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Consultation Paper 358 Remaking ASIC relief on PDSs, superannuation dashboards and FSGs

Industry Super Australia (ISA) is a research and advocacy body for Industry SuperFunds. ISA manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings of nearly five million industry super members.

ISA does not support the proposal to defer commencement of the Choice product dashboard regime. While we accept that ASIC cannot make the long-awaited regulations to prescribe the detailed content of Choice product dashboards, further deferral by ASIC continues to enable the Choice sector to avoid scrutiny - disadvantaging millions of members who invest in Choice products.

The deferral raises the following issues:

- ▶ **Deferral timeline:** Eight years after the product dashboard obligations were scheduled to commence for Choice products they have still not been implemented. The proposed deferral would postpone the obligation until 2027 - a total deferral of thirteen years. This cannot possibly reflect the will of the Parliament at the time the law was passed.
- ▶ **Avoiding transparency:** Deferral of Choice product dashboards allows the Choice sector to avoid clear, consistent and comparable disclosure to 7 million Choice product members of important information including fees, costs and net returns. This hinders informed choice by consumers which can drive competition and place downward pressure on fees.
- ▶ **Product and sector neutrality:** Deferral of Choice product dashboards results in an uneven playing field that entrenches lack of product neutrality and, in turn, sector neutrality.

Recommendations:

1. The Government should extend the performance test under the *Your Future, Your Super* reforms to cover all Choice products and commit to extending the ATO comparison tool to Choice products.
2. ASIC should engage with Treasury and work to provide clear advice to Government after the forthcoming election to finalise Choice product dashboard regulations and not pre-empt the outcome through further lengthy deferral.

3. The proposed relief and previous deferrals should be brought to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Deferral timeline

Simplified product dashboards for MySuper products commenced in 2013. Choice product dashboards were due to commence 6 months later – from 1 July 2014. The timeline below sets out the deferrals facilitated through ASIC relief:

- ▶ Choice product dashboards were deferred by an ASIC Class order [CO14/443] until 1 July 2015
- ▶ In 2015 ASIC further extended the deferral for Choice product dashboards to 1 July 2016
- ▶ In 2016 ASIC further extended the deferral for Choice product dashboards to 1 July 2017
- ▶ In 2017 ASIC further extended the deferral for Choice product dashboards to 1 July 2019
- ▶ In 2019 ASIC further extended the deferral for Choice product dashboards to 1 July 2023
- ▶ ASIC is proposing to further extend the deferral to 1 October 2027.

Eight years after the product dashboard obligations were scheduled to commence for Choice products they have still not been implemented. The proposed deferral would defer the obligation until 2027 - a total deferral of thirteen years.

The Productivity Commission registered its concern at the lack of progress for Choice product dashboards, and attributed blame:

‘Dashboards already exist for MySuper products and have been slated for choice products, but the process of developing these has been beset by industry resistance, missed deadlines and an attempt by the Government to exempt some products from the rules.’¹

ASIC commenced work on Choice product dashboards in 2014 - commissioning Latitude Insights to undertake consumer testing of a proposed dashboard.² The report indicates that this work was undertaken in consultation with Treasury.³ This testing followed a similar round of testing in 2013 of the MySuper product dashboard. The results of the consumer testing of Choice product dashboards were released in December 2015.

The report highlights the benefit of Choice product dashboards for consumers in its main findings:

‘Some participants considered superannuation to be a topic that could be simplified and better communicated and whilst research participants suggested that Dashboards are not for everyone, for those seeking a way to understand and compare funds, they provide a resource that was considered to be highly valuable.’⁴

¹ Superannuation: Assessing Efficiency and Competitiveness – Inquiry report (December 2018), p. 38

² ASIC Report 455 Consumer testing of the Choice product dashboard (REP 455)

³ REP 455, p.18

⁴ REP 455, p. 6

Findings of the report also show the design of the Choice product dashboard was highly resolved and ready to be implemented along with an online retirement estimator tool.

This work suggests that design of Choice product dashboards was well progressed in 2015 so designing the dashboard was not an impediment to implementing the law.

It is worth considering who stood to gain from the deferral of Choice product dashboards. Certainly, it wasn't consumers who have been denied access to simple disclosure showing the cost and performance of products they are invested in. With the Productivity Commission finding⁵ choice products offered by retail funds account for almost all the 'tail' of higher-fee products (those with fees above 1.5 per cent of assets) it is clear the beneficiaries are product issuers who wished to preserve their business model of gouging their members. It is difficult to reconcile if the lobbying efforts to achieve this outcome or facilitation by Government is worse. Either way this cannot possibly reflect the will of the Parliament at the time the law was passed.

Avoiding transparency

ISA supports greater transparency by all super funds of data about fees, costs and long-term net returns. Resistance to the development of Choice dashboards by parts of the industry and by the Government, combined with a lack of available data, has resulted in poor performing Choice products – most of which are offered by retail funds – avoiding transparency and escaping effective scrutiny by members and regulators.

Only recently have attempts been made by Government to address this lack of transparency through the performance test which forms part of the *Your Future, Your Super* reforms and action by APRA to publish product Heatmaps. However, the performance test for Choice products is yet to commence, does not extend to all Choice products and contains significant flaws. The first Choice Heatmaps also contain significant gaps in data and methodology which undermine their accuracy, impartiality and credibility. Further, the complexity of the Heatmaps means that, unlike the ATO comparison tool, they are not helpful for consumers. ISA understands that there is currently no decision on whether the ATO comparison tool will be extended to Choice products.

The Choice product dashboard would provide transparency around fees, costs and net returns enabling consumers to readily compare products using standardised simple information and make an informed choice about their super fund. Transparency around fees and costs can drive competition and place downwards pressure of fees, benefitting all members.

Product and sector neutrality

Employees when exercising choice should have confidence that the same regulatory regime applies to all available super funds. However a different regulatory approach applies to Choice versus My Super products. Different disclosure requirements apply to My Super products making it difficult for consumers to make informed choices. For example:

- ▶ The shorter PDS regime which was designed to make PDSs shorter and simpler for consumers and to facilitate comparison between financial products does not apply to Choice products

⁵ "...a tail of high-fee products remains entrenched. Annual fees exceed 1.5 per cent of balances for an estimated 4 million member accounts (holding about \$275 billion). Almost all of these accounts are in choice products offered by retail funds." P15 Productivity Commission Inquiry Report No. 91, 21 December 2018

- ▶ Members of Choice products do not receive a single consolidated periodic statement that includes consolidated information about fees and costs – they receive a series of periodic statements from different fund managers
- ▶ Choice products will not face a performance test until this year (2022) which means members are stapled to products the quality of which they cannot easily assess
- ▶ It is currently not known whether the ATO comparison tool will be extended to Choice products

This uneven approach results in enhanced scrutiny on the higher performing and most transparent sections of the superannuation industry, MySuper products administered by industry funds, while perversely disregarding members' interests in the poorest performing parts of the industry administered by retail funds which hold the vast majority of assets outside MySuper. ISA analysis of APRA data finds that in June 2021, 80 per cent of funds under management in the retail sector were in Choice products and 38 per cent of funds under management in the industry sector were in Choice products.

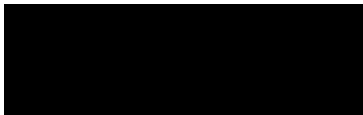
Further delaying Choice product dashboards only serves to entrench the lack of product neutrality and, in turn sector neutrality, that has hindered other reforms. The policy priority should be the establishment of a level playing field where all superannuation products are subject to the same regulatory regime. It is not acceptable that Choice products continue to remain excluded from the dashboard requirements.

Recommendations:

1. The Government should extend the performance test under the *Your Future, Your Super* reforms to cover all Choice products and commit to extending the ATO comparison tool to Choice products.
2. ASIC should engage with Treasury and work to provide clear advice to Government after the forthcoming election to finalise Choice product dashboard regulations and not pre-empt the outcome through further lengthy deferral.
3. The proposed relief and previous deferrals should be brought to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation.

If you have any questions, please feel free to contact me at [REDACTED]

Kind regards



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