

Tax and Transfers Branch
Retirement Income and Superannuation Division
The Treasury
Langton Crescent
Parkes, ACT 2600

Via Email: superannuation@treasury.gov.au

8 October 2024

Dear Treasury,

Consultation – Legacy retirement product conversions and reserves – draft regulations

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback to Treasury on the Legacy retirement product conversions and reserves – draft regulations.

The FAAA strongly supports the objective of this draft regulation. We are aware that there are many Australians stuck in pre 20 September 2007 retirement income products who are unable to exit due to limitations with the rules that applies to these products. As a result, there are many Australians who either have unnecessary complexity in their superannuation arrangements or are forced to keep an SMSF open even when this is no longer appropriate or where they no longer have the capacity to operate an SMSF. Equally, we are very supportive of the mechanism provided for the release of reserves, which is an arrangement that is not required under modern products. This legacy product issue is another factor adding complexity and preventing the closure of SMSFs. We are aware that this measure will have a meaningful application in the small APRA regulated fund space as well. This is an important measure to address rules that are currently forcing people to remain in products that are no longer appropriate for their needs, including where their balance is too low to justify the ongoing costs of running an SMSF or where they no longer have the capacity to operate them.

We are very much aware that there were material Centrelink asset test benefits in acquiring these products prior to 20 September 2007 in the form of lifetime, life expectancy or market linked super income stream products. In many cases, the residual value or commutable balance will have fallen significantly since these products were initially commenced. Thus, the asset test benefit will

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

have declined as well. It is appreciated that this asset test treatment benefit will be lost as a result of exiting from these products. It is important that there are no other penalties, including any look-back or claw-back mechanism, that may be applied to reassess Government pension benefits paid in prior years. It is our understanding that the commutation of these income streams would result in them being treated as an asset tested income stream from the date of commencement, with excess payments recouped for up to five years. We ask that legislative mechanisms are introduced to ensure that this does not occur. In the absence of resolving this issue, there would be little incentive for these members to take advantage of this reform, undermining the good policy intent as proposed.

Other Feedback

Our other feedback is as follows:

- We are supportive of the five year timeframe offered in this package. In the case of commuting an existing legacy income stream product, allocating reserves and closing an SMSF, this can take considerable time. It is also in many cases going to require access to financial advice and other professional services. Access to financial advisers with the expertise relevant to these legacy products (pre 20 September 2007), might be challenging, necessitating a reasonable period of time. We encourage the Government to be open to consideration of an extension should complications arise that reduce or delay the uptake of this important measure.
- Given the complexity in exiting these products and the expected difficulty in getting access to financial advice on this measure, we believe that other forms of communication with impacted SMSFs and the provision of guidance by the ATO to financial advisers, accountants and trustees is critical.
- We are conscious that there will be many SMSF members who have since passed away who have an entitlement to a reserve in an SMSF. There is significant additional complexity involved with these cases and limitations on how this can be treated as they no longer have access to Non-Concessional Contribution Caps. A beneficiary of the deceased person should not be compelled to become a member of the SMSF in order to receive any entitlement. We think that more needs to be done to help resolve these cases, including potentially allowing the payment of these reserves as a death benefit. In the absence of further provisions to deal with reserves related to previously deceased members, it will not be possible to achieve the broader goal of resolving these reserves that are remaining in the superannuation system.
- We recommend the inclusion of examples in the Explanatory Statement to assist trustees and practitioners to understand how this measure will work in practice. These are complex arrangements and the risk of making a mistake are significant. Clear guidance is essential.

Conclusion

The FAAA strongly support the provisions in this draft regulation to enable people to transfer out of legacy retirement products and to release reserves for the benefit of members. This is an important exercise to remove unnecessary complexity and to enable many Australians to close SMSFs that are no longer fit for purpose. We request that our proposals as set out above are addressed to ensure that this measure works as effectively and comprehensively as possible. Please contact me on (02) 9220 4500 or via phil.anderson@faaa.au if you have any questions.

Yours sincerely,



Phil Anderson

General Manager Policy, Advocacy and Standards
Financial Advice Association of Australia