

**Senate Economics Legislation Committee**  
ANSWERS TO QUESTIONS ON NOTICE  
**Treasury Portfolio**

**Division/Agency:** Retirement Income Policy Division, Fiscal Group

**Question No:** 1

**Topic:** Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019

**Reference:** Hansard page 56

**Senator:** Senator Patrick

**Question:**

**Senator PATRICK:** I want to go to some questions that have been raised during the hearing today. There has been no Treasury submission, so in some sense we're blind as to Treasury's analysis as to the benefits of the bill. It's been put to us during the hearing that there aren't in fact many people that are covered by an EBA which has a prescribed superannuation fund. Are you able to give any numbers in relation to this? How many people will be granted choice that they don't already have as a result of this bill?

**Mr Jeremenko:** I'm aware of some analysis that the Attorney-General's Department has done, which I believe was referred to in some earlier witness evidence today.

**Senator PATRICK:** Again, that hasn't been put before the committee. Is that analysis something that could be put to the committee?

**Mr Jeremenko:** It's not our analysis, so we can't really make that call. It's the Attorney-General's.

**Senator PATRICK:** Could you take that on notice? You're seeking to rely on it.

**Mr Jeremenko:** Well, no. You asked the question, and I'm saying that there is no analysis that Treasury can provide, but I note that there is—and the details have been reported in the media as well—the Attorney-General's Department analysis.

**Senator PATRICK:** Do you have any knowledge as to whether that analysis is public?

**Mr Jeremenko:** No, other than that I have read details of it in a newspaper article, so to that extent that part is public.

**Senator McALLISTER:** Mr Jeremenko, could you take on notice our request that any documentation that underpins the public comments by the Attorney-General be tabled for this committee?

**Mr Jeremenko:** I'm happy to take that on notice.

**Answer:**

The Attorney-General's Department has advised that the Attorney-General has not made any public comments on this issue.

**Division/Agency:** Retirement Income Policy Division, Fiscal Group

**Question No:** 2

**Topic:** Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019

**Reference:** Hansard page 56

**Senator:** Senator Patrick

**Question:**

**Senator PATRICK:** Let's go back now to what the newspaper said the analysis contained.

**Mr Jeremenko:** There was a newspaper article in, I think, December 2019. I note that in the minister's second reading speech introducing this bill there was reference to—and I'm assuming it's the same study—a sample study undertaken by the Attorney-General's Department that shows there are at least 290 agreements that restrict choice in some way to an underperforming fund.

**Senator PATRICK:** Do you know how many people are covered by those agreements?

**Mr Jeremenko:** Around 14,000.

**Senator PATRICK:** How many people are covered by agreements where there is a choice? I'm just trying to work out the quantum of the problem that this bill seeks to solve.

**Ms Dowdell:** We can take it on notice. It would be the total number of employees, but I don't have that number at hand.

**Answer:**

Earlier this year, the Attorney-General's Department undertook a sample analysis using the Workplace Agreements Database to examine the extent of restrictions on superannuation fund choice in current (not expired or terminated) enterprise agreements. This analysis estimated that around 819,000 employees are covered by a current enterprise agreement that restricted superannuation fund choice in some way, representing around 39 per cent of all employees covered by a current enterprise agreement. The analysis also estimated that around 1.3 million employees are covered by a current agreement that did not restrict superannuation fund choice. There may be an additional cohort of employees still covered by expired agreements who have their choice of fund restricted but no data on these employees is available.

**Division/Agency:** Retirement Income Policy Division, Fiscal Group

**Question No:** 3

**Topic:** Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019

**Reference:** Hansard page 57

**Senator:** Senator Patrick

**Question:**

**Senator PATRICK:** That would be appreciated. It has been put to the committee that you could have a perverse situation whereby a choice is given to an employee, and because of the general lack of knowledge—I think the previous witness said 80 per cent of people simply don't have sufficient knowledge to make a good choice—you end up with a perverse outcome. Has Treasury looked at that aspect of this bill?

**Mr Jeremenko:** We have considered all of the effects of this amendment that the bill makes. I say it in that way because, as part of that decision-making process that the government has undertaken, the results of the Productivity Commission review that has been referred to earlier today as well, which is a three-year review into the efficiency and effectiveness of the super system, found that there is a wide divergence in where the underperformance of super funds lies. There is underperformance both in the choice sector, certainly, and in the MySuper default sector. But that in and of itself is not a reason, in the government's view, to restrict the ability for someone to choose their own super fund.

**Senator PATRICK:** Even in circumstances where that choice may result in a worse outcome?

**Mr Jeremenko:** Well, it may result in a better outcome as well.

**Senator PATRICK:** I appreciate that. But once again this goes to the fact that no analysis has been presented to the committee to be able to quantify some of this stuff. I saw that in the growth fund bill that this committee had to look at, where again no analysis was conducted into the quantum of how much underinvestment occurred in industry. They sort of relied on the RBA, but it wasn't clear that that evidence was indeed as definitive as might have been suggested to the committee. So it's just hard when someone like me, a crossbencher who doesn't have a lot of time, is trying to make a decision on something and is not presented with any information from government as to why they might want to vote a particular way, in the government's favour.

**Mr Jeremenko:** The government response to the *Financial System Inquiry final report*, often referred to as the Murray report, was in 2015. There was a recommendation in there along the lines of this bill, making sure that every—

**Senator PATRICK:** Was it grounded on the sorts of questions I was asking, about numbers and there being a lack of financial literacy amongst those who might be given a choice?

**Mr Jeremenko:** I wasn't in this role at the time. I can take that on notice to give you a precise estimate.

**Senator PATRICK:** Ms Dowdell is nodding her head.

**Ms Dowdell:** The Financial System Inquiry did look at a range of those issues. I can't recall this particular recommendation, but there were a number of discussions about the level of financial literacy and the support needed for members, particularly in default funds. But we can take on notice the specifics of the analysis and this recommendation.

**Answer:**

The 2014 Financial System Inquiry (FSI) recommended that Government should:

*Provide all employees with the ability to choose the fund into which their Superannuation Guarantee contributions are paid. (FSI recommendation 12)*

FSI cited the 2010 Association of Superannuation Funds of Australian *Choosing to Choose* paper that found that around 20 per cent of employees could not choose their fund. FSI concluded that exemptions from choice of fund:

*...contribute to employees having multiple superannuation accounts and paying multiple sets of fees and insurance premiums, which reduces retirement income... For some individuals, lack of choice contributes to disengagement with superannuation. (FSI, p. 131)*

Subsequently, the Productivity Commission (PC) in its *Superannuation: Assessing Efficiency and Competitiveness Report* found that absence of choice was a barrier to member engagement. The PC cited an estimate of 1 million members that could not exercise a choice of fund even if they wished to do so due to enterprise agreements and workplace determinations.

The PC also conducted a survey of around 2300 people and found that about 30 per cent had low financial literacy. From the same survey, the PC also estimated that about 33 per cent of members were well informed to make superannuation decisions.

**Division/Agency:** Retirement Income Policy Division, Fiscal Group

**Question No:** 4

**Topic:** Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019

**Reference:** Hansard page 61

**Senator:** Senator Bragg

**Question:**

**ACTING CHAIR:** I want to finish on the point about inducements. It might be useful to get some of this on notice just for the committee's benefit. My understanding was there was a broad anti-inducement provision—and this is about employers—which various inquiries have shown wasn't always effective. That has now been strengthened after the Hayne commission.

**Mr Jeremenko:** That's correct. Maybe Mr Maevsky can speak to that.

**Mr Maevsky:** Section 68A of the Superannuation Industry (Supervision) Act used to have a prohibition that was criticised by various stakeholders as not operating—

**ACTING CHAIR:** Too weak?

**Mr Maevsky:** That's right; too weak and difficult to enforce. The royal commission has outlined a few instances where it was potentially breached or industry participants operated against the spirit of the prohibition. After the royal commission, on the recommendation of Hayne, it was strengthened as part of the member outcomes No. 1 act.

**ACTING CHAIR:** So that has been in place for how long?

**Mr Maevsky:** Since May last year.

**ACTING CHAIR:** That's ASIC. That's a conduct thing, isn't it?

**Mr Maevsky:** Yes, it's enforced by ASIC.

**ACTING CHAIR:** Who does it apply to? Does it apply to the funds?

**Mr Maevsky:** It applies to employers. I believe it also applies to the funds.

**ACTING CHAIR:** What are you doing to make sure that the employers are aware of it?

**Mr Jeremenko:** That would be something that the regulators would be ensuring. We can take that on notice.

**Answer:**

As part of the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019*, new legislation imposed civil and criminal penalties on the trustee of a superannuation fund who uses goods or services to influence employers to nominate the superannuation fund as the default fund or influence employers to encourage their employees to nominate the fund as their choice of fund (no treating of employers). This amendment implemented Recommendation 3.6 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which recommended for the existing legislative prohibition on inducements to be strengthened and made enforceable by ASIC as a civil penalty provision.

When a contravention of a civil penalty provision occurs, ASIC can apply to the Court for a civil penalty order. If the Court finds that a trustee has contravened one of these civil penalty provisions, the Court must declare that they have contravened the provision, and may fine the trustee up to 2,000 penalty units.

ASIC has published information about how s68A applies. Infosheet 241 Prohibition on influencing employers' superannuation fund choice: section 68A of the SIS Act was published on 31 July 2019. It draws attention to the amendments to s68A of the Superannuation Industry (Supervision) Act 1993, as well as providing examples of how s68A

applies in common scenarios. This guidance was targeted at trustees of superannuation funds and their associates, as these are the parties to which the penalty provisions apply.

The Infosheet was circulated to a number of superannuation industry groups (e.g. ASFA, AIST, FSC, ISA). Commissioner Danielle Press also did a series of media interviews which resulted in a number of media articles being published around the time Infosheet 241 was released. In addition, ASIC has discussed the s68A prohibition in a number of speeches and stakeholder engagements since.

At the time of release of Infosheet 241, ASIC's consumer website, MoneySmart, contained some information relating to employer obligations for selecting a default superannuation fund for employees. Included in this was a brief overview of the prohibition on inducements from trustees, along with some examples/cases studies which noted that trustees should not be providing employers with inducements that might influence their decision making. This content was updated, upon release of Infosheet 241, to reflect the amendments to s68A.