



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

15 June 2018

The Treasury
Manager, CIPRs
Retirement Income Policy Division
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam

Retirement Income Covenant Position Paper

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the Retirement Income Covenant Position Paper.

However our position on the introduction of a retirement income framework has not changed from our original submission in response to Treasury's Development of the framework for Comprehensive Income Products for Retirement (CIPRs) discussion paper and the proposed Actuarial Certification Test for CIPRs.

As detailed in our original submission, the FPA strongly opposes the introduction of such a regime as we believe it would be detrimental to consumers and would erode consumer protections, particularly in relation to the selling of financial products and the provision of financial advice. This will only serve to confuse consumers and blur the lines of advice and product sales. These are significant issues for consumers that the Government is working tirelessly to address in other areas.

It is extremely disappointing and concerning to see Treasury progressing with the introduction of this regime at a time when shocking evidence has been, and continues to be, disclosed at the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, with its public hearings and inquiry into the superannuation industry still pending.

Further, the Productivity Commission has recently released its Stage 3 draft report of its Inquiry into its assessment of the efficiency and competitiveness of Australia's superannuation system, with concerning findings of significant flaws in the system. The Productivity Commission's draft findings state:

- *Draft Finding 4.4 - A 'MyRetirement' default is not warranted. The diversity in household preferences, incomes, and other assets when approaching, and in, retirement means there is no single retirement product that can meet members' needs. The most important task remaining is to improve the quality of financial advice to guide members among the various complex products, especially where members may decide to make the mostly irreversible decision to take up a longevity (risk pooled) income product.*
- *Draft Finding 4.5 - Superannuation funds make insufficient use of their own (or imputed) data to develop and price products (including insurance). This is particularly problematic for designing products for the retirement and transition to retirement stages, because this is when different strategies have the biggest payoffs for members.*



Progressing the development of this Comprehensive Income Products in Retirement (CIPRs) regime at this time undermines the seriousness and role of both the Royal Commission and the Productivity Commission's Inquiry.

We do not believe it is appropriate for a retirement income product regime that encourages a sales based culture to be introduced, or further developed and consulted on, prior to the completion of the Royal Commission or the Productivity Commission's work.

The FPA strongly recommends the Government, at a minimum, put this project on hold at this time. However we believe this regime should not be implemented at all.

Treasury's proposed Retirement Income Framework is forcing the creation of financial products, mandating they be offered to consumers, overriding existing consumer protection mechanisms, and overlooking the significant risk this poses for consumers and the trillions of dollars of Australians' retirement savings. It is also ignoring the fact that if these products were viable, product providers would already be offering them to consumers. However, as detailed in our previous submission, product providers have not developed these type of products, or if they have they have failed and become legacy products to the detriment of providers and consumers.

The FPA acknowledges Treasury's efforts to amend its original proposal from April 2017, however the changes do not address our concerns in order to adequately protect consumers. For example:

- **'nudge marketing'** – while this language is not used in the current position paper, the position paper states: "*Trustees would be required to offer a CIPR to all members at retirement*"; and "*...trustees would be able to offer up to three flagship CIPRs based on an individual's account balance without the offer constituting financial advice.*" This at a time when the Royal Commission has seen misconduct around the requirements product providers have placed on representatives to push products on consumers, rewarding and paralysing representatives for selling and under selling their products. As previously submitted, it is inappropriate to bend the financial advice rules for product providers to create a false market for a financial product and to allow product providers to push such products on consumers under a mandate in the law, in order to stimulate demand for these products.
- **'Offer'** – The new Treasury position paper states: "*Trustees would be required to offer a CIPR to all members at retirement.*" As discussed in our previous submission, the FPA opposes the use and reliance on the term 'offer' as it is very sales focused, will perpetuate a sales based culture, puts product providers who rely on it at risk of falling into the advice provisions, and is not focused on the needs and best interest of the member. Rather it signifies a regime focused on product sales and up take, to sign up as many members as possible to build a pool of disengaged members in a product that may not be in their best interest, in order to create a false market and reliance on a product that may not be viable or sustainable but is required under the law.
- **Mandating** - The proposal has moved from permitting product providers to offer these products to consumers in a sales like fashion, to **mandating** that product providers push these products onto consumers. "*Trustees would be required to offer a CIPR to all members at retirement.*" The FPA adamantly oppose mandating product providers to develop and offer these products. As discussed in detail in our previous submission, this forces the creation of a false market which puts the life savings of Australians at risk. The market for any financial product must be developed based on thorough due diligence, analysis and testing by product providers, including examining



the individual product provider's ability to develop such products in a viable and sustainable way within the parameters of their unique business model. While we acknowledge the proposal to allow trustees to offer CIPRs products of third parties, this in itself poses additional risks for both the trustee and the consumer.

- Advice regulations – the position paper states: *“To support trustees guiding members into products that are better suited to the member’s circumstances, regulations would clarify a limited range of factors that are classified as scaled personal advice or intra-fund advice.”* The Corporations Act, Corporations Regulations, and ASIC guidance, thoroughly cover the requirements, factors and classifications for scaled personal advice and intra-fund advice. The application of these requirements must be consistent, regardless of the product(s) involved otherwise there is a high risk that these consumer protection mechanisms will be watered down and consumers and providers will become confused as to which rules apply in which circumstances. The FPA opposes the implied proposal that changes or carve outs would be made to existing regulations, either under the Corporations Regulations or SIS Regulations, to clarify a limited range of factors that are classified as scaled personal advice or intra-fund advice specifically in relation to CIPRs.
- Underlying guarantee – as previously submitted, products that take an individual’s savings for the purpose of providing an income for life must come with an unwaiving guarantee, and security as to who is behind that guarantee. However Treasury has stated: *“There is no requirement for products to be fully or even partly guaranteed.”* There is no underlying guarantee as to the provision of adequate income for life. This puts consumers’ life savings at risk and undermines the objective of the proposed regime. There have been cases of underfunding in both state and private defined benefit income products which have led to consumers failing to receive all entitled retirement benefits as promised at the outset of entering the product.
- Sales culture – The position paper states: *“Trustees may choose to offer additional products at the time of offering the CIPR, but it should be clear that the flagship CIPR offering is the starting point for members.”* This implies a sales push to a particular product – the flagship CIPR – under the guise of general or intra-fund advice, and reinforces the allowance of a sales culture over the best interest of members.
- MyRetirement – we note the position paper no longer refers to the regime as MyRetirement. While we acknowledge our recommendation to remove this name has been apparently adopted, the concept and requirements of the regime are the same, just with slightly different language to remove some concerning terminology, and some minor tweaking around the edges. We are disappointed to see the regime progressing at all.
- Social security treatment – the position paper states: *“The Government announced the treatment of the social security means test rules for new and existing pooled lifetime income products in the 2018-19 Budget.”* Specifically, *“...the Government has committed to \$20.2 million to amend the pension means test rules to encourage the development and take-up of lifetime retirement income products that can help retirees manage the risk of outliving their savings”*¹. However as stated in the Budget Papers – *“This measure commences on 1 July 2019.”* We note the key date for the proposed CIPRs Framework: *“The Government proposes to legislate the covenant by 1 July 2019”*. It is concerning that part of Treasury’s justification for the CIPRs Framework is based on a

¹ https://www.budget.gov.au/2018-19/content/bp2/download/bp2_combined.pdf page 175



change in the means test rules that will not be implemented until July 2019, the same time as the CIPRs Framework. This means Treasury is not permitting the market time to test and respond to the new means test rules as they apply to retirement products, prior to implementing CIPRs framework.

- Income for life – we are concerned that while members may be able to direct funds into a CIPRs product under the guise of receiving an ‘income for life’, that income is likely to be substantially less than the income required to live on.
- Legacy products – the position paper states: “*Treasury should work with regulators (ASIC and APRA) to ensure the legislative and regulatory frameworks include provisions about how legacy retirement income products should be managed.*” However this is included under the heading ‘future work’.... “*Once those frameworks are established*”. As discussed in detail in our previous submission, creating an artificial market for the uptake of CIPRs products does not ensure the sustainability of the market or the necessary product performance for both members and funds, posing a significant risk that these will themselves become legacy products. This regime proposes locking up members’ superannuation savings in a pooled product for what could be 20 or 30 years or even longer. The known and unknown variables and conditions that could impact product performance over such a lengthy timeframe significantly increase the risk of them resulting in legacy products. As previously stated, similar products have been closed creating legacy products at great cost to providers and consumers. Also consolidation and changes in the superannuation market are constant and can significantly impact on the sustainability of such products, as discussed in detail in our previous submission. While Treasury have recognised this is a real issue that puts consumers’ savings at risk and that must be addressed, this should be done prior to establishment of the framework (not as future work).
- Safe harbour - in our previous submission we stated our opposition to the introduction of a safe harbour for product providers as the proposed CIPRs regime produces products that have no guarantee, locks away member’s superannuation savings, risks huge loss of capital and an individual’s estate, and must support the needs of members for 20, 30 or more years. These consumer risks associated with the proposed regime are exacerbated by the instability of the market and behavioural economics issues (discussed previously) impacting on the viability and sustainability of such products. Due to the risks borne ultimately by the members, a safe harbour should not be attached to the proposed CIPRs products. It is now disappointing and concerning to see that Treasury is proposing to establish the framework with a safe harbour to potentially be introduced in the future. The positions paper states: “*The Government understands that trustees are concerned they may be open to claims for loss or damage if, for example, a member accepts a CIPR offer but later changes their mind or dies before life expectancy.*” This risk for product providers is real, but a safe harbour from vital laws presents an equal or higher risk for consumers. This further demonstrates the complexities of such products and the flaws in introducing a regime that forces providers to offer CIPRs to consumers based on a sales pitch of flagship.

The FPA opposes the introduction of the proposed CIPRs framework as it is counter to increased regulation and consumer protections that the government is putting in place in relation to other financial products and advice under the Corporations Act. Such protections should not be watered down in relation to trillions of dollars’ worth of Australians retirement savings held in the superannuation system.



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If you have any questions, please contact me on heather.mcevoy@fpa.com.au or 02 9220 4500.

Yours sincerely

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Financial Planning Association of Australia²

² The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. 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 super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by Mark Vincent, deals with investigations and complaints against our members for breaches of our professional rules.
- 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 required of professional financial planning practices. This is being exported to 27 member countries and 170,000 CFP practitioners of the FPSB.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or working toward, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional designations, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board