



25 May 2021

Director
Retirement Income Policy Division
Treasury

By email: superannuation@treasury.gov.au

Your Future, Your Super Draft Regulations and associated measures

Thank you for the opportunity to provide a response to the draft regulations and associated measures for the Your Future, Your Super package.

Rest is a major profit-to-member industry superannuation fund with around 1.8 million members – or around one-in-seven working Australians – that manages assets of more than \$62 billion (as at 31 March 2021).

Rest is pleased to see that draft regulations include some of the recommendations from the superannuation industry to address concerns about the proposed methods to assess funds' performance within the 'Addressing Underperformance in Superannuation' section of the package. In particular, we welcome the change to include the impact of administration fees on investment returns.

In the following pages are some elements in the regulations that we believe could be changed or reconsidered in order to improve the effectiveness of the Your Future, Your Super reforms.

I invite you to contact me directly on 0400 399 330 or via email on sarah.o'brien@rest.com.au.

Yours sincerely,

Sarah O'Brien
Head of Regulatory Affairs, Rest

Appendix – Comments on the draft Regulations

Addressing underperformance

Rest welcomes both the inclusion of the impact of administration fees on performance measurement and additional indices to better assess the performance of unlisted assets.

However, we still have concerns and questions about the design of the performance measure.

- Aligned with several submissions made to the Treasury consultation on the draft Bills and the Senate Standing Committee on Economics Inquiry, including the submission from The Conexus Institute¹, we believe that there are significant disadvantages to an ongoing eight-year test. The time frame creates possible tracking errors, resulting in a lack of certainty in accurately identifying out- or underperformance against the benchmark as designed. We believe that extending the test over time to a ten-year period would address some of these challenges.
- While the addition of the MSCI Private Infrastructure index as the benchmark for unlisted infrastructure is an improvement to the range of indices for assessing superannuation fund performance, we note that this index does not fully represent the holdings of Australian super funds in infrastructure, and has not been designed to benchmark superannuation fund infrastructure investments as a whole. We understand that review is underway continue to add specific asset holdings to this index over time. In the meantime, consideration should be given to more accurately benchmarking this asset class to holdings actually held by superannuation funds.
- We seek guidance from Treasury or APRA on the International Unlisted Infrastructure index concerning how APRA will treat the currency exposure risk in the offshore assets that comprise 60 per cent of the index. For other international benchmarks, there is a prescribed currency risk treatment, but this has not been provided for this benchmark.
- In the event that a fund does not meet the performance assessment test, the requirements currently require a fund to notify members by both post and email. This is in contravention of the ongoing development of electronic communications as the default in both the financial sector and corporations more broadly. Various acts and regulations, as well as ASIC guidance, and SIS have been updated over time to allow electronic communications to be both the default and primary means to communicate with members, with mail to be used when a fund does not have a valid email address. Furthermore, the cost of mailing notices to members, who are used receiving communications electronically, will be a significant impost.

Recommendations – addressing underperformance

- Extend the 'lookback period' in the first four years of implementation to ten years (2021 – seven years, 2022 – eight years, 2023 – nine years, 2024 – ten years), aligned with performance records available to APRA.
- Include guidance on how APRA will treat the currency exposure risk in the offshore assets in the International Unlisted Infrastructure index.
- Amend the requirement for the notice to members, so email is the default mode of communication, with post used for members who do not have a valid email address.

¹ The Conexus Institute, submission to the Treasury consultation on the Your Future, Your Super package, available at <https://treasury.gov.au/consultation/c2020-124304>

Single Default Account

Rest welcomes the details in the draft Regulations on the requirements for the ‘tiebreaker’ decisions by the Commissioner.

We note that the legislation provides significant guidance and relief to employers in circumstances where they make an error in directing contributions under the new requirements, but that no similar guidance exists for funds in managing the return or transfer of contributions made in error. Currently we assume that existing processes and arrangements will apply, however further guidance in the specific circumstances that the introduction of Single Default Accounts would be welcome

Recommendations – single default account

- Provide additional guidance to trustees on the management of correction of contributions made in error.

Improving Accountability and Member Outcomes – Annual Members’ Meeting

Rest welcomes the clarification provided in the draft Regulations on the treatment of providing the Annual Member Outcomes Assessment, and the acknowledgement of the challenges to schedule an appropriately timed Annual Members Meeting while providing these disclosures.

Improving Accountability and Member Outcomes – employer inducements

The proposed removal of SIS regulation 13.18A(1)(d) has impacts upon workplace seminars offered by Rest regarding superannuation. Workplace seminars on superannuation include topics on planning for retirement, super explained, women and super, insurance in super, super to pension and investments. (We note that education on contributions only is subject to an exemption which will remain, ie 13.18A(1)(c).)

The ASIC Information Sheet INFO 241 characterises educational seminars at an employer’s premises that are not broadly offered to members as a benefit to an employer, because the employer can highlight the availability of the seminars as making working for the employer more attractive. ASIC states that “potentially, the provision of seminars ... may be an incentive that could reasonably be expected to influence the choice of fund into which the employer pays employee superannuation guarantee contributions.”

It is unfortunate that a service that benefits members, ie delivering superannuation education at a convenient workplace location for employees is mischaracterised as a good or service to benefit or induce an employer to stay or join a superannuation fund. The style of information and education offered at these seminars is that which we also seek to provide by other means to all members, including through online articles, videos, seminars and webinars, and the opportunity to provide this in a workplace setting supports this other educational material.

We note that the explanatory memorandum to the draft regulations refers to gifts of computers to both employees and employers as one reason for removing the regulation. This seems appropriate, however because ASIC INFO 241 refers to workplace education as a good or service that could reasonably be expected to influence an employer, the removal of this regulation will make workplace education on superannuation (apart from contributions) a contravention of s68A of the SIS Act. This is unfortunate, as superannuation is complex and it is in members’ best financial interests to offer such education. It is the members, not employers who are benefiting from the education and such education has an important role in terms of increasing financial independence and literacy of members.

Recommendations – employer inducements

- That an exemption be included in the regulations for workplace seminars and where the content relates to superannuation.

Portfolio Holdings Disclosure

Earlier this year, Rest commenced voluntarily providing public portfolio holdings disclosure on our website. This disclosure is comprehensive, and we believe provides practical and useful information for our members.

We believe that both options of the proposed disclosure requirements for portfolio holdings described in the draft EM, and in detail in the draft Regulations, have some significant shortfalls against what is already provided voluntarily by many funds, as follows.

Disclosure will be reduced

- The proposed 'associated entity' test generally means that the disclosure does not 'look through' to underlying assets, which is unaligned to existing voluntary approaches. The result is less disclosure about what is owned, for example, a property shopping centre fund is disclosed, rather than the actual assets (that is, the shopping centres).
- The test will also result in inconsistent disclosure as it depends on the type of holding structure, rather than the underlying assets. In particular, there are some difficult applications of the 'associated entity' test across the various types of investment structures. For example, in the treatment of investments in enterprises where a fund holds more than 50 per cent and funds of one (where theoretically the fund may be able to remove the trustee).

Disclosure will not be meaningful

- Disclosure of each underlying instrument is not useful to members in all asset classes. For example, disclosure of each investment instrument in the fixed interest asset class does not provide a meaningful representation of exposure by issuer, by duration or by other feature that discloses something of meaning about the asset class. Permitting some form of aggregation of some interests should be considered as it is likely to be more useful.
- Treasury assumes independent advisers will be required to assist retail clients understand the information, however it is unclear what meaningful sense can be made of the point in time portfolio.

Single point valuations for unlisted assets will prejudice members

The use of single-point valuations for unlisted assets may:

- limit realisable gains on disposals, as this disclosure dampens the market process for disposals if the 'reserve price' is publicly known;
- operate to exclude members from certain investment opportunities, as confidentiality about value is vital to certain investment managers; and
- make it more difficult to procure valuations for unlisted assets. Currently valuations are procured from independent valuers on the basis that they are confidential and generally a valuation range is provided. Given the inexact nature of unlisted asset valuations, independent valuers may be less willing to provide the output if there is public disclosure.

Recommendations – portfolio holdings disclosure

- Given that Rest (and various other funds) have existing voluntary portfolio holding disclosures that have significant benefits above the disclosure required in the draft regulations, further consultation is required to ensure that the disclosures are effective.