Additional Comments from Labor Senators

1.1 Labor Senators support Schedules 2, 3 and 4 of the bill, which relate to the work bonus, the pension loans scheme and other technical amendments.

1.2 Labor Senators do have concerns about the consideration of Schedule 1, relating to new means test rules for lifetime income streams. Given the recent publication of both the Productivity Commission report *Superannuation: Assessing Efficiency and Competitiveness* and the publication of the Royal Commission final report into Misconduct in the Banking, Superannuation and Financial Services Industry, it is important that disclosure frameworks, trustee obligations, financial advice frameworks and behavioural impacts are well understood and improved alongside any changes to means testing.

1.3 The concerns in question are outlined below.

Inquiry Process

1.4 The submission by AustralianSuper makes it clear that the Government has not completed complementary work regarding the framework for Comprehensive Income Products for Retirement (CIPRs):

> In summary, Schedule 1 to this Bill is but one of a series of measures supporting the Government's developing retirement income framework.
>
> This framework envisages the development of Comprehensive Income Products for Retirement (CIPRs). The CIPRs framework is still being developed with the following outstanding items yet to be actioned by the executive government to complete this framework for implementation by industry:
>
> - The passing of legislation for retirement income covenant designed to protect member interests in the development of retirement products.
> - The disclosure regime for such products which is presently under consultation.
> - The creation of a framework that enables trustees to offer a CIPR product, which is inherently complex, without personal advice, and include measures to protect consumers at the same time.[1]

1.5 In a similar way, the Australian Institute of Superannuation Trustees indicated that insufficient context and preparatory work has been completed for the passage of Schedule 1:

> Taken out of context, the measure proposed in schedule 1 of the Bill appears to go a considerable way to satisfying one of the aims of the Government, being the goal to remove regulatory barriers to the use of

1 AustralianSuper, Submission 1, p. 1-2

innovative (in this case, lifetime) income streams. However, viewing this in context is problematic, since we do not have a context to view this in.

…

In any event, as Treasury indicated in their Retirement Income Disclosure Consultation Paper, there are remaining parts to the proposed Retirement Income Framework that remain before "consumers are supported to make informed decisions about the income, risk and flexibility associated with different retirement income products", including retirement income projections and changes to the regulatory framework.

…

We are also concerned that, in the absence of basic consumer protections which, at the very least, must include sufficient consumer disclosure to enable fund members to have informed consent when selecting these products, social security incentives commencing on 1 July 2019 are badly timed and inappropriate.

Whilst we are aware that the industry requires certainty in relation to the new rules, we believe that these are being implemented in the wrong order, and the unintended consequences of incentivising Australians to potentially choose the wrong retirement income product at this early stage are too great.[2]

1.6 Industry Super Australia also outlined concerns about other unresolved "moving parts" relevant to implementing the Government's CIPRs-based framework:

a) The introduction of a retirement income covenant to the Superannuation Industry (Supervision) Act 1993 that will include a requirement that trustees develop and offer CIPRs to their members.

b) The design and implementation of a disclosure framework that will provide consumers who wish to purchase a retirement income product with a factsheet for each product containing simplified metrics that will enable meaningful comparisons to be made prior to purchase.

c) Proposed new means testing rules

…

In short, the proposed rules [means testing rules] are intended to promote the sale of complex retirement income products before implementing measures that would help to protect consumers from buying products that may not be in their best interests.

In particular, many of the products that will be sold from July 2019 are likely to comprise annuities that purchasers may not be able to exit from should they later conclude (perhaps when a disclosure regime is in place) that a different product is better.[3]

2 Australian Institute of Superannuation Trustees, Submission 7, p. 85

3 Industry Super Australia, Submission 6, p. 2-3

1.7 Labor Senators agree that the Government has failed to provide the supporting architecture necessary to properly support the take-up of lifetime income products and guarantee that pensioners will be protected.

1.8 Finally, submissions make it clear that there are concerns about the obligations these products will place on superannuation trustees:

> Further, as a superannuation trustee, we have concerns about the operation of the means testing rules and the need for a consumer to understand that they are entering into a long-term trade-off for means testing purposes (see Appendix A). AustralianSuper as a fiduciary is concerned as to application of these rules to new CIPR products which are designed to be offered by superannuation trustees to their members without personal advice. Traditionally, these types of products have been sold to customers directly not through the fiduciary overlay of superannuation. A higher duty is owed by superannuation trustees as fiduciaries than applies under contract law.[4]

Productivity Commission Report

1.9 A number of submissions outlined findings from the recent Productivity Commission final report into superannuation. Labor Senators understand that the Government is considering its response to this report and as yet has not made public its final position on recommendations.

1.10 A number of findings were made with regard to retirement income products.

1.11 The most pertinent is Recommendation 10:

> The Australian Government should reassess the benefits, costs and detailed design of the Retirement Income Covenant — including the roles of information, guidance and financial advice — and only introduce the Covenant if design imperfections (including equity impacts) can be sufficiently remediated.
>
> In conjunction with this reassessment, the Australian Government should also:
>
> - consider cost-effective options, including possibly extending the Financial Information Service to provide retirees with access to a one-off, impartial information session to help them navigate complex retirement income decisions
> - explore the business case for investing in digital technology that assists people's financial decision making.[5]

1.12 Supporting this recommendation was the finding that lower-income households might be worse off with an annuity in terms of total benefits and access to the Age Pension when compared to an account based pension (ABP):

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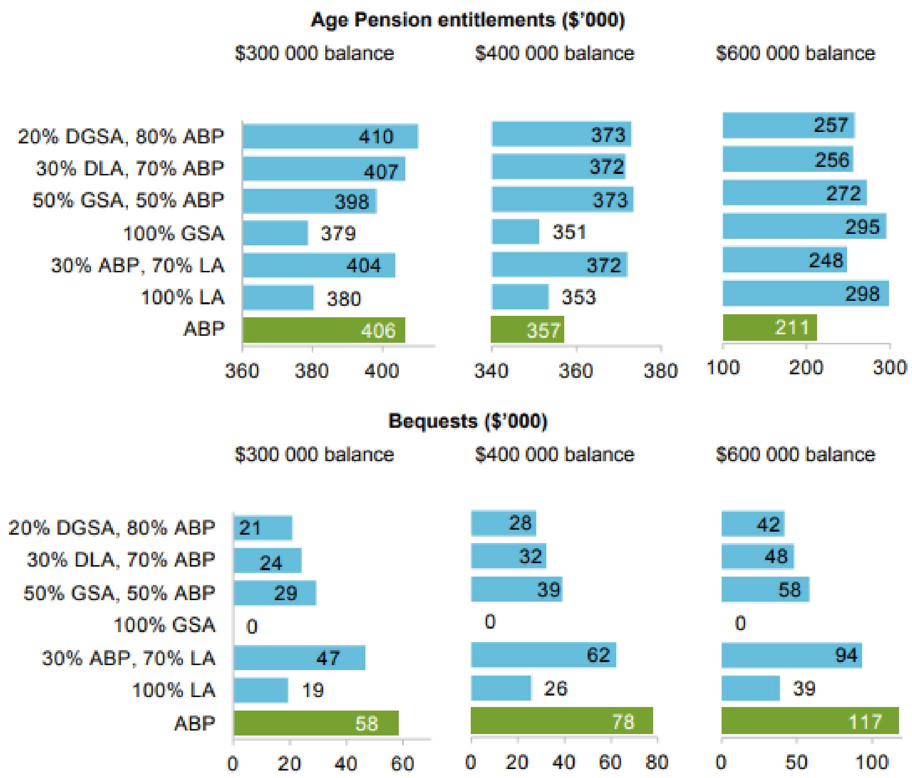
4 AustralianSuper, Submission 1, p. 2

5 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, No. 91, 21 December 2018, p. 69

The opposite pattern applies to lower-income households, where most annuity types reduce total benefits and decrease access to the Age Pension compared with an ABP. These contrasting outcomes appear inconsistent with any income distributional function of the Age Pension, and imply that choosing an annuity may not be favourable for households with lower net superannuation assets. Given that lower educational qualifications tend to reduce earnings and ultimately retirement balances, low-balance households will have fewer sophisticated investors able to make an informed decision about the desirability of CIPRs — especially given their complex variants (as shown in figure 4.10). This would become more problematic if the proposed Retirement Income Covenant nudges people into such products. The same equity concern would arise for groups with systematically lower life expectancy for whom longevity insurance is less valuable.[6]

Figure 4.10 **CIPRs obtain more generous Age Pensions than account-based pensions for wealthier households and reduce retirement income bequests for all[a]**



[a] The outcomes relate to a single homeowner with varying retirement balances. The different retirement income products are account-based pensions (ABP), life annuities (LA), group self-annuities (GSA), deferred lifetime annuities (DLA) and deferred group self-annuities (DGSA). Their definitions are provided in the relevant paper cited below.

Source: DSS (2018).

6 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, No. 91, 21 December 2018, p. 232-233

1.13 The second supporting issue that Labor Senators wish to raise is that there is currently limited competition in the offering of lifetime income products. As noted by the Productivity Commission:

> Putting aside the practical issues of implementing the Covenant, government-sponsored nudging should demonstrably be for people's good. As discussed in the previous section, CIPRs almost certainly suit some people, especially those who do not value bequests or will benefit from the more favourable access to the Age Pension.
>
> …
>
> On the practical front, there are also several concerns.
>
> - Requiring funds that are unable to develop pooled products in-house to still offer a third party product may provide some degree of market power to the few current incumbent providers.[7]

Royal Commission Report

1.14 The Royal Commission Final Report has expressed concerns about the ability of the financial services industry to provide independent advice to the public:

> Second is poor advice – which, too often, is the result of the conflicts of interest that continue to characterise the financial advice industry. Other professions are not so pervaded by conflicts of interest and do not have such a high tolerance for the continued existence of conflicts of interest. Other professions do not have such faith in the notion that conflicts of interest and conflicts between duty and interest can be effectively managed. Until something is done to address these conflicts, the financial advice industry will not be a profession.[8]

1.15 Industry Super Australia has expressed concerns that the current state of the financial advice regime is inadequate to support retirement income products:

> In short, the current financial advice regime cannot be relied upon to protect consumers.
>
> Until appropriate regimes for retirement income products, disclosure and financial advice are in place, legislating concessional means testing rules for retirement income products amounts to 'putting the cart before horse.'
>
> It risks exposing consumers to significant, and unnecessary, financial harm.[9]

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7 Productivity Commission, Superannuation: Assessing Efficiency and Competitiveness, No. 91, 21 December 2018, p. 234

8 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, p. 135

9 Industry Super Australia, Submission 6, p. 4

Conclusion

1.16 Labor Senators are supportive of efforts to improve the superannuation system, particularly as people move to the retirement phase. It is important that there be a suitable suite of retirement income products available to people in retirement and that older Australians and pensioners are properly protected.

1.17 Labor Senators also note that COTA Australia is supportive of the proposed changes to the pension means testing of pooled lifetime income stream products.[10]

1.18 Labor Senators recognise that there are potential risks associated with Schedule 1 of the Bill, as noted above. Labor Senators believe it would be preferable for disclosure frameworks, trustee obligations, financial advice frameworks and behavioural impacts to be well understood and improved alongside any changes to pension means testing.

1.19 That said, Labor Senators do not believe that these risks warrant delaying passage of this Bill. Accordingly, Labor will carefully monitor the implementation and impacts of Schedule 1 of the Bill and the regulation of related financial services products to ensure they operate fairly and that older Australians and pensioners are protected.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

[10] COTA Australia, Submission 2, p. 5