Your Future, Your Super review

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Response to Your Future Your Super Measures

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To: Superannuation Efficiency and Performance Unit
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From: BUSS (Queensland) Pty Ltd

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BUSS (Queensland) Pty Ltd and BUSSQ Overview

BUSS (Queensland) Pty Ltd is the trustee of the Building Unions Superannuation Scheme Queensland ('BUSSQ'). BUSSQ is an industry superannuation fund that has $5.9 billion of funds under management. It has approximately 69,000 members, drawn from more than 20,000 employers who range from very large organisations to sole trader businesses.

BUSSQ has 39 permanent employees.

Executive Summary

The purpose of this review is to assess any unintended consequences and implementation issues of the Your Future, Your Super (YFYS) measures.

The responses provided in this review reflect the opinions and thoughts of how the measures effect BUSSQ and our members. In our response we will cover all four elements of the YFYS measures.

- Performance
- YourSuper comparison tool
- Stapling
- Best financial interests' duty (BFID)

BUSSQ would also like to provide feedback on some overarching elements of the YFYS measures outside of the specific questions raised by Treasury. Firstly, BUSSQ agrees that consistently underperforming funds should look to exit the industry. However, what is the appropriate test to measure this, and more importantly, over what time periods. BUSSQ believes that the current performance test needs material improvement and objects to the retrospective nature of the current test.

The performance test time period to commence from the date the legislation

Measuring a fund's performance and back dating the test some 5 years before it was announced is both unfair and does not consider the investment reasons underpinning decisions that were taken at the time to protect and grow members funds.

BUSSQ believe that the test should be reformed on its time period to commence from the date the legislation came into effect. Many Trustees in earlier time periods were investing members funds based on the current observed and advised economic environment, where geopolitical macroeconomic threats were present, and in line with members expectations. Where funds experienced underperformance to peers during this period, in BUSSQ's case this was a result of deliberate more defensive strategies, as opposed to poor investment decisions.

A fund with a younger member average age for example can (and do) take on a more aggressive tilt exposure to equity markets, whereas a fund with an older average age needs to consider a less aggressive strategy. The current test fails to take these considerations into account, especially over past and retrospective periods.

Many funds, both mega, large, and small, would also have failed this test if it was introduced at other times over the past 20 years. To draw a line in the sand as of 1 July 2021 and retrospectively measure a fund's performance at a point in time is not a robust measure of a funds ability to improve their performance. Indeed, the Australian and Securities Commission (ASIC) has long stated in consumer protection legislation that funds must adhere to strict member communication standards that past performance is no indication of future performance. The concept of the current test appears to disregard this key regulator policy position.

BUSSQ has a 38-year history of delivering exceptional returns to members (currently 9.29% per annum over this time period), so to cherry pick a short historical period is not reflective of the funds ability to manage members money responsibly and optimize returns. Superannuation is a long-term investment for members of course.

BUSSQ believes that a performance test that is fair and reasonably measures a fund's performance from when the legislation came into effect is the way a responsible Federal government and regulator could fairly assess funds on performance, and this is a fundamental change that should be introduced as an absolute minimum.

Members are appropriately insured for high-risk working environments

One of the unintended consequences of the Stapling legislation is that Australians who change jobs and work in these industries have insurance cover which may not be fit for purpose if they needed to make an insurance claim for disability or death. Minimising unnecessary superannuation accounts is a positive step to improve member retirement outcomes, however members who work in the building, construction and allied industries need to be confident that their superannuation funds insurance policy will cover them for the work they do.

BUSSQ has an exemption under the dangerous occupations legislation, however we are increasingly observing Australians that work in these industries being attached to superannuation funds which do not insure them appropriately for the work they do, such as working at heights or in certain occupations. BUSSQ's experience has also been that many previously insured members who have lodged death and disablement claims lost cover under the previous Federal governments Protecting Your Super legislation, often leading to financial distress and disaster for the member or their beneficiaries. BUSSQ has kept records since this legislation came into force, and 14% of all death claims paid since 1 July 2019 had lost insurance cover under the legislation.

Serious consideration should be given to ensuring members who work in high-risk industries are appropriately covered by providing an exemption to the Stapling laws when Australians enter certain industries and industry superannuation funds. The financial burden inevitably falls to the Federal government's various social welfare programs and agencies when members can not avail of insurance cover within superannuation.

BUSSQ has provided further commentary on the review's specific questions in our submission below.

Performance

While we will not comment on all the questions raised, we will comment on ones relevant to BUSSQ.

Does the measurement of actual return using strategic asset allocation affect risk-taking behaviour by superannuation trustees?

As discussed in question 6, every investment now needs to be made with a YFYS lens. The use of single benchmarks such as ACWI leads trustees to only allocate a benchmark weight to Emerging Markets as an example rather than allocating based on their short- and long-term expectations of risk and reward in Emerging Markets. Another stark issue is the lack of a risk measure. Some funds with an older membership cohort may have a downside protection bias within their equities portfolio and/or tail-risk hedging to help protect members from sequencing risk. The introduction of a sharp ratio or risk-adjusted return would make sense (noting that members cannot "eat" risk-adjusted returns).

Does the current set of indices used to calculate benchmark returns unintentionally distort investment decisions or reduce choice for members? If so, is there a way to adjust the benchmark indices while maintaining a clear and objective performance test?

Having set benchmarks that don't always reflect the underlying investments will always be problematic. Whether it is Direct Property, Direct infrastructure, or Direct Agriculture there are no specific indices that can be fully replicable and, therefore, a viable benchmarking tool. As discussed in Question 6, asset classes like Alternate Growth and Alternate Debt will be very hard to benchmark.

Have the consequences been effective at encouraging trustees to improve their performance or merge with better performing funds? Are there ways this could be improved?

Anecdotally it has but potentially has caused funds to prioritise passing the test as opposed to focusing on performance. Every investment decision made needs to be made with the YFYS lens rather than is this in the member's best interest. This is not a bad thing as the two things are not necessarily opposed but can be. An example is BUSSQ Alternate Debt asset class which internally is benchmarked against Cash as the underlying investments are all floating rate, and this was deliberate with interest rates close to zero. Now that rates have risen, we have been adding duration to the portfolio as it is now in the best interest of members, but it also minimises our YFYS benchmark risk (where FI is measured against the Composite Bond index), but this would not have been in the best interest of members 12 months ago.

Are the measures in place to resolve underperformance sufficient given the potential for members to be stapled to these products? How can the system best support members in underperforming products?

We believe the tests have had the desired effect of forcing several mergers of poor-performing funds. Going forward, it needs to be understood that due to differentiated strategies and objectives, some funds will underperform from time to time, just as even the best Investment Managers will underperform from time to time.

What would be the impact of extending the current performance test to other Choice products (such as single sector or retirement products)? How could any issues be addressed?

We believe extending the test to single sector options where there is an unambiguous, fully investable benchmark, such as equities, is fine; however, where there is a CPI Plus or Cash Plus benchmark, or in the case of Direct Property, an uninvestable benchmark, we believe the test should be avoided.

YourSuper Comparison Tool

Does the comparison tool adequately inform members and prompt a behavioural response? Is the tool effective at informing new employees of their options when entering the workforce, including those who do not have an existing superannuation account?

To inform members, including new employees entering the workforce to an acceptable extent, and avoid causing unintended harm prior to prompting a change to a superannuation product, the current tool requires the following considerations:

- Insurance – members should understand what their insurance needs are, how this compares to their current insurance arrangements and any implications of changing. For BUSSQ members specifically, if they change their superannuation account based on the current tool, they are in fact, likely to inadvertently move from a fund that covers dangerous occupations to a fund that does not.
- Stage of life – Members should consider their stage of life in this decision, particularly if they are close to retirement age.
- Risk profile – Members should consider their risk profile in this decision.
- Choice products – Members should clearly understand that this is only a comparison of MySuper products and not a complete picture of what is available to them.
- Time period of data – Superannuation is a long-term investment, and therefore, members should understand the full performance history rather than a selected period which may not reflect overall performance.

Given there has been over 1.5 million views, 430,000 members use the tool and approximately 37% making a change because of the tool, this data suggests that the tool does prompt a behavioural change. This creates more urgency to get the metrics and information adequate as suggested.

To what extent would altered or additional metrics, or improved functionality, make the tool more effective while ensuring it remains simple and clear? What more can be done to ensure that new employees are able to choose high-performing superannuation products that are appropriate for their needs?

Additional metrics as stated above, would make the tool more effective at adequately informing members. The question is, can this be done while keeping the tool simple and clear. Improved functionality might take an interactive direction as a way of bringing in personal advice in a digital way. For the tool to be adequate and simple, it needs to ascertain certain personal information so that the recommendation considers each individual's particular situation.

As the test is applied to more superannuation products, should the comparison tool also be extended? Considering the volume and complexity of Choice products, how could the tool be extended in a way that is meaningful and digestible to members?

At a minimum, the tool should clearly communicate the current comparison is limited to MySuper products only and is not a complete picture of choice. Ideally, an interactive personal advice tool would consider all products based on individual circumstances.

Stapling

To what extent are employers putting into practice processes to seek stapled fund details from the ATO? How has the implementation of stapling changed onboarding, software, and payroll processes for new employees?

BUSSQ is not able to provide any meaningful assessment of employer practices during the onboarding process or of their software and related payroll processes. BUSSQ does not receive copies of completed choice forms or nominations as this matter is dealt with directly between the employer and the new employee.

Anecdotally, BUSSQ employer-servicing staff have reported that new employees are providing their superannuation fund details as part of the employers onboarding process, but this appears to be due to heightened awareness around choice rather than as a direct result of stapling. Additionally, some BUSSQ employers have advised that due to the nature of their workforce, such as Casual Employees, FIFO Employees or Employees that travel, getting a registered home address can be difficult as these workers provide and prefer to list their current location rather than their registered address. This is leads to several unsuccessful results when performing a look-up and discourages stapling requests from being made.

Are there any barriers in the current framework to achieve the intent of the stapling reform?

Many workplace agreements and industrial awards nominate a default fund that is aligned with and tailored for the specific circumstances of the industry they represent. The right of workers to collectively negotiate their default superannuation arrangements through workplace agreements and industrial awards has been essentially overruled by the stapling reforms, potentially leaving individuals at a disadvantage.

Like other stakeholders in the industry, BUSSQ would also raise the issue of sequencing of the Your Future Your Super legislation, as it does not contain protections against stapling a new employee to an underperforming fund. Safeguards should be included to ensure minimum eligibility requirements are met in order to be a stapled fund, such as;

- the fund is open to new members;
- it is subject to annual performance testing; and
- it can provide appropriate insurance coverage for the member's current employment circumstances, including consideration of occupational and industry risk.

What is the actual, or likely, impact of stapling on insurance coverage?

BUSSQ is one of the few funds that have obtained the dangerous occupation exemption to allow members to have insurance coverage. As stapling does not consider the changing roles or industries of an individual, there is a significant risk that an individual who is in a dangerous occupation is stapled to a fund that may not cover them under the stapled funds default insurance arrangements should an injury, illness or death occur.

Conversely, an individual moving from a high-risk occupation to a lower-risk occupation could end up paying higher insurance premiums by being stapled to their initial superannuation fund. This would be contrary to the intended purpose of stapling, which is to reduce the costs to members, as they could be paying higher premiums than would be required under their employers default fund.

BUSSQ also notes that individuals changing roles into industries with different levels of risk are not prompted to consider their financial situation and insurance needs. The stapling results do not expose the insurance cover linked to the stapled account. Therefore, the automatic protections that were previously embedded in default settings within MySuper group insurance offerings are no longer available.

Best Financial Interests Duty

To what extent has the BFID required trustees to change their processes and procedures? Has this caused any unintended consequences or impacted member outcomes in any way?

Where material amounts of members money was being spent, BUSSQ had robust assessment and processes in place. This included business cases, including quantification of expected outcomes, cost–benefit analysis, statement of risks and mitigation strategies. This was in light of the duty to act in the best interests of members.

The introduction of BFID led to some refinement of these processes for significant expenditure. However, the main impact has been on expenditure that in insolation would be considered not material, such as expenditure on everyday administration expenses. A more constructive approach may be to advocate for regulatory guidance to confirm that an overall budget approach is appropriate for necessary expenses of conducting business.

Are there certain types of expenditure or activity that trustees are particularly concerned about being able to prove compliance with the BFID in respect of? Why is it difficult to demonstrate compliance? Should there be a materiality threshold?

Having no materiality threshold combined with a reverse onus of proof means that the possibility exists that BUSSQ or any fund could be prosecuted by the regulator for not having a robust business case for everyday administrative or business operational expenses. While it is unlikely the regulator would undertake such an action, the strict interpretation of the law means that it could occur and who would have the final determination as to what is material without such guidance. Therefore, time and resources are being used putting together evidence for such expenditure, which more than likely is not required. It is difficult to directly link such expenditure to the best financial interests of members but to maintain a professional work environment, such expenditure is necessary.

Is the reverse onus of proof the most appropriate way to achieve the objective of improving member outcomes?

While BUSSQ undertake rigorous business cases in line with the current interpretation of the need for expenditure to be in the best financial interests of members, we have concerns about the scope and application of the reversal of the evidential burden of proof.

A reversal of the evidential burden of proof is usually confined to offences that are serious, and where there are difficulties of proof, such as terrorism offences. While a breach of the duty would certainly be serious in the context of the superannuation sector, it is unlikely that a breach would be difficult to prove.

BUSSQ currently undertake detailed business cases to ensure expenditure is in line with duties to members; however, there are concerns that the legislated civil penalty, paired with lack of guidance around what is required to satisfy a reverse burden of proof, has resulted in costly and overly complicated recordkeeping. This is heightened by the absence of a materiality threshold.

It would be more appropriate align the approach with other civil penalty regimes and remove the reverse burden of proof. This would also align the approach with other regulated entities and reflect the risk profile of the superannuation industry.

For further information or clarification please contact

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