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SUPERANNUATION TRUSTEES

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Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 [Provisions] Chapter 17 - Retirement Income Covenant

In brief: This submission relates solely to Chapter 17 of the Bill (Retirement income covenant).

AIST supports the principles-based covenant and calls for the speedy passage of the Bill, amended so that publication of retirement income strategies become mandatory for super funds on 1 July 2023 (in place of the ambiguous requirements for partial implementation on 1 July 2022).

AIST also strongly urges that associated financial advice issues be addressed in tandem with the covenant, and recommends a data-sharing arrangement with Government agencies to facilitate implementation, safe-harbour protections for super funds, investigation of standardised labelling, and confirmation retirees will continue to have flexible access to their savings (including lump sums).

About AIST

The Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organization whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.5 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

The Australian Institute of Superannuation Trustees (AIST) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee, and welcomes the opportunity to speak to it at your scheduled public hearings in January 2022.

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Executive summary

AIST supports the addition of a principles-based retirement income covenant to the section 52 covenants in the SIS Act as proposed in Chapter 17 of the Bill and calls for this part of the Bill to be passed as a priority.

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AIST supports the proposed objectives for retirement income strategies, provided the objective of maximising a members' expected income throughout retirement is given priority if there is conflict between objectives.

The legislation should be amended to provide a flexible implementation period, where the requirement for a retirement income strategy would be voluntary for the first 12 months from 1 July 2022 and become mandatory on 1 July 2023.

The covenant has implications for the provision of financial advice, and consequential legislative and regulatory changes should be made to address these:

- The Explanatory Memorandum should foreshadow ASIC updating its guidance about the boundaries between the factual information and general advice in relation to the Covenant.
- The legislation should explicitly provide protection from liability for a fund where a higher drawdown rate is a part of a properly constructed and compliant retirement income strategy.
- The Explanatory Memorandum should foreshadow the extension of intra-fund advice to allow the provision of advice on how a member might best provide for their retirement, including consideration of a household's retirement adequacy, Age Pension eligibility, non-superannuation assets, and income. The Government should announce legislation to support such an extension.
- The Explanatory Memorandum should reiterate that a super fund can offer general advice about retirement products without breaching anti-hawking legislation, and that the Government expects ASIC issue guidance and parameters within which this can occur.

The proposed retirement income covenant will continue to allow retirees to choose how they access their retirement balances. The Explanatory Memorandum should confirm that this means retirees, and especially those with modest levels of retirement savings, are not precluded from accessing these as a lump sum.

While AIST supports the requirement for super funds to publish a summary of their retirement income strategy, the proposed requirement for trustees to make every determination made about their strategy public is unnecessarily onerous and should be removed.

Safe-harbour protections should be provided to super funds in line with *Treasury's Retirement Income Covenant Position Paper* of May 2018.

The Explanatory Memorandum should foreshadow a data-sharing framework for Government agencies (eg, ATO and Services Australia) to release de-identified data to assist trustees meet their obligations to support the development of retirement income strategies and associated cohorts of members.

Changes sought by AIST in Chapter 17 of the Bill

In Schedule 9 of the Bill (Retirement income covenant):

1. Amend item 2 (52AA Retirement income strategy requirements—registrable superannuation entities) to insert the following as subsection 52AA(3) and renumber following subsections:

Where there is a conflict between any of the objectives in subsection 52AA(2), the trustee must give priority to maximising expected retirement income over the period of retirement.

2. Amend item 2 (52AA Retirement income strategy requirements—registrable superannuation entities) to insert the following as subsection 52AA(8):

Where the trustee has taken reasonable steps to meet the retirement income strategy requirements of section 52AA, trustees can rely on the relevant safe harbour provisions of subsection 961B(2) of the Corporations Act 2001.

3. Amend subitem 2 of item 3 (Application of this Schedule) to read:

Despite subitem (1), a trustee of the entity is not required to have formulated a retirement income strategy or published a summary of a retirement income strategy before 1 July 2023.

Commentary

AIST is a long-term advocate of a principles-based retirement income covenant. In an earlier submission responding to the Government's Position Paper released in July 2021, we noted our support for the proposed introduction of the retirement income covenant¹.

As part of our submission, AIST made several recommendations we believed would enhance the introduction and implementation of the covenant². While the Bill and the Explanatory Memorandum has made improvements, it does not appear to address some of important recommendations outlined in our previous submission which remain pivotal to the optimal implementation of the covenant.

A summary of these recommendations is included in **Appendix A**.

Policy Considerations

There should be a legislated objective of the retirement income system

The principles-based approach is welcome as it provides flexibility to trustees of superannuation funds to develop a strategy that is best suited to its membership. Noting the existing policy settings, we consider the introduction of the covenant to be a positive step towards the development of a more cohesive retirement income system.

However, we believe that a principles-based approach must be accompanied by a clear guiding objective for superannuation as part of a broader, comprehensive legislated objective of the retirement income system.

This would align with the findings of the Retirement Income Review ('the RIR'). In its Final Report, it noted:

"A clear objective for the system, agreed by the Australian community and through the Government, is needed to guide policy, improve understanding and provide a framework for assessing performance of the system"³.

¹ AIST (2021), *Retirement Income Covenant Position Paper – AIST Submission to Treasury*, 6. https://www.aist.asn.au/getattachment/Media-and-News/News/2021/AIST-Submission-to-Treasury-Retirement-Income-Cove/AIST-Submission-to-Treasury-Retirement-Income-Covenant_FINAL.pdf.aspx

² Ibid., 5.

³ Retirement Income Review (2020), *Final Report*, 79. <https://treasury.gov.au/sites/default/files/2021-02/p2020-100554-udcomplete-report.pdf>.

AIST reiterates its recommendation that the introduction of the covenant be progressed in tandem with (but not delayed by) a legislated objective of the retirement income system, including the role of superannuation.

Priority should be given to maximising expected retirement income where there is a conflict between objectives

AIST supports the objectives of the retirement income strategy ('the strategy') outlined in the Bill. The three objectives of the strategy are:

- (a) To maximise expected retirement income over the period of retirement;
- (b) To manage expected risks to the sustainability of retirement income over the period of retirement, including longevity, investment, and inflation risks alongside any other relevant risks to this objective; and
- (c) To have flexible access to expected funds over the period of retirement.

The Bill and Explanatory Memorandum make it explicit that these objectives must be balanced. AIST supports all three objectives and notes that although they must be balanced, the interaction between the objectives requires prioritisation where there is a conflict between objectives, as they develop within the broader retirement income system and its two other pillars – the Age Pension and private savings.

AIST recommends that priority be given to maximising expected retirement income where there is a conflict between objectives, as this is consistent with, and will not result in any conflict with, the sole purpose test set out in subsection 62(1), and the general covenants in section 52 to give priority to the duties to and interests of the beneficiaries over others.

In addition, maximising expected retirement income during the period of retirement contributes directly to the long-term reduction of the fiscal burden arising from the Age Pension – although this will remain a key pillar in protecting retirees from longevity risk.

We consider that giving priority to maximising expected retirement income where there is a conflict between objectives will contribute to the policy intent of the retirement income system of “[delivering] adequate standards of living in retirement in an equitable, sustainable and cohesive way”. It will also assist trustees in implementing, giving effect, and reviewing the strategy by providing the clearest guiding principle.

AIST’s recommendation is to insert the following as a new subsection 52AA(3):

Where there is a conflict between any of the objectives in subsection 52AA(2), the trustee must give priority to maximising expected retirement income over the period of retirement.

This follows the construction of subsection 52(2)(d) where the Act makes it clear that trustee conflicts are to be resolved by giving priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons.

Interaction with financial advice requirements should be made clearer

Establishing a principles-based covenant requires consideration of the interaction with, and role of, financial advice. There are practical concerns that relate to the overlap between what is expected from superannuation trustees regarding guidance and *assistance* and what is considered advice.

Despite extensive guidance from the Australian Securities and Investments Commission ('ASIC'), there remains some confusion about the boundary between general and personal advice. Although this is extensively canvassed in the 2012 **RG 244 Giving information, general advice and scaled advice**⁴ and the more recent **RG 90 Example Statement of Advice: Scaled advice for a new client**⁵, differing views about this persist and the issue has seemed intractable.

This lack of clarity needs to be addressed in order for advice to play an appropriate role in retirement income strategies. ASIC should update their guidance about the boundaries between the provision of factual information and general advice, including in relation to the Retirement Income Covenant, and the Explanatory Memorandum foreshadows this.

For example, and of particular importance, the status of recommendations or encouragements for a particular cohort solution to include drawdown levels that are greater than the regulated minimum drawdown levels should be made clear in Government or regulator guidance.

If such drawdown recommendations are replicated in general or personal advice provided to fund members, the status of this and the implications for funds should be clarified. In particular, the legislation should explicitly provide protection from liability for a fund where a higher drawdown rate is a part of properly constructed and compliant retirement income strategy.

If general information provided to an individual member identifies them as being part of a specific cohort and outlines the recommended drawdown rate for their age in that cohort based on the data gathered for the purposes of the strategy, it is difficult to understand how this would not be regarded as personal advice.

The effective operation of the covenant should reduce the need for personal advice and increase the proportion of fund members who are able to decide on their preferred retirement income solution without the need for comprehensive personal financial advice.

For this ambition to be realised, there are additional measures that should be put in place:

1. Clear guidance about the extent to which a fund can encourage a member to adopt the retirement income solution recommended for their cohort; and
2. The expansion of intra-fund advice to include advice about retirement products.

⁴ ASIC (2012), <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-244-giving-information-general-advice-and-scaled-advice/>

⁵ ASIC (2017), <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-90-example-statement-of-advice-scaled-advice-for-a-new-client/>

In order to supplement a fund's retirement income strategy AIST also calls for the removal of obstacles to the use of alternatives to comprehensive personal advice. This includes factual information, general advice and intra-fund advice, and should include consideration of strategic advice.

- **Super funds should be able to offer general advice on retirement products**

While the Explanatory Memorandum states that the covenant obligations are consistent with anti-hawking legislation permitting super funds to contact their existing members with retirement product information, there is a grey area that should be specifically addressed in the explanatory memorandum to the legislation.

The Explanatory Memorandum should also reiterate that a super fund is able to offer members general advice about retirement product options, and that the Government expects ASIC to be issuing guidance and parameters within which this can occur.

- **Super funds should be able to use forecasting tools to encourage retirement product selection**

The covenant must also address how the new obligations interact with the use of tools such as calculators and retirement projections. The existing regulatory framework limits how trustees can make use of these tools to assist members under the obligations outlined in the Bill.

While the Regulation Impact Statement for the Bill mentions (at page 409) the Retirement Income Review observation that the provision of retirement income projections has shown to increase pre-retirement member engagement, the Explanatory Memorandum only envisages calculators and forecasts being *provided* to members and does not suggest that they would be used to encourage retirement product selection.

ASIC's recent release of *CP 351 Superannuation forecasts: Update to relief and guidance* sets out proposals that would amend legislative instruments on superannuation calculators and retirement estimates. We welcome this consultation and highlight that it is a good opportunity for Government to consider a holistic approach to setting up a sound structure on which trustees can assist members in the context of a retirement income strategy.

The consultation paper makes explicit note of how trustees will use these tools to comply with the covenant. However, ASIC have outlined their expectations in relation to how superannuation calculators and retirement forecasts **cannot** be used, including using them to recommend specific products.

AIST generally agrees with this approach to ensure consumer harm is minimised from misleading conduct. However, we think this is a missed opportunity to leverage these tools for a retirement income strategy. The explicit limit of the proposed relief hinders trustees' ability to assist and provide guidance to members as required by the obligations in the Bill.

Reliance on consumer-side behaviour to make an informed decision depends heavily on several factors such as framing, complexity, and financial literacy⁶. Evidence from the Australian experience suggests that this approach can limit the impact of well-intentioned policies. For example, Bateman highlights how ASIC, in “introducing the short-form disclosure format, the intention [...] was to reduce complexity, increase comparability and *encourage engagement with financial decisions* [...without considering] how people would use the information provided”⁷ (emphasis added).

Requiring trustees under the retirement income covenant to assist and guide members as part of a retirement income strategy, but not allowing them to nudge or present appropriate products that would be beneficial to the member, would leave members with little help outside of formal financial advice to make an informed decision.

AIST believes there is room for this to be developed and urges the Committee to consider recommending a more holistic approach that would align use of calculators and retirement projections with retirement product development and offerings. A statement to this effect should be included in the Explanatory Memorandum.

- **Intra-fund advice should be expanded to cover household retirement planning**

Intra-fund advice is a cost-effective way for super fund members to obtain advice as a part of their fund membership. The Financial Services Royal Commission (‘FSRC’) found no evidence that intra-fund advice had been misused or related to misconduct⁸. On the contrary, intra-fund advice provides mass-market advice very widely and successfully.

The value of intra-fund advice has not, however, been fully or consistently utilised. There are two areas where this should be remedied, both of which are relevant to the Retirement Income Covenant.

First, clarifying the provision of intra-fund advice on how the member might best provide for their retirement may provide a model for accessible advice that has not been prone to misconduct. Such a model should also reflect that people commonly seek pre-retirement advice as couples/household, and that this (including consideration of a spouse’s super) should be allowable within an intra-fund advice topic on retirement and paid for via existing intra-fund advice models. This is particularly pertinent given that other relevant retirement income such as the Age Pension is assessed based on whether someone is in a relationship.

Second, AIST members report that one of the main advice strategies for members in the accumulation phase leading up to retirement is increasing contributions and managing contributions

⁶ Bateman, Hazel. “Retirement Income Strategies for an Ageing Population.” In *Population Ageing and Australia’s Future*, edited by HAL KENDIG, PETER MCDONALD, and JOHN PIGGOTT, 233–60. ANU Press, 2016.

⁷ Ibid., 251-252.

⁸ Commonwealth Government (2019), Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* Volume 1, 242-243.

for a couple's best interests. Therefore, intra-fund advice should be extended to include a household's retirement adequacy, Age Pension eligibility, non-superannuation assets, and income.

This approach is a natural fit with the approach outlined in the Bill and Explanatory Memorandum, where a fund is required to have regard to these criteria in developing cohorts. While the retirement income solution recommended for the various cohorts may be suitable for a broad cohort of members, this would be appropriately supplemented by accessible intra-fund advice for members who are unclear about the suitability of the cohort for their needs, or who may have different needs.

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While the Explanatory Memorandum suggests trustees take the provision of intra-fund advice into consideration in formulating their strategy (paragraph 17.63), it does not suggest any expansion of intra-fund advice in relation to retirement planning.

In the Regulation Impact Statement (p.414), it is stated:

As intra-fund advice costs are spread across the whole membership, younger and lower balance members who are less likely to access this advice could be subsidising the advice of older and wealthier members who do choose to access it.

In response, AIST notes that superannuation is a long-term proposition, and that younger, lower account balance members become older and higher account balance members over time, and that this should justify the expansion of intra-fund advice to retirement planning.

While there may be some increased costs associated with the expansion of intra-fund advice, trustees still would need to ensure this complies with the sole purpose test and best financial interests duty.

Lump sum payments should not be precluded

Policy settings must not undermine the benefits of letting retirees choose how they access their retirement balances.

Many members are retiring with relatively modest balances, and they should not be precluded from accessing some or all of this as a lump sum. Access to a lump sum may help retirees clear debt or for other purposes that help them prepare for retirement aligned with their needs. The risks arising from a lack of liquidity are higher as a person approaches retirement or is in retirement, and this type of access may alleviate these risks.

Retirement income strategies must recognise circumstances where it might make sense for a retiring member to use their savings in a way that contributes to their quality of life (for example, purchasing a car) over receiving a small superannuation pension.

The Regulation Impact Statement for the Covenant (pages 401-2 of the EM) recognises these issues and concluded that draw down of superannuation assets too quickly by taking large lump sums when members reach retirement is not a widespread problem.

When the Productivity Commission researched this issue in 2015, it found that less than 30 per cent of superannuation assets are taken as lump sums and when lump sums are taken, they have a median value of around \$20 000. Lump sums are more prevalent among those with very low superannuation balances. Those with comparatively more superannuation savings tend to take lump sums that comprise a relatively small proportion of their superannuation assets. Where lump sums are taken, they are used to retire debt or purchase goods and services that can be used throughout retirement, such as making home improvements and purchasing consumer durables.

AIST recommends that the Explanatory Memorandum explicitly confirm that retirees, and especially those with modest levels of retirement savings, are not precluded from accessing their savings as a lump sum if they so wish.

AIST applauds specific identification of Indigenous considerations in cohort development

AIST welcomes the Government's use of the introduction of the retirement income covenant as an opportunity to structurally consider how the superannuation system can be adjusted to improve outcomes for Aboriginal and Torres Strait Islander people.

It is a significant development that the Explanatory Memorandum explicitly states that trustees will have regard to the needs of Aboriginal and Torres Strait Islanders in their retirement income strategies and development of cohorts.

There is a significant retirement gap for Aboriginal and Torres Strait Islander peoples, in particular for Indigenous females. Indigenous males retire with 27% less, and females with 39% less, superannuation "than the median non-Indigenous male worker"⁹. This gap must be addressed as part of any enhancement to the retirement income system, including as part of the retirement income covenant.

AIST considers that the introduction of a retirement income covenant should consider Aboriginal and Torres Strait Islander peoples, and acknowledges and applauds the inclusion of other demographic considerations, such as Aboriginal and/or Torres Strait Islander status in the factors listed in the Explanatory Memorandum (paragraph 17.31) for cohort analysis.

It is imperative to consider the objectives of the proposed covenant in the context of broader settings that impact the accumulation phase of Indigenous people. The covenant intends to address the gap arising from trustees' focus on accumulation and the lack of any obligations post-accumulation. This is appropriate when considering the average beneficiary, but evidently it is inadequate when major issues must first be addressed for Aboriginal and Torres Strait Islander peoples in relation to the accumulation phase itself.

⁹ MacDonald, K., & Guest, R. (2019). KiwiSaver: A jewel in the crown of New Zealand's retirement income framework? In J. Luetjens, M. Mintrom, & P. 't Hart (Eds.), *Successful Public Policy: Lessons from Australia and New Zealand* (pp. 477–504). ANU Press. <http://www.jstor.org/stable/j.ctvh4zj6k.27>

We do not consider it is appropriate to merely determine Aboriginal and Torres Strait Islander members as a cohort for which a strategy must be developed without due consideration of issues such as financial literacy, materially lower life expectancy, and higher reliance on welfare. These are issues which must be addressed by the Government, with input from Indigenous stakeholders, superannuation trustees, financial services providers, and community stakeholders.

In addition to these structural limitations, there are challenges directly related to the data collection requirements outlined in the Bill. The RIR noted in its Final Report the “limited and poor-quality data [which] prevent[s] comprehensive analysis of Aboriginal and Torres Strait Islander people’s retirement outcomes”¹⁰. There are already challenges that, as we highlight later in this submission, relate to data collection for the broader population – challenges which deepen when considering Aboriginal and Torres Strait Islander peoples.

The Australian retirement system is not designed for Aboriginal and Torres Strait Islander peoples. This includes limitations to access to financial services in remote and very remote areas; identification challenges; and an explicit lack of recognition of Indigenous kinship structures in superannuation law¹¹.

Specific Comments

AIST has consulted extensively with its member funds in relation to the Bill. The introduction of the covenant is strongly supported, and there is a widespread view that the Senate should make the amendments to the Bill and other clarifications sought by AIST, and pass the legislation as a priority.

However, there are elements of the Bill and the Explanatory Memorandum that are unclear. In the following sections, we outline key concerns we believe require further clarity to assist superannuation trustees meet their obligations under the proposed covenant.

Requirements relating to recording determinations and publication should be clarified

Subsection 52(8A)(d) of the Bill lists several requirements relating to the recording of determinations made by trustees and the gathering of information. Subsection 52(8A)(e) also outlines a requirement for trustees to make a summary of the strategy publicly available on the website of the entity.

AIST has concerns with regards to the wording of the Bill and the requirements set out in the subsections mentioned. It is understood from the Bill and the Explanatory Memorandum that trustees will be required to make public every determination made in respect of the strategy, including the reasons for *each* decision. The rationale behind this requirement is unclear and is not outlined in the Explanatory Memorandum. Furthermore, the requirement to make determinations public, including steps taken to gather information and decisions considered by trustees as part of the process, is not a requirement found in any of the other covenants under *section 52* of the

¹⁰ Retirement Income Review (2020), *Final Report*, 337. <https://treasury.gov.au/sites/default/files/2021-02/p2020-100554-udcomplete-report.pdf>.

¹¹ *Ibid.*

*Superannuation Industry (Supervision) Act 1993*¹² ('SIS Act'). We reiterate our support for the covenant, but consider these requirements, which are *additional* to those found in the other covenants, to be onerous and without any clear public benefit.

We highlight our support for the requirement to publish a summary of the strategy. However, it is not clear from the Explanatory Memorandum what the expectation is as to what the summary should include. We recommend guidance be provided given that failure to comply with this requirement will be considered a contravention of a covenant.

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Super funds should be given limited safe harbour protections

In our previous submission we recommended that safe harbour protections be provided in limited circumstances¹³ in line with the *Retirement Income Covenant Position Paper* of May 2018¹⁴. Our review of the Bill and Explanatory Memorandum reinforces our view that a safe harbour provision should apply in limited circumstances with the introduction of the covenant.

AIST highlights some elements of the Bill that are unclear and, without additional guidance, leave trustees at risk of breaching their obligations. For example, it is unclear what is meant by *assist* or *assisting*. We question how a trustee would determine if it has met its obligation to assist members in the context of a retirement income strategy and the determination of cohorts.

We seek clarity on this term having regard to our earlier points about the limits of intra-fund advice and general advice rules, and the punctuated intersection between general advice and the need for comprehensive advice in some instances.

Given that a breach of *section 52* covenants may incur a civil penalty, guidance would be beneficial to understand the liability risks for trustees in developing, giving effect to, and reviewing a strategy if the Government is not able to consider introducing a safe harbour in limited circumstances.

The defined benefit exemption should be clarified

AIST is supportive of the exemption provided to trustees to develop a retirement income strategy for certain defined benefit members. We understand from *paragraph 1.20* of the Explanatory Memorandum that the exemption applies for a beneficiary that exclusively holds a defined benefit interest *and* the benefit can't be commuted. AIST seeks further clarification from the Government about the operation of this exemption, and that the Committee also recommend seeking this clarification.

¹² *Superannuation Industry (Supervision) Act 1993* (Cth), s58.
http://www5.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s52.html

¹³ AIST (2021), *Retirement Income Covenant Position Paper – AIST Submission to Treasury*, 6.
https://www.aist.asn.au/getattachment/Media-and-News/News/2021/AIST-Submission-to-Treasury-Retirement-Income-Cove/AIST-Submission-to-Treasury-Retirement-Income-Covenant_FINAL.pdf.aspx

¹⁴ Treasury (2018). *Retirement Income Covenant Position Paper: Stage one of the Retirement Income Framework*, 11. <https://treasury.gov.au/sites/default/files/2019-03/c2018-t285219-position-paper-1.pdf>

A Federal Government data-sharing framework should be introduced to facilitate implementation

We have consulted extensively with our members funds and received feedback pertaining the collection of data. These concerns were also raised in our previous submission, where we outlined the challenges of collecting accurate and comprehensive data in a short time frame for the purposes of a retirement income strategy that is appropriate for a class of members or sub-class.

For example, outside of personal advice superannuation funds do not receive, and are unable to easily collect, much of the information that is outlined as being required for a strategy. Aggregated, de-identified data for the Age Pension is not available to trustees, and HILDA data, for example, while useful, has “significant gaps [...] which would improve the understanding of retirees’ income needs”¹⁵.

We consider that establishing a robust data-sharing framework for bodies like the Australian Taxation Office (ATO) to release de-identified data would assist trustees with their obligations. Having access to other de-identified data sets, including those from Services Australia (e.g., Centrelink payment statistics, Child Support statistics, etc.) would provide a clearer stream of information that will assist trustees determine their membership and any sub-classes within it.

This would be in addition to the proposed expansion to superannuation of the Consumer Data Right (CDR). AIST supports this expansion but notes the benefit would likely be limited to members who are actively engaged with their finances over more disengaged members, or members who are vulnerable and may not be able to engage with CDR.

AIST reiterates its call for the removal of legislative constraints on the collection of data at least 12 months prior to the requirement of a retirement income strategy.

Publication of retirement income strategies should be mandatory from 1 July 2023

The Bill does not give sufficient time for superannuation funds to implement the requirement for a retirement income strategy and AIST submits that the mandatory requirement for a strategy to be approved, and for a summary to be made publicly available after 1 July 2022 should be extended by 12 months to 1 July 2023.

The statement in the outline of the Explanatory Memorandum (and paragraph 17.83) that Trustees will not be required to give effect to all components of their strategy by 1 July 2022 as implementation of the strategy will be an ongoing process, requires more clarification.

This is an ambiguous comment and appears to be inconsistent with the provisions of the Bill. The Bill (Schedule 9, item 3) states that (notwithstanding these amendments commencing following Royal Assent):

¹⁵ AIST and ACFS (2016), *Expenditure patterns in retirement*. https://www.aist.asn.au/getattachment/Mediaand-News/News/2016/Expenditure-patterns-inretirement/aist_expendpatternsretirement_aug16_web.pdf.aspx

...a trustee of the entity is not required to have formulated a retirement income strategy or published a summary of a retirement income strategy before 1 July 2022.

The requirements for a strategy are set out in section 52AA and specify new, detailed and additional objectives for trustees to consider the interests of their members. This is not just a restatement of a best interests tests, but new requirements such as the information gathering requirements greatly extend the steps that Trustees must take.

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Do the comments in the EM mean that not all of the objectives in section 52AA need to be considered in a Trustee's strategy by 1 July 2022? If so, is there a minimum level of consideration? For example, would it be sufficient to have a plan to build capability and capacity to service members' retirement income needs, and not have completed an analysis of the relevant membership nor completed a review of advice and products?

There are civil and criminal consequences for contravening a covenant, so these are not minor or trivial considerations.

AIST recommends that the application and transitional provisions of Schedule 9. Item 3 of the Bill be amended by deleting the reference to "2022" in subitem (2) and replacing it with "2023" so that subitem (2) reads:

Despite subitem (1), a trustee of the entity is not required to have formulated a retirement income strategy or published a summary of a retirement income strategy before 1 July 2023.

If this amendment is adopted, there would be no need for the confusing last two sentences of paragraph 17.83 of the EM, and these could be deleted.

These changes would have the effect of maintaining the effective date of this part of the Bill as the day following Royal Assent. This will enable trustees to commence taking steps to gather information to formulate the retirement income strategy immediately following Royal Assent but would provide a flexible implementation period until 1 July 2023.

This would also address the liability concerns raised in this submission, allow time for trustees to gather appropriate data (including through member surveys), and allow for any adjustments that may be required arising from the findings of the Quality of Advice Review.

Clearly defined product labels and standardised disclosures should be investigated

While a principles-based approach is supported, it has the potential to lead to a range of different solutions and outcomes. This is good for consumers, but there should be additional safeguards to ensure they are not confused or misled. Funds may offer a range of solutions and products that can be hard to compare, or which appear to be similar but are actually very different.

For example, there is no standard definition for a longevity product, and the underlying structures of two longevity products may be quite different and deliver different outcomes. For example, one product may be an index-linked pension that delivers annual increases linked to inflation, while another may be market linked and provide benefits linked to the market value of the product.

Offering a longevity product is also likely to involve a contractually guaranteed income for life. This is a very significant promise being made to a consumer, and the management of systemic longevity risk is a very important consideration for product manufacturers. A longevity guarantee needs to be credible, reliable and have a clear meaning, otherwise this will be a strong disincentive to providing lifetime retirement products.

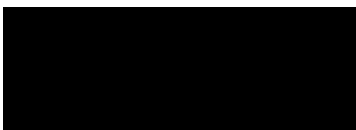
In principle, a solution may be to seek clearly defined and consistent retirement income product labels, and standardised disclosures. The experience of the industry is that achieving standardisation and consistency is complicated and difficult. The experience of RG 97 Fee and Cost Disclosure is evidence of this.

The personalised nature of retirement and the variety of product options that can meet these needs means this would make the application of prescribed labels and disclosures similarly difficult, and could be a constraint to product innovation. Nevertheless, AIST believes that consistency assists member comprehension and calls on the Government to explore opportunities for consistency and possible standardisation with industry.

AIST reiterates its support for the principles behind the Bill and welcomes further discussions with Treasury in relation to the matters raised in this submission.

For further information regarding our submission, please contact AIST Senior Policy Manager David Haynes at [REDACTED]

Yours sincerely,

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Eva Scheerlinck
Chief Executive Officer

Appendix A – AIST recommendations to July 2021 Position Paper

Recommendation 1: The development of the covenant and retirement income strategies should include greater consideration of the majority of members who will be retiring on a full or part pension over the next couple of decades.

Recommendation 2: The introduction of a covenant should be progressed in tandem with (but not delayed by):

- a legislated objective of the retirement income system, including the role of superannuation; and
- consideration of the full breadth of regulatory and practical issues impacting on the quality and affordability of financial advice, particularly that related to advice for retirement.

Recommendation 3: The Government should provide an objective basis for assessing if 'better retirement products' meet members' best interest.

Recommendation 4: A supplementary requirement should be introduced to measure whether the cost of delivering a longevity solution meets the best financial interest test.

Recommendation 5: The Government should consider and amend if necessary, the anti-hawking laws and retirement income strategy requirements so that super funds can proactively contact existing members to provide guidance on their retirement options.

Recommendation 6: The Government should implement the Consumer Data Right for superannuation in line with the Productivity Commission's recommendations.

Recommendation 7: The Government should explore measures to support the collection and use of data needed by trustees to formulate a retirement income strategy, including to address privacy, confidentiality, and the provision of a safe harbour. Legislative constraints on the collection of this data should be removed at least 12 months prior to the requirement to have a strategy in place.

Recommendation 8: The flexible implementation of the requirements for retirement income strategies should be permitted to allow for maturation. The requirement for a retirement income strategy should be voluntary for the first 12 months.

Recommendation 9: Previously proposed safe harbour protections, in limited circumstances, should be introduced.