

Additional Comments from Labor Senators

1.1 Labor Senators are cautiously supportive of the bill's broad objectives, note the measures contained within the schedules and will continue to evaluate possible amendments in order to improve the legislation.

1.2 Labor Senators will use these additional comments to set out views on the three schedules and also note particular concerns raised by stakeholders.

Important ongoing reviews into superannuation and insurance

1.3 Labor Senators note that this bill, which results from measures announced on Budget night 2018, was introduced at a time when significant reviews into group insurance arrangements within superannuation were being undertaken but not yet completed.

1.4 For example, the Productivity Commission is currently in the process of preparing a final report for Stage 3 of its inquiry into the competitiveness and efficiency of Australia's superannuation system. The terms of reference for the inquiry includes the following:

- the impact of insurance premiums on retirement incomes of both default cover and individually underwritten cover funded inside of superannuation
- the extent to which current policy settings offset costs to government in the form of reduced social security payments
- whether policy changes could improve default cover through superannuation, so that default cover:
 - provides value-for-money
 - does not inappropriately erode the retirement savings of members of all ages
 - delivers consistent outcomes across the system.
- whether policy changes are needed to ensure that insurance is not a barrier to account consolidation.¹

1.5 Labor Senators note that it is unusual for the government to be proceeding with legislation in response to a draft Productivity Commission report rather than a final report.

1.6 The Royal Commission has also started inquiring into both superannuation and insurance arrangements within superannuation, as noted in the media² and the Royal Commission is due to issue its interim report by 30 September 2018.³

1 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, accessed via: <https://www.pc.gov.au/inquiries/current/superannuation/assessment/terms-of-reference>

2 ABC 7:30 Report, *Banking Royal Commission to look at superannuation insurance*, accessed via <http://www.abc.net.au/7.30/banking-royal-commission-to-look-at-superannuation/10063336>

1.7 Given these inquiries will be providing significant findings and providing recommendations to government, Labor Senators note concerns that further legislative changes might have to be considered not long after debate on this bill is concluded.

Schedule 1—Fees charged to superannuation members

1.8 Labor Senators broadly support the measures set out in this schedule. Labor Senators will make one substantial point on these matters, but note submissions provided to this inquiry which outline numerous concerns about the operation of this schedule. On these operational issues, Labor Senators encourage the government and Treasury to resolve these stakeholder concerns in a cooperative manner.

1.9 The primary concern Labor Senators have with this schedule is that the legislative framework might allow funds to simply reallocate fees and charges, which would diminish the intended outcome of this schedule.

1.10 As stated by consumer group CHOICE:

We are concerned that some funds may attempt to game the 3% cap by shifting costs elsewhere. The legislation contemplates this mischief by allowing the regulations to list indirect fees and costs that must be included for the purpose of calculating the cap. To ensure there is adequate attention on any attempts to levy fees through indirect fees and costs we recommend that the regulator monitor and report on fees and be given the power to make delegated legislation to address unintended consequences. While the regulators are already empowered to monitor fees, as an accountability measure it is important that this monitoring is publically reported on and that the regulator be empowered to act via the regulations. We would expect public reporting to occur within two years of the reforms coming into force.

...

As with fee caps we are concerned that some providers may seek to game the prohibition by increasing other fees that may be charged on exit. For example, under the proposal funds are free to charge for buy/sell spreads.⁴

1.11 The Australian Institute of Superannuation Trustees (AIST) outlined similar concerns:

Inconsistency between what is classified as 'fees' and 'indirect costs' provides an avenue for entities to game the fee capping requirements.

...

The exclusion of the sell component of buy/sell spreads means that exit costs could be gamed. This also affects how many members may be covered. To ensure that exit costs are not simply repackaged as part of the

3 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, accessed via <https://financialservices.royalcommission.gov.au/Media/Pages/media-releases/Financial-Services-Royal-Commission-confirms-date-for-interim-report.aspx>

4 CHOICE, *Submission 15*, pp. 5–6.

buy/sell spread, the sell portion of buy/sell spreads should be included as part of exit fees.⁵

1.12 Labor Senators note testimony given by the Australian Prudential Regulation Authority (APRA) on these matters:

Mrs Rowell: We would need to give consideration to whether we needed to have access to additional data to be able to monitor that on a more routine basis. We could monitor it through our regular supervision engagement and making information requests for the industry. However, often with these types of changes getting regular reporting that we can then review and look at would be important. I would have to say that some of the provisions in the bills that have not progressed—in particular, the expense look-through provision—would be important for us to be able to get the detailed information that we would need to be able to monitor the degree to which all relevant expenditure was being captured within the fee caps and the decisions that were being made.⁶

...

Mr Summerhayes: There is obviously an inherent cost in processing a member's exit and if that cost is not recovered, other things being equal, the cost would have to be recovered other ways and spread across the fee structure for the pool.

...

Mr Summerhayes: Yes. The funds do need to provide a member statement. They might have some one-on-one communication. It is not a process that comes without a cost burden for the funds, which, if they're not explicitly charging for it, would need to recover it in some other form.⁷

1.13 Given this evidence, Labor Senators believe that the government should task either Treasury or APRA with the responsibility for monitoring fund responses to this schedule. In evaluating any responses, they should determine whether such changes are appropriate in meeting the intent of the legislation. Labor Senators also note section 2.161 of the Chair's report which indicates that Coalition Senators are also supportive of this approach.

Schedule 2—Insurance for superannuation members

1.14 Labor Senators note the measures contained within this schedule and are continuing to evaluate possible amendments that would improve member outcomes.

1.15 Labor Senators note the history of group insurance within superannuation and the benefits these products bring to working Australians.

5 Australian Institute of Superannuation Trustees, *Submission 10*, pp. 1–2.

6 Mrs Helen Rowell, Deputy Chair, Australian Prudential Regulation Authority, *Committee Hansard*, 20 July 2018, p. 5.

7 Mr Geoff Summerhayes, Member, Australian Prudential Regulation Authority, *Committee Hansard*, 20 July 2018, p. 5.

1.16 As outlined by the Australian Council of Trade Unions (ACTU):

Superannuation in Australia was won by unions with an \$11 promise: \$9 for retirement, \$1 for administration and \$1 for insurance. This founding principle is the reason why we have such a comprehensive system of retirement savings and insurance in Australia, where workers are assured of the promise that, if the worst should happen to them at work or should they lose their ability to work, they and their families will not be left destitute. Through their superannuation, workers are afforded security in retirement, and security for themselves and their families during their working lives.⁸

1.17 As stated by the Productivity Commission, there are number of advantages that group insurance brings to the insurance market:

There are a number of rationales that support the case for insurance in superannuation.

- Superannuation provides a pooling mechanism to facilitate group insurance policies that can be provided more cheaply than individually underwritten policies. The cost effectiveness of group insurance is primarily attributable to lower distribution costs (there is no need to pay commissions to insurance agents to sell the product given the opt-out arrangements) but group insurance also has lower advice, administration and underwriting costs.
- Group policies can charge lower premium costs by pooling risk and reducing adverse selection, particularly under opt-out arrangements. This means that an individual with higher risk factors can access insurance at a substantially cheaper rate than under an individually underwritten policy.
- The default opt-out arrangements that facilitate group insurance assist in addressing reported problems of underinsurance.
- There are potential benefits to individuals from having life insurance through superannuation compared with purchasing it outside of superannuation. It allows members to pay for insurance using funds that cannot otherwise be currently spent and that are taxed concessionally.⁹

1.18 However, Labor Senators also note some of the shortcomings of group insurance arrangements, as indicated by the establishment of the Insurance in Superannuation Working Group (ISWG).

1.19 Labor Senators also note the legislation contains a carve-out that can allow for the new insurance rules to not apply where an employer covers the full costs of the insurance in addition to its superannuation guarantee obligations.¹⁰ This may allow

8 Mr Joseph Mitchell, Workers' Capital Organising Officer, Australian Council of Trade Unions, *Committee Hansard*, 20 July 2018, p. 38.

9 Productivity Commission, *Superannuation: Efficiency and Competitiveness Draft Report*, pp. 312–313

10 *Explanatory Memorandum*, p. 22.

certain enterprise bargaining outcomes to keep opt out arrangements in some circumstances.

1.20 Labor Senators have also listened to stakeholders and are very cognisant of the following concerns they have raised:

- (a) The start date for insurance arrangements;
- (b) Potential impacts on high risk occupations;
- (c) The 13-month definition of inactivity;
- (d) Insurance coverage for people with active accounts with a balance of less than \$6000;
- (e) The age threshold of 25 years; and
- (f) The anti-selection problem raised by opt in arrangements.

1.21 Labor Senators will continue to evaluate these concerns and seek to find suitable amendments that improve the legislation.

Concerns about the start date for insurance arrangements

1.22 As stated in the Explanatory Memorandum, the proposed Date of Effect is 1 July 2019.¹¹

1.23 Stakeholders from across the industry raised concerns about the proposed start date for the group insurance arrangements within superannuation and the impacts this legislation could have on members.

1.24 The Association of Superannuation Funds of Australia (ASFA) stated that:

These changes will take time to implement and some of our members have questioned the feasibility of a 1 July 2019 start date, especially for the insurance measures. In their current state the proposals will require significant changes to existing contractual arrangements, the need for changes to insurance premiums and the need to cater to additional reporting and administrative requirements. In addition, all measures will involve substantial communication and disclosure costs and obligations.¹²

1.25 The major group insurers also indicated the same concerns. For instance, as described by AIA Australia:

As a minimum, AIAA proposes that the Government needs to reconsider the timing of the proposed change, since this would force insurers to reprice their group insurance policies well before the deadline of 1 July, 2019 to allow super funds time to make system changes and communicate with members. Without this readjustment, insurers would potentially suffer significant financial losses, as expected claims will exceed premiums collected.

11 *Explanatory Memorandum*, p. 3.

12 Association of Superannuation Funds of Australia, *Submission 12*, p. 1.

There are three main concerns in relation to the deadline. The first is that repricing policies will have long lead-times. It will not be possible for AIAA and many other insurers to review and reprice all group insurance arrangements in this timeframe given resourcing and capacity constraints. In some cases, there may be an inability to complete this contractually, until the expiry of current premium rate guarantees, as such a scenario as proposed by the Budget announcements would never have been contemplated in previous agreements.

The second is the challenge for insurers to appropriately reprice premiums. This would lead to insurers being forced to predict the behaviours and opt-in preferences of members, which would leave the sector exposed in setting premiums. The uncertainty around an insurer's ability to reprice, or how to price for member behaviour, could lead to significant under or over-pricing, which is not sustainable or equitable.

The third impact of the short implementation timeframes is the need for funds to undertake significant communications activities to drive member engagement and meet appropriate disclosure obligations.

The current timetables pose significant hurdles for trustees and insurers that will lead to administration issues, errors and member detriment, which likely would manifest itself in increased disputes and potentially litigation.¹³

1.26 Rice Warner echoed similar concerns:

The insurance changes are due to take place from 1 July 2019, requiring that members be given notice by 1 May 2019 so that they can choose to opt in to retain their cover before the commencement date.

Given the significance of these changes, funds will likely need to renegotiate the terms of their contracts with insurers. This is a process which requires significant time and resources from both the fund and the insurer. This exercise would generally commence at least one year before implementation and for most funds occurs every three years. This means that insurers will require considerably more resources to be able to deal with pricing requirements.¹⁴

1.27 APRA in testimony to this committee also outlined reasons why it believed a 1 July 2019 start date was problematic for Schedule 2:

To implement all of these proposals, funds will need to work closely with their administrators and insurers to ensure the required system changes and amendments to group insurance arrangements are in place. This will be challenging to achieve by the proposed implementation date of 1 July 2019, given both the complexity and extent of the changes that will be required to be made across the entire superannuation sector. In particular, insurance arrangements will need to be reviewed and repriced, taking into account actuarial input; underwriting processes reviewed; and contractual

13 AIA Australia, *Submission 17*, p. 14.

14 Rice Warner, *Submission 7—Attachment 1*, p. 7.

arrangements renegotiated accordingly. These processes can be highly complex and time consuming for individual superannuation funds, and will be even more so when the industry as a whole is impacted. Sufficient time also needs to be allowed for effective communication to members of the changes that are being made, their expected impact and the decisions that members may need to make, particularly in relation to insurance. This in turn will require certainty in the final legislative requirements so that the nature and extent of the changes to insurance and fees can be determined by each superannuation fund in collaboration with their service providers, and to enable funds' current disclosure obligations to be met.

APRA is therefore concerned that unintended consequences may arise for members and that there will be significant pressure on and heightened operational risk for super funds and their insurers and administrators if sufficient time is not allowed to implement the proposals in an appropriate and orderly manner.¹⁵

Potential impacts on high risk occupations

1.28 A number of stakeholders were concerned that workers in high risk occupations who currently are covered by default insurance arrangements might not be able to access equivalent insurance through retail insurance channels due to a lack of market offerings and retail insurer risk appetite. Submissions also stated that it could be quite likely that those workers who chose to opt in might face a combination of underwriting processes, higher premiums and reduced cover.

1.29 Rice Warner stated that some members might have trouble accessing adequate insurance arrangements:

Superannuation funds may be the only option to obtain insurance cover for individuals working in a range of high risk occupations. We believe this is a particularly valuable service to these members. By offering opt-out cover to large numbers of members in these occupations, some funds have been able to negotiate the provision of cover to these members. For some occupations it could be difficult to obtain automatic cover outside group insurance through the superannuation environment. Members in these occupations may be unable to replace their cover if it was reduced or removed.¹⁶

1.30 The joint submission by the Consumer Action Law Centre and the Financial Rights Legal Centre through the Treasury consultation raised similar concerns:

Workers compensation schemes may cover many younger people in high risk work. However, if the Government's view is that private life insurance is an important financial protection, this insurance must be accessible and

15 Mrs Helen Rowell, Deputy Chair, Australian Prudential Regulation Authority, *Committee Hansard*, 20 July 2018, p. 2.

16 Rice Warner, *Submission 7—Attachment 1*, p. 3.

affordable for the young people who need for it. This will include young people with dependents and/or in high risk work.¹⁷

1.31 The ACTU's position is that insurance arrangements should remain opt-out for those in high risk occupations:

The ACTU believes that workers in high-risk industries should be required to opt-out of their insurance policies, and the Government should delay implementation until a comprehensive consultation process with unions, employers, funds and insurers is completed to ensure the significantly detrimental gaps are filled.¹⁸

1.32 The Corporate Superannuation Association stated its belief that all members should be covered by automatic insurance:

However, in situations where the member does bear the cost and is in a high risk occupation [as opposed to the employer covering such costs], or in a remote or sensitive location, we believe that it is in the best interest of the member to be covered automatically.¹⁹

1.33 Industry Super Australia (ISA) highlighted the consequences that might be faced by workers in high risk occupations:

The problem is compounded by the inevitability that workers in high-risk industries or those with an obvious need for insurance cover, in the absence of group default insurance cover, will find it difficult to obtain the cover. **Where high-risk workers self-select and seek cover, insurers will either not offer cover or require underwriting. In addition, where cover will be offered, it is very likely to be limited in its cover and, undoubtedly, more expensive.** Most workers employed in high-risk occupations where default group insurance is not provided will not have the option of opting into insurance.²⁰

Concerns about the 13 month definition of inactivity

1.34 A number of submissions raised concerns that the combination of 12 months of parental leave with current quarterly superannuation guarantee payments made a 13-month definition of inactivity problematic in some circumstances.

1.35 For instance, Rice Warner stated that:

The amended definition of inactivity may prove problematic. A period of 13 months may be insufficient to define an account as inactive, as:

- Superannuation Guarantee (SG) payments can be made quarterly so people going on parental leave for 12 months could have a period of 15 months between SG payments.

17 Financial Rights Legal Centre and Consumer Action Law Centre, *Submission 11—Attachment 1*, p. 5.

18 Australian Council of Trade Unions, *Submission 16*, p. 7.

19 Corporate Superannuation Association, *Submission 6*, p. 3.

20 Industry Super Australia, *Submission 26*, p. 8.

- Some people will be on parental leave for longer than 12 months, or may have a delay in finding a suitable new role after a planned period out of the Australian workforce to work overseas, study, raise children or provide care to relatives.²¹

1.36 MetLife Insurance Limited (MetLife) concurred:

MetLife is concerned that the 13 month inactivity rule could have a discriminatory effect on women. One of the reasons that contributions cease is that an employee has an extended period of parental leave. It is usually women who bear the bulk of parenting responsibility and who would be most affected by this change. This problem will be particularly acute for women who have casual or part-time roles and are more likely to have interrupted work patterns, such as those who work in the retail industry.

The proposed timeline of 13 months does not fit with the obligations under the Fair Work Act to provide employees who have more than 12 months service with up to 24 months of parental leave following the birth or adoption of a child.²²

1.37 ASFA argued for a definition of two years:

13 months is a relatively short timeframe for the determination of inactivity and a member may have perfectly straightforward reasons for such inactivity including maternity leave, carers' leave and extended leave for travel or study. On the assumption that lack of contributions will be the primary determinant of inactivity the 13 months should be extended to two years and we note that the Productivity Commission's draft report recommends that the lost inactivity threshold be set at two years. This timeframe would provide greater assurance that the member is genuinely lost or disengaged.²³

1.38 The ACTU argued for a more nuanced approach to the definition of activity:

The definition of inactivity proposed under the legislation is hugely problematic. 13 months without a contribution does not reflect the engagement of the member with their account. The ACTU believes that should a member be active in investment choices, changing insurance policies, changing their details or beneficiaries, the Fund should be allowed to deem them an active account holder. The regulator should be empowered to work with Funds to determine when an account is active, so that those intending to keep their superannuation insurance are not punished for missing communiques from their Fund.²⁴

21 Rice Warner, *Submission 7—Attachment 1*, p. 2.

22 MetLife Insurance Limited, *Submission 9*, p. 4.

23 Association of Superannuation Funds of Australia, *Submission 12*, p. 8.

24 Australian Council of Trade Unions, *Submission 16*, p. 9.

Concerns about insurance coverage for people with active accounts with a balance of less than \$6000

1.39 The ACTU pointed out that it could take a long time for new entrants to the workforce (whether young people or migrants) to accumulate the minimum \$6000 threshold:

But the problem is extended to more than just young workers. A worker on the median wage, around \$55,000, would need to work 14 months to be defaulted into insurance through this system, regardless of their circumstances. This law would strike out many who one day will need continuous insurance coverage.²⁵

1.40 This problem is so significant that the Financial Rights Legal Centre, in a departure from consumer group CHOICE, believed that active accounts (that is, accounts receiving contributions) less than \$6000 should continue to have an opt out insurance regime:

Where anything under \$6,000 switches to an opt-in? Our biggest concern is that I know that CHOICE has argued that in an ideal world people who are on low incomes would be better serviced from just being a part of the DSP and getting funded by government in that way. I don't disagree with that on principle. I think that that is a much more socially aware and sustainable situation but, in practice, it's quite hard to get approved for DSP right now. The eligibility for DSP since 2011 has really tightened, and we worry that a lot of people with low amounts of super really wouldn't qualify for the DSP. Maybe their family actually has enough assets that they wouldn't qualify or they make money because they're in and out of a high-risk industry; that super account isn't growing beyond \$6,000. We just think there are vulnerable communities that fall inside these low-amount accounts, like people in Aboriginal communities, people with mental illness, people with itinerant types of careers or new migrants who've just arrived—they are all people that we'd be concerned about them not having default insurance. We know that, when you first start a job or if you are in and out of a job, you probably aren't aware. That's us trying to protect people and make sure that they have some sort of disability protection or life protection.²⁶

1.41 The Financial Services Council (FSC) also agreed with this position:

We do not understand the policy rationale for providing default insurance cover to people who are actively contributing to their accounts only when their balance reaches \$6,000. Creating a lag in insurance cover for new members with active accounts appears to be an unintended consequence of the proposals.

Providing active members with cover from the time they join would make it simpler for people to know when their cover starts, and potentially avoid

25 Mr Joseph Mitchell, Workers' Capital Organising Officer, Australian Council of Trade Unions, *Committee Hansard*, 20 July 2018, p. 38.

26 Mrs Julia Davis, Policy and Communications Officer, Financial Rights Legal Centre, *Committee Hansard*, 20 July 2018, p. 10.

underwriting issues for people choosing to opt-in from the outset. It would also avoid the complexity resulting from linking the start date for insurance to the member's account balance. For example, for some investment options, the balance of the account is not immediately available.²⁷

Concerns about the age threshold of 25 years

1.42 Evidence received by this committee indicates that the example of AustralianSuper was a driving reason for why the government proceeded with an age threshold set at 25 years:

We've come to the view that younger people have less need for life insurance, and therefore that it shouldn't be a default. I think you then have to establish a threshold at which someone is old enough that on a default basis they receive automatic cover. Twenty-five is the answer that we adopted, the PC adopted and AustralianSuper adopted. It's not the only answer, but it seems to be one that probably has general support within the industry. As I think the previous witness noted, we're designing an overall default system. From that perspective, 25 seemed like an appropriate threshold.²⁸

1.43 However, there were a number of funds who stated that their under-25 members were much more likely to have significant assets and have dependents.

1.44 ISA stated that major life decisions are often made at the age of 22:

Whilst it is accepted that younger members generally are less likely to have financial dependants and obligations, empirical data reveals insurance needs crystallise in the early rather than mid 20's for most.

Workers from the age of 22 are significantly more likely to have insurance needs. After the age of 22, workers are more likely to have completed their studies, be employed full-time and have obtained social and financial responsibilities.²⁹

1.45 Individual funds raised similar points. For instance, Cbus Super and Rest stated that:

Cbus members are primarily male and blue collar, and skew towards a younger demographic. They tend to start full time work at a younger age, and most assume financial responsibilities for others from 21 years of age.³⁰

Unlike young people who may be living at home or attending university and only working intermittently, Rest members rely on their income. Their insurance is valuable to them and their dependants. For many their ability to earn a living is their most important asset. Rest's insurance is created with this in mind.

27 Financial Services Council, *Submission 25*, p. 3.

28 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, The Treasury, *Committee Hansard*, 20 July 2018, p. 93.

29 Industry Super Australia, *Submission 26*, p. 9.

30 Cbus Super, *Submission 32*, p. 3.

...

We have paid more than \$50 million to members who are younger than 25 and have passed way, leaving dependent partners and children behind, or have suffered a disability that left them unable to work.³¹

1.46 Funds have also taken steps to reduce or eliminate any age-based cross subsidisation. For example, Rest in its submission outlined how an 18 year old Rest member pays \$1.11 per week for insurance, scaling to \$4.85 per week for a 25 year old.³² Such arrangements are greatly impacted by the government's approach in this legislation.

1.47 TAL Life Limited (TAL) in testimony given at the hearing explained how some funds will be impacted by this age threshold:

The third area we believe needs to be addressed is in relation to young members. This has been touched on already by a number of members who've presented today. There is no question that the insurance needs of young members can be different to other superannuation fund members. They may not have accumulated dependents or liabilities, which typically support the need for life insurance; however, this is not consistently the case across all cohorts of members and across all funds. For example, members of a super fund that supports blue-collar workers are more likely to have more comprehensive insurance needs at an earlier age than a fund that supports professional workers. This is particularly important for funds that support members in high-risk occupations, where insurance cover may not be available elsewhere in the system. Trustees are well positioned to understand and accurately provide for the retirement insurance needs of their fund members, and in many cases tailor benefits to their membership. Therefore, we're recommending that, to allow trustees to have the necessary flexibility, they determine the appropriate minimum age for providing automatic life insurance cover to their members aged between 21 and 25.³³

Concerns raised about the anti-selection problem raised by opt in insurance arrangements

1.48 Opt in insurance arrangements present the problem of adverse-selection. That is, people with a relatively higher risk of claiming will form the majority of people who opt in, therefore raising the average risk of the pool, and increasing premiums that must be charged to cover these increased risks. Insurers are presented with three major options to address this risk. As stated by ISA at section 1.33 of these additional comments, insurers can raise premiums for the entire pool of insured members, cover can be reduced for the entire pool or those who opt in will face an underwriting process.

31 Rest, *Submission 22*, p. 1.

32 Rest, *Submission 22*, p. 6.

33 Mr Brett Clark, Group CEO and Managing Director, TAL Life Limited, *Committee Hansard*, 20 July 2018, p. 61.

1.49 In response to this problem, the ACTU argued that this schedule should be opposed until an agreed solution is reached:

Furthermore, an advantage of the group insurance default model is that members are not subject to selection biases—that is, if a person opts in to insurance then they must have a reason to, meaning that insurance costs will rise for simply doing the right thing for their circumstances, and this is without considering the additional price increases associated with breaking the group insurance model. The ACTU recommends that the insurance provisions of the bill be opposed until a meaningful and careful solution can be found so that workers are covered by insurance that is appropriate for them.³⁴

1.50 CHOICE offered one other solution, which is for the introduction of a community rating system:

Our suggestion is that it would be important to apply the benefits of the group insurance system to people who choose to opt in under this regime, particularly younger people. As APRA was explaining towards the end of its evidence, it is effectively a community rating system. You've got people pools—they're not individually underwritten—which has a lot of benefits. It's cheaper to administer. It also means that there are people who get access to insurance who might otherwise be denied insurance. It would be a shame if, under this regime, there were people who were no longer part of that group insurance—for very good reason, as we've outlined in our submission—but if they chose to opt in they were then subject to a different form of insurance that didn't have those benefits. They'd be underwritten, they might be subject to exemptions and they might be subject to different pricing. So what we're saying is these are people who are already insured now, and if they choose to opt in under these reforms they should be opting into the same insurance arrangements they would have now. It should be something that I would think funds, insurers and members, if they were able to understand it, would welcome.³⁵

1.51 Labor Senators note these anti-selection concerns and the possible impacts they will have on premium pricing, coverage and underwriting processes. Labor Senators believe it is incumbent on the government to monitor outcomes resulting from decisions that funds and insurers agree to. Labor Senators will continue to work toward a system where appropriate insurance is not denied, or priced at unaffordable levels, for key cohorts impacted by this bill.

Schedule 3—Inactive low-balance accounts and consolidation into active accounts

1.52 Labor Senators support the intent of this schedule, which seeks to provide new powers to the Australian Taxation Office (ATO) in reducing multiple accounts.

34 Mr Joseph Mitchell, Workers' Capital Organising Officer, Australian Council of Trade Unions, *Committee Hansard*, 20 July 2018, p. 38.

35 Mr Alan Kirkland, Chief Executive Officer, CHOICE, *Committee Hansard*, 20 July 2018, p. 38.

Labor Senators also note the many submissions which called for the ATO to have a level of public accountability when exercising these powers.

1.53 The ACTU outlined its concerns about the impacts of funding cuts on the ATO and its view that the government should set a clear expectation for the ATO:

Senator KETTER: In relation to the ATO's new or enhanced role in the consolidation of accounts: can you tell us what your expectations of the ATO are, at the moment, and particularly in the context of where there have been cuts to funding for the ATO?

Mr Mitchell: I worry that the ATO isn't well resourced enough to take on this role. There have been significant cuts to the Public Service. But, more pressingly, it's the members' interests which we should consider chiefly; they should not spend a significant amount of time in earning the cash rate, and there should be some compulsion from government to the ATO that it meets the target, or there should be a preference order, where if there is no fund to consolidate to and the member is earning a higher return than the cash rate then they stay in the fund—if there is a fund to consolidate to, it never really goes to the ATO; it goes straight from fund to fund—or, if it is earning below the cash rate, then it should be consolidated into the ATO, until an appropriate fund is found. And the members should be notified as often as possible that their retirement savings are in the ATO, which is usually a suboptimal outcome.³⁶

1.54 CHOICE stated that public reporting can help manage competing priorities that the ATO might have:

We broadly support this measure as it will see billions of dollars flowing into the active accounts of people. However, we are concerned that the proposal contains no timeframes for the ATO to conduct a consolidation. The ATO has a number of competing priorities – giving it this new responsibility without additional funding or a timeframe in which to complete the activity risks delays. There is also a threat to the ATO's reputation if a belief forms that the regulator is delaying consolidation in order to boost government finances. This reputational risk is not good for building important tax payer trust in the institution. We recommend the ATO be given adequate resources to complete this new function, that it have deadlines for consolidation where an active account exists and that it report against this metric.

...

Recommendation 11 - Give the ATO adequate resources to consolidate accounts. That the ATO meet a deadline for reuniting at least 90% of eligible funds within one month of receipt and publically report on its performance.³⁷

36 Mr Joseph Mitchell, Workers' Capital Organising Officer, Australian Council of Trade Unions, *Committee Hansard*, 20 July 2018, p. 43.

37 CHOICE, *Submission 15*, pp. 17–18.

1.55 ASFA stated that it is important that the ATO be accountable for its actions and that accounts are receiving higher returns as quickly as possible:

However should the money be required to go to the ATO or for the money that is already held there, we consider that the ATO needs to be accountable for reuniting the super benefit with people's active accounts as quickly as possible to ensure people benefit from the higher fund returns.³⁸

1.56 Stakeholders in the superannuation sector such as ASFA, ISA and AIST all believed that the transfer of balances held in inactive accounts should be directly from fund to fund, not through the ATO:

We consider that the ability of the ATO to reunite lost superannuation with an active account is a compelling reason why the ATO should move the money directly from an inactive account to an active account rather than it going to the ATO, particularly due to the higher investment returns available in a superannuation fund account.³⁹

The Commissioner should not function as an intermediary to consolidate inactive low-balance accounts where an active account has been identified within 60 days after the unclaimed money day. ISA encourages the Committee to consider that direct fund to fund account consolidation is more efficient and in the best interests of members. It enables members' savings to continue accumulating earnings during the consolidation process.⁴⁰

AIST supports a mechanism based on direct fund-to-fund transfer of inactive accounts to active accounts, based on data provided by the ATO to funds⁴¹

1.57 Labor Senators also note testimony given by the ATO which outlined its intent to reunite most accounts within 30 days and to be accountable for its actions:

...I've heard the commentary and read in submissions what might be deemed a service standard or at least tracked reporting on how quickly we're reuniting upon receipt of information coming in from the funds. Under the current arrangements, we probably have a matching rate, if you like, upon receipt of the data—but obviously conditional on the data from the funds—probably in the order of 75 to 83 per cent. It bounces around a little bit. In terms of once we can do a match, I've seen reference around how quickly we can then transmit that out. We certainly think that in this quite significant year, subject to the legislation, a month is certainly doable. ...

If you're talking about a performance report, either voluntary or otherwise, in principle it's not unusual for us to report matters of interest in terms of, if you like, service standards or turnaround et cetera. We probably haven't

38 Association of Superannuation Funds of Australia, *Submission 12*, p. 9.

39 Association of Superannuation Funds of Australia, *Submission 12*, p. 9.

40 Industry Super Australia, *Submission 26*, p. 15.

41 Australian Institute of Superannuation Trustees, *Submission 10*, p. 6.

done it until now, though I'm happy to go through some figures now if you wish around how our current arrangements work, but certainly we'll be tracking it. I've seen reference to this a few times in some of the submissions, but, at least as the administrator or the tax office, there is no interest in us holding the money.⁴²

1.58 Given this evidence, Labor Senators believe that the government should set performance targets for the ATO in exercising powers given in this legislation, and on a regular basis the ATO should provide a public report which outlines performance against these targets. Labor Senators believe that a 30 day timeframe for the consolidation of most accounts is both achievable for the ATO and in the interests of members.

Conclusion

1.59 Labor built Australia's superannuation system. Labor Senators will always work to ensure that it is fair, sustainable and sets Australians up for a comfortable life in retirement.

1.60 Labor Senators support the broad intent of this bill, which is to minimise the erosion of superannuation accounts.

1.61 Labor Senators also note the history of insurance arrangements, often provided as an outcome of industrial bargaining arrangements and note the many benefits that group insurance can bring to the financial services sector, providing affordable insurance to many working Australians. Labor Senators will continue to work towards the objective of insurance arrangements within superannuation that are affordable, well designed and provides a benefit that outweighs the impact on superannuation balances.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

42 Mr James O'Halloran, Deputy Commissioner, Superannuation Australian Taxation Office, *Committee Hansard*, 20 July 2018, pp. 95–96.