Australian Securities and Investments Commission

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Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: economics.sen@aph.gov.au

27 February 2024

Dear Committee Secretary;

Re: Submission to the Senate inquiry into improving consumer experiences, choice, and outcomes in Australia's retirement system (the "Inquiry")

ASIC welcomes the invitation of the Senate Economics References Committee to make a submission to the Inquiry. Our submission set out in this letter focuses on the following paragraphs of the Inquiry's terms of reference:

f. progress on implementing the Retirement Income Covenant;
g. the impact of climate change on insurance premium affordability and accessibility;
h. the impact that climate change is likely to have on insurance premiums for products including life, home and contents and small business;

ASIC's role and priorities

1. ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. We are an independent Australian Government body established under the *Australian Securities and Investments Commission Act 2001*.

2. ASIC licences superannuation trustees, and general and life insurance companies that carry on business in Australia as part of the Australian Financial Services (AFS) licensing regime under the *Corporations Act 2001*. AFS licensees have a general obligation to provide financial services efficiently, honestly and fairly and comply with relevant additional obligations under the Corporations Act as well as their licence conditions.

3. ASIC's legislative powers are focused on conduct and disclosure obligations of superannuation trustees, and general and life insurance companies. ASIC's remit complements that of APRA as prudential regulator.

4. Our submission focuses on recent work of relevance to the terms of reference noted above.

5. One of ASIC's four strategic priorities for 2022/23 and 2023/24 is to protect consumers, especially as they plan and make decisions for retirement. ASIC has undertaken a range of work aligned to this priority including work focused on the implementation of the retirement income covenant.

6. In relation to insurance, during the 2022–23 financial year, ASIC focussed on general insurers' pricing promises, insurance in superannuation and claims handling. In 2023-24, ASIC is continuing to actively monitor claims handling to improve practices.

7. Further details on ASIC's work in relation to superannuation and insurance are outlined in ASIC's 2023-24 Corporate Plan and ASIC's Enforcement Priorities.

Implementation of the retirement income covenant

8. ASIC supports superannuation trustees doing more to promote the retirement outcomes of Australians and expects trustees to engage thoughtfully with their obligations under the retirement income covenant (which took effect 1 July 2022).

9. ASIC and APRA are jointly responsible for administering the covenant. We have worked together closely to monitor trustees' implementation of the covenant and drive trustees to prioritise the needs of their members at and leading up to retirement.

10. Based on the work ASIC and APRA have done to date, it is clear that the superannuation industry needs to mature in terms of its ability to support members in and approaching retirement.

Review of retirement income strategies

11. The retirement income covenant requires trustees to formulate, based on information and data, a strategy for the benefit of members who are retired, or who are approaching retirement, which balances the objectives of:

    - maximizing expected retirement income;

- managing longevity and other risks to sustainability of retirement income; and
- flexible access to expected funds over the period of retirement.

12. In 2022-23, APRA and ASIC reviewed progress by industry in implementing the covenant, considering how trustees understood members' needs, how they offered assistance to members and how they executed and oversaw their retirement income strategies. The findings of this review were published in REP 766 Implementation of the retirement income covenant: Findings from the APRA and ASIC thematic review in July 2023.

13. ASIC and ASIC's review examined the progress made by 15 trustees, who collectively represented approximately half the total accounts and superannuation balance held by members aged 45 and above across APRA-regulated funds as at December 2022.

14. Overall, the review found that while trustees are improving their assistance offered to members in retirement, there is more they can do to:

- understand members' needs through collection and use of data; and
- ensure the initiatives identified in the strategy are implemented and tracked to deliver good retirement income outcomes.

15. APRA and ASIC expect trustees to consider the review findings and improve by:

- addressing fundamental data and analytical gaps to enhance their understanding of members to support effective strategy formulation and deliver useful assistance to members.
- tailoring assistance to cater to diverse member preferences and needs, and regularly testing and tracking their effectiveness to improve assistance offering.
- integrating the retirement income strategy with the broader business planning cycle and measuring the success of their strategy using appropriate metrics.

Retirement products

16. The number of member accounts and the value of benefits in the retirement (i.e. decumulation) phase is growing steadily. According to APRA data, between 2015 and 2022, the number of member accounts in the retirement phase increased to more than 1.3 million, with an average growth rate of 2.4% per year. Over the same period, member benefits within the retirement phase increased from $247 billion to $478

billion, growing at a rate of almost 10% per year on average on average.

17. Retirement products are decumulation products designed to meet the needs of members in and approaching retirement. They can include:

- account-based pensions, which permit members a lot of flexibility in determining the amount of money they draw down each year;
- longevity protection products that aim to provide steady income over a guaranteed period (e.g. an annuity) reducing the risk of a consumer outliving their savings (longevity risk);
- "transition to retirement" products, which provide members with a smaller income to support a gradual reduction in working hours over a period leading up to retirement.

18. Retirement products issued by superannuation trustees and held through a superannuation account are "choice products" (i.e. they are not MySuper products) and are subject to the same regulation under legislation administered by ASIC as other choice superannuation products (i.e. those available during the accumulation phase).[1] Relevant legislative protections include design and distribution obligations, product disclosure statements, cooling-off periods and anti-hawking prohibitions.

19. Longevity protection products can also be issued by life insurers outside of superannuation. Similarly, they are subject to the subject to the same regulation under legislation administered by ASIC as other life insurance products.

20. As part of the review, ASIC and APRA reviewed the different retirement products that trustees offered. Some trustees only offered account-based pension products and had chosen not to pursue longevity protection products at this time. Some noted that they did not see a current need for longevity protection products because an account-based pension would be a suitable product for many of their members, and the members who are eligible would also receive longevity protection in the form of the Age Pension. Other trustees were mindful of the development costs involved and the risk of developing a product that does not have sufficient take-up by members.

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[1] A MySuper product is a legislated default superannuation product which is designed to be a simple, cost-effective, balanced product appropriate for the vast majority of Australian workers who do not make an investment choice. A choice product can only be obtained by making an active investment choice.

21. Seven of the 15 trustees we reviewed were providing access to products with longevity protection, such as lifetime annuities or other retirement income streams with guarantees relating to the level and/or duration of payment. This included products offered directly by the trustee where the longevity component is built into the product and provided by a life insurer, as well as externally issued products that members access through an adviser.

22. Five of seven trustees offering longevity protection products told us that take-up of these products by members had been generally low to date, with some of these trustees considering whether to continue offering these products in their current form.

23. Six of the 15 trustees we reviewed were considering developing or offering a new longevity product. Some of these trustees acknowledged the need to test the demand for a new product with their members early in the process. Several other trustees were seeking opportunities to partner with an external provider, such as a life insurer, to make one of the life insurer's products available to their members.

24. While there are only limited types of retirement products on offer, increasing the number of products is not, of itself, the solution for Australians. Trustees should, consistent with the design and distribution obligations, be seeking to offer retirement products that meet the needs, objectives and financial situations of those consumers to whom they are sold. Taking care with product design and distribution is particularly important in relation to longer-term products that are difficult to exit: consequences for a consumer ending up in an unsuitable product can be severe, especially if the consumer has limited future earning capacity.

25. Better practices in relation to longevity products that ASIC and APRA identified as part of the review included:

   - undertaking member research to gauge the likely demand for a new product, and suitability before commencing product design as well as testing the design of the product with members and advisers during development;
   - defining a clear target market for new products early in the product development process and identifying early what steps will be needed to ensure that the product is distributed to consumers in the target market; and
   - considering what additional protections are required to prevent members entering a product that might be unsuitable or unsustainable to address the additional risks that arise if a product is difficult for a member to exit.

26. ASIC, along with APRA, the ATO, the Department of Social Services and Services Australia, participates in the Cross-Agency Process for Innovative Retirement Income Stream Products, which facilitates engagement by industry by providing a single-entry point to the relevant government agencies allowing product providers to test concepts, seek information and high-level guidance on topics or issues and provide views on how their products meet relevant legislative requirements.

27. The purpose of the Cross-Agency process is to facilitate the development and issue of innovative retirement income stream products by reducing regulatory burden. As part of our review, some trustees indicated that they were planning to engage with the Cross-Agency Process in the future, but none has done so as yet to our knowledge.

Fit-for-purpose assistance

28. Beyond the provision of retirement products, there are other forms of assistance that trustees can offer as part of their retirement income strategy. REP 766 discusses these in the context of retirement specifically.

29. More broadly, a trustee's general approach to how they interact with and service their members is important to a member's retirement outcome. Through ASIC's work over the past several years, which involved considering trustee practices, ASIC has observed that trustees are putting insufficient priority on the delivery of high-quality services to members. This has resulted in issues such as delays to the processing of claims, inadequate and delayed responses to complaints, poor communication and a lack of assistance navigating complex topics.

30. ASIC expects that consumers in and approaching retirement will need to engage with their super funds more than in the accumulation phase: they will need to understand their options, they may start drawing down a pension, they may need information and advice, they may need to put in place arrangements in relation to the treatment of superannuation upon their death.

31. As about three million Australians become eligible to draw down from their superannuation in the coming decade, we can expect the demand on member services to steadily increase.[2]

[2] According to data collected by the Australian Bureau of Statistics, about 3 million Australians will turn 65 (preservation age) in the next ten years and become eligible to draw down on their superannuation. This number does not account for members passing away before preservation age or accessing their superannuation early in certain circumstances.

32. ASIC is currently undertaking a review of industry practices and trustees' compliance with laws in relation to their delivery of member services, including administration and contact centres. While this work in initially focussed on death benefits claims handling, we expect that our review will obtain insights that relevant to how trustees prioritise members' needs in other respects relevant to retirement.

Further review of industry progress on implementation of the retirement income covenant

33. APRA and ASIC are currently assessing industry progress on responding to the recommendations in REP 766 and expect trustees to address, with urgency, the gaps in their approach to implementing the retirement income covenant.

Impacts of climate change on insurance premiums

34. Based on the work of organisations such as the Actuaries Institute, it is anticipated that extreme weather events are likely to continue to be frequent causes of loss to consumers and increases in the cost of insurance premiums.[3]

35. In the past 12 months, ASIC has released two reports on issues of relevance to consumers of general insurance products, following reviews of insurers' claims handling practices (REP768 Navigating the storm: ASIC's review of home insurance claims) and pricing promises (REP 765 When the price is not right: Making good on insurance pricing promises).

Claims handling review

36. In August 2023, ASIC published REP 768, which highlighted the impact of external forces, such as severe weather events, and how they can affect the claims handling terrain, putting significant pressure on the resources of insurers and third parties.

37. Our review identified the need for improvement in relation to communication, project management, complaints handling, treatment of vulnerable consumers and resourcing.

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[3] The Actuaries Institute, Home Insurance Affordability Update (August 2023); Choice, Weathering the Storm: Insurance in a changing climate (August 2023).

38. In November 2022, and in parallel to our analysis for REP 768, we sent a letter to general insurers setting out ASIC's expectations that insurers be prepared, proactive, transparent, consumer-centric, and responsive in meeting their claims handling obligations. This letter also set out our expectation that insurers review whether they are allocating adequate resourcing to claims handling.

39. ASIC expects insurers to proactively plan for the ongoing severe weather events impacting consumers, including by ensuring resourcing is no longer under strain. Insurers must have adequate resourcing to support their claims handling and dispute resolution functions. This extends to ensuring that staff are properly trained and skilled to handle claims efficiently, honestly and fairly, as well as to identify expressions of dissatisfaction and vulnerability.

Misleading pricing promises

40. In a context where many consumers are facing issues with the affordability of insurance because of premium increases (partly driven by the increased frequency and severity of extreme weather events), it is particularly important that consumers can rely on the promises that insurers make about pricing and discounts.

41. In June 2023, ASIC undertook a review of general insurer pricing practices and published REP 765 outlining its findings and the improvements required to fix them. This report explains how failures by general insurers to manage non-financial risk have led to significant consumer harm. It confirms the standards general insurers need to meet in designing and promoting pricing promises to ensure consumers get the full benefit of any discounts promised.

42. Our intervention on these issues required 11 general insurers (representing 68% of the market) to undertake comprehensive reviews to identify and compensate consumers for broken pricing promises. This intervention has culminated in an estimated $850 million being repaid to 5.6 million consumers from January 2018 to June 2023.

43. In addition to consumer remediation, in June 2023, Insurance Australia Ltd was ordered by the Federal Court to pay a penalty of $40 million for failing to honour discount promises to customers with NRMA-branded policies. This was the largest penalty imposed by the court against an insurer for breaches of the financial services consumer protection laws.

44. ASIC expects insurers to have robust and effective product governance practices in place over the design and delivery of pricing promises to ensure they honour their promises to consumers.

ASIC looks forward to engaging with the Committee on this Inquiry.

Yours sincerely

[redacted]

Alan Kirkland
Commissioner