



Manager
Retirement Income Policy Division
Treasury

December 22, 2020

Dear Madam / Sir

**Submission re: Exposure Draft
Treasury Laws Amendment Bill 2020: Best Financial Interests Duty**

Canstar is a finance commentator and provider of a free service to consumers to assist them in making informed financial choices. We provide product advice (not personal advice) via a website visited by around a million consumers a month and superannuation is a key product vertical.

Our superannuation rating system showcases the diversity of consumer retirement outcomes arising from the choice of superannuation fund, and we are disturbed that so many consumers, through lack of awareness, knowledge or confidence, remain in substandard products severely damaging their retirement standard of living. We believe it is important that the whole programme of superannuation reforms stays sharply focused on a big picture of improving retirement outcomes. In the current superannuation landscape this means that industry participants - super funds, regulators and intermediaries - do what they can to encourage consumers in poorly performing funds to switch to stronger performers.

In that context Canstar offers the following comment on the proposed changes to regulation of advertising in superannuation.

1. Advertising fulfils a crucial role in the superannuation microcosm

- i. Consumers find superannuation confusing, at the extreme thinking it to be a tax, and intimidating.
- ii. Consequently there is low engagement with their super – annual statements remain unopened, communications ignored and comparisons not undertaken - leading to inertia even when retirement savings are with an underperforming fund.
- iii. Advertising can cut through to the audience not reached by traditional industry media and can play a powerful role in lifting financial literacy. It can encourage consumers to research, explore and compare their fund with alternatives, and lead them to resources that will assist in this endeavour.

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- iv. The stapling reform will make members even stickier with the one fund, removing one of the triggers that can stimulate engagement. It should be beneficial to members, but not if they are in an underperforming fund. The risk is that they will be in an underperforming fund for life. Advertising can be one of the tools to shake them loose.

2. The narrow “financial benefit to members” hurdle could have unintended consequences

- i. Example 1.3 clarifies how “financial benefit” should be applied by the industry, a narrow definition that a campaign must lower fees to existing members by increasing member numbers.
- ii. The measure excludes the benefit derived by consumers of moving from an underperforming fund to a better performing fund. This financial benefit to future members of the fund is a key driver of other reforms, and should also be a driver of decision making when it comes to investment.
- iii. A fund must grow its membership if it is to keep fees down and maintain a high standard of governance and brand promotion is one proven lever to this.
- iv. Discretionary investments can sometimes benefit members in non-financial ways but not meet the strict financial benefit test. These could be programmes that improve service levels, promote broader financial literacy or in some other way improve retirement lifestyle prospects.

3. Trustees are being positioned to encourage defensive decision-making

- i. The burden of proof and personal liability of trustees is likely to encourage risk aversion first and foremost, such that campaigns without immediate payback and high certainty will not be supported.
- ii. Proving the necessary level of certainty for a single campaign will be difficult when multi-channel and multi-period campaigns in aggregate contribute to a future lift in membership numbers. Brand halo and air conditioning effects can set the environment for a future choice of fund.
- iii. The near untenable position trustees may find themselves in will take many forms of advertising out of the mix, leaving only direct acquisition channels.
- iv. Identifiable and quantifiable financial benefit of advertising to members is notoriously difficult to prove in the business case for a campaign, and the risk is that only the unimpeachable campaigns will receive approval.

4. Advertising is an enabler supporting other reforms

- i. The suite of past, present and proposed reforms – choice of fund, MySuper, heat maps, self-reporting of underperformance, stapling - is designed to improve member outcomes by lifting investment performance net of fees, and so retirement savings.
- ii. Advertising is a cost but also an enabler, reaching consumers to whom superannuation has been invisible, and encouraging use of the resources and opportunities these programmes present.



- iii. Canstar is concerned that however much investment and intent is put in by providers, regulators and intermediaries to improve consumer outcomes, much of it will not see the light of day if we excessively inhibit the role of advertising.
- iv. We would never wish to see marketing that would move consumers into underperforming funds and would support a tougher approval regime for funds that are being required to self-report underperformance.

Canstar is always available to discuss the matter and is appreciative of the opportunity.

Kind Regards,

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