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Manager,
Regulatory Framework Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: superannuation@treasury.gov.au

Dear Sir/Madam,

We welcome the opportunity to comment on the exposure draft of the *Treasury Laws Amendment (Protecting Superannuation) Bill 2018*.

Maurice Blackburn is on record as having welcomed the Australian Government's budget announcement outlining measures to protect the superannuation for young people, preserve critical default insurance and take broader steps to ensure retirement balances are not unnecessarily eroded. The value of automatic cover through superannuation for otherwise uninsured or underinsured workers and their families cannot be overstated.

We believe that the legislation will help preserve the relatively low and vulnerable account balances of younger super fund members.

We share the Minister's disappointment that legislative intervention became necessary after the industry failed to introduce appropriate protections through a compulsory code of practice.

We believe there is still work to do in tailoring superannuation cover for young people that strikes the right balance between providing the ability to opt-in to insurance cover, whilst also ensuring that the retirement balances of those with multiple employers and superannuation accounts are not eroded unnecessarily.

However, there are significant unintended consequences created by the current proposals that could leave hundreds of thousands of Australians over 25 without insurance cover, despite the fact they are in full time work and have existing and substantial retirement savings.

The movement of Australian workers from one job to another on a regular basis is the norm of today, not an exception. The proposed policy needs to reflect this fact.

Maurice Blackburn is also concerned that a cohort of under 25s should opt-in where they have dependents and assets to protect, or they may work in a high risk industry such as construction. Effective engagement by their Fund will be critical to avoid any detrimental circumstances. Given the track record of the industry to date we are not confident that Funds will do this effectively and we are concerned that without appropriate legislative/regulatory intervention, this cohort will feel the full brunt of unintended consequences.

Crucially, we believe that these new measures continue to preserve the invaluable role of default group insurance through an opt-out system more broadly, something that remains critical given Australia's significant under-insurance problem.

Our direct responses to each of the Schedules within the Bill are detailed below.

Schedule One – The Capping of Fees Charged to Superannuation Members

We are on record as having supported capping the administration and investment fees on super funds with low balances.

We agree that $6,000 is an appropriate threshold for the capping of fees. We also agree that the recommended adjustment to the SIS Act is the most appropriate way to achieve this.

We are also in favour of the initiative described in subclause 1.17 of the Explanatory Materials, that Schedule One "…*also prevents trustees from charging exit fees on all superannuation products, regardless of member's account balance*". (p.5)

Schedule Two – Insurance for Superannuation Members

The key driver of the changes addressed in Schedule Two – the erosion of low balance superannuation accounts – is well documented and understood.

Minister O'Dwyer made this clear in her media release of 8 May 2018 which states that:

> "*The Turnbull Government is protecting the hard-earned retirement savings of millions of Australians by introducing new measures to guard against the undue erosion of superannuation balances through excessive fees and inappropriate insurance arrangements*".[1]

In the same media release, the Minister declared her preferred method for guarding against erosion:

> "*The Government will tailor insurance arrangements in super by ensuring that cover is offered on an opt-in basis for accounts of young members below the age of 25, inactive accounts that have not received a contribution in 13 months (where the member has not elected to retain existing cover), and low balance accounts below $6,000".*

Maurice Blackburn understands that the provisions of Schedule Two enact the Minister's commitment, via proposed changes to section 68AA of the SIS Act.

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[1] *http://kmo.ministers.treasury.gov.au/media-release/050-2018/*

The provisions detailed in this schedule highlight the ineffectual nature of the Insurance in Superannuation Working Group's voluntary code.

The fact that legislation is necessary to stem the erosion of low balance funds is a sad indictment on the capacity of the industry to do what's right, by their own volition.

Maurice Blackburn agrees that 13 months is an appropriate threshold for determining inactivity. In our experience, lessor periods of inactivity are often due to parental leave considerations or other life circumstances.

Maurice Blackburn warns, however, that the enactment of these commitments in the current legislative and regulatory form could also have serious unintended consequences for certain sections of the Australian community.

i. Unintended consequences for members aged 25 and over

Under the proposed arrangements, if someone aged 25 and over has a balance in their superannuation account of less than $6,000, they will be left without any default insurance – despite the fact that they continue to be in full-time or part time work and have built retirement savings.

Maurice Blackburn disputes the assumption that all superannuation account balances under $6,000 are due to inactivity and that that, somehow, determines the need for Death and TPD insurance coverage.

Superannuation account balances may be under the $6,000 threshold for a number of reasons. For many Australians it is due to the fact that they have changed jobs and have established a new Superannuation account as a consequence.

According to the Department of Education's Household, Income and Labour Dynamics in Australia (HILDA) Survey[2], the current average job tenure for under 25s is one year and eight months. This is likely explained by part time work while studying and the challenge of getting a foothold in the world of work.

However, such churn is also a feature for the working lives of older millennials. The current average tenure for someone between 25 and 35 is two years eight months. This is in comparison to an average four year tenure for those between 35 and 44 years of age, with the average tenure rising to almost 7 years for those over 45 years of age.

Australian Bureau of Statistics (ABS) data[3] tells us that the median weekly earnings for workers between 25 and 35 years of age are $1,150 per week. The compulsory employer contribution, based on this rate of pay, would be $109.25 per week. At that rate, it would take a new account holder almost 55 weeks to get to the $6,000 threshold, not allowing for administration and investment fees.

With only opt-in insurances, that would mean this average younger worker could be uninsured for more than a year before the appropriate provisions kick in.

Given there are 1.934 million workers in the 25-35 group, and average tenure is 2 years 8 months, it means that up to 35% of these workers would not have insurance associated

[2] *As cited in https://mccrindle.com.au/insights/blog/job-mobility-australia/*
[3] *Ref ABS spreadsheet 63100DO018_201308 Employee Earnings, Benefits and Trade Union Membership. http://www.abs.gov.au/AUSSTATS/subscriber.nsf/log?openagent&63100do018_201308.xls&6310.0&Data Cubes&C1143EEA318F8D9ECA257CEC001E0C2A&0&August 2013&04.06.2014&Latest*

with their super despite the fact their Superannuation contributions would not be eroded by insurance. This is the equivalent of 676,900 workers.

Evidence suggests that Australian households are carrying some of the highest average debt levels of all OECD countries and that many Australian households are experiencing an underinsurance problem, including young families[4]. Having this compounded for those aged 25 years and over through the proposed changes would be an unfortunate and unintended consequence.

ii. Unintended consequences for under 25s

Maurice Blackburn disputes the assumption that all superannuation account holders under 25 years of age do not need or want insurance.

There are currently more than 900,000 full time and 832,000 part time workers in Australia under the age of 25.[5]

We argue that many young people – especially young workers – will have a distinct need for Total and Permanent Disability (TPD) coverage. This may be due to:

- The nature of the work the young person does. Young people who work in construction, for example, have a greater need for TPD insurance coverage than their older counterparts in less dangerous or physically taxing professions, or

- The family circumstances of the young person. If the young person has dependents and assets to protect, it may be more important for them to have coverage than their older counterparts who don't.

There is an assumption in the proposed legislative change that those under 25 do not, across the board, have dependents and assets to protect; and this needs to be taken in to account.

The fact that they are under 25 does not necessarily mean they would not have a need for TPD insurance.

In the event someone under 25 experiences total or permanent disability, this could also leave him/her exposed to the possibility of having to fend for him/herself in covering the cost of medical expenses which could and should be covered by insurance.

It is the taxpayer and the public health system that will end up bearing the brunt of the insurance gap.

Maurice Blackburn agrees with the assumption that Death cover for under 25s may not be as necessary, but that that will depend on the circumstances of the individual.

Under these new arrangements, funds will need to clearly communicate the benefits of opting in to TPD coverage for those whose work and family arrangements warrant it.

[4] Rice Warner Underinsurance in Australia 2015 *found the median level of life cover met just 61 per cent of basic needs and 37 per cent of the income replacement level. See also* http://www.ricewarner.com/australias-relentless-underinsurance-gap/

[5] *Ref ABS spreadsheet 63100DO012_201308 Employee Earnings, Benefits and Trade Union Membership*

Government will need to track trend data closely to see if young injured workers are increasingly reliant on health and welfare safety nets as a result of the consequences of these changes.

Alternatively, as noted earlier, given the track record of the industry to date, legislative and regulatory change should take in to account circumstances raised in this submission to avoid unintended consequences for this cohort.

Schedule Three – Consolidation of Low Balance and Inactive Accounts

Maurice Blackburn is on record as supporting the protection of low balance, inactive super funds.

We applaud the initiative of increasing the powers of the Australian Taxation Office (ATO) to consolidate funds where the ownership is certain.

This will need to involve careful implementation. We hope the ATO is adequately resourced for this task, and will balance its new found powers with some degree of consumer choice.

The expansion of the current provisions of the SUMLM Act in terms of referring funds to the Commissioner seems like an appropriate way to enact this sensible move.

Please do not hesitate to contact me and my colleagues on (03) 9605 2792 or at KShaw@mauriceblackburn.com.au if we can further assist with Treasury's important work.

Yours faithfully,

MAURICE BLACKBURN