**AIA Australia Limited**
(ABN 79 004 837 861 AFSL 230043)

PO Box 6111
Melbourne VIC 3004
Phone : 1800 333 613
Fax : 1800 832 266

AIA.COM.AU

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Director
Retirement Income Policy Division
Treasury
Langton Cres
Parkes ACT 2600

By email: superannuation@treasury.gov.au

**TREASURY CONSULTATION: YOUR FUTURE, YOUR SUPER REGULATIONS AND ASSOCIATED MEASURES**

Thank you for the opportunity to provide feedback on the Your Future, Your Super Regulations. The regulations provide much-needed clarity for industry to implement the reforms.

However, there are a number of areas where we believe changes are needed to avoid unintended consequences in relation to members with insurance. These include:

- Consideration of any active insurance in a member's super fund when determining the stapled fund
- The prescribed notice issued by trustees who have failed the underperformance test (underperformance notice) and the proposed YourSuper tool should include information that prompts members to consider their insurance
- The short timeframes to issue the underperformance notice.

**Single Default Account Regulations**

The proposed regulations set out the tiebreaker requirements where an employee has two or more eligible funds and are applied by the Commissioner to determine the employee's stapled fund.

The proposed drafting of the tiebreaker requirements considers whether an existing fund has been identified by the Commissioner as a stapled fund, and if one has not been identified, prioritises the account with the most recent contribution, or if relevant, the largest account balance.

We believe the existence of an account with active insurance should be considered a relevant factor and given priority when determining the stapled fund. Failing to consider the existence of active insurance in one or more of the existing funds is likely to have unintended consequences. For example:

1. **Members risk having duplicate insurance covers**. This could occur where a member has one account with insurance, and another account with no insurance that is selected as the stapled fund as it has the most recent contribution. Once the contributions to the stapled fund grow the balance to over $6,000, the member would automatically receive default cover, albeit that they already hold insurance in another account for as long as that account remains active.

2. **Members risk losing insurance cover**. This could occur where a member has one account with insurance, but another account with no insurance is selected as the stapled fund as it has the most recent contribution, there is a risk that the account holding insurance will become inactive and the member will lose their insurance cover. Even if they later receive new automatic cover once the stapled fund reaches $6,000, they may have developed pre-existing conditions which would leave them with less coverage than they originally held.

**To avoid the unintended consequences of creating duplicate insurance, or exposing members to a period of no insurance, the tiebreaker requirements should be amended to consider the existence of active insurance in one or more of the funds.**

**The tiebreaker requirements should include this insurance check as the second requirement, before assessing the recency of the contributions, and if relevant the account balance. Where only one of the accounts holds insurance, this should be the stapled fund, provided it is otherwise eligible.**

**We believe this leads to insurance outcomes that are consistent with the objectives of the *Protecting Your Super* and *Putting Members Interests First* reforms.**

It is currently unclear how a stapled fund would be treated in the event of a successor fund transfer (SFT). Industry requires clear guidance, supported by scenarios, of how stapling is to be applied, including what happens to a stapled fund when an SFT has occurred. This would include what to tell members and employers before and after the SFT has transacted.

It would be prudent for the ATO to update the employer of the employee's new stapled fund, if required, following an SFT. This will minimise any disruption for the employer and the member.

**Where the Commissioner has previously determined a stapled fund for a member, and that fund has subsequently been subject to an SFT, the receiving fund should be deemed the member's stapled fund.**

**This ensures that the previous decision made by the Commissioner to determine the stapled fund is preserved when a member's interests are transferred.**

**The ATO should inform the employer that the stapled fund has now changed and that future contributions should be directed to the new fund.**

Currently, information that employers submit via SuperStream and Single Touch Payroll is limited to that needed to open and maintain a member's account and to ensure contributions are made to a member's account. There are many optional data points that are rarely provided by employers. Some of these optional data points would be valuable for trustees in designing their default insurance design. Because the impact of stapling will see the occupation mix of funds change over time as more members are stapled to a fund when they change employers, access to richer data will enable trustees to better meet the changing nature of their membership. This would also assist trustees to better engage with their membership, particularly where there is a change in their employment information.

Examples of optional data points that would be valuable include:

- employment start date
- annual salary for insurance amount
- occupation description
- employment status code (i.e. casual, contractor, full time part-time).

These data points are likely already held by many employers in their HR management or payroll systems. While mandating the provision of these data points could lead to employers simply defaulting information that isn't representative of each employee, employers should be required to provide correct information.

**Employers should be required to provide additional data points through SuperStream or Single Touch Payroll, which will assist trustees in designing and reviewing their default insurance arrangements and engaging appropriately with members.**

**Addressing Underperformance in Superannuation Regulations**

The proposed format of the underperformance notice to be issued to members is set out in Schedule 2A of the exposure draft. While this is likely to encourage members to consider if they remain in the underperforming fund or seek a fund which has performed better, the notice does not include any references to insurance they may hold.

As drafted, the proposed notice can't be considered balanced without actively noting that insurance is a relevant consideration. While the focus may be on net performance, as this is the measure which is arguably likely to have the greatest impact on a member's retirement balance, failing to consider insurance could have a significant financial impact to those who are unfortunately struck down by illness and injury and unable to work or die prematurely.

Members should be prompted to consider the impacts on insurance they hold in super or may obtain when joining a new fund. These impacts could include:

- whether they will automatically receive insurance with the fund they choose to receive future contributions and/or transfer their balance to
- whether there are any limitations on cover, for example a period where only new events are covered
- for those working in hazardous or high-risk occupations, whether the fund they choose provides insurance for those occupations.

Similar to the balanced information trustees provide when communicating the benefits of account consolidation, the underperformance notice should similarly ensure that members have considered impacts other than fees and investment performance. The consequences of failing to consider insurance can be catastrophic to individual members.

The YourSuper tool, which is being developed by the ATO, should provide similar information to members on considering impact to their insurance cover.

A member who selects a better performing fund to maximise their retirement balance but loses valuable insurance cover or has limitations on their coverage could experience a poor outcome if this was not a considered decision.

More broadly, the use of nudges should be more widely used to encourage members to regularly review their superannuation and insurance. Trustees can leverage defined events to provide appropriate and relevant messages to members. The underperformance notice is an appropriate trigger event where nudging is relevant.

Where a super fund recognises a change to the contributing employer, this is an important event that can be used to trigger communication and prompt members to act. A new employer could mean a change in salary, and the need to revisit any salary sacrificing arrangements or levels of income protection cover. Similarly, a change in occupation or employment circumstances, such as moving from part-time to full-time, might require a review of the appropriateness of their insurance arrangements.

**To mitigate the risk of members of underperforming funds making decisions based on incomplete information, we propose that the information prescribed in Schedule 2A includes prompts for members to consider the implications on any insurance cover held.**

**The YourSuper tool should also expressly note factors that a member should consider when determining whether to choose a better performing fund. These considerations should include as a minimum:**

- **whether the member will receive insurance in the new fund**
- **whether there are any limitations on that insurance**
- **whether the insurance covers their occupation.**

**To ensure that insurance cover remains relevant and appropriate, prompts and nudges should be used**

**to support individuals to consider insurance cover when they are changing jobs.**

The proposed section 60E of the Superannuation Industry (Supervision) Act requires trustees to provide a notice to impacted members within 28 days of receiving notice from APRA that a product has failed the performance test.

We consider this timeframe too short for a number of reasons. The timing of when APRA will issue the notice is currently unclear and this lack of clarity may see this notification obligation overlap with other significant communication activities that a trustee is undertaking; for example, issuing annual statements.

In addition, trustees would ordinarily stagger any significant mailing to members to manage mail house capacity and to ensure that its contact centre can manage any inbound calls. Many funds stagger the mailing of their annual statements over a 4-6 week period for this reason.

Given the underperformance notice is likely to generate significant volumes of activity from members, including contacting the fund, there is significant operational risk in this mailing being condensed to such a narrow window. While some trustees could anticipate they may fail the underperformance test and have prepared in advance of the notice being issued, it is more likely that trustees will only commence preparations once the notice has been issued. This means that the opportunity to stagger communication over that 28-day period is extremely limited.

**The time period for trustees to issue the underperformance notice to members should be extended to 90 days after receiving the assessment from APRA to allow trustees sufficient time to stagger the mailing and to manage the expected high volume of inbound calls and any overlap with other member communication.**

**Alternatively, ASIC and APRA should be given greater discretion in deferring the notification to members.**

Should you wish to discuss any aspects of our response, please contact Tom Gordon, Head of Regulatory Affairs in the first instance, on tom.gordon@aia.com or 0404 059 808.

Yours sincerely

Damien Mu
CEO and Managing Director
AIA Australia and New Zealand