



Mr Wayne Poels
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Dear Mr Poels

REGULATION IMPACT STATEMENT – FINAL ASSESSMENT SECOND PASS

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for the Government's reform relating to annual member meetings in superannuation.

I believe the RIS meets best practice requirements and is consistent with the ten principles for Australian Government policy makers.

In particular, the RIS addresses the seven RIS questions:

- *What is the problem?*

Currently there is an accountability gap relating to superannuation trustees. Part of this gap derives from the lack of a statutory mechanism for superannuation fund members to formally question and engage with their fund to hold trustees and responsible officers to account for the fund's performance. There is also a widespread lack of engagement between members of superannuation funds and trustees.

- *Why is government action needed?*

Government action is required because the problem stems from an information asymmetry, which superannuation funds have been unable to resolve.

- *What policy options are you considering?*

Option 1: Status Quo

This option involves no change to the current law. Trustees could choose to engage with members if they wish, but it would not be compulsory to do so and the law would not contain rules on how this should be done.

Option 2: Flexible annual members' meetings (AMMs) without voting

This option involves a change of law to require trustees of certain APRA-regulated funds to hold annual member meetings. However, trustees would retain flexibility over how AMMs are conducted including holding virtual meetings. Also, while members would be able to ask questions, and trustees would be required to answer them, there would be no formal voting on resolutions.

Option 3: Physical annual members' meeting with voting

Under this option, trustees would be required to hold a physical members' meeting each year. In addition to questioning trustees, executives and other relevant officeholders, members would be able to vote on non-binding resolutions.

- *What is the likely net benefit of each option?*

Option 1

Preservation of the status quo would not impose any additional compliance burden on superannuation fund trustees but would not improve accountability.

Option 2 (Recommended option)

Option 2 provides a formal opportunity for engaged members to question superannuation fund trustees and responsible officers, holding them to account at reasonably low cost.

Option 3

Option 3 provides a formal opportunity for engaged members to vote on non-binding resolutions and question superannuation fund trustees and responsible officers, holding them to account at a higher cost.

- *Who will you consult and how will you consult them?*

The Government issued exposure draft legislation to consult on its policy to have annual members' meetings for superannuation funds. In relation to some of the more technical aspects of the Government's annual members' meeting policy, the Government conducted targeted consultation with relevant stakeholders.

- *What is the best option from those you have considered?*

After considering stakeholder feedback from public consultation, Option 2 is the best policy option. We believe Option 2 strikes the best balance between costs and benefits and increases trustee accountability.

The Office of Best Practice Regulation has agreed that Option 2 will impose an average annual compliance cost of \$14.6 million. A regulatory offset has not been identified. However, Treasury is seeking to pursue net reductions in compliance costs and will work with affected stakeholders and across Government to identify regulatory burden reductions where appropriate.

- *How will you implement and evaluate your chosen option?*

The Government intends to implement Option 2 by introducing legislation into Parliament in the Spring Sittings with application of this measure from the 2017-18 financial year and later financial years. Success will be measured by how many members participate in the meetings and whether they improve trustee accountability and performance.

I am satisfied that the RIS addresses the concerns raised in your letter of 28 August 2017, with specific changes to the RIS highlighted below.

Problem

In relation to the problem section, a greater evidence base for the problem has been provided. In addition, more tangible consequences of the current situation have been identified (such as the disconnect between members and trustees). The impact analysis section contains a more thorough analysis of the benefits of the changes, including greater member engagement and requiring AMMs.

The problem section has also been revised to: reflect how the current flexibility available to members, such as the ability to change fund, does not sufficiently address the problem; and show that while there is no clear link between member engagement and fund performance, it is clear that without appropriate accountability or oversight by interested parties, which should include members, performance may suffer.

Impact Analysis

The analysis of the impact for each option has been refined to reflect the changes made in the problem section, Options 2 and 3 now also provide insight into how they compare to Option 1 (status quo). The impact on the benefits of non-binding voting under Option 3 have been clarified. In this regard, while non-binding voting lessens the benefits that can be delivered through this Option, the trustees' fiduciary obligations will ensure that members' views expressed through voting would be likely to be taken into account. Finally, the impact analysis section clearly indicates that the net benefits for Options 2 and 3 will depend on the level of member attendance at AMMs.

We have estimated that Option 2 will provide a net benefit to members if the improvements in performance exceed the estimated cost of holding AMMs; in other words, if it delivers annual improvements of more than \$66,000 per fund in funds' performance.

Consultation

The consultation section has been revised to note changes that have been made in response to stakeholder feedback, including where concerns have not been addressed. Specifically, we have included material on how we responded to stakeholder concerns around compliance costs associated with notifying members and how AMMs would work in practice.

Conclusion

The conclusion section has been strengthened to put a greater emphasis on the differences between the status quo and the other options.

Implementation and review

The implementation and review section has been revised to explicitly acknowledge the need for ongoing consideration of the benefits of AMMs.

More broadly, I note that the RIS reflects the status of impact analysis around previous decision points – in particular, an early assessment RIS (OBPR ID 22455) was prepared for consideration prior to the development of exposure draft legislation.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the Australian Government Guide to Regulation.

I submit the RIS to the Office of Best Practice Regulation for formal assessment.

Yours sincerely



Michael Brennan
Deputy Secretary
Fiscal Group