



**SUBMISSION TO SENATE ECONOMICS LEGISLATION COMMITTEE
INQUIRY INCLUDING INTO THE**

Financial Accountability Regime Bill 2021

Date Submitted: 17 December 2021

Submitted by: Gerard Dwyer
National Secretary-Treasurer

About the SDA

The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with over 210,000 members. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%, approximately 131,000), under 35 years (57%, approximately 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix A.



Submission to Senate Economics Legislation Committee Inquiry into Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions] and related bills

Background

On 25 November 2021, the Senate referred the provisions of the Financial Accountability Regime Bill 2021, Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021, Financial Services Compensation Scheme of Last Resort Levy Bill 2021 and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021 to the Economics Legislation Committee for inquiry.

This submission is made with respect to the Financial Accountability Regime Bill 2021 [Provisions] which is intended to deliver on a recommendation of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry:

Recommendation 6.8 – Extending the [Banking Executive Accountability Regime] BEAR Over time, provisions modelled on the BEAR should be extended to all APRA-regulated financial services institutions. APRA and ASIC should jointly administer those new provisions.¹

The SDA supports a Financial Accountability Regime and supports the ACTUs submission of August 2021 on the Bill through the consultation undertaken by the Treasury.

The need for accountability is clear

The Shop, Distributive and Allied Employees' Association (the SDA) strongly supports robust accountability measures that protects the retirement savings of Australians which contribute to their standards of living in retirement and contribute to the economy during their working lives.

Protection of superannuation is embedded in the Superannuation Industry (Supervision) Act 1993 which includes general covenants which are - as described by the Hayne Royal Commission – honesty; care, skill and diligence; to perform the trustee's duties; and exercise the trustee's powers in the best [now, financial] interests of the beneficiaries.

With the best predictor of future behaviour being past behaviour, it is fair to say that the behaviour of banks and other for-profit providers has demonstrated why they have no place in superannuation. Demonstrated unconscionable behaviour from the past includes:

- The AUSTRAC child sex trafficking scandal: AUSTRAC launched civil proceedings against Westpac in November 2019 for committing 23 million violations of anti-money laundering laws stemming back to 2013.² In Jan 2020, Westpac was linked to an international paedophilia case following the arrest of a notorious Australian sex offender who is suspected of using the bank's transfer system to pay for live-streamed child abuse videos in south-east Asia.³
- The scandal of charging fees for no service: CBA charged more than 31,000 financial advice

¹ p.458 Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. See: <https://www.royalcommission.gov.au/banking/final-report>

² <https://www.abc.net.au/news/2019-11-20/westpac-to-face-fines-anti-money-laundering-terrorism-breaches/11720474>

³ <https://www.smh.com.au/business/banking-and-finance/westpac-linked-to-international-paedophilia-case-after-australian-man-charged-20200116-p53s61.html>

customers who did not receive an annual review⁴ and more than 15,000 AMP customers were charged fees for financial advice that was never given.⁵

- The scandal of charging fees to people who have died: One Commonwealth Bank customer was charged for financial advice for more than a decade after their death.⁶ AMP charged premiums for life insurance for people who were already dead and identified 4,645 dead customers, who are owed \$1.3m in unrefunded premiums and lost earnings.⁷
- The scandal resulting in know your customer expectations: CBA breached anti-money laundering and counter-terrorism financing laws that resulted in millions of dollars flowing through to drug importers.⁸

It is unacceptable that banks can return a profit from superannuation funds which are contributed to as part of a guaranteed entitlement of working Australians under law. At the same time profit-to-member funds are questioned for legitimate expenses of sharing information, marketing, and advice.

The question at hand in this inquiry, and the reason why the SDA is providing this submission, is that these entities are regulated through the Banking Executive Accountability Regime (BEAR) and this is to be extended to all APRA regulated entities, including super funds, through the new FAR. That the culture of banks permitted these behaviours while regulated by this scheme raises the important question:

What will the Financial Accountability Regime do to achieve change in super funds especially in those that are banks or privately owned?

While we do not oppose the scheme, the SDA contends that FAR is unlikely to deal with the poor culture of banks and for-profit providers. These cultures need to change to avoid impacts on members, and ultimately impacts on the standards of living in retirement and the contribution that guaranteed superannuation makes to the economy.

By impacts, we mean returns. The SDA notes the report *The Success of Representative Governance on Superannuation Boards: A report of the Center for Workforce Futures for The McKell Institute*⁹ which made it clear that part of the solution is representative governance. Indeed, the SDA wonders if such a scheme of representative governance might sensibly be extended to ASX listed companies and with it an update to financial accountability protocols.

The need for appropriate remuneration is also clear

The Australian workplace system sees workers' rights to pay and conditions protected by the Fair Work Act, awards, and enterprise agreements which is enabled by their workplace representatives, unions. This is a regulatory base through which a basic and/or living wage is contextualised. Likewise, there is a need to contextualise remuneration at the other end of the scale, especially when it relates to excess and/or unnecessary expense and a race to the top of salary.

To establish an appropriate balance between the two, regulation is needed to contain salaries and conditions to avoid inequality and the negative consequences it can have on Australians and, in this case, on their retirement savings and the economy in which they live and work. This seems an appropriate role able to be played by the FAR.

At an executive level, it will be important that FAR provides the structure through which superannuation

⁴ <https://www.abc.net.au/news/2018-04-19/cba-charged-fees-to-customers-who-had-died-commission-hears/9675922>

⁵ <https://www.theguardian.com/australia-news/2018/jun/07/amp-faces-fourth-class-action-over-fee-for-no-service-scandal>

⁶ <https://www.theguardian.com/australia-news/2018/apr/19/commonwealth-bank-charged-fees-to-dead-clients-royal-commission-hears>

⁷ <https://www.sbs.com.au/news/amp-charged-dead-people-for-life-insurance/5ecf9fc2-d1db-4293-974d-3681e3186c40>

⁸ [https://www.abc.net.au/news/2018-06-04/commonwealth-bank-pay-\\$700-million-fine-money-laundering-breach/9831064](https://www.abc.net.au/news/2018-06-04/commonwealth-bank-pay-$700-million-fine-money-laundering-breach/9831064)

⁹ <https://mckellinstitute.org.au/research/reports/the-success-of-representative-governance-on-superannuation-boards/>

can provide members confidence (and trust) in the people administering their funds, achievement of returns and a compliant fund. This means that the arrangements need to facilitate appropriate remuneration for the qualifications and experience needed to run a financial service at the same time as avoiding a race to the top of the salary structure.

At a trustee level, it will be important that FAR provides the structure through which superannuation can provide members confidence that those senior staff are both supported and held to account for the objectives of members – a decent retirement and contributing to the economy. This means that the arrangements need to facilitate appropriate compensation for time spent, considering there is a need to fill skills gaps, manage the complexity of large and multi-faceted organisations, and take on personal liabilities. For example, the ability to influence change and exit if that influencing is unsuccessful is different for executives than for trustees.

Indeed, the liabilities of directors and officers of superannuation funds are greater than it is in other forms of governance. For example, these directors are trustees under the Superannuation Industry (Supervision) Act 1993 which imposes greater duties than the Corporations Act 2001.

The SDA contends that, given the nature of the entities the FAR Bill seeks to regulate, the committee should consider the executive salaries of wealth management and bank owned businesses and boards and compare them to superannuation and industry superannuation. These should be compared alongside the purposes of the entities. Understanding this would allow the committee to understand the similarities and differences imposed by FAR and how they impact on the social and economic contribution of each type of entity.

Any such questions should not prevent progress of an accountability scheme but should be considered during the implementation process.

Recommendation:

That the inquiry consider:

1. How will FAR improve culture and avoid unconscionable conduct?
2. What are and how will FAR change total salaries across entity types in financial services?
3. How will FAR support the professionalism of directors?

Appendix A: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a broken industrial framework. We seek an economic system that supports, protects and advances the interests of working people in this country.

Our predecessors built the conciliation and arbitration system which provided the foundations to our nations prosperity over a century ago, it is now our responsibility to build a system for the next generation.

Since the introduction of the Fair Work Act 2009 and subsequent radical changes to the financial and digital context inequality has grown and economic and political power has concentrated in the hands of a few.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

