



Law Council
OF AUSTRALIA

Legal Practice Section

28 March 2019

Manager
Retirement Income Framework
Retirement Income Policy Division
The Treasury
Langdon Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Manager

Retirement Income Disclosure Consultation Paper

The Superannuation Committee of the Legal Practice Section from the Law Council of Australia appreciates the intention to provide a “simplified and standardised disclosure” for retirement income products using suitable and effective key information and metrics to ensure consumers are supported to make informed decisions about the income, risk and flexibility associated with different retirement income products.

The Consultation Paper proposes that a Retirement Income (product) Disclosure Fact Sheet (**RID Fact Sheet**) be introduced incorporating key information and prescribed metrics which would operate (and be provided to members and prospective members) as a separate disclosure requirement to existing Product Disclosure Statement (**PDS**) requirements.

Instead, in the context above, we submit consideration should be given to making the core RID Fact Sheet proposed operate as part of the PDS disclosure required rather than in addition to it. To this end, we suggest mandating a modified, short-form PDS disclosure regime for CIPRs which would include as part of a CIPR PDS, provision of the product’s RID Fact Sheet.

This submission does not seek to respond to issues of policy. As the consultation paper largely seeks input on the proposed metrics for the prescribed disclosure, requiring technical actuarial or investment risk expertise, our observations are otherwise limited to matters of clarity. Our observations are all intended to relate to the Committee’s objective of ensuring that the law relating to superannuation in Australia is sound, equitable and demonstrably clear and, in the context of these proposals, that prescribed product disclosure is likely to be effective for its intended purpose.

Comment on Retirement Income Disclosure Fact Sheet – interaction with PDS disclosure regime

The stated purpose of the Paper is to identify the key information or metrics to ensure consumers are supported to make informed decisions about the income, risk and flexibility associated with different retirement income products. These metrics are intended to form

part and support the aim of delivering “simplified, standardised disclosure for retirement products”.

In our view, this examination needs to be performed in the context of the specific Government policy of promoting and indeed requiring funds to offer Comprehensive Income Products for Retirement (“**CIPR**”) to their members in order to discharge their Retirement Income Covenant that:

- have been actuarially certified as conforming to Australian Government Actuary requirements and assumptions;
- are the fund’s nominated “flagship” CIPRs (up to 3) to be provided to members (subject to certain minimum eligibility conditions); and
- are offered on a “soft compulsion” opt in basis to existing members on reaching retirement age.

We note from earlier rounds of consultation on development of CIPRs that it had been mooted an alternative to the PDS disclosure regime would be considered for these products, rather than what is now proposed – a requirement for a RID Fact Sheet (meeting prescribed requirement and containing certain metrics in approved form) **in addition** to existing PDS requirements.

We submit consideration should be given to making the proposed RID Fact Sheet operate as part of the PDS disclosure required, rather than in addition to it. To this end, we suggest mandating a modified, short-form PDS disclosure regime for CIPRs which would include as part of a CIPR PDS, provision of the product’s RID Fact Sheet. The short form PDS regime proposed for CIPRs would be modelled on that already applying to super products in the growth phase (under Subdivision 4.2B of Part 7.9 Division 4 of the Corporations Regulations), with modified, prescribed content requirements specific to CIPRs.

We note that superannuation, pension products are currently excluded from the short-form PDS disclosure regime and are subject to the “long form” PDS disclosure regime (under Part 7.9 of Division 4 of the Corporations Regulations) and in the absence of enabling legislative amendments, CIPRs would be required to conform with that disclosure regime.

Comment on Retirement Income Disclosure content

The form and content of the RID Fact Sheet and metrics used is intended to be “product neutral”. The stated aim is to better and more effectively inform consumers about the likely future income their investment is likely to deliver and the potential risks involved.

Although the technical characteristics and adequacy of the stated metrics for consideration are largely outside our area of legal expertise, we note the following observations for your consideration for greater clarity and effectiveness in the information provided:

- reverse the suggested scale for Income Variation shown in the paper so that a Product with a higher “risk” (low level of security) as measured will equate to a higher number on the scale as follows:
 - currently the scale is shown as ranging from 1 - for least secure average income in expectation to a limit of 7 - for most secure average income in expectation;

- suggest instead it would range from 1 – for the most secure (ie guaranteed) lowest risk of average income variation expected) to 7 for the least secure, greatest risk of average income variation;
- include key assumptions on the RID Fact Sheet in prescribed form, including any explicit guarantees or, if none, expressly state that no guarantees apply;
- we query the suitability of key information and metrics that would ignore the impact on age pension entitlements altogether, as is proposed in the paper, given the stated objectives of the disclosure is to arm consumers with effective information to make decisions in and for retirement taking into account the age pension – we submit that some prescribed information regarding age pension entitlements should be considered; and
- include a section and worked example of fees and costs over the expected life of the product – we suggest consideration be given to a simplified or standardised scale of fees and costs as for the various proposed risk measure disclosures.

Contact

The Committee would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact:

- Ms Lisa Butler Beatty, Chair, Superannuation Committee [REDACTED]
[REDACTED]
- Ms Natalie Cambrell, Deputy Chair, Superannuation Committee
[REDACTED]

Yours sincerely



Jonathan Smithers
Chief Executive Officer