Berrill & Watson
SUPERANNUATION & INSURANCE LAWYERS

Superannuation: Assessing Efficiency and Competitiveness
Submission to the Productivity Commission Draft Report

By Berrill & Watson Lawyers

1. Introduction

Berrill and Watson Lawyers practice exclusively in the areas of superannuation, insurance and financial services representing consumers, workers and people living with disabilities.

These written submissions supplement the oral evidence given by John Berrill at the public hearing in Sydney on 20 June 2018.

We welcome the Productivity Commission inquiry as a very important review of the $2.6 trillion Australian superannuation system and we are generally very supportive of the recommendations in the Draft Report (the Report).

This submission is focused on a number of discrete issues and recommendations raised in the Report that have particular significance and impact on consumers and in particular those in vulnerable communities.

2. Selection of Default Funds

We are supportive of the Report recommendations regarding the mechanism for selection and allocation of default funds.

There is little doubt there are too many superannuation funds for Australian workers to choose from. As a compulsory product, most workers have very limited understanding of superannuation and are relatively disengaged in the selection process. With a myriad of funds, investment options, terms and conditions and insurance benefits to choose from, choice is illusory. Most workers either select their existing fund (if any) or the default fund on the choice form-if they make any selection at all.

The existing award system and the MySuper requirements offer protections to ensure that default funds have minimum standards. However, the inefficiencies, lack of transparency and lack of real competition and accountability illustrated in the Report are stark and in need of corrective action.

The introduction of MySuper in 2014 with its acknowledgement of worker disengagement and setting of minimum standards was a big consumer law reform measure. The results are

still coming in. However, it is our view that the "best in show" mechanism to develop a short list of default funds selected against clear criteria for new workforce entrants is good policy.

The current MySuper arrangements do provide protections but the process by which new entrants choose their superannuation fund from a large number of MySuper-compliant funds, most of which they will not be aware of, is still problematic. To reduce that to a few shortlisted funds carefully chosen by an independent panel is a positive development. Whether many new entrants will really engage in selecting their first superannuation fund will still be problematic, but they will have a readily identifiable shortlist of funds and they will have to engage in the selection process, at least at some level.

The notion of defaulting only once when members first enter the workforce will also drive down the number of multiple accounts over time.

The success of the proposed mechanism will depend on the design of the standards by which the shortlist funds will be measured and the integrity of the selection process and the selection panel.

The Report identifies net returns and fees, investment strategies, intra-fund advice, governance and meeting members needs as considerations. We would add to the list fund administration in dealing with member queries and complaints including response times, complaint outcomes and compliance with the Insurance in Superannuation Code of Practice (the Code) (see item 7 below). The input and ongoing involvement of consumer and industry representatives in the development of the design and the panel will be also be important.

We do have concerns about the potential impact on well-performing funds who do not make the 10 "best in show" list. Some funds will presumably suffer a reduction in members and for some with younger membership demographics this may be substantial, particularly close to the conclusion of the four-year selection period. This may in turn affect the economies of scale of such funds and lead to increases in administration fees, charges and insurance premiums.

Perhaps one measure that could be considered would be to stagger the selection of "best in show" funds with five to be selected every two years, perhaps after a selection of 10 for the initial full four-year period.

3. Removal of Default Arrangements from Awards

The Report recommends the removal of the default superannuation arrangements from the award system and oversight by the Fair Work Commission (FWC). In its place, it recommends an expert panel, independent of government but sitting outside the FWC, be established to run a competitive process to select 10 superannuation products. These 10 "best in show" funds would be presented to all new workforce participants and be offered sequentially as default funds for those members who do not actively choose a compliant superannuation fund within 60 days.

This contrasts with the current default superannuation arrangements pursuant to which employers must nominate a MySuper-compliant fund as the default fund with the selection of default funds commonly subject to industrial awards.

Awards usually specify one or perhaps a few funds as the default funds and place obligations on employers to pay Superannuation Guarantee (SG) contributions at least quarterly in accordance with the *Superannuation Guarantee (Administration) Act* 1992 (the SGAA) and often more regularly i.e. monthly.

If an employer fails to pay the SG contributions on time or at all, the employer is in breach of the award which invokes the civil remedy provisions under the *Fair Work Act* 2009 (the FWA). An action for breach of a civil remedy provision may be bought in the Federal Circuit Court or an eligible state or territory court under Sections 539 and 545 of the FWA.

Remedies available to a court include:

- injunctions to prevent further contraventions of the award (Section 545(2))
- compensation for loss that the person has suffered because of the contravention (Section 545(2))
- civil penalties for normal contraventions and serious contraventions, currently up to $12,600 and $126,000 respectively (Section 539) and:
- any other orders the Court deems appropriate (Section 545).

Accordingly, a court can order an employer to make payment of outstanding SG contributions and, importantly, lost insurance benefits that would otherwise have been in place had the employer complied with the award and paid SG contributions to a nominated default fund.

Such proceedings can be lodged by an employee directly and are not usually subject to the risk of adverse costs if unsuccessful (Section 570). This contrasts with civil court proceedings for breach of contract which can be very expensive.

The removal of default superannuation arrangements from the award system would remove such a direct right of action by an employee, specifically in relation to any lost insurance benefits which could be worth substantial six-figure sums.

A member would still have the avenue of recovery of unpaid SG contributions via the Australian Taxation Office (ATO) under the SGAA. However, the ATO is limited to recovering up to 4 years of backdated contributions (Section 37 of the SGAA) * and importantly has no right to seek recovery of lost insurance benefits.

We have acted for many members who have lost valuable insurance benefits by employers failing to comply with their SG obligations. If they are locked out of their only real avenue of redress via the award system, this would constitute a serious consumer detriment for vulnerable communities, namely disabled workers and members' dependents in the event of premature death.

Whilst it could be possible to amend the SGAA to give the ATO power to seek recovery of consequential losses such as lost insurance, in our view this would not be practical. It would require the ATO to make an assessment of a person's eligibility for the lost benefits which in the case of lost insurance benefits may involve interpreting insurance policies, obtaining and assessing medical evidence and deciding whether a person meets the requisite definition of disability. Given the well documented long-term struggles of the ATO to collect unpaid superannuation, imposing such further obligations would be onerous and require substantial ongoing extra resources.

There is also no other suitable forum for the collection of any unpaid SG contributions or consequential losses. The Superannuation Complaints Tribunal (SCT) and the Australian Financial Complaints Authority (AFCA) (from November 2018), for example, have jurisdiction to deal with complaints against superannuation fund trustees but not against employers for non-payment of SG contributions.

One option may be to allow the "best in show" funds to be registered with the FWC or perhaps included in awards to enliven the rights and remedies under the FWA.

*As an aside, the ATO's powers should be extended to remove the four-year cap for the collection of backdated unpaid SG contributions-or at least extend it to six years.

Further, it is our view that the SGAA which has now been in place for 26 years should be formally reviewed. In particular, the definitions of "employee" and "ordinary time earnings" should be examined as to their scope and relevance in modern day employment arrangements. In our experience, many workers are artificially classified as independent contractors and not paid SG contributions whilst others have payment arrangements which reduce the amount paid as ordinary time earnings, thereby reducing the amount of SG contributions.

The Federal Government recently announced enhanced enforcement measures, including increased penalties, for non-compliance with SG obligations which are welcome. The ATO reported $2.85 billion in unpaid superannuation in the 2015/16 year. Adequate resourcing of the ATO to ensure the identification and recovery of unpaid or short paid SG contributions will also be very important to maximise the retirement incomes of Australian workers.

Many of the gains to be made from the Report recommendations will be lost without a modernised SGAA and a robust and well-resourced SG collection system

4. Auto-Consolidation

The Report makes recommendations to clean up lost or inactive accounts specifically by auto-consolidating lost/inactive accounts into members' active accounts when they start a new job or join a new active superannuation fund.

The proposal is similar to the final tranche of account consolidation measures recommended in the Stronger Super-SuperStream proposals announced by Treasury in 2013 but never enacted into legislation.

The measures included superannuation funds auto-consolidating multiple accounts for members within the one fund, the ATO auto-consolidating lost and inactive accounts into active funds and finally superannuation funds auto-consolidating lost/inactive accounts for new employee members.

Under the last tranche, superannuation funds chosen by new employees would have the authority to use the members' Tax File Numbers to search the ATO website for lost/inactive accounts and then auto-consolidate the accounts.

They would be required to write to the members advising them that unless they opted out within a prescribed period, the accounts would be auto-consolidated into the new account. They would be required to advise the members that there may be insurance cover in the other funds and they should consider this and any other relevant information before making any decision.

The first two measures were introduced in tranches of the Stronger Super legislative reforms, but the last auto-consolidation measure was never implemented. Instead, the Lost Super rules were amended to increase the threshold amount of lost/inactive account balances, reduce the measure of inactivity to qualify as Lost Super and mandate that lost accounts must be transferred to the ATO and held in interest-bearing accounts until claimed by members.

These measures and others have led to a reduction in the proliferation of superannuation accounts from a peak of 33 million to currently 28.6 million accounts (APRA Statistics-March Quarter 2018). However, the average Australian worker still has approximately 1.8 superannuation accounts which is far from ideal.

Some concerns were raised at the time of the Stronger Super proposals about the auto-consolidation measures and in particular the inherent presumption that an active account was superior to an inactive account in regard to performance, administration fees, investment options and insurance coverage (if the inactive account had ongoing account-based insurance cover).

Whilst it may be difficult for a disengaged member to compare fees, charges and performance of funds, it must surely be a sound general proposition that it is inefficient to be paying two or more sets of fees and charges and that all things being equal, it will be in a member's best interests to consolidate inactive accounts into current active accounts. Active accounts will likely have the consumer protections of MySuper or award provisions currently in place and perhaps the 10 "best in show" default arrangements in the future.

Accordingly, it is our submission that consideration should be given to revisiting the new employee auto-consolidation as a measure to clean up lost or inactive accounts.

There will be risks associated with the loss of insurance coverage under a consolidated inactive account but, at least in relation to income protection insurance, there may be no significant detriment given offsetting arrangements under income protection policies. To guard against unintended loss of extra death and Total and Permanent Disability (TPD) insurance cover (which are typically not offset), members must at least be clearly informed of the opportunity to opt-out of consolidation and directly warned in writing of the risk of the

loss of potentially valuable insurance cover, particularly if they have any existing health problems.

There is also the question of the impact of rollovers on the investment strategies chosen by members of inactive accounts (c/f eg MySuper balanced investments of active funds) and the potential crystallisation of losses when inactive accounts are closed. Members should also be specifically warned to check the fund investment strategies of each fund and the potential consequences of closure of inactive accounts.

It would be important to standardise the opt-out notices and warnings and it may also be appropriate to provide members with the shortlist of independent organisations to seek advice or information from (see item 9 below). Whilst it may be appropriate to flag auto-consolidation in the choice forms, notices would only be provided to members after they have chosen their fund and the ATO search is conducted to identify lost and inactive accounts.

Finally, there is a question as to which fund should be the recipient of auto-consolidated funds if there is more than one active account, such as when a member has multiple jobs. Given the increased casualisation of the workforce, this will be a common occurrence.

Consistent with the general proposition, it would be in the interests of members to have one active account and auto-consolidate inactive accounts into that one account. The Report's default fund recommendations will assist in the selection of one active fund. However, if there is more than one active account, the trustee of whichever account is established first would have responsibility to initiate the auto-consolidation of inactive accounts.

5. Account Consolidation- Service Period

As is indicated above, the Report includes a number of recommendations to reduce the number of multiple accounts and to consolidate lost or inactive superannuation accounts.

A reduction in the number of superannuation accounts can only lead to savings in duplicated administration fees, charges and insurance premiums (the latter specifically regarding income protection policies which do not usually respond to multiple claims).

The Report specifies that "lost inactive" account thresholds should be reduced to 2 years with such accounts mandated to be sent to the ATO and then auto-consolidated into a member's active account on an opt-out basis.

However, the consolidation of one or more older superannuation accounts into a younger active account can have adverse taxation implications for members applying for the release of superannuation on the grounds of permanent incapacity.

The tax payable on permanent incapacity benefits is calculated by reference to the Service Period which commences on the Eligible Service Date being the date a member joins the relevant superannuation fund and concludes on the member's retirement date. Of that Service Period, a proportion is tax-free, being the proportion of the Service Period that is from the date the member ceases work until his/her retirement date. The taxed portion is that representing the actual days worked after the Eligible Service Date.

i.e. Tax free portion of lump sum =Days to retirement/ (Service days + Days to retirement)

However, that tax-free proportion is reduced if the commencement date of the Service Period is pushed back.

Pursuant to Section 307.400(2) of the *Income Tax Assessment Act* 1997 (the ITAA), the Service Period for a superannuation lump sum which includes monies rolled into the fund, will include the Service Period of the originating fund(s), which is not tax-free.

Accordingly, if previous superannuation fund accounts are rolled into a later active account under the account consolidation proposal, the latter account will inherit the Service Period(s) of the consolidated fund(s) and this will in turn reduce the tax-free component of the superannuation lump sum payout on grounds of permanent incapacity.

The end result will be that members who need early access to superannuation because of permanent incapacity will be penalised by paying more tax (potentially tens of thousands of dollars) than had they been able to retain the money in their superannuation account or not had their older superannuation account(s) consolidated.

In 2016/17 19,000 members were paid out superannuation lump sums on grounds of permanent incapacity totalling nearly $2 billion (APRA Statistics 2017 Bulletin).

Much as members may have the option to opt-out of an auto-consolidation process, very few (if any) will be alive to this issue to exercise an informed choice.

A potential remedy is to amend the ITAA to exclude the Service Period(s) of consolidated inactive accounts from the calculation of the Service Period for the tax payable on a superannuation lump sum paid out from an active account on grounds of permanent incapacity.

6. Insurance

The Report makes two key recommendations with regard to default insurance in superannuation, namely, that insurance for members under 25 years of age should only be offered on an opt-in basis as should all insurance cover on accounts with no contributions for 13 months or more.

The former is premised on bundled insurance being poorly designed for young members with no dependents and low account balances, whilst the latter is based on inactive accounts being eroded to nil by insurance which is often duplicate cover and cannot be claimed (eg multiple income protection insurance policies).

We agree with the recommendation that insurance cover should lapse for inactive accounts on an opt-out basis, with 13 months being an appropriate measure of inactivity. It has been suggested that cover should lapse much earlier, but a 13-month period would accommodate periods of inadvertent inactivity for maternity leave, disability and employer non-compliance with SG obligations.

Together with measures relating to duplicate accounts and lost superannuation in both the Report and the Code, this should be a substantial hedge against erosion of inactive accounts.

We also agree with the recommendation regarding young members and death insurance cover, which has been and remains poorly targeted because of the relatively small proportion of Australians under 25 with dependents who would otherwise be reliant on them for financial support but for their premature deaths.

The same reasoning does not apply to disability cover which could in fact be more important to supplement what would in all likelihood be small account balances of members whose working lives are cut short before age 25 because of disability.

However, it must be acknowledged that insurance premiums would have a proportionately greater impact on small account balances. This problem supports taking action to protect young members from unnecessary insurance, although the removal of members under 25 from the risk pool of some funds may significantly increase premiums for the remaining members, including those who enter the pool after they reach age 25.

Given that insurers are now offering tailored group insurance which can unbundle types of benefits, it would be possible to prescribe separate default arrangements for different insurance benefits.

Currently, MySuper products must offer death and TPD insurance benefits on an opt-out basis subject to a trustee's assessment of the appropriateness of insurance of any kind and balancing that with the erosion of retirement incomes (Section 52(7) of the SIS Act). Income protection insurance can be offered at the discretion of a trustee i.e. it is not default option.

Death and TPD insurance benefits are invariably lump sums designed to top up retirement incomes of members or their dependents if they leave the workforce or die prematurely because of permanent disability or death respectively. Income protection benefits on the other hand are usually monthly payments designed to provide financial support for members who are temporarily absent from the workforce, sometimes (but not always) including payment of ongoing SG contributions. Income protection insurance is in reality not a precise fit for the sole or ancillary purpose tests under Section 62 of the SIS Act. At best, it provides temporary income support to assist workers to return to work and resume accumulating superannuation for their retirement incomes. It does not of itself contribute to a member's retirement income, except to the extent it may provide a SG component.

Since an ATO Ruling in 2007 which allowed trustees to claim a tax deduction for insurance premiums for temporary incapacity exceeding two years (TD 2007/3W), some superannuation funds have moved to provide income protection benefits beyond what was usually limited to monthly payments for up to two years to periods up to retirement age (65 or beyond). However, as the data in the Report reveals, income protection insurance premiums account for upwards of 40% of total insurance premiums in group insurance in superannuation (page 21, Report Overview).

It is our view that in balancing the benefits of group disability insurance with the cost of account erosion for young members, consideration should be given to limiting the removal of

default insurance cover for under 25s to death insurance and income protection insurance, whilst maintaining default TPD insurance cover under MySuper products subject to trustees determining that the insurance cover is appropriate pursuant to their obligations under section 52(7) of the SIS Act. Absent this, we would support insurance through superannuation only being offered to members under 25 on an opt-in basis with a requirement to offer insurance on an opt-out basis once members reach 25 years of age.

The Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 proposes amendments consistent with the above (without a carveout for TPD insurance cover for under 25s) in addition to the removal of default insurance for superannuation accounts with balances below $6,000.

It is our view that this additional measure should only apply to inactive accounts under $6,000. Otherwise, many people from vulnerable communities will be locked out of default insurance cover for significant periods of time until their account balances hit $6,000 after deduction of administration fees and charges. Affected communities could include new migrants, indigenous Australians with limited paid work histories, single mothers entering or returning to the workforce, people disabilities with limited work histories and casual workers including those with problematic employer SG compliance. Many would be commencing paid work after age 25 or returning to work with very limited superannuation. Active accounts with SG contributions being paid are not at the same peril of inactive accounts being eroded to nil.

Further to the above, it is our view that, subject to the above, income protection insurance in MySuper products should remain optional at the discretion of trustees after their assessment of its appropriateness under Section 52(7) of the SIS Act. However, to align it with retirement incomes policy, any income protection insurance under MySuper should be for temporary incapacity up to a maximum of two years and must include a SG component. Longer term income protection benefits and those without SG contribution payments do not contribute to retirement incomes and only serve to increase insurance premiums and erode superannuation accounts.

Finally, the Report recommends that an independent review of insurance in superannuation should be initiated after four years, or earlier if the Insurance Code Taskforce concludes that the insurance in superannuation code of practice is not made enforceable within two years (see item 7 below).

Given the substantial suite of measures proposed in the Report and the Code for improving default coverage, product and benefit design, claims handling and member education, we support a review of the effectiveness of the measures and the current opt-out/opt-in insurance arrangements.

The four-year timeframe should provide a sufficient period for implementation and assessment of the changes, although it is noted that many group insurance contracts are renegotiated in three-year cycles. This may result in limited data being available for such a review and it may be appropriate to consult with industry to make this achievable.

Given the importance of an effective code to consumer outcomes and achieving value for money of insurance within superannuation, the linkage of an inquiry to improvements in the Code and in particular its enforceability through code compliance is welcome.

7. Insurance in Superannuation Code of Practice

The Insurance in Superannuation Code of Practice was launched by the peak superannuation bodies in December 2017. It is a code of practice for superannuation funds relating to benefit design, claims, complaints and education. It is quite prescriptive particularly in relation to decision-making timeframes and the provision of information and documentation regarding claims and coverage.

The Code is certainly a significant step forward for consumers who had laboured under slow claims processes and a lack of transparency in coverage, terms and conditions and decision-making.

More will need to be done to implement standard definitions, and alignments between insurance terms and conditions and statutory obligations under the SIS Act, the Insurance Contracts Act 1984 and the proposed amendments to the Australian Consumer Law (Schedule 2, Competition and Consumer Act 2010) to include insurance.

However, as the Report has identified, the Code suffers from two glaring deficiencies: it is not compulsory and there is no external oversight of code compliance.

Whilst the rate of adoption by superannuation funds has been substantial, there are outliers have not yet committed to adopting the Code. There is no good reason why any superannuation fund would not adopt a code which provides consumer protections and advances members' interests.

It may be possible for the relevant superannuation associations to mandate code compliance as a condition of continuing membership. However, it has been suggested that external direction of trustee decision-making would breach the SIS Act. Section 58 (1) of the SIS Act states that a trustee cannot be subject to direction by another person or entity. Section 58 (2) specifies a number of exceptions, including a direction given by a court, the Regulator or the SCT (and AFCA).

Indeed, it was concern about a breach of the SIS Act that was apparently the catalyst for the Code stakeholders to drop the external oversight by a code administrator from the draft Code to the final version.

The lack of any external oversight of trustee compliance with the Code drew sharp criticism from consumer groups who pointed to the fact that many other financial services industries have codes with code compliance committees whose rules include data collection, auditing, education and naming-and-shaming, all of which could surely be undertaken by a code administrator without offending the SIS Act.

The matter would be put to rest by an amendment to section 58 (2) of the SIS Act to include directions of a code administrator or code compliance committee in the list of exceptions. A

further amendment would be appropriate to mandate adoption of the Code by all regulated superannuation funds, including MySuper funds. In the meantime, the Code should be immediately amended to reinstate a code administrator or code compliance committee with the above roles.

The Code specifies that it must be subject to formal independent reviews at least every three years (clause 14.8). However, the Report recommends a more proactive approach with the establishment of a joint regulator taskforce (the Insurance Code Taskforce) to monitor, advise and report on improvements to and the adoption and implementation of the Code with a timeline of two years to strengthen the Code and make it binding and enforceable.

We agree with the Report recommendations save that we believe the Taskforce should include representatives of not only the regulators but also industry and consumer groups. There was substantial goodwill in the development of the Code, some of which was eroded by the modifications made to the draft Code. However, we believe there is still the opportunity to bring all parties together to develop a robust Code in the interests of members, particularly given the intervention of the Productivity Commission Report. The input and ownership of an industry Code by the relevant stakeholders is always a preferred model.

The two-year time frame for completion of the Taskforce's work is sensible given that the Code with its existing substantive requirements will take time to implement and then review its effectiveness. However, we believe an external code administrator or code compliance committee should be implemented within a much shorter time line (a maximum of six months) and a recommendation for legislative reform to mandate adoption of the Code to be in place within twelve months.

The Financial Ombudsman Service currently houses the secretariats of a number of financial services code compliance committees, including the Life Insurance Code Compliance Committee, and it is anticipated that these arrangements will continue after the introduction of AFCA in November 2018. A similar arrangement could be entered into with regard to the Code for a code compliance committee or code administrator and there would likely be substantial symmetries and cost savings.

8. Self-Managed Superannuation Funds

The Report raised the issue of the high costs for low balance Self-Managed Superannuation Funds (SMSFs) without making any recommendations.

The Report noted that the reported costs for SMSFs had increased over previous years which is consistent with greater complexity, increased compliance obligations and a greater reliance on professional providers such as lawyers, accountants and financial advisers.

The net returns of larger SMSFs were comparable to institutional funds but SMSFs with less than $1 million in accounts performed significantly worse, largely due to higher average costs.

The Australian Securities and Investments Commission (ASIC) has an online Guide for people considering setting up SMSFs. The 2013 Guide recommends the threshold for an SMSF account to be $200,000.

The website annexes a report from Rice Warner which indicated that an amount of less than $250,000 was problematic for an SMSF and they only become fully comparable to regulated superannuation funds if the account balance is $500,000 or more.

The Australian taxpayer has a substantial stake in the success of SMSFs by providing concessional tax treatment and retirement income support via the age pension for those people whose SMSFs fail and have inadequate retirement incomes.

Accordingly, it is important that the ASIC Guide be updated and the recommended threshold for SMSFs be increased in line with the Report findings. Consideration should also be given to introducing a mandatory threshold for SMSF accounts.

9. Superannuation Consumers Centre

We support the recommendation of the Consumer Action Legal Centre (CALC) and the Financial Legal Rights Centre (FRLC) for the establishment of a Superannuation Consumers Centre.

Superannuation advocacy is sometimes seen through the prism of superannuation fund trustees having direct obligations to act in the best interests of members. Accordingly, it is asserted by some that trustees, through their representative organisations, will advocate on matters of policy for their members as a collective.

However, it cannot be gainsaid that the collective interests of superannuation fund members and such organisations diverge on some occasions, as well as the rights and entitlements of individuals. The final Code was to some extent an illustration of divergent interests and views.

Similarly, the dual oversight of the superannuation industry by the Australian Prudential Regulation Authority (APRA) and ASIC is important to consumers but, as independent statutory bodies, they cannot represent consumers on matters of policy.

The heavy lifting for financial services consumers has been left to a few consumer organisations, namely CALC, FLRC and Choice with support from consumer lawyers such as ourselves.

This pales in comparison to the resources of industry associations although that is not to say that there isn't a large degree of cooperation and goodwill between industry and consumer groups.

Superannuation is extremely important to Australian consumers and yet as a compulsory product it is not well understood by them. A dedicated Superannuation Consumers Centre with a corpus and income stream independent of government and industry would be a significant consumer benefit, particularly in matters of policy, and at a modest cost in a $2.6 trillion industry.

Recommendations

1. The criteria for “best in show” funds should include administrative performance in dealing with member queries and complaints, including response times, complaint outcomes and compliance with the Insurance in Superannuation Code of Practice.
2. Industry and consumer representatives to be involved in the development of the criteria for “best in show” funds and the selection panel.
3. Stagger the selection of “best in show” funds-perhaps five every two years after an initial full 10X4 year period.
4. Allow “best in show” funds to be registered with the Fair Work Commission or perhaps included in awards to enliven the rights and remedies under the *Fair Work Act* 2009.
5. Amend the *Superannuation Guarantee (Administration) Act* 1992 to allow the ATO to seek collection of Superannuation Guarantee Shortfalls for entire outstanding periods-or at least for six years.
6. Conduct a formal review of the SGAA, including the definitions of “employee” and “ordinary time earnings” and the mechanism and resourcing for the collection of unpaid superannuation.
7. Allow superannuation trustees to search the ATO website for lost or inactive accounts of new employee members and auto-consolidate those accounts on an opt-out basis
8. Develop standard opt-out notices with warnings about potential loss of insurance (particularly for people with existing health problems) and investment strategies and consequences and include a referral to the Superannuation Consumers Centre.
9. Amend the *Income Tax Assessment Act* 1997 to exclude the Service Period(s) of consolidated inactive accounts from the calculation of the Service Period for the tax payable on a superannuation lump sum paid out from an active account on grounds of permanent incapacity.
10. Death and income protection insurance cover through superannuation should only be provided to members under age 25 on an opt-in basis.
11. Total and Permanent Disability insurance through superannuation should continue to be default cover under MySuper products subject to members opting out of cover and trustees determining that the insurance cover is appropriate under section 52(7) of the SIS Act.
12. Insurance cover should lapse for accounts with no contributions of 13 months+ and for inactive accounts under $6,000.
13. Insurance cover for active accounts under $6,000 should continue to be default cover under MySuper products subject to members opting-out of cover and trustees determining that insurance cover is appropriate under section 52(7) of the SIS Act
14. Income protection insurance in MySuper products should be limited to temporary incapacity up to a maximum of two years and must include a Superannuation Guarantee component
15. The Insurance Code Taskforce should include industry and consumer representatives

16. The Insurance in Superannuation Code of Practice should be amended to include the establishment of a code administrator or code compliance committee within six months
17. Section 58(2) of the SIS Act should be amended to include decisions or directions of the Code administrator or code compliance committee once established.
18. The Code should be mandatory for all MySuper and other regulated superannuation funds.
19. The 2013 ASIC Guide for minimum account balances for SMSFs should be reviewed and updated and consideration given to introducing a mandatory threshold for SMSF accounts.
20. A Superannuation Consumers Centre should be established to represent the interests of superannuation fund members and beneficiaries, particularly on matters of superannuation policy.

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