

11 August 2021

Director, Retirement, Advice and Investment Division  
The Treasury  
1 Langton Cres  
PARKES ACT 2600

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

## Retirement Income Covenant Position Paper

CPA Australia and Chartered Accountants Australia & New Zealand (the Major Accounting Bodies) welcome the opportunity to provide comments on the *Retirement Income Covenant* (RIC) Position Paper (the "Position Paper").

The Major Accounting Bodies represent over 200,000 professional accountants in Australia and New Zealand. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The Major Accounting Bodies note that this is the second position paper concerning the RIC released by the government. Despite some welcome developments in the RIC concept in this second position paper we remain of the view expressed in Chartered Accountants Australia and New Zealand's (Chartered Accountants ANZ) first submission<sup>1</sup> in relation to this topic that:

*Chartered Accountants ANZ believes the creation of a retirement income covenant for superannuation funds at this time is unnecessary.*

*For reasons outlined in this submission we believe this new covenant will add to the costs of running superannuation funds but will be of little or no practical benefit to fund members, trustees, regulators or the government.*

Contrary to the assertions in the Position Paper, Australian Prudential Regulation Authority (APRA) data shows that retirees deplete their superannuation retirement savings in retirement. The Major Accounting Bodies also consider that retirees spending their non-superannuation monies in retirement is not a superannuation fund trustee's business or concern. Finally, we have significant concerns about the implication in the Position Paper that superannuation fund trustees be required to effectively offer a form of financial advice to retired members and members "close to retirement".

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<sup>1</sup> Chartered Accountants Australia & New Zealand, 2018. *Retirement Income Covenant Position Paper* submission. [\[online\]](#)

For further information in relation to our submission, please contact Tony Negline, Superannuation Leader at Chartered Accountants ANZ at [Tony.Negline@charteredaccountantsanz.com](mailto:Tony.Negline@charteredaccountantsanz.com) or Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au).

Yours sincerely

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## Response to Position Paper

### Executive summary

The proposed RIC is a duty which is designed to further develop the retirement phase of superannuation. The covenant will require trustees to regularly formulate, review, and implement a retirement income strategy, outlining how they plan to help their members' balance key retirement income objectives. The key objectives of this strategy are to maximise retirement income, manage stability and sustainability risks, provide flexible access to savings and balance these three items.

The Major Accounting Bodies welcome the decision by Government to no longer require superannuation fund trustees to offer a default retirement income product to their members.

However, we do not support the proposed new covenant for several reasons:

1. The complexity of retirement planning results in a process which is convoluted and difficult for many to navigate. Consequently, we believe that it would be more efficient for this process to be streamlined and simplified prior to subjecting trustees to increased compliance costs.
2. Many of the Position Paper's assertions are misleading or incomplete, including the premise that retirees are not drawing down their superannuation savings prior to death.
3. The Position Paper does not adequately address member perceptions of mortality and longevity risk, and a number of the recommendations may provide an incentive to members to simply self-insure against these risks outside of superannuation. We have further noted evidence which supports the premise that Australians are already unlikely to draw down on non-superannuation assets.
4. A number of the recommendations made in the Position Paper consist of requirements which trustees are already subject to, including requirements under the best financial interests duty, sole purpose test and requirements regarding the formulation and maintenance of investment strategies. We are concerned that requirements for trustees to consider their members' non-superannuation investments is beyond their remit, and in the case of Self-Managed Superannuation Fund (SMSF) trustees who are also members, provide questionable value.
5. The recommendations regarding trustees providing appropriate guidance to their members is further likely to create a burden of additional compliance costs. In addition, a grey area is created where what policy makers may consider is general financial product advice may be perceived by members as personal financial product advice. This may conflict with existing member engagement strategies, as well as business planning at the trustee level.

Further discussion in response to the Position Paper follows.

## Retirement involves complex decisions

The RIC Position Paper explains that:

*Retirement involves multiple decisions and difficult trade-offs, such as:*

- *when to retire*
- *whether to keep their money in superannuation*
- *how to invest their savings, both in and outside of superannuation*
- *how to draw down their savings, both in and outside of superannuation; and*
- *their future expenditure and capital needs.*

*The long-term implications of these decisions, and their complex interactions with other systems like tax, social security, aged care and housing, make it very challenging for retirees to determine an optimal retirement income strategy on their own.*

The Major Accounting Bodies agree with these sentiments. However, it is worth noting that the “complex interactions” are a result of government legislation and regulator oversight.

We argue that most of the complexity concerning retirement occurs because of the intricate regulatory environment. As the government has created this complexity it is clearly within its power to work expeditiously to eradicate as many inconsistencies and complexities in its laws as possible. We stand ready to work constructively with the government to achieve this urgent and important objective.

## Retirees are depleting their superannuation retirement savings

In the Position Paper it is claimed that “retirees struggle to develop effective retirement income strategies on their own, much of the savings accrued by members through the superannuation system are not used to provide retirement income. Rather, they remain unspent and become part of the person’s bequest when they die”. It is our view that this key premise is misleading and needs to be re-cast.

The *Retirement Income Review Final Report*<sup>2</sup>, (RIR) best illustrates this with a finding (quoting Asher et al 2017<sup>3</sup>) that most retirees leave the majority of their wealth as a death benefit when they die, with a figure quoted in Asher’s paper as 90 per cent of assessable assets on average.

The RIR commissioned research which suggested that superannuation assets tended to grow in retirement and concluded that “investments have tended to equal or exceed drawdown rates.”<sup>4</sup>

<sup>2</sup> Callaghan, M., Ralston, D. and Kay, C., 2020. *Retirement Income Review Final Report*. July 2020. [online] Canberra: Commonwealth of Australia, p.432. Available at: <https://tinyurl.com/hderwhpu> [Accessed 6 August 2021].

<sup>3</sup> Asher, A., Meyricke, R., Thorp, S. & Wu, S., 2017. Age Pensioner Decumulation: Responses to Incentives, Uncertainty and Family Need. *Australian Journal of Management*, 42(4), pp. 583-607

<sup>4</sup> Callaghan, M., Ralston, D. and Kay, C., 2020 (as cited in a previous footnote), p.434

At a cursory glance, the RIR research appears to provide a strong argument for retirees to draw down more of their capital in retirement. However, nearly half of Australians predecease their life expectancy, meaning that it is to be expected that a large number of Australians will die with retirement savings unspent.

Furthermore, the combination of steadily high annual returns over the past ten years in excess of historically low inflation, offset against the lower minimum drawdown rates required through the initial period of retirement, will produce precisely the result that Asher et al (2017) notes. The account balance – and implied death benefit – in some cases will increase throughout the early years of retirement before declining as drawdown rates outpace investment returns.

Our analysis of APRA data shows that retirees generally deplete their superannuation savings in retirement. There are two aspects here – the total number of accounts (both accumulation and pension) and the number of pension accounts, noting that, for a number of reasons, not all Australians will roll over their superannuation benefit into the pension phase.

The following data has been extracted from APRA's June 2020 Annual Superannuation Bulletin<sup>5</sup> issued in January 2021, from funds with more than four members:

Age	Total Member Accounts ('000)		Total Pension Accounts ('000)	
	June 2015	June 2020	June 2015	June 2020
60 to 64	1,690	1,668	284	266
65 to 69	1,002	1,149	387	412
70 to 74	486	720	292	388
75 to 84	323	548	282	409
85+	80	113	76	109

In most cases member accounts for retirees will be closed for four main reasons:

- benefits paid out of the superannuation system to the member,
- benefits transferred to another member account in the same superannuation fund,
- benefits transferred to another superannuation fund, or
- benefits paid out of the superannuation system because the member has died.

Transfers between superannuation accounts and between funds will offset themselves, leaving death and transfers out of superannuation as the relevant reasons for account closure for this cohort.

In 2015, APRA regulated funds had 20,000 accounts with at least \$1 million in them for those aged 60 to 64 but had **no** accounts with at least \$1 million for those aged at least 85. One

<sup>5</sup> Australian Prudential Regulation Authority (APRA), 2021. *Annual superannuation bulletin - superannuation entities*. June 2020 (Issued 29 January 2021). [Canberra: APRA. Available at: <https://tinyurl.com/y4r6mcnc> [Accessed 6 August 2021].

conclusion that could be drawn from these figures is that anyone aged at least 85 in 2015, who retired with an account balance of more than \$1 million aged between ages 60 and 64 (i.e., before 2005) no longer has that amount of money in superannuation.

In 2015, for younger age brackets (ages 65 to 69), pension accounts are less than 40 per cent of total member accounts, but by age 85+ pension accounts are 95 per cent of total member accounts. This indicates that retirees are taking money out of the superannuation system.

In our view the overall reduction in pension accounts within APRA regulated funds is an indication that the minimum pension factors (found in Schedule 7 of *the Superannuation Industry (Supervision) Regulations 1993*) work in removing money from the superannuation system for those retirees who live until older ages.

This suggests that the minimum pension factors **do not** need to be adjusted to force retirees to remove more income from their superannuation savings.

We noted above that the premise that Australians are dying with most of their superannuation savings intact is skewed by nearly half of all retirees predeceasing their life expectancy. Although the total accounts figures shown above appear to confirm this, we can examine this effect more closely by looking at the total member benefits and average balance data provided by APRA<sup>6</sup>:

Age	Members Benefits (\$ million)		Average Member Balance (\$)	
	June 2015	June 2020	June 2015	June 2020
60 to 64	225,397	305,696	133,364	183,313
65 to 69	159,432	242,492	159,152	211,043
70 to 74	86,530	157,541	178,079	218,894
75 to 84	51,440	105,299	159,261	192,181
85+	15,188	12,512	190,114	110,602

This table shows that even though there has been a consistent overall decline in total member benefits during these periods (as well as a decline in member accounts, as shown in the previous table), the average member balance shows a pattern consistent with our observations above, in respect of members predeceasing their life expectancy.

Figures obtained from Chant West to the end of June 2021<sup>7</sup> show that with the exception of conservative funds, the ten year average annual returns on amounts invested in portfolios with 41 per cent or more in growth assets, on average exceeded minimum drawdown rates up to age 84. Balanced funds of between 41-60 per cent in growth assets match the normal minimum drawdown of 7 per cent for 80-84 year old retirees. It is worth noting that normal minimum drawdown amounts have been halved for the past two years as a temporary COVID-19 relief measure. Also, Chant West's figures are for the accumulation phase where a 15 per cent tax on

<sup>6</sup> Australian Prudential Regulation Authority (APRA), 2021 as cited in a previous footnote.

<sup>7</sup> Drury, B., 2021. Super fund performance: Monthly returns to June 2021. *SuperGuide*, Available at: <https://tinyurl.com/xff4ztsa> [Accessed 6 August 2021].

earnings applies. Equivalent performance figures for the exempt pension phase are likely to be higher.

The RIR acknowledges that many Australians draw down the minimum rate, which for members in account-based or market linked income streams, is recalculated based on the previous year's closing balance. However, where investment returns have outstripped drawdown rates for most of an Australian's life expectancy, the blanket assertion that Australians are dying with almost all their superannuation intact on average is misleading, given the skew towards more recent retirees who will have higher account balances because they are yet to spend their superannuation balances in retirement.

It is also worth noting that the RIR commissioned research shows that at least 80 per cent of retirees, both male and female, had exhausted their account balances by age 80<sup>8</sup>. Given that the number of account balances in APRA funds falls as people age this seems a logical conclusion.

To put this in its simplest terms: Australians are depleting their superannuation in growing amounts, and where account-based or market-linked income streams are used, benefiting enormously from investment performance which creates a feedback loop of higher drawdown amounts in subsequent years. Furthermore, the average member balances for those aged 85 and over are demonstrably less than the younger cohorts, confirming that those who live past their life expectancy are likely to have depleted their superannuation savings as expected.

Unfortunately, we do not have access to similar data for Self-Managed Superannuation Funds.

### Responding to member perceptions of risk

We are concerned that the focus of the Position Paper appears to be specifically concerned with maximising retirement income. While this is a laudable aim, it imposes specific limitations on retirees' abilities to manage risks, which are very important to them, given that the maximisation of income necessarily impacts flexibility late in retirement.

We note that discussion of mortality risk is missing entirely from the Position Paper. As noted previously, a key premise upon which the Position Paper is founded is brought into question when it is recognised that retirees who predecease their life expectancy are likely to die with a sizable portion of their retirement savings intact. Whilst we agree that casting one's retirement savings benefits as an income amount rather than a lump sum is a key objective, Australians retiring now will have had their statements showing a closing account balance for decades. It is unlikely that expectations can be changed overnight.

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<sup>8</sup> Polidano, C., Carter, A., Chan, M., Chigavazira, A., To, H., Holland, J., Nguyen, S., Vu, H. and Wilkins, R., 2020. *The ATO longitudinal information files (ALife): A new resource for retirement policy research*. TTPI - Working Paper 2/2020, April 2020. [online] Canberra: Australian National University. Available at: <https://tinyurl.com/8c6xzrun> [Accessed 6 August 2021].

We also consider that the discussion of longevity risk is deficient. The opening sentence, “Longevity risk is the risk a person will outlive their savings,” disregards other sources of longevity risk, such as the risks of:

- incurring large expenses in retirement, or
- drawing down savings too quickly.

The aim to maximise retirement income places retirees at higher risk of being unable to manage these two risks. Further, the justification in the Position Paper has been sourced from the RIR’s discussion of aged care and healthcare costs, which appears to be both simplistic and premised on a high incidence of home ownership in Australia. This is clearly unsustainable.

Finally, we note that where retirees are receiving more in retirement income than what they need, they may direct this into alternative savings vehicles. If it is true that retirees are self-insuring against longevity risk, with a mortality risk hedge, then the strategy of making retirees draw more in the early years of retirement may only result in members building these hedges outside of superannuation.

### **Do retirees deplete their non-superannuation savings?**

As identified by the RIR and noted in the Position Paper “retirees die with around 90 per cent of the assets they had at retirement”.

We investigated Australian Taxation Office statistical data for the 2013 and 2018 years<sup>9 10</sup>. The data in the tables in Appendices 1 and 2 shows interest, dividends, net rent and personal superannuation contributions for the 2013 and 2018 financial years respectively

It is noted that many retirees do not need to submit a tax return. Many people in this category would receive the maximum age pension, have modest savings and have no tax liability due to the Senior and Pensioners Tax Offset (or SAPTO).

This ATO data suggests that as people age they earn more interest from financial institutions, dividends (franked and unfranked) and net rent. We suspect that the amount of interest has fallen from 2013 to 2018 because of lower interest rates, while dividends received have increased strongly.

It is interesting to note the number of older Australians earning rental income declines faster than those in receipt of other assessable income sources such as interest and dividends. In these cases, it is likely that either those owning properties are dying or they have been disposing of these assets and are placing the funds into other investments.

<sup>9</sup> Australian Taxation Office (ATO), 2020. *Individuals - Table 3. Taxation statistics 2017-18*. [online] Canberra: Commonwealth of Australia. Available at: <https://tinyurl.com/e3cy2ssa> [Accessed 6 August 2021].

<sup>10</sup> Australian Taxation Office (ATO), 2015. *Individuals - Table 3. Taxation statistics 2012-13*. [online] Canberra: Commonwealth of Australia. Available at: <https://tinyurl.com/ykaww76s> [Accessed 6 August 2021].



The figures show how much Australians contribute to their superannuation, with some people aged over 65 still considering it to be important to make additional contributions to their superannuation.

Data for the private superannuation pension monies paid to those aged 60 or older are unavailable as such income does not have to be declared to the ATO.

It seems reasonable to conclude from the above data that:

1. the majority of retirees do not spend their accumulated non-superannuation wealth in retirement, however.
2. they are clearly depleting their superannuation assets

We cannot see why trustees would need to be concerned with what their members do with their non-superannuation monies, including money that has been paid out of the fund either by lump sum or pension payments. However, Australia presently operates under a three-pillar retirement income framework, where the third pillar includes voluntary savings, superannuation or otherwise. As previously explained, efforts to artificially accelerate the drawdown of one of these is likely to expand the footprint of alternative savings vehicles. It is not clear that this is a policy aim of the covenant.

### The future direction of the retirement income framework

The Position Paper states that the RIC

*will require trustees to develop a **retirement income strategy**. In doing so, trustees will be required to consider the broad needs of their members and identify what actions the trustee needs to take to assist their members meet those needs. It is anticipated that the requirement to develop a retirement income strategy will result in many trustees evaluating the products they offer to their members and investigating whether their product offerings can be improved to better meet the needs of their members. (our emphasis)*

We are of the view that trustees of all superannuation funds should be constantly “evaluating the products they offer to their members and investigating whether their product offerings can be improved to better meet the needs of their members”, as trustees are required by the existing SIS Act covenants to act in the best financial interests of their fund’s beneficiaries<sup>11</sup>.

We are also of the view that it is inappropriate for trustees to be “required to consider the broad needs of their members and identify what actions the trustee needs to take to assist their members meet those needs” because, as shown in the previous section, members are broadly demonstrating that in relation to their superannuation monies they are making these determinations themselves.

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<sup>11</sup> We are of the view that acting in the best interests of beneficiaries would have satisfied this requirement better however, this was recently replaced with a best financial interests duty. It is expected that the new duty would not have mandated this.

Again, we do not see why it should be a trustee's obligation to assist members with their non-superannuation holdings. In any event, we do not see how the costs incurred to provide these services to retired or near retired members could be justified as acting in the best financial interests of non-retired members.

Therefore, we see little need for trustees to be required to develop a *retirement income strategy* as described in the Position Paper.

Also, we note that there are likely to be substantial impacts on SMSF trustees, who are also the members of their funds. The additional burden of developing a retirement income strategy may require expensive advice for actions already explained in existing documentation (including the fund's investment strategy), as well as being implied by compliance with the sole purpose test and best financial interests duty.

### Appropriate Guidance

The Position Paper seeks feedback from stakeholders on "barriers to providing appropriate guidance that could prevent members from using their superannuation to take up retirement products that would be in their interest, or otherwise inhibit trustees providing guidance".

The recent High Court case, *Westpac Securities Administration Ltd v Australian Securities and Investments Commission [2021] HCA 3*, looked at the appellant's action in contacting its clients and suggesting that they should transfer superannuation money into a fund operated by Westpac Securities Administration Ltd or related entities. The appellant argued that it had provided "general advice" as defined in the *Corporations Act*.

The High Court found that:

*On the undisputed facts of the case, a reasonable person in the position of each of the members called by Westpac might expect Westpac, in recommending that the member accept Westpac's offer to procure the roll-over of the member's external superannuation accounts into the member's BT account, to have considered one or more of the member's objectives, financial situation and needs.*

We consider this case to present a significant barrier to offering "appropriate guidance" to those retired and those near to retirement. It is clear that in order to provide this guidance to an appropriate standard, a trustee would need to offer "personal advice" as defined in the *Corporations Act*. The provision of personal advice would require an Australian Financial Services License (AFSL) that permitted the trustee to offer retirement product advice to retail clients.

Some APRA-regulated superannuation fund trustees will have the necessary skills, knowledge and experience to apply for and obtain this type of license; others will not. We question if the need to then obtain these skills, knowledge and experience is acting in the best financial interests of beneficiaries who are yet to retire, particularly if trustees previously assessed that such a service was not necessary for their members or could not be provided in the best interests of all beneficiaries.

A solution to this problem may be to exempt APRA-regulated funds from the need to hold a personal advice AFSL, however due to existing SIS Act requirements, and the trustee obligations contained in the general law, we believe that many trustees may reluctantly feel obliged to obtain and hold such a license.

## Appendix 1 – Data from 2013 ATO Tax Statistics

Gender	Age	Number of individuals no.	Gross interest no.	Gross interest \$	Dividends - franked and unfranked amount no.	Dividends - franked and unfranked amount \$	Net rent <sup>2</sup> no.	Net rent <sup>2</sup> \$	Personal superannuation contributions no.	Personal superannuation contributions \$
Female	60 - 64	397,920	295,365	984,729,212	226,895	1,047,609,772	85,800	177,888,577	13,745	273,252,266
	65 - 69	240,260	184,310	806,878,740	176,935	1,012,365,892	46,040	290,655,561	6,820	145,875,109
	70 - 74	168,580	133,580	1,019,301,359	158,220	1,329,065,142	32,225	428,992,330	5,440	124,632,559
	75 and over	220,030	179,015	1,996,466,207	222,005	2,321,548,436	30,860	522,043,155	260	5,544,242
Male	60 - 64	456,030	292,640	838,861,797	262,565	1,553,482,465	103,610	-55,763,038	22,630	397,432,628
	65 - 69	300,745	210,495	727,135,869	208,555	1,402,661,355	60,505	229,516,064	13,155	262,476,255
	70 - 74	153,815	111,090	522,198,857	131,800	926,780,074	26,590	229,939,688	5,775	126,235,869
	75 and over	210,075	161,435	1,390,273,498	207,885	1,925,558,738	28,195	405,725,498	550	12,173,055



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## Appendix 2 – Data from 2018 ATO Tax Statistics

Sex	Age range <sup>3</sup>	Number of individuals	Gross interest no.	Gross interest \$	Dividends franked and unfranked no.	Dividends franked and unfranked \$	Net rent <sup>3</sup> no.	Net rent <sup>3</sup> \$	Personal superannuation contributions no.	Personal superannuation contributions \$
Female	60 - 64	462,941	328,628	623,182,251	227,047	1,288,017,985	104,143	244,455,484	29,084	490,645,822
	65 - 69	295,073	221,645	555,429,810	195,117	1,214,542,237	62,752	398,116,261	14,252	265,816,246
	70 - 74	183,379	136,585	500,704,876	159,159	1,152,089,655	34,769	371,183,863	6,242	131,737,021
	75 and over	255,995	200,187	1,236,740,852	271,147	3,039,833,247	38,954	707,169,825	388	8,678,197
Male	60 - 64	501,767	297,675	517,929,994	251,301	1,873,459,744	119,909	-2,187,945	39,679	639,780,045
	65 - 69	441,582	316,347	709,543,989	293,291	1,382,083,710	90,541	483,827,117	16,266	295,034,319
	70 - 74	307,988	217,886	662,826,003	263,262	1,342,841,619	54,936	477,348,993	7,321	149,104,700
	75 and over	252,816	186,417	902,121,517	252,970	2,765,143,995	38,457	565,519,467	837	18,420,346



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