and that inconsistencies abound with how fees and costs are reported.
- The Financial Services Royal Commission (FSRC) has heard numerous examples where fees and costs are not disclosed, have been disclosed in a misleading way, or have been

impacted by for-profit related party transactions. These examples highlight both the need to remove the numerous erosions made to the legislative framework, as well as collect data which could help identify these problems. A lack of ownership of products, services and indeed accountability across integrated organisations has also been an ongoing focus by the Commission.

- The Expert Review report<sup>1</sup> of superannuation fees and costs disclosure, undertaken by Mr Darren McShane, vindicates our longstanding concerns over the past 5 years that the disclosure regime fails members. The report agrees with AIST that fee and cost information is extremely difficult to find, let alone compare. The report also finds that there is a lack of a level playing field between superannuation and managed investment schemes, across various asset classes, and between platform and non-platform superannuation products.

We strongly urge that there is a further review of the proposals to ensure that firstly, systemic issues are reviewed, and secondly that products will be delivered and distributed in members' best interests.

For further information regarding our submission, please contact Karen Volpato, Senior Policy Advisor at [REDACTED] or at [REDACTED].

Yours sincerely,

[REDACTED]

Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$1.2 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*

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<sup>1</sup> McShane, D. (2018). *Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements Report to the Australian Securities and Investments Commission*. [online] ASIC. Available at: <https://tinyurl.com/y7l82sho> [Accessed 15 Aug. 2018].