



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

29 September 2021

Director  
Tax and Transfers Branch  
Retirement, Advice, and Investment Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir / Madam

### Retirement Income Covenant – Draft Legislation

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback to Treasury on the draft legislation to enact the Retirement Income Covenant.

The FPA supports the intent of the Covenant and the potential enhancements it should provide users of the superannuation system in the lead up to and during retirement.

The FPA is concerned that the draft legislation does not oblige superannuation trustees to comply with the financial advice laws in the Corporations Act 2001. While the financial advice regime is referred to in 1.51 of the draft Explanatory Memorandum, this is insufficient to provide a clear and ongoing legal obligation that the laws that govern the provision of financial advice must be adhered to by the trustee regarding the formulation, review and giving effect to their retirement income strategy. This issue is of particular concern in relation to the assistance the trustee will provide beneficiaries to achieve and balance the objectives of the strategy, as required under s52AA(2) of the draft legislation.

While 1.52 of the Explanatory Memorandum states that the trustee “*does not need to consider the specific circumstances of individual members*”, superannuation trustees have access to personal information about beneficiaries. This creates a very fine line between the provision of

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<sup>1</sup> The Financial Planning Association (FPA) is a professional body with more than 12,000 individual members and affiliates of whom around 8,500 are practising financial planners and 5,207 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first “policy pillar” is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC ‘gifted’ this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.

factual information, as suggested in 1.14 of the Explanatory Memorandum, and the provision of general or personal advice as the beneficiary may assume the trustee has considered the individual's circumstances when 'assisting' them with their retirement income needs.

The obligation to comply with the financial advice provisions in the Corporations Act must be included in the SIS Act as the primary legislation codifying the Retirement Income Covenant.

**The FPA recommends the draft legislation (not the EM) be amended to include a clear obligation on trustees to adhere to the provisions in the Corporations Act 2001 relevant to personal and general financial advice when formulating, reviewing and giving effect to the retirement income strategy. For example, amend s52AA(2) of the draft legislation to include:**

***Note: In assisting beneficiaries in achieving and balancing the objectives of the strategy as required under this section, trustees must comply with the personal and general financial advice provisions of the Corporations Act 2001.***

This is in line with the reference to other important Commonwealth laws referenced in the draft legislation, rather than citing a regime in the Explanatory Memorandum.

The FPA notes that the draft legislation sets the framework for the Covenant. However, the Explanatory Memorandum includes a significant amount of detail of the considerations and steps trustees would be expected to take to meet the new retirement income obligations under the SIS Act.

We anticipate that the detail in the Explanatory Memorandum will form the basis of supporting amendments to the SIS Regulations and future regulatory guidance to ensure all superannuation trustees employ consistent and appropriate methodologies to meet their obligations under the new legislated Retirement Income Covenant in line with the government's intended operations of the provisions of the Bill. The inclusion of this detail in regulations and guidance would enable these provisions to be reviewed and, if necessary, updated in a timely manner to ensure the retirement income covenant obligations and trustees' strategies remain relevant to changing environmental conditions and beneficiaries' needs.

In our previous submission to Treasury on the 2021 Covenant Position Paper, the FPA recommended the need for trustees to consider the impact of 'frailty risk' on the stability and sustainability of retirement income and when identifying how they will assist members to have flexible access to their savings in retirement. The consideration of 'frailty risk' should occur during the formulation, review and giving effect to the trustee's retirement income strategy.

As discussed in our previous submission, 'frailty risk' refers to the impact on retirement income of the increasing levels of support retirees have historically needed over the last 10-12 years of

their life, with many experiencing high levels of care dependency in the last 4-5 years<sup>2</sup>. This represents on average 17-25% of retirement years<sup>3</sup>. With aged care costs ranging from \$5,200 to \$260,000 a year, and the average balance of superannuation accounts of men and women aged 75 years and over being \$366,200 and \$270,300<sup>4</sup> respectively, this could represent as much as 71% (men) or more than 96% (women) of a retiree's superannuation savings as they enter the years of their retirement during which they will require the most care.

We acknowledge and welcome the inclusion in the draft Explanatory Memorandum:

- of the need for trustees to consider “... *the risk to the appropriate management of the sustainability and stability of expected retirement income posed by issues associated with beneficiaries’ potential cognitive decline over time*”(1.45); and
- that “*Trustees may wish to consider the life stage of beneficiaries and likely consumption needs*”(1.47).

However, the FPA encourages trustees to consider the impact on retirees’ superannuation savings of ‘frailty risk’ and the life stages during which individuals will require the most care due to the cognitive and health decline that can occur.

**The FPA recommends the draft Explanatory Memorandum be amended to require trustees to make assumptions about the health and aged care needs of their members (particularly in their ‘frailty years’) when formulating, reviewing and giving effect to the retirement income strategy for the fund. This obligation should be included in the supporting SIS Regulations amendments and regulatory guidance for the Retirement Income Covenant.**

We would welcome the opportunity to discuss with Treasury any matters raised in our submission. If you have any questions, please contact me on 02 9220 4500.

Yours sincerely



**Ben Marshan CFP® LRS®**

*Head of Policy, Strategy and Innovation*  
Financial Planning Association of Australia

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<sup>2</sup> Australian Institute of Health and Welfare; and Aged Care Steps

<sup>3</sup> Based on ABS statistics on life expectancy

<sup>4</sup> Australian Bureau of Statistics Household Income and Wealth, Australia 2017-2018.