FSC FINANCIAL SERVICES COUNCIL

Protecting Your Superannuation Package

FSC Submission - Draft Regulations

FINANCIAL SERVICES COUNCIL

Contents

1. About the Financial Services Council 3
2. Introduction 4
2.1. Timing concerns 4
2.2. Impact on members 4
3. Key issues to be addressed in Regulations 6
3.1. Determining treatment of member accounts 6
3.2. Simplifying member communications 8
3.3. Aligning PDS changes 10
4. Detailed feedback on the Regulations 11

1. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2. Introduction

The Protecting Your Superannuation package (**PYS**) contains a range of measures designed to improve outcomes for superannuation fund members.

However, the FSC and its members are concerned that a lack of clarity in some sections of the draft PYS Regulations (**Regulations**), in addition to the extremely short timeframe for implementation, is likely to lead to poor outcomes and sub-optimal experiences for some clients.

Section 3 of this submission sets out the issues most significant to FSC members, which are likely to result in poor or unintended outcomes at commencement if they are not corrected.

Section 4 of this submission sets out a comprehensive list of amendments that the FSC recommends be made to the Regulations as drafted in order to achieve the goals of the PYS package.

2.1. Timing concerns

While superannuation funds and insurers are working to comply with PYS requirements by the dates required, there is a real risk some funds may not be able to fully comply by the implementation date.

In particular, it is extremely difficult to reprice insurance, and in some cases renegotiate commercial arrangements, within the timeframes required to provide appropriate disclosure to customers.

Efforts to meet the deadlines imposed by the Bill and regulations will require significant diversion of resources and, in many instances, manual processes.

Even where compliance is possible, there is little room for testing or verifying of processes, and manual processes remain more prone to error than automated systems.

We will therefore be seeking understanding and, where possible flexibility from regulators in relation to compliance with PYS requirements to ensure that consumers are not adversely impacted by the transition.

The FSC has suggested several amendments to the Regulations which would allow superannuation funds to comply with the intent of PYS, and deliver equivalent or improved outcomes to members.

This should not be interpreted as industry seeking to avoid or delay compliance, but as part of a good-faith effort from superannuation funds and insurers to comply with the law.

2.2. Impact on members

We have particular concerns about the member impacts of the short period between initial member communication on 1 May 2019 and insurance being cancelled on 1 July 2019.

The requirement to provide initial communication to members by 1 May 2019 will be difficult for funds to meet given the short lead time available, the number of different communications required on this day, and ongoing lack of clarity regarding requirements of the Bill and Regulations.

We also have significant concerns about the short time period available for individuals to act on making initial elections to maintain their insurance. The current timetable provides only two months for funds to contact members, and receive confirmation where required that a Member wishes to retain their insurance benefits before 'inactive' accounts are required to have insurance removed on 1 July 2019.

This leaves very little margin for error, such as a member not receiving a single communication or acting in time. This approach is not in members best interests given they may not realise their insurance will be cancelled until it is too late to act.

One FSC member pays on average 1,500 claims per week and anticipates at least 30% of policies to be cancelled automatically on 1 July – this could result in up to 450 claims being denied in relation to events in the first week of July alone, because individuals are not aware their insurance has been cancelled.

Providing some flexibility for funds to extend the timeframe when they will accept elections for accounts which would otherwise have insurance cancelled on 1 July would improve the experience for these customers. In this scenario, premiums paid since 1 July would be refunded if no election is received.

Insurance has been a major part of Superannuation for many years. Until these new Regulations it has been a mandatory part of default Superannuation, ensuring Members had a reasonable level of insurance cover.

PYS represents a significant change to the status quo and should be communicated to members clearly and effectively. Unfortunately this is unlikely to be possible in the time available.

Some funds are already in the process of finalising templates for member communications and are finding it difficult to provide the (assumed) mandated information in a customer-friendly manner, particularly in instances where the Regulations appear to require inclusion of text from legislation.

3. Key issues to be addressed in Regulations

While there are a range of adjustments required to the PYS regulations to ensure intended outcomes are achieved, FSC members have identified several high priority issues which, if addressed, will significantly assist with implementation.

3.1. Determining treatment of member accounts

It is not unusual for members to hold a single account with investments across both MySuper and Choice options. This may occur where a MySuper member selects a choice investment option for part of their balance, with the remainder staying in their existing MySuper default investment option.

Currently, the Regulations appear to specify treatment of members who have investments in both MySuper and Choice investment options as having two separate accounts. This creates potential adverse outcomes, particularly in relation to ATO rollover requirements.

The Explanatory Materials notes that *"Where a member holds interests in respect of MySuper and choice products in a superannuation fund, only the account balance relating to the MySuper product will be assessed separately."*

If MySuper and Choice investments within a single account are treated separately, there is a risk of inequitable and confusing outcomes for some customers.

For example, it is conceivable that an individual contributing to an account with an inactive MySuper component (due to ongoing contributions being made into the Choice element) could have this balance swept to the ATO only to be reunited with their choice investment – effectively rolling money back into the same account.

This does not have any benefit from the perspective of the member, and will lead to unnecessary complexity and confusion.

We also have concerns that treating Choice and MySuper differently will lead to situations where cover may be immediately ceased if a member with both MySuper and Choice investments in a single account decides to move 100% of their balance to a Choice option, as this may appear as an inactive account when considered separately from the previous MySuper investment option.

The approach of considering MySuper components separately also differs from current arrangements for transfers to the ATO (unclaimed money, departed temporary residents and lost super accounts), under which MySuper and Choice products are treated as a single account.

While wording currently appears to suggest that these balances should be calculated separately, FSC members take the view that, in order to meet the objectives of the legislation, the total balance of an account should be considered together irrespective of the investment options chosen.

Further, insurance cover does not separately attach to the MySuper or the Choice investment options, it applies to the member's interest in the fund. It will be very difficult to explain to members, and to administer, scenarios where either the MySuper or Choice options become inactive while the other is active (due to the member's investment profile for contributions and rollovers).

The FSC recommends clarifying the treatment of MySuper and Choice options to ensure that accounts with multiple investment options are treated as a single account for the purpose of assessing the fee cap and determining inactivity.

Risk only accounts

Some superannuation products are created for the express purpose of holding insurance. Premiums on these policies can be paid annually by way of a rollover or contribution and accounts are generally set up for members purely to receive these premiums rather than for the purpose of accumulating savings. The balances of these risk only accounts will almost always be zero, so there is no risk of superannuation balances being eroded.

Under the Regulation, members with this type of policy would receive an Insurance Inactivity Notice each year at the ninth month, which is unnecessary, given many members have actively made arrangements to pay their insurance premiums yearly.

There should be a further carve out in R7.9.44B(3) for members with retail insurance only superannuation policies as such member communications under R7.9.44B(4) are meaningless and confusing to policy holders (these accounts, by definition, will never meet the 16 month inactivity requirement because premiums must be paid annually via contribution or rollover).

Any such letter will be required to state that the insurance will cease where no contributions have been received in 16 months, immediately accompanied by a contradictory statement that the customer will not be affected.

The policy intent of the legislation is to reduce erosion of account balances; products that hold no account balance should therefore not be impacted.

The FSC recommends the regulations exempt insurance-only products from providing inactivity notices.

Alternatively, flexibility in content and timing of notices would assist in reducing confusion for members who would otherwise receive unnecessary correspondence.

Pension products

The Regulations should also be clarified to state that pension accounts should not be considered to be caught by the fee cap.

Currently, the use of the 'choice product' definition in the SIS Act means that pension products (including TRIS) will be captured by the fee cap.

However, these products are not accumulation products and are intended to have a balance that is drawn down toward zero.

The FSC recommends the regulations exempt pension products from the fee cap.

3.2. Simplifying member communications

The member communication requirements in the PYS legislation and Regulations are numerous and highly prescriptive.

Several adjustments could be made to simplify communications from the perspective of consumers and streamline the transition process.

Timing of communications

Depending on the time a member becomes inactive, the communications required are as follows:

- **Notice on 1 May 2019:** a notice is sent to any member whose account has insurance cover and the account has been inactive for 6 months or more as at 1 April 2019.
- **Notice for 9 months (or more) of inactivity:** From 1 July 2019, a notice is sent to a member whose account has insurance cover and the account has been inactive for 9 months.
- **Notice for 12 months (or more) of inactivity:** From 1 July 2019, a notice is sent to a member whose account has insurance cover and the account has been inactive for 12 months.
- **Notice for 15 months (or more) of inactivity):** From 1 July 2019, a notice is sent to a member whose account has insurance cover and the account has been inactive for 15 months.

However, there are a number of scenarios in which this may cause confusion. For example:

- On commencement of the Regulations, it is not clear that only one insurance activity notice needs to be sent to a member who has been inactive for 15 months or longer. Draft sub-regulation 7.9.44B(4) of the Corporations Regulation says “and” between each of paragraphs (a) to (c), indicating multiple notices may be required. These individuals will also receive notification following cancellation of their insurance.
- Similarly, someone who has been inactive for 6 months on 1 April 2019 will receive inactivity notices in both May and July.
- For retail insurance policies in super, the Life Insurance Act requires life insurers to send communications to the trustee and the life insured (the member) about cancelation of cover due to unpaid premiums, which could cause confusion.

- Customers in insurance-only superannuation products who pay on an annual basis will receive an inactivity notice nine months into each year, despite payment not being due or expected for another three months.

While it is important that members receive adequate information about potential changes to their account, particularly in instances where their insurance cover is likely to be cancelled, it is also vital that information is provided in a clear and convenient manner.

The FSC recommends clarifying and streamlining initial communication requirements, particularly during the transition period. Further detail on specific proposed changes can be found in Section 4 below.

Scheduling of ongoing communications

On an ongoing basis, the current regulations require inactivity notices to be provided within two weeks of the day on which the member's account becomes inactive. This would effectively require funds to issue notices on a daily basis depending on when an account becomes inactive.

There is no apparent detriment to consumers from potentially receiving this information earlier than the date of inactivity, but it would simplify compliance if funds were able to provide notices on a monthly, rather than rolling, basis.

The FSC recommends adjusting requirements to allow for monthly data extracts to be used for communicating inactivity notices (see Section 4 below).

Content of communications

The current wording of the Regulations appear to prescribe specific sections of legislation be included in inactivity notices.

For example, Regs 7.9.44B(5)(g) and (6)(g) require an Insurance Inactivity Notice and Final Insurance Inactivity Notice to explain that "section 68AAA of the SIS Act does not affect a right of the member in relation to insurance that is covered by subsection 68AAA(7) or (8) of that Act."

This is unnecessary and likely to create confusion and uncertainty for members. Words to the effect of these clauses should be appropriate, and would be more useful to members who are unlikely to know if they are impacted.

It is also unnecessary for a notice to specifically detail the manner in which an election was made. This will create additional administrative requirements for funds without improving consumer outcomes. Given the need for an active election to continue holding insurance, it is unlikely that a member would be unaware of how the election had been made – and in the case of any doubt the member could contact the fund for this information.

The FSC recommends simplifying prescribed content of notices where possible. Further detail on specific proposed changes can be found in Section 4 below.

Format of communications

The Explanatory Memorandum to the PYS Bill suggests that notices from the member regarding their insurance election will be covered by the Electronic Transactions Act 1999 (ETA) and therefore can be made electronically.

However, the Electronic Transactions Regulations 2000 currently exclude notices under the Superannuation Industry (Supervision) Act from being subject to the application of the ETA.

The FSC recommends amending the Electronic Transactions Regulations so that members can communicate their insurance preferences in either digital or traditional written format.

3.3. Aligning PDS changes

Compliance with PYS will require significant changes to Product Disclosure Statements (PDS), effectively requiring the amendment and issuance of a full PDS, rather than issuing a Supplementary PDS or PDS update.

This is because changes will be required throughout the PDS (including numerous places throughout the various fees and costs disclosure tables) to reflect PYS compliance.

Compliance would be significantly simplified if the requirements for PDS changes proposed by the Regulations could be aligned with other existing timelines for PDS rollovers, in particular the 1 October deadline for changes relating to RG97.

The PDS requirements generally relate to reducing risk to consumers. However, the risk of negative consumer outcomes from slightly delaying the PYS changes is negligible and not misleading, particularly considering the beneficial impact PYS will have for members.

The FSC recommends relief be provided to allow PDS changes to be made any time up to 1 October 2019.

4. Detailed feedback on the Regulations

Reference	Issue	Suggested solution
Regulations		
Item 1 Corps Regs 7.9.44B(3) and(4)	**Exempt members who have applied for, or been underwritten, or have modified their insurance cover** Sub-section 68AAA(6) of the PYS Bill to which the Regulation applies exempts the trustee from cancelling insurance for members with inactive accounts where, during the period after 8 May 2018, and before 1 April 2019, the member has given notice in writing to the trustee that the member elects to have insurance taken out or maintained. Though it is not specified, we assume that such an election/notice from the member could constitute an application form for insurance, or a request to modify their cover. That is, the member has made and taken an active decision to take up, keep, or modify their insurance. The exception for members during the period of 8 May 2018 to 1 May 2019, should extend to other members who have actively sought insurance to be taken up, maintained, or modified.	Include policies where the member has applied for, been underwritten, or taken an active decision in taking out or modifying their insurance in the exemptions R7.9.44B(3) to avoid unnecessary and confusing communication with customers who have made an active choice to take out or maintain insurance.
Item 1 Corps Regs 7.9.44B(3)	**Customers with active claims** There is no protection within the current drafting of 7.9.44B(3) for customers receiving claims payments, or whose claim is being assessed, and who may not presently be making premium payments towards their insurance policy or contributions into their superannuation account.	Expand 7.9.44B(3) to exclude such members. Alternatively, provide additional flexibility to trustees in timing and content of notifications to ensure they are appropriate to members' circumstances.

Reference	Issue	Suggested solution
Item 1 Corps Regs 7.9.44B(3)	**Whole of life and endowment products** There are serious issues with cancelling some bundled old legacy policies to the significant detriment of the customers. Legacy Traditional Products (Whole of Life & Endowment) are life insurance policies dating back to the 1960s (and earlier) with the primary aim of providing life cover over a person's lifetime. In some cases they also build up a tax-effective superannuation investment. The life insurance policy is guaranteed to remain in force for the insured's entire lifetime, provided required premiums are paid, or in the case of Endowment to an agreed maturity date. Members can elect for their policy to be made 'paid up' so that no further premiums (i.e. contributions) become payable and the sum assured adjusted accordingly. Such members will then become "inactive" by default. As there is no separation of the investment and insurance elements of the policy it cannot be unbundled. A "forced removal" of the life cover component can only be effected through termination of the policy itself at a nominal surrender value. In many instances this will not be in the best interests of the policyholder when compared to the expected maturity value (or sum assured on death). It is worth noting that Traditional Products have a large portion of older members. Seeking direction from such a late aged demographic in some instances presents both practical as well as ethical considerations. As with insurance only products, Traditional Products that hold no account balance should not be captured by the scheme as they do not have account balances to erode.	Include legacy traditional products in 7.9.44B(3) to avoid adverse outcomes for beneficiaries of these products.

Reference	Issue	Suggested solution
Item 1 Corps Regs 7.9.44B(4)	**Insurance-only superannuation accounts** This Regulation would apply to members with retail insurance only superannuation interests. Premiums on these policies can be paid annually by way of a rollover or contribution and accounts are generally set up for members purely to receive these premiums rather than for the purpose of accumulating savings. Under the Regulation, members with this type of policy would receive an Insurance Inactivity Notice each year at the ninth month, which is unnecessary, given many members have actively made arrangements to pay their insurance premiums yearly. There should be a further carve out in R7.9.44B(3) for members with retail insurance only superannuation policies as such member communications under R7.9.44B(4) are meaningless and confusing to policy holders (these accounts, by definition, will never meet the 16 month inactivity requirement because premiums must be paid annually via contribution or rollover). Any such letter will be required to state that the insurance will cease where no contributions have been received in 16 months, immediately accompanied by a contradictory statement that the customer will not be affected.	Clarify that risk only superannuation policies are exempted by SIS Act 68AAA(8). This appears to be in intention of subsection 8, though this requires confirmation. Include insurance-only accounts in the exemptions contained in R7.9.44B(3) to avoid unnecessary and confusing communication with customers.
Item 1 Corps Regs 7.9.44B(5)(d) and (6)(d)	**Most recent completed year vs current year of premiums** Regs 7.9.44B(5)(d) and (6)(d) insert a requirement for an Insurance Inactivity Notice and Final Insurance Inactivity Notice to state *"the amount of insurance fee charged in relation to the product for the fund's most recent completed year of income"*. [Emphasis added]	Refer to the most recent periodic fee and the frequency of the fee.

Reference	Issue	Suggested solution
	In our view, the amount of the insurance fee charged should be the most recent periodic fee and the frequency of the fee. It is likely to be misleading and deceptive if the previous year's premiums are stated here.	
Item 1 Corps Regs 7.9.44B(5)(g) and (6)(g)	**References to legislation in inactivity notices** Regs 7.9.44B(5)(g) and (6)(g) require an Insurance Inactivity Notice and Final Insurance Inactivity Notice to explain that *"section 68AAA of the SIS Act does not affect a right of the member in relation to insurance that is covered by subsection 68AAA(7) or (8) of that Act"*. This is not consumer-friendly and would cause significant confusion. Members would receive this notice despite the fact that it may not apply to them at all, or the effect on them may be unclear. Further, the description in the Explanatory materials may be misleading or deceptive to some members. It will not always be correct that a member's right to make a claim ceases at the time their insurance cover is cancelled as they may have already accrued a right to claim. Members for whom insurance may be cancelled should be informed in straightforward terms that they should contact their fund if they think they may have a claim, even after their insurance has been cancelled. Similar issues arise with Reg 7.9.44C(5)(a).	Remove the requirement for including these words in notices. This could be achieved by adding the words "to the effect of" in 7.9.44B(5)(g) and (6)(g), and 7.9.44C(5)(a). Members to whom an inactivity notice is inapplicable as a result of section 68AAA(7) and/or (8) should be exempted from the notice requirements entirely. Alternatively, provide additional flexibility to trustees in timing and content of notifications to ensure they are appropriate to members' circumstances.
Item 1 Corps Regs 7.9.44B(7)	**Frequency of member comms (at 9, 12 and 15 months of inactivity)** As noted elsewhere, the inclusion of a 9 month inactivity notice may cause confusion for some members. Many issuers currently give 2 prior notices relating to cancellation of insurance before cover is cancelled. Therefore, the 12 and 15 month	Provide additional flexibility to trustees in timing and content of notifications to ensure they are appropriate to members' circumstances.

Reference	Issue	Suggested solution
	Insurance Inactivity Notices should be sufficient in many instances, and align with current procedures without having a negative impact on members.	
Item 1 Corps Regs 7.9.44B(7)	**Timeframe for providing insurance inactivity notifications** Under the Regulations, an insurance inactivity notification is required to be provided to members within 2 weeks after the day on which the member's account becomes inactive for a continuous period of 9 months, 12 months and 15 months. As an account may become inactive on any day depending on when the last contribution/rollover was received this will create an unnecessary cost on funds to generate and issue these notifications more frequently, without any clear benefit for members.	Require notices be provided within two weeks of the end of the month before the members account becomes inactive for a continuous period of 9 months, 12 months and 15 months. This also gives members receiving the 15 month notification more time, in most cases, to consider their options and take appropriate and informed action before their insurance ceases or before they can no longer be insured due to a pre-existing condition.
Item 1 Corps Regs 7.9.44C	**Notices about insurance—right to cease insurance cover** We question the utility of sending members who have made an election a communication informing them of their right to cease insurance cover every 15 months in circumstances where this right will be communicated to them clearly at the time or shortly after (Reg. 7.9.44C(4)(a)) they make that election, especially given their Periodic Statements will clearly detail the insurance premiums that are being paid through their superannuation account.	Remove this requirement. Alternatively, confirm that the notice does not need to be provided separately and may be included with the annual statement or renewal notice if appropriate.
Item 1 Corps Regs 7.9.44C	**Timeframe for providing notices about rights to cease insurance** The notice informing the member of the right to cease insurance is required to be provided within 2 weeks after the day on which the member makes an election and at regular intervals of no more than 15 months after the first notice about rights to cease insurance is given.	Require notices to be provided within two weeks of the end of: a) the month in which the client made the election; and

Reference	Issue	Suggested solution
	As an account may become inactive or a member make an election on any day, this will create an increased impost on funds to generate and issue these notifications on a daily basis. We consider that this issue could be easily solved by instead requiring such notices to be sent within two weeks of the end of the month in which the client makes the election.	b) the 14th month, that is, monthly in advance (assuming not included in annual statement/renewal per above).
Item 1 Corps Regs 7.9.44C	**Content of notice about rights to cease insurance** The Regulations propose that this notice should include both the date and the manner in which the member made an election. This would prove challenging to capture and provide in this format, especially for those members who have provided an election prior to 1 July 2019, as superannuation funds may not currently store this information in administration systems in a format suitable for extraction for reporting/notice purposes. We also assume, given the correspondence that will follow an active choice by the member to retain their insurance, that in almost every case the member would be aware of the circumstances of their election.	Remove requirement to provide manner in which election has been made. Clarify application date of this part (Reg 7.9.44C) of the Regulations such that they do not apply to members who made an election prior to 1 July 2019, but who are otherwise inactive.
Item 2 Corps Regs 10.29.03	**Start date for periodic statement requirements** The Regulations currently require compliance for periodic statements "given" on or after 1 July 2019. This is challenging to implement as it depends on the date a document is provided to a customer, rather than the period it relates to. This could also prove confusing for customers given the disclosures will relate to measures which may not have been implemented in relation to their accounts.	Change the periodic statement requirements to apply to statements provided "in relation to" periods ending on or after 1 July 2019.

Reference	Issue	Suggested solution
Item 5 Corps Regs Clause 201 of Schedule 10	**Deferred entry fees** The Regulations require the addition of the following sentence before the Fee and Cost Template in PDS – "Entry fees and exit fees cannot be charged." We suggest that the reference to "Entry fees" be omitted or changed to read "Deferred entry fees payable on disposal of a member's interest". The Explanatory Memorandum contains a reference to deferred entry fees which are triggered by the disposal of part or all of a member's interest in a superannuation entity: *2.39 The Bill inserts a new definition of exit fee into the SIS Act. An exit fee is a fee, other than a buy-sell spread, that relates to the disposal of all or part of a member's interests in a superannuation entity. [Schedule 1, item 15, subsection 99BA(2) of the SIS Act]* *2.40 This could include a deferred entry fee or a percentage based fee. It is not related to the cost of disposing the interest, rather it is a fee triggered by the disposal.* *Example 2.6* *Maggie took out a superannuation policy with Thornton Superannuation fund in 1994. The policy was sold through a life insurance agent.* *Maggie sought to transfer her superannuation savings to another fund in 2017 but was informed by Thornton that, if she withdrew before 2024, she would face an early withdrawal fee to recover the outstanding costs incurred when the policy was purchased.* *From 1 July 2019, Maggie can transfer her savings to another fund without incurring any exit fee.*	Alter Clause 201 of Schedule 10 to omit reference to "entry fees" or to read "Deferred entry fees payable on disposal of a member's interest".

Reference	Issue	Suggested solution
	We note that Schedule 10 defines “contribution fee” to mean an amount paid or payable against the initial, and any subsequent, contributions made into a product by or for a retail client for the product”. On some products, “contribution fees” are charged, and these should not be inadvertently construed as (or confused with) “deferred entry fees” payable on disposal.	
Item 11	**Treatment of investment fees and indirect costs for super Platform products** The Regulations propose that the fee cap applies to administration fees, investment fees and indirect costs relating to administration and investment costs as required to be disclosed to members within their periodic statement. From a Platform perspective, while the costs of underlying financial products are not required to be disclosed, there are best practice requirements as part of RG 97 for providers to make ‘reasonable efforts’ to calculate and disclose these fees to members (by including separate and additional items as ‘Total Costs’ as per current guidance provided by ASIC Q&A 6). ASIC guidance only requires providers to disclose an estimate of these costs. This may lead to the fee cap being applied inconsistently across industry. ASIC is still considering the appropriate treatment of platform products from a fees and costs disclosures perspective.	Provide an acceptable method (or further clarification) for defining indirect costs for platform products to provide more certainty and consistency across the sector. Any defined method (or clarification) should take into consideration ASIC’s proposed approach to defining indirect costs currently being considered as part of CP 308.
Item 17 Item 20 Item 26	**Inconsistencies with other legislative instruments/regulatory guidance** There are several inconsistencies throughout the Regulations:	Drafting corrections as required

Reference	Issue	Suggested solution
	• The note to clause 211 of Schedule 10 (item 17) – this item is inconsistent with changes made to Schedule 10 by ASIC CO 14/1252 • The change to subclause 303(1) of Schedule 10 (item 20) inserting new paragraph (1)(c) – there is already a paragraph (1)(c) • The footnote to subclause 8(3) of Schedule 10D (item 26) – the proposed wording appears to differ from the current version of RG 97	
Item 20	**Drafting considerations for subclause 303(1) of Schedule 10** This item should be included in reg 7.9.20(1) of the Corporations Regulations with all of the other periodic statement disclosure requirements. It would make sense to keep all of the periodic statement disclosure items together. Clauses 301-303 in Schedule 10 are really about *how* to calculate and set out indirect costs.	Drafting changes as required
Explanatory materials		
Explanatory material P6	**Treatment of single accounts with both choice/MySuper balances** It currently appears that accounts with both a MySuper and choice investment must be treated as two separate accounts for calculation of the fee cap, the inactivity test and the transfer of inactive low-balance accounts as unclaimed money, rather than as a single account. This could have confusing and adverse implications for some members holding multiple investment options in a single account.	Clarify that the balance of a member's account should be treated as a whole for the purpose of both calculating the fee cap and identifying inactivity.

Reference	Issue	Suggested solution
Issues not covered in regulations		
PYS Bill SIS Act s68AAA	**Elections under s68AAA of the PYS Bill and associated transitional provisions** It appears this section is aimed at members with default insurance cover. Members who have elected to take out insurance, including adjusting their cover, have been underwritten and, by definition, have elected to hold their current insurance. Requiring an additional election would not appear to improve outcomes for these customers. If the definition of 'election' in s68AAA is to be interpreted narrowly (i.e. that the member needs to have made a positive written election rather than the trustee inferring an election based on some prior action they have taken in relation to their insurance, for example to have underwritten cover), it would be helpful for this to be clarified. A narrow interpretation may result in a significant number of unintended insurance lapses.	Clarify meaning of a member election through regulations. Ideally, an election should be assumed when an individual has taken an action in relation to their insurance such as adjusting default cover or taking out self-selecting underwritten cover with guaranteed renewal terms.
PYS Bill SIS Act s68AAA(3)	**Initial inactivity notices** The Bill requires funds to identify by 1 April 2019 accounts which have been inactive for 6 months, to receive notices by 1 May 2019 These accounts will not have been inactive for 9 months at the time notices are sent, and members will receive a second notice shortly after when their account does reach 9 months of inactivity. Others who are very close to 9 or 12 months of inactivity on 1 April may receive two letters in quick succession.	Legislative amendment required to provide that only members already inactive for 9 months at 1 April 2019 require communication by 1 May 2019. Ideally, all members due to receive a 9 or 12 inactivity notice before at least 1 June should be exempted from the mailing to avoid duplication in correspondence.

Reference	Issue	Suggested solution
PYS Bill	**Treatment of pension accounts under the fee cap** Currently, it appears that pension products will be caught due to the definition of choice products in the SIS Act, which states: *A class of beneficial interest in a regulated superannuation fund is a choice product unless:* *a) all the members of the fund who hold that class of beneficial interest in the fund are defined benefit members; or* *b) that class of beneficial interest in the fund is a MySuper product*	Clarify in regulations that pension products are not covered.
PYS Bill SIS Act s99G	**Fee cap design** The design of the fee cap involves a calculation based on the member's account balance on the last day of the period rather than the balance over the entire period. This could lead to unintended outcomes where a member may not qualify for the fee cap despite having a low balance throughout the year, due to tipping over the $6000 threshold shortly before the assessment date.	Would require legislative amendment.
PYS Bill s20QA(1)(a)(vi)	**Conditions of Release** Regulations have not detailed the conditions of release that would deem an account as **not** meeting the inactive low-balance definition, per section 20QA(1)(a)(vi) of the PYS Bill. In addition to existing conditions of release, it would improve member experience if some other circumstances were included where it may be inappropriate to send an inactivity notice. For example, while death is a condition of release, notification without supporting evidence may not	Provide detail of prescribed conditions of release as soon as possible. These should include conditions of release prescribed in the SIS Act, as well as other appropriate circumstances where it may be inappropriate to send inactivity notices.

Reference	Issue	Suggested solution
	be, and it would not be appropriate to send inactivity notices or transfer money to the ATO before a death claim is processed.	
SIS Regulations 4.07D	**Early Intervention** Current legislation prevents life insurers from providing payments for treatment for Australians at risk of long-term incapacity where they are not covered by private health insurance or are languishing on public healthcare waiting lists. Reports show that returning to work can play an important role in a person's recovery. Life insurers are not allowed to pay for medical support even if it is in the interest of the member and the life insurer. Early intervention services can speed up healthy return to work rates and help avoid secondary (and sometimes long term) health issues. These services may be provided by Medicare, Health Insurers or WorkCover. Parliament should allow life insurers the option to pay for medical treatments on a voluntary basis where the insurer and the insured person agree. This would allow people to get back to work sooner. This policy is supported by APRA.	Adding the following to SIS Regulation 4.07D: *"Or (c) amounts to cover the cost of medical treatment to assist in the rehabilitation of the member."*
Schedule 1, Electronic Transactions Regulations 2000	**Providing election notices electronically** The Electronic Transactions Regulations currently exclude most notices under the SIS Act as being subject to the application of the Electronic Transactions Act.	Amend the Electronic Transactions Regulations so that notices under s68AAA of SIS may be provided in electronic format.

Reference	Issue	Suggested solution
N/A	**Fee rebates – tax and regulatory issues** Some superannuation funds will deal with the fee cap required under PYS by rebating any fees above the cap. It is important that any such fee rebate is not treated as a contribution for tax purposes or for the various super contribution caps.	We request Treasury take appropriate action to ensure that fee rebates due to PYS are not treated as contributions for tax purposes or for the various super contribution caps.