Ban on bargaining for super

Submission by the Australian Council of Trade Unions to the Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU and the union movement won compulsory employer-paid superannuation through national, worker-led campaigns. A right once reserved for the wealthy and executives, and won by public sector workers, superannuation is now a near-universal workplace right. The ACTU and affiliated unions were instrumental in the establishment and development of the industry super fund sector and are the sole advocates for and representatives of superannuation fund members. Unions improve workers' superannuation entitlements and represent members in their funds.

This Bill is an attack on workers' rights to collectively bargain for a superannuation fund in their interests. It is another in a series of attacks on workers' rights from the Abbott-Turnbull-Morrison Government intent on undermining workers' wages and conditions. The Bill abolishes the ability for workers and their employers to agree to specific benefits only available with single fund workplaces. The bill undermines action against unpaid super undertaken by workers, unions and their funds. Finally, this Bill is a gift to the scandal-plagued and underperforming for-profit superannuation sector.

This Bill is representative of the priorities of the Morrison Government. The Government is doing nothing to combat the enormous problem of superannuation theft. There is a significant delay implementing the recommendations of the Banking Royal Commission. But the Government is focusing on stripping the rights of workers to bargain for a fund which represents them.

This Bill removes the right for workers to collectively bargain for what they want to see in a workplace and must be opposed.

More unpaid super

This legislation will hit those in vulnerable sectors the hardest, where unscrupulous employers don't pay their workers' super. Industry Super Australia (ISA) modelling shows that 2.85 million workers lose $5.94 billion per year in unpaid superannuation.[1] This directly contributes to poorer retirement outcomes as the theft compounds with every year toward retirement. The problem is getting worse each year, and under the current Government there has been no prospect of a meaningful solution.

Superannuation funds are a key ally for workers seeking to ensure their superannuation is paid and paid on time. Workers bargain for a single fund, often as a measure to improve super fund compliance. This is most common in industries with highly vulnerable workers, like cleaning, security and construction. Workers bargain for a single fund in the workplace because they have confidence in industry funds to understand their industry and the workers within it. Industry superannuation funds can be trusted to enforce and recover unpaid super and pay close attention to problem industries. Industry Fund Services (IFS) recovers unpaid superannuation entitlements for super fund members, among other services. In the 2018-19 financial year, it recovered $181 million in stolen super. For context, this is nearly the entire amount projected to be recovered by the Government's 26 year unpaid superannuation amnesty.

Where workers have a single fund, superannuation funds are more able to closely monitor contributions across the entire workforce to ensure they are paid on time and in full. Should the Government ban workers from bargaining for superannuation it will mean that unscrupulous employers will be able to divide the workforce into different funds to more easily evade detection by funds.

Better relationships, better understanding of super

Superannuation funds are more effectively able to work with single-fund workplaces to ensure they are complying with their obligations and develop strong relationships with both the employers and the workers. A mutually beneficial intention of a single fund in the workplace is that employers have a lighter administrative burden by avoiding dealing with multiple funds, as well as providing a resource for employers to draw upon to understand the superannuation system. Workers and employers often mutually agree to a single fund for the ease of use and access to quality information industry funds provide. Industry funds understand the industries they work in, the pressures employers and workers face.

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[1] Phil Gallagher, Matt Linden, and Thomas Quinlivan, *Super Scandal: Unpaid Super Guarantee in 2016-17* (Melbourne: Industry Super Australia, 2019), p. 3.

Workers bargain for better funds and better conditions

In almost all cases, the funds in collective agreements are industry funds and in many cases these contributions are higher than the superannuation guarantee. Industry funds systemically outperform the for-profit bank-owned funds by investing in the real economy, rather than passively (see Figure 1). Industry funds have outperformed for-profit bank-owned funds across every measured period, within every asset class, and against fees as evidenced in Figures 2 and 3. The Productivity Commission found that 'over the 13 years to 2017, not-for-profit funds generated materially higher net returns than retail funds.'[2] Because industry funds are the primary default fund for so many workers, it materially lifts the performance of our superannuation system.

Workers use the opportunity of a single fund to seek co-contributions for from their employers to assist with insurance and fees. In high-risk industries, in particular, workers reach agreements with their employers to pay insurance premiums through their superannuation. Workers also bargain to alleviate systemic inequalities in the system, like the $450 per month threshold, ensuring superannuation is paid on every dollar earned, and superannuation on paid and unpaid parental leave.

Giving the banks exactly what they want

In proposing this law the Morrison Government is giving for-profit superannuation funds exactly what they want. More opportunity to covertly cross-promote. Despite the Royal Commission into the banks showing systemic misconduct, and that bank-owned superannuation funds were gouging millions from their members in unauthorised fees, charging the dead for financial advice, delaying moving workers' money into lower-fee accounts and systemically underperforming – the Government is offering them a gift. The Banks have systemically broken the law [redacted] ASIC recently found that 75% of bank advice is non-compliant.[3]

So far the law has been no obstacle for banks to overcome in making a profit. Inducements to employers are illegal, but inducements have happened anyway. With scandals still emerging after the Royal Commission, like the significant Westpac breaches, it shows that the banks haven't learned anything.

In 2010, research commissioned by the ATO found that some employers admitted to receiving some benefit from the banks. Which led to Colmar Brunton to find:

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[2] Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness* (Canberra: Productivity Commission), p. 126.
[3] Australian Securities & Investmetns Commission, *Financial Advice: Vertically Integrated Institutions and Conflicts of Interest* (Canberra: Australian Securities & Investments Commission), p. 7.

"Employers would be more inclined to consider changing their default superannuation fund if it was clear that membership of one fund would provide financial or resource benefit to the company"[4]

Workers' best interest could be sold to the highest bidder under this arrangement. Alan Kohler puts it most succinctly:

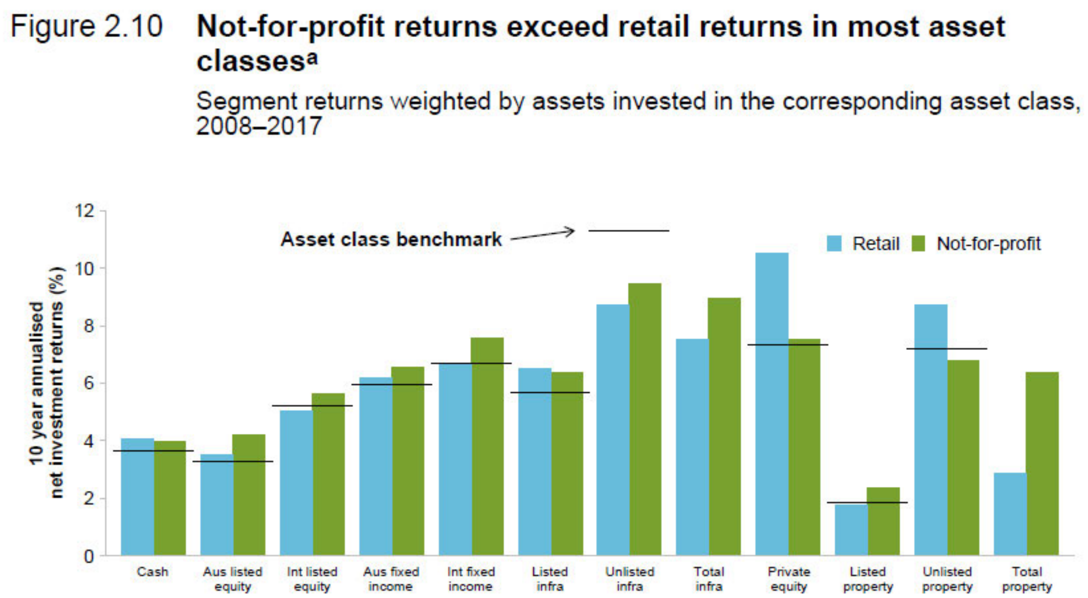
"More likely, employers will choose for us. But the same problem arises - on what basis do they choose?

How about this: if you want to keep your overdraft, you'll choose the bank's fund?"[5]

Conclusion

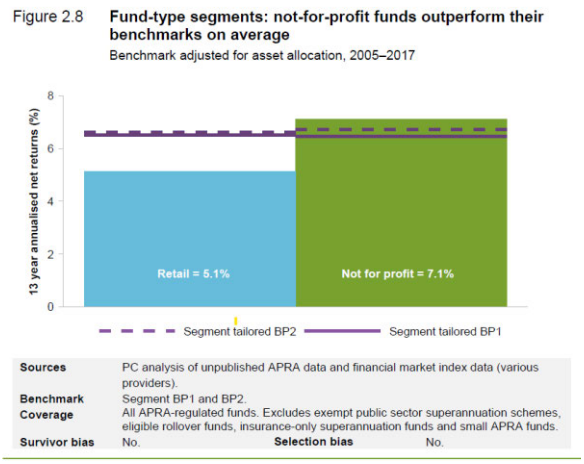
This Bill is contrary to workers' interests and should be opposed.

Figure 1 Industry super funds outperform for-profit in nearly every metric[6]



[4] Corey Fisher and James Wunsch, *Investigation Superannuation: Quantitative Investigation with Employers* (Canberra: Colmar Brunton Social Research for the Australian Taxation Office, 2010), pp. 55–57.
[5] Alan Kohler, 'No Sure Thing in the Superannuation Lottery', *Australian Broadcasting Corporation* (Sydney, 22 January 2015), section The Drum <https://www.abc.net.au/news/2015-01-22/kohler-no-sure-thing-in-the-superannuation-lottery/6032802>.
[6] Productivity Commission, p. 130.

Figure 2 Industry funds systemically outperform bank-owned funds, and lift the default sector[7]



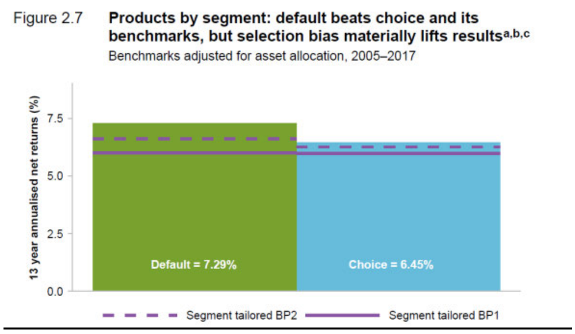
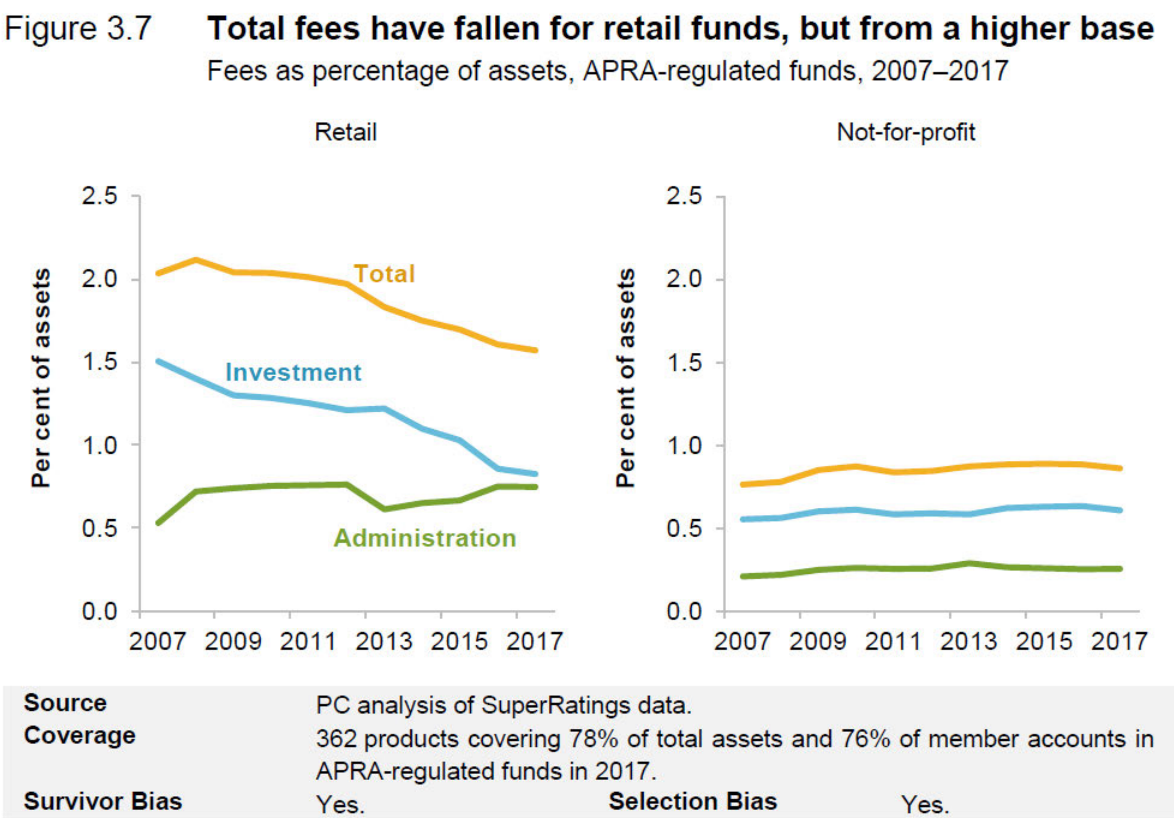
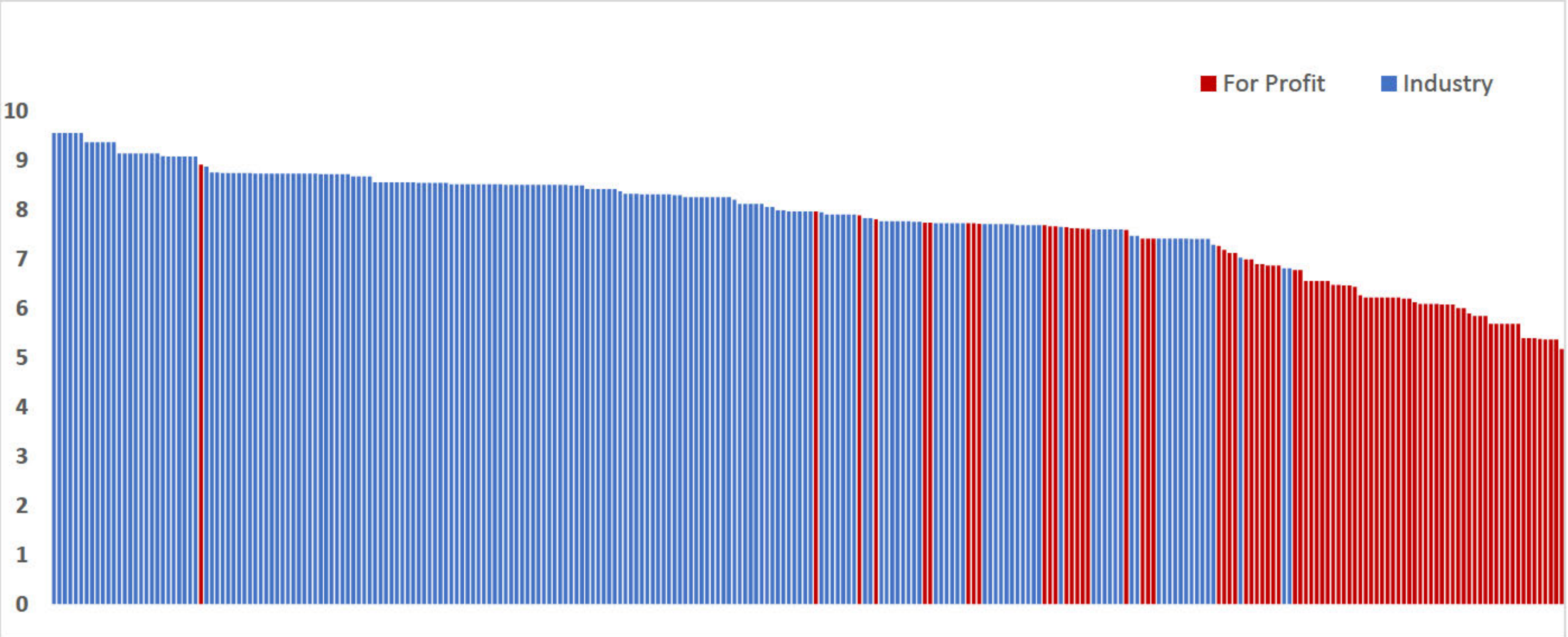


Figure 3 Fees are lower in industry funds, both for investment and administration[8]



[7] Productivity Commission, pp. 125, 128.
[8] Productivity Commission, p. 166.

Figure 4 Performance of 276 'Balanced' Super Funds, Over the past 7 years[9]



[9] Anthony Klan, 'Retail Funds Dominate in 50 Worst-Performing Super Investments', *The Australian* (Sydney, 19 January 2019).

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