



FINANCIAL
SERVICES
COUNCIL

Retirement Income Covenant Position Paper

FSC Submission

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1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advice licensees and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing \$3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Executive Summary

The FSC welcomes the release of the Retirement Income Covenant Position Paper.

The FSC continues to be strongly supportive of a principles-based Retirement Incomes Covenant, which ensures all trustees are appropriately considering the retirement income needs of their members.

The FSC is broadly supportive of the proposed structure and content of the Covenant. It clearly builds on the learnings of the Retirement Income Review to provide clear direction for trustee thinking on retirement issues.

However, while the Covenant is principles-based there will need to be clear minimum expectations for trustees, particularly in relation to implementation and transition arrangements.

This submission raises practical implementation issues which will be faced by trustees implementing the Covenant, and broader issues which should be considered alongside the development of the Covenant.

We also look forward to the Government continuing to articulate the role of superannuation in the broader retirement system, including through a comprehensive response to the Retirement Income Review.

3. FSC Recommendations

1. Implement a Retirement Income Covenant which maintains the principles-based structure of the proposal.
2. Retain the three key elements of the Covenant as drafted in the Position Paper.
3. Consider whether “maximising” income should be replaced with a more nuanced drafting relating to meeting retirement income goals or needs.
4. Ensure that any regulatory guidance is provided, at least in draft form, well before the implementation date of the Covenant.
5. Clearly articulate the expectations for trustees in relation to implementation of their Retirement Income Strategy through regulator guidance.
6. Provide clear regulatory guidance in the transition period, to create an explicit framework within which trustees may develop products and guidance within the current law.
7. Ensure an ongoing dialogue between industry, Government and Regulators to ensure trustees are comfortable providing appropriate guidance to members.
8. Consider guidance to ensure trustees consider relevant circumstances of members when determining the level of guidance and assistance to provide.
9. Specifically consider retirement advice and guidance as part of the Quality of Advice Review, to ensure that the advice regulatory framework does not prevent individuals accessing appropriate information, guidance and advice throughout their retirement journey.
10. Undertake further consultation on the provision of aggregated Government data to superannuation trustees to support development of Retirement Income Strategies.
11. Clearly identify system-level assumptions that trustees are expected to factor into the development of their retirement income strategies.
12. Regularly test and update system-level assumptions, such as those relating to unspent retirement savings.
13. Consider the role of Government and non-Government sources of information to support Australians making decisions about retirement, outside their superannuation fund.
14. Consider in detail how the Retirement Income Covenant will interact with other regulatory requirements.

4. Comments on the Covenant

4.1. Structure

The FSC has no material concerns with the proposed structure of the Covenant.

We are pleased to see a proposed approach to the Covenant which is principles-based and focused on helping members balance the key considerations relevant to retirement planning.

The requirement for funds to develop, implement and regularly review a Retirement Income Strategy for members is an appropriate addition to the existing legislated covenants.

The three areas to be considered by trustees (income, risk, and access to savings) are also broadly appropriate to reflect the key considerations when determining the appropriate approach to retirement income for a particular member.

However, while we agree that considering the level of retirement income required by members is appropriate, we have some concerns about the implications of the inclusion of the term “maximising” retirement income.

Some concerns have been raised that, even when balanced with the other two considerations, this may still inappropriately skew trustee behaviour toward maximising income with no upper limit, rather than maximising income to a reasonable level of adequacy. It may be more appropriate to specify that trustees should consider the income needs and goals of members – this might not align with the maximum possible level of income.

We anticipate that regulations and/or regulatory guidance will provide more granular detail in relation to the three factors a trustee must balance – for example, by specifying longevity risk as one of the types of risk to be considered by trustees, as noted in the Position Paper.

Other key non-financial considerations, such as considering cognitive decline as part of both the trustee’s strategy and the member guidance which supports it, may also need to be considered as part of additional regulatory standards and/or guidance.

Recommendation

1. Implement a Retirement Income Covenant which maintains the principles-based structure of the proposal.
2. Retain the three key elements of the Covenant as drafted in the Position Paper.
3. Consider whether “maximising” income should be replaced with a more nuanced drafting relating to meeting retirement income goals or needs.

4.2. Transition

The proposed 1 July 2022 starting date for the Covenant will leave trustees with only a small amount of time to prepare for the implementation of the Covenant.

In order for trustees to be able to meaningfully comply with their obligations by this date, it will be necessary to ensure the appropriate level of information to commence development of compliant strategies is available as soon as possible. This includes providing certainty in relation to both legislation and any supporting regulations and standards/guidance from regulators. We also understand that the Government's intention is not to require funds to have fully implemented and operationalised all elements of their Retirement Income Strategy by this commencement date. It is instead expected that trustees will have a strategy in place which includes a forward implementation plan.

This approach will be vital to being able to meet the 1 July 2022 commencement date. Trustees who determine that there are specific product, advice or guidance needs of members that should be addressed by the fund are likely to require additional time to have these elements in place.

It would be helpful if the transition expectations could be clarified through the legislative process so trustees have a clear understanding of their obligations and the transition process.

While the continual development and review of Retirement Income Strategies is likely to make it difficult to pinpoint a time when implementation is "complete", if a transition period is deemed necessary this should last at least two years from commencement.

While some interim safeguards for trustees may be considered, it may be more useful for clear regulatory guidance to be provided to clarify appropriate trustee behaviour under the current law, both in terms of provision of guidance and advice (see discussion of Quality of Advice Review below) and other trustee activities.

This guidance should make explicit the activities that can be undertaken by trustees as part of their compliance with Covenant obligations, within the current regulatory framework, to provide certainty for trustees in relation to development of products or guidance.

This will effectively create a clear 'safe harbour' for trustees acting within the current regulatory framework, removing doubt about the scope of activity a trustee may choose (but would not be obligated to) undertake.

It should also clarify existing inconsistencies in regulatory requirements. For example, some trustees have concerns about the inconsistent regulatory treatment between online retirement income calculators and individual retirement projections, which may result in conflicting information being made available to members.

Recommendation

4. Ensure that any regulatory guidance is provided, at least in draft form, well before the implementation date of the Covenant.
5. Clearly articulate the expectations for trustees in relation to implementation of their Retirement Income Strategy through regulator guidance.

6. Provide clear regulatory guidance in the transition period, to create an explicit framework within which trustees may develop products and guidance within the current law.

Providing guidance, assistance and advice to members

The FSC is supportive of the trustee having a responsibility to consider providing appropriate assistance and guidance to members as part of their Retirement Income Strategy.

We also agree that the scope and scale of information and guidance provided should generally be at the discretion of the trustee, rather than a regulated level of information required. This will allow trustees to consider the information needs of their specific member cohorts.

For example a fund with primarily high-balance members who already receive financial advice (for example, a wrap/platform environment) may not consider it necessary to provide a comprehensive suite of basic information about retirement planning.

However, while the requirements on trustees appear appropriate, we have some concerns about the use of the terms “guidance” and “assistance” throughout the Position Paper.

While we understand this is intended to encapsulate a broad range of information and advice to members as appropriate, the lack of legal definition of these terms, along with potential hesitance of trustees to risk unintentionally providing personal advice, may risk narrowing the scope of guidance trustees feel able to provide.

The inability of intra-fund advice structure to provide information on an individual’s non-superannuation circumstances also risks limiting the value that can be provided to members through that channel, and risks individuals who receive information only from their super fund not making appropriately considered decisions.

While it will be possible to provide some guided pathways and assistance that allow individuals to take into account their own circumstances without a trustee veering into the advice space, it will be important that the guardrails around this are well-developed. This will require ongoing engagement between industry, Government and Regulators.

Updated guidance on the Sole Purpose Test to support trustees interpreting their role in this space would also be useful for trustees as they continue to develop their strategies and any associated guidance.

An example of this is the specific references in the paper to bequests, specifically noting that this should not be a consideration in a retirement income strategy. While the FSC agrees that it is not the role of superannuation savings to provide an inheritance, it is likely that this will remain a key consideration in individuals thinking around their broader retirement income.

This is one area where it may be difficult for trustees to provide guidance around retirement outcomes without understanding the broader circumstances of an individual member and potentially straying into the personal advice space. Simply ignoring these factors could lead individuals to disengage and make poorer decisions.

Recommendation

7. Ensure an ongoing dialogue between industry, Government and Regulators to ensure trustees are comfortable providing appropriate guidance to members.
8. Consider guidance to ensure trustees consider relevant circumstances of members when determining the level of guidance and assistance to provide.

Timing of Quality of Advice review

The Position Paper notes that there is an opportunity to further explore issues relating to financial advice and retirement incomes in the upcoming Quality of Advice Review.

While it is not realistic for every individual reaching retirement to access comprehensive personal advice, it will be important that the right strategic information and advice can be provided to members at the right time in their retirement journey, at a reasonable cost.

This is not always possible within the existing advice regulatory framework. The FSC's Financial Advice Green Paper, and the forthcoming White Paper, explore these issues in more detail.

The FSC looks forward to contributing to the Quality of Advice Review and using it as an opportunity to specifically grapple with issues around the provision of guidance and advice to superannuation members planning their retirement.

However, it should be noted that, given the implementation timeframe for the Covenant will not allow for resolution of issues identified through this review before commencement, trustees may feel constrained in the information and guidance they are able to provide to members, as well as product development.

Recommendation

9. Specifically consider retirement advice and guidance as part of the Quality of Advice Review, to ensure that the advice regulatory framework does not prevent individuals accessing appropriate information, guidance and advice throughout their retirement journey.

5. Supporting the Covenant

5.1. Data to support trustee strategies

External data sources

The ability to provide appropriate products and guidance relevant to their members will be core to the role of the trustee under the Retirement Income Covenant.

However, it is generally quite difficult for trustees to understand the broader circumstances of their membership outside their interest in the fund. This is particularly an issue in funds with diverse membership bases. While we anticipate the Covenant will provide trustees an incentive to seek to better know and understand their members directly, it would also be helpful if additional data was made available to support trustees in developing retirement income strategies.

While the Position Paper suggests that trustees could survey members or use similar strategies to determine their needs, FSC members are doubtful that they would be able to gather enough data to provide meaningful insights on the retirement needs of members.

A more effective way to ensure trustees have a clear understanding of their members would be to make existing data from government agencies available to superannuation funds for this purpose, either directly or through an open data framework.

For example, the ATO holds a broad range of data in relation to superannuation and non-superannuation circumstances of individuals. The datasets held by the ATO are unique, but not currently shared in any meaningful way to support industry.

Centrelink and other Government service providers also hold valuable information about individuals circumstances outside their superannuation savings.

Government data provided to trustees annually at an aggregate level (rather than at the member level) for key indicators could provide valuable demographic insights to help funds better understand their members and their potential retirement needs. This would be particularly useful when trustees are determining how they might consider providing cohort-level strategies for their members, as well as in the design of products and advice/guidance.

The kinds of data that might be useful in this context include (but are not limited to):

- members with multiple superannuation accounts;
- total superannuation balance across all accounts;
- taxable income across age cohorts for pre-retirees;
- Age Pension (full and partial) received for members in retirement;
- Marital status.

This data would also potentially be useful for trustees in complying with other regulatory obligations, such as member outcomes assessments. Broader population level data, such as

that collected by the Australian Bureau of Statistics, could also be tailored for use by superannuation funds.

The FSC would welcome the opportunity to further engage with the Government and ATO on the most appropriate way for the data held by the ATO to be made available to superannuation funds.

Recommendation

10. Undertake further consultation on the provision of aggregated Government data to superannuation trustees to support development of Retirement Income Strategies.

Key assumptions

The Position Paper takes a number of key assumptions about retiree needs and behaviour from the Retirement Income Review.

For example, the assumption that the majority of retirees pass away with the majority of their retirement savings untouched does not align with the experience of many superannuation trustees. While we understand this was a broad finding of the Retirement Income Review, we would caution against assuming this is the case for all members. Taking a one-size-fits-all approach to assumptions about retiree behaviour risks setting up the system in a way which ignores the circumstances of some or all retirees.

It should also be remembered that there is a limit to the role of trustees in terms of creating broad changes in attitudes and behaviours, such as individuals choosing only to draw down mandatory minimums from their savings (see Section 5.2 below).

The FSC recommends that any key system-level assumptions that trustees are expected to align with should be specified by regulators, and regularly tested and updated to align with changing retiree behaviour and the system maturing.

In general, trustees should be able to apply assumptions about consumer behaviour and circumstances that are tailored to their understanding of that fund's members.

Recommendation

11. Clearly identify system-level assumptions that trustees are expected to factor into the development of their retirement income strategies.
12. Regularly test and update system-level assumptions, such as those relating to unspent retirement savings.

5.2. Consumer confidence and understanding

In addition to the role of trustees, we also anticipate a broader role for the Government and other non-superannuation organisations in providing relevant information to individuals planning for retirement.

While the role of the trustee may be important for certain cohorts, it will be important to make sure sufficient information is available to ensure that individuals consider all appropriate options – including where this involves making the choice to move their superannuation savings to another fund for the retirement phase.

Trusted, centralised sources of information will also be particularly important when considering misconceptions people tend to have around external factors impacting their retirement (for example, confidence that the Age Pension will continue to be available to them, and misconceptions about the likely scale of late life expenses).

It will also be important to consider how individuals think about income more broadly and ensure that the language used by industry and other stakeholders is consistent and appropriate.

For example, individuals may not equate drawing down on capital with the idea of ‘income’, even though superannuation savings are clearly intended to be a key source of income for retirees. It may take some time to change perceptions that have arisen from the focus on preservation of ‘nest eggs’ in certain cohorts. Understanding when it is and is not beneficial to take superannuation savings as a lump sum is another area where education from outside the superannuation system may be more effective.

The FSC looks forward to working with the Government and other relevant organisations to ensure consistent and effective information is available to support Australians planning their retirement.

Recommendation

13. Consider the role of Government and non-Government sources of information to support Australians making decisions about retirement, outside their superannuation fund.

5.3. Interaction with other regulatory requirements

It will be important to consider how the implementation and regulation of the Covenant aligns with other regulatory reforms, particularly those currently on foot.

Relevant reforms, some of which were highlighted in the Position Paper, include:

- Design and Distribution Obligations;
- Member Outcomes Assessments;
- Anti-hawking requirements.

We understand that APRA and ASIC are already considering the points of crossover between these regulatory settings.

The focus of alignment for these regimes should be focused on how to ensure seamless interactions for members, including:

- ensuring appropriate conversations can be had with member at the appropriate time; and,
- ensuring consistent information is provided to members throughout their retirement journey.

Recommendation

14. Consider in detail how the Retirement Income Covenant will interact with other regulatory requirements.