The Senate

Economics Legislation Committee

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

October 2017

ISBN 978-1-76010-671-3

Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics Legislation Committee

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Introduction

1.1 On 14 September 2017, the Senate referred the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 (Measures No. 1 bill) and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (STA bill) to the Senate Economics Legislation Committee (committee) for inquiry and report by 23 October 2017.

1.2 These bills form part of a broader package of government reforms designed to strengthen the Australian superannuation system by 'protecting members' money and members' interests'.[1] The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017, which forms part of the package, was also separately referred to the committee for inquiry and report by 23 October 2017.[2]

1.3 In his second reading speech, the Assistant Minister to the Prime Minister, Senator the Hon James McGrath, explained that in implementing these reforms, the government will deliver a:

> …strong and modern superannuation system with a stronger prudential regulator that is solely focused on delivering outcomes for all Australians who rely on these funds to secure their retirement.[3]

1.4 The Measures No. 1 bill contains eight schedules, which propose to amend the *Superannuation Industry (Supervision) Act 1993* (SIS Act), the *Corporations Act 2001* (Corporations Act) and the *Financial Sector (Collection of Data) Act 2001* (FSCODA) in order to 'modernise and increase confidence within the superannuation system'.[4] The details of each schedule are set out below.

1.5 The STA bill seeks to introduce a definition of independence as it relates to directors and to legislate a requirement that all superannuation funds regulated by the Australian Prudential Regulation Authority (APRA) have a minimum of one-third independent directors; as well as an independent Chair.[5] The details of the STA bill are set out below.

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1 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

2 This bill would amend the *Superannuation Guarantee (Administration) Act 1992* to strengthen accountability of superannuation funds and improve outcomes for members. The measures contained in the bill are aimed at ensuring that choice of fund is provided to over one million more Australians; and salary sacrifice contributions are reflected in members' retirement savings.

3 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

4 Explanatory Memorandum, p. 9.

5 Explanatory Memorandum, p. 10.

Conduct of the inquiry

1.6 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions by 29 September 2017. The committee received 37 submissions, which are listed at Appendix 1.

1.7 The committee held two public hearings in Canberra on 9 October 2017 and in Sydney on 10 October 2017. The witnesses who appeared at the hearings are listed at Appendix 2.

1.8 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who took the time to make written submissions and appear at the hearings.

Background

1.9 Superannuation is an important part of Australia's retirement income system and will be an increasingly significant contributor to the retirement incomes of many Australians.[6]

1.10 This year marks 25 years since the introduction of compulsory superannuation in Australia. Over this time, the superannuation system has grown from $136 billion to over $2.3 trillion with APRA regulated funds managing approximately $1.4 trillion of this total. The reforms in the two bills are designed to ensure that the superannuation system has a strong foundation into the future.

1.11 In recent years, two reviews have considered the governance arrangements of the Australian superannuation industry: the Super System Review and the Financial System Inquiry. The Measures No. 1 bill and STA bill put recommendations of these past reviews and the practices of high performing superannuation funds into effect.[7]

Super System Review

1.12 The Super System Review (the Cooper Review) was led by Mr Jeremy Cooper and was finalised in June 2010. It explored in detail, the governance, efficiency, structure and operation of Australia's superannuation system.[8]

1.13 A majority of the issues examined in the Cooper Review were linked back to issues of trustee governance. In particular, the review noted the need for changes to the structure of trustee boards, including their size, and recommended the creation of a new office of 'trustee–director', which would be subject to tenure[9]. The Cooper Review highlighted that:

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6 The Hon. Kelly O'Dwyer MP (Minister for Revenue and Financial Services), Turnbull Government puts super members first, *Media Release*, 14 September 2017, http://kmo.ministers.treasury.gov.au/media-release/093-2017/ (accessed 22 September 2017).

7 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

8 Super System Review: Final Report, p. v. http://dpl/Books/2010/158928-1.pdf (accessed 27 September 2017)

9 A trustee-director is: See also: Super System Review: Final Report, http://dpl/Books/

> Contemporary best practice in corporate governance for listed companies includes the presence of independent directors on the board. The Panel believes that a minimum number of 'non-associated' trustee-directors (such that they can genuinely influence the decisions of those boards) should be required on all superannuation trustee boards.[10]

1.14 The Cooper Review also made several recommendations in relation to trustee governance including:

> Recommendation 2.6: The SIS Act should be amended so that if a trustee board does not have equal representation, the trustee must have a majority of 'non-associated' trustee-directors.
>
> Recommendation 2.7: For those boards that have equal representation because their company constitutions or other binding arrangements so require, the SIS Act should be amended so that no less than one-third of the total number of member representative trustee-directors must be non-associated and no less than one-third of employer representative trustee-directors must be non-associated.[11]

1.15 These recommendations are reflected in the schedules of the STA Bill.

Financial System Inquiry

1.16 The Financial System Inquiry (FSI) was led by Mr David Murray AO and finalised in November 2014. The FSI examined how the financial system could be positioned to best meet Australia's evolving needs and support its economic growth. The FSI noted that:

> …superannuation is now the second largest asset for many Australians. Its growing importance underlines the need for a regulatory approach that puts individual members at the very centre of the system — benefiting both individual Australians and the economy as a whole.[12]

1.17 The FSI raised concerns in relation to directors who fail to execute their responsibility to act in the best interests of members, or who use their position to further their or others' interests to the detriment of members. The FSI suggested that the government introduce civil and criminal penalties for directors who do not fulfil their responsibilities.[13] This suggestion has been captured in schedule 3 of the Measures No. 1 Bill.

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10 Super System Review: Final Report, p. 12. http://dpl/Books/2010/158928-1.pdf (accessed 27 September 2017)

11 Super System Review: Final Report, p. 31. http://dpl/Books/2010/158928-1.pdf (accessed 27 September 2017)

12 The Financial System Inquiry 2014 (Murray), Final Report, p. 24. http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 27 September 2017)

13 The Financial System Inquiry 2014 (Murray), Final Report, p. 133. http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 27 September 2017)

1.18 Recommendation 13 of the FSI report, recommended changes to governance of superannuation funds, which in effect, summarises the principal objective of the STA Bill:

> Mandate a majority of independent directors on the board of corporate trustees of public offer superannuation funds, including an independent chair; align the director penalty regime with managed investment schemes; and strengthen the conflict of interest requirements.[14]

Superannuation Legislation Amendment (Trustee Governance) Bill 2015

1.19 The committee notes that it has previously inquired into the Superannuation Legislation Amendment (Trustee Governance) Bill 2015. That bill contained measures which would have had the same effect as those set out in the STA Bill.

1.20 The committee reported on the provisions of that bill in November 2015 and recommended that the bill be passed. However, the bill lapsed when the Parliament was prorogued in April 2016.

Overview of the Bills

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

1.21 As noted above, the Measures No. 1 Bill contains eight measures, which propose to amend the SIS Act, the Corporations Act and the FSCODA in order to 'modernise and increase confidence within the superannuation system'.[15] The eight schedules that make up the bill are set out below.

Schedule 1: Annual MySuper outcomes assessment

1.22 Schedule 1 amends the SIS Act to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually including how that product continues to deliver appropriate outcomes to MySuper members.

Schedule 2: Authority to offer a MySuper product

1.23 Schedule 2 amends the SIS Act to give APRA an enhanced capacity to refuse a registerable superannuation entity (RSE) licensee a new authority to offer a MySuper product or to cancel an existing authority.

Schedule 3: Director penalties

1.24 Schedule 3 amends the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of members.

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14 The Financial System Inquiry 2014 (Murray), Final Report, p. 133. http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 27 September 2017)

15 Explanatory Memorandum, p. 9.

Schedule 4: Approval to own or control an RSE licensee

1.25 Schedule 4 amends the SIS Act to strengthen APRA's supervision and enforcement powers when a change of ownership or control of an RSE licensee takes place.

Schedule 5: APRA directions power

1.26 Schedule 5 amends the SIS Act to strengthen APRA's supervision and enforcement powers to include the power to issue a direction to an RSE licensee where APRA has prudential concerns.

Schedule 6: Portfolio holdings disclosure

1.27 Schedule 6 amends the Corporations Act to refine the requirements for RSE licensees to make publically available their portfolio holdings.

Schedule 7: Annual members' meetings

1.28 Schedule 7 amends the SIS Act to require RSE licensees to hold annual members' meetings (AMMs). The meetings are to discuss the key aspects of the fund and provide members with a forum to ask questions about all areas of the fund's performance and operations.

Schedule 8: Reporting standards

1.29 Schedule 8 amends the FSCODA to provide APRA with the ability to obtain information on expenses incurred by RSE and RSE licensees in managing or operating the RSE.

Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

1.30 The STA bill seeks to introduce a 'strong and consistent definition of independence' and a legal requirement that APRA regulated funds must have an independent Chair and a minimum of one-third independent directors on their boards.

Schedule 1: RSE licensees

1.31 Schedule 1 amends the SIS Act to introduce new trustee arrangements RSEs to have at least one third independent directors and for the Chair of the Board of directors to be one of these independent directors.

Schedule 2: Board of CSC

1.32 Schedule 2 amends the *Governance of Australian Government Superannuation Schemes Act 2011* (Governance Act), to enable the trustee board of the Commonwealth Superannuation Corporation to comply with the independence requirements set out in schedule 1.

Financial impact and regulatory impact statement

1.33 The explanatory memorandums to the Measures No. 1 bill and the STA bill state that the bills do not have any financial impact. However, the regulation impact statement for schedule 7, which introduces a requirement to hold AMMs, indicates that the amendments have a start-up cost of $8.5 million and ongoing costs of $13.7

million, which will result in an estimated compliance cost impact, averaged over 10 years of $14.6 million.[16]

Legislative scrutiny

1.34 The explanatory memorandums to the Measures No. 1 bill and the STA bill state that the bills do not engage any of the applicable rights or freedoms under the *Human Rights (Parliamentary Scrutiny) Act 2011*, and, as such, are compatible with human rights. The Parliamentary Joint Committee on Human Rights considered the bills in its *Report 10 of 2017* and made no comment.[17]

1.35 The Measures No. 1 bill and the STA bill were also considered by the Senate Standing Committee for the Scrutiny of Bills in its *Scrutiny Digest 12 of 2017*. In relation to the Measures No. 1 bill, the Scrutiny of Bills committee has sought information from the Treasurer regarding the proposed penalties, and for a broadly framed offence that reverses the evidential burden of proof and allows exceptions to be prescribed in regulations.[18]

Structure of this report

1.36 The report is structured in two chapters—this introductory chapter, which provides a brief overview of the bills and the context; and chapter two which discusses the bills in more detail, and the related issues raised in submissions and by participants in the inquiry.

16 Explanatory Memorandum, p. 6.

17 Parliamentary Joint Committee on Human Rights, *Report 11 of 2017*, October 2017, p. 60.

18 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 12 of 2017*, October 2017, pp. 57–61.

Chapter 2

Views on the bills

2.1 The proposals in the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 (Measures No. 1 bill) and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (STA bill) seek to 'modernise and increase confidence within the superannuation system'; and 'strengthen superannuation trustee arrangements'.[1]

2.2 Submitters to the inquiry agreed with the overall objectives of the proposed legislation to improve member outcomes, accountability and transparency in the Australian superannuation system. However, support for the objectives of the bills notwithstanding, concern was noted regarding various provisions of the bills and whether they were the best way to ensure Australia's superannuation system has a strong foundation today and into the future.

2.3 Both regulators with oversight of the superannuation industry, the Australian Prudential Regulatory Authority (APRA) and the Australian Securities and Investments Commission (ASIC), were strongly supportive of the measures as they related to each regulator's remit and their ability to improve outcomes for superannuation members.

2.4 This chapter examines the evidence received in relation to the proposed reforms in the Measures No. 1 bill; before moving to the evidence received in relation to the STA bill.

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

Strengthening MySuper

2.5 Since January 2014, if an individual had not chosen a superannuation fund, their employer had to pay their super to a superannuation fund that offers MySuper; and existing default superannuation funds (those chosen by an individual's employer) had until 1 July 2017 to transfer an individual's balance into a MySuper account.[2] The aim of these MySuper changes were to provide:

> …a simple, cost-effective, balanced product for the vast majority of Australian workers who are invested in the default option of their current fund.[3]

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1 Explanatory Memorandum, p. 9.

2 Australian Securities & Investments Commission, *MySuper*, https://www.moneysmart.gov.au/superannuation-and-retirement/how-super-works/choosing-a-super-fund/mysuper (accessed 11 October 2017).

3 Australian Government, The Treasury, *MySuper*, https://treasury.gov.au/programs-and-initiatives-superannuation/mysuper/ (accessed 11 October 2017).

2.6 It has been previously acknowledged that members of a MySuper product have effectively delegated the responsibility for making decisions regarding their superannuation, including the way their money is invested, to the trustee:

> The standards that a MySuper product must meet will be set out in legislation and enforced by the Australian Prudential Regulation Authority (APRA). Funds that do not operate as default funds, such as self-managed superannuation funds (SMSFs) or choice products, will not have to comply with these additional standards.[4]

2.7 The Measures No. 1 bill seeks to further strengthen all default MySuper products by replacing the current 'scale test' in the law with a broader 'outcomes test' to all registrable superannuation entities (RSE) licensees who offer a MySuper product:

> It will achieve this by introducing a requirement for trustees to undertake a stronger, broader annual assessment of their MySuper product outcomes to ensure they are promoting the financial interests of MySuper members with almost 15 million accounts across the system.[5]

2.8 APRA confirmed during a committee hearing that the broadened 'outcomes test' would 'apply equally to all funds that offer MySuper products'. As at June 2016, there were 115 MySuper products across the superannuation industry including 46 MySuper products offered by retail funds; 43 MySuper products offered by industry funds; 15 MySuper products offered by corporate funds; and 11 MySuper products offered by public sector funds.[6]

2.9 The amendments would require each trustee of a regulated superannuation fund to make an annual determination, in writing, as to whether the financial interests of the members in the MySuper product are being promoted by the trustee, having regard to a range of factors. This determination would follow a two-step process:

- The trustee makes an assessment of its MySuper product taking into consideration a range of matters (for example, whether the options, benefits and facilities offered under the MySuper product are appropriate to those beneficiaries), including any matter prescribed in the regulations; and
- The trustee compares their MySuper product against other MySuper products using specified comparable metrics (for example, the fees and costs that affect the return of the beneficiaries holding the MySuper product).

2.10 The determination, together with a summary of the assessment and comparison on which the determination is based, are then to be made publically

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4 The Hon Bill Shorten MP, Stronger Super–Government Response to the Super System Review, 16 December 2010.

5 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

6 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, *Senate Hansard*, 14 September 2017, p. 7311.

available on the superannuation fund's website within 28 days of the determination being made.

2.11 While some submitters were supportive of the amendments to replace the 'scale test' with the 'outcomes test', stakeholders queried whether the test should apply to all superannuation products; what value it would add; and whether it could be improved.

Applying the 'outcomes test' to all superannuation products

2.12 Whilst supporting the need for the broadened 'outcomes test' for default MySuper products, a number of submitters suggested a more fundamental change to the existing law to apply the strengthened MySuper test to non-default, choice products.[7]

2.13 In evidence before the committee, Industry Super Australia (ISA) confirmed that:

> ….there is a need to have an outcomes test for MySuper products. There has been some concern that the existing arrangements around a scale test for MySuper have been ineffective, and we tend to agree with that.[8]

2.14 However, the Australian Institute of Superannuation Trustees (AIST) expressed concerns that the proposed outcomes test does not apply to choice superannuation products. AIST argued that as the objective of the 'outcomes test' is to improve outcomes across the superannuation system, it should therefore apply to choice products, particularly, due to the fact that choice products have a greater degree of complexity.

2.15 ISA agreed with AIST, and proposed that:

> The stated purpose of the proposed outcomes test, which would replace the scale test, is to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering. This objective should equally apply to all superannuation products. Determining that a superannuation product is appropriate should not be limited to MySuper products.[9]

2.16 Treasury addressed this issue, noting that MySuper products often involve additional obligations on a trustee compared with other types of superannuation products.[10] Mr Beckett explained that:

> This was an explicit decision under the former government that came out of the Cooper review. It reflected a view that default products were often held

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7 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

8 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard,* 10 October 2017, p. 64.

9 Industry Super Australia, *Submission 8*, p. 3.

10 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

> by disengaged members and that they warranted a higher standard of consumer protection. The basic framework is that we impose some design restrictions and some fee restrictions on MySuper products in terms of the fact that it's generally a single product and a single investment strategy and there are requirements on fees.[11]

2.17 Further, in his Second Reading Speech, the Assistant Minister to the Prime Minister, Senator James McGrath explained that:

> On 11 August this year, APRA wrote to all RSE licensees to advise that it intends to consult on a proposal to apply an outcomes test to all products, not just default MySuper products. As with the MySuper outcomes test, this would include consideration of net investment returns, expenses and costs, insurance, and other benefits and services provided to choice members.
>
> The Government believes this is an efficient means through which the choice sector can be strengthened for the benefit of members and agrees with APRA's proposal and expects it to be implemented.[12]

2.18 APRA confirmed with the committee that it will implement an 'outcomes test' for all superannuation products including non-default choice products, through prudential standards to:

> …ensure that the same outcomes assessment approach is applied across the board, whether it's a MySuper product or a choice product or a non-MySuper product.[13]

The value of the 'outcomes test'

2.19 APRA also confirmed during the committee hearing that that this approach would mean that 'standards and outcomes for members will be lifted across the entire APRA regulated industry'[14] as 'prudential Standards have the force of law in the same way as legislation and regulation'.[15] This was also supported by Treasury:

> …the structure of legislation means it's very difficult. In part the way these products operate, the diversity, the lack of consistent reporting at this stage means it's not very difficult to do it in the law. But what APRA is proposing

11 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

12 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

13 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 87.

14 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 88.

15 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 90.

> to do is achieve a commensurate outcome simply by using a different approach.[16]

2.20 The Association of Superannuation Funds of Australia (ASFA) also suggested that the 'outcomes test' would not be beneficial to members as it would duplicate the information that is already available in the MySuper dashboard, increasing the reporting burden that already exists.[17] ASFA also contended that members may find the assessments confusing or potentially misleading as they are primarily designed to satisfy APRA and its requirements.[18]

2.21 While supportive of improving the current 'scale test'; some submitters expressed concerns that the proposed 'outcomes test' is not primarily focussed on net returns. For example, Ms Volpato of AIST submitted that 'net returns should be the primary factor in judging the selection of default funds',[19] and Mr Linden from ISA commented:

> We are concerned that the outcomes test does not have a primary focus on net returns. Ultimately, that's the money which people will retire on and which, in the long term, will reduce taxpayers' exposure to the age pension. So the MySuper outcomes test is there. We think it could be improved.[20]

2.22 With respect to the intent of the new 'outcomes test', the Assistant Minister to the Prime Minister, Senator James McGrath clarified its purpose was to deliver greater transparency and strengthen trustees' existing primary obligation to promote the financial interests of MySuper members, including through net returns by requiring trustees to:

> …publicly release their determination of whether or not they are promoting the financial interests of members and a summary of the assessment and comparisons that lead to the determination… These changes will ensure that trustees, who have a fiduciary obligation to regularly assess the quality of their MySuper offering; the findings are transparent and address any weaknesses that they identify.
>
> To be clear, the 'outcomes test' will not weaken or lessen a trustee's primary obligation to promote the financial interests of their MySuper members, including through net returns – it will strengthen it. [21]

16 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 83.

17 Association of Superannuation Funds of Australia, *Submission 28*, p. 3.

18 Association of Superannuation Funds of Australia, *Submission 28*, p. 3.

19 Ms Karen Volpato, Senior Policy Adviser, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October, 2017, p. 67.

20 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard*, 10 October 2017, pp. 64–65.

21 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7311.

2.23 In evidence before the committee, Mr Beckett of the Treasury also explained that:

> What drives relative performance is investment returns, which reflects investment strategy, fees, tax and issues like that. That can be driven by different things. I think funds can have different investment strategies. In some ways, that can reflect different liquidity requirements and different types of inflows—more stable inflows. Those are the types of things that may cause funds to be able to undertake different types of investment strategies and achieve different outcomes.[22]

Enhancing APRA's capabilities

2.24 The Measures No. 1 bill amends the law to give APRA more discretion over the authorisation and cancellation of authority to offer a MySuper product;[23] and the power to reject a change in the ownership of a corporate trustee[24]. These changes were welcomed by APRA[25] and broadly supported by submitters to the inquiry.

2.25 The Measures No. 1 bill also gives APRA the power to:

- issue a direction to an RSE licensee, and take protective or corrective action, where APRA has prudential concerns or if it is concerned that a fund is not acting in the best interests of the members;[26] and
- make reporting standards that require the RSE licensee to report expenses relating to investments of an RSE on a look through basis.[27]

2.26 APRA was also strongly supportive of these reforms as they related to its remit as a regulator, and their ability to improve outcomes for superannuation members. However, some stakeholders cautioned that the expansion in APRA's powers may weaken prudential regulation and increase the reporting burden on superannuation funds. These issues are examined below.

Directions power

2.27 The Measures No. 1 bill harmonises the directions powers across the banking, insurance and superannuation industries, by enabling APRA to intervene at an early stage to address prudential concerns in a manner that ensures actions undertaken are in the best interests of members.

2.28 The amendments provide APRA the power to give a direction to:

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22 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 82.

23 Explanatory Memorandum, p. 3.

24 Explanatory Memorandum, p. 4.

25 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 86.

26 Explanatory Memorandum, p. 5.

27 Explanatory Memorandum, p. 7.

- an RSE licensee where it has concerns about one of the RSE licensee's connected entities which raise prudential concerns and/or a connected entity of the RSE licensee directly; and
- an acting RSE licensee in circumstances in which that direction can be made.

2.29 Under the proposed amendments an RSE licensee will commit an offence if it contravenes a direction from APRA. The offence is a strict liability offence subject to a penalty of 100 units (currently $21 000) which is consistent with the current penalty for breach of a direction by an acting trustee.[28]

2.30 AIST was broadly supportive of the proposed expansion of APRA's powers, noting that APRA should be able to intervene if it considers that a particular action might result in consumer harm. AIST also expressed concerns, however, with the definition of a 'connected entity' in the bill. AIST stated that:

> …the relevant definition of a 'connected entity' within the bill and as utilised in the bill would not have application to related party service providers which existed under a common corporate parent. That's relevant because that's the most common structure that you'll see in the retail for-profit sector, so those powers to intervene would appear to be not effective in those circumstances, and we think that they should be.[29]

2.31 However, Treasury and APRA both provided clarifications that addressed the concerns expressed by the AIST in relation to the definition of a 'connected entity' and the structures they believed to be common in the retail for-profit sector.

2.32 Treasury explained that APRA would have strong directions powers in relation to trustees in all sectors: retail, corporate, or industry; and clarified that:

> APRA's prudential powers apply to trustees and connected entities, which are defined as subsidiaries. The reason they don't apply more broadly in this case is due to a constitutional limitation. That's why it was structured that way under the past Labor government and that's the reason it's limited in that way. As a reality, APRA would direct a trustee to do something. It can do that in any sector. In some ways, the connected entity would be a very rare fallback position. It would direct the connected entity, if necessary, to do something rather than direct a trustee to do something else. I don't believe it would make material difference to the effectiveness of the legislation.[30]

2.33 APRA confirmed that under their supervision, 'assuming that the related party within a corporate group is under another APRA regulated entity, then to the degree we have concerns we might have that avenue to address it if the trustee didn't address it.' Mrs Helen Rowell of APRA also noted that:

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28 Explanatory Memorandum, p. 56.

29 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard*, 10 October 2017, p. 65.

30 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 84.

> …the primary focus is to get the trustee to address the issue in the first place, and that is how we would expect to achieve outcomes on 99.9 per cent of occasions.[31]

2.34 Some submitters also raised concerns about the threshold required to be satisfied to issue a direction. For example, noting that proposed subsection 131D(1) permits APRA to give a direction to an RSE licensee if APRA 'has reason to believe' that one of the criteria in paragraphs (a) through (j) is satisfied, the Australian Institute of Company Directors (AICD) submitted that:

> To ensure that this power has some appropriate checks and balances in place, the AICD recommends amending s 131D(1) of the Bill so that APRA is only empowered to act when it 'reasonably believes' one of the criteria has been satisfied. This requirement contains both an objective element (was the belief reasonable) and a subjective element (APRA did actually believe it). The AICD also is concerned that a number of the criteria in paragraphs (a) through (j) are diluted by phrasing such as the RSE Licensee being 'likely to' contravene, or that there 'might be' a material risk or material deterioration.[32]

2.35 Dr Scott Donald, Deputy Director of the Centre for Law, Markets and Regulation at UNSW Law, also provided evidence about the exclusion in the proposed legislation of a requirement that APRA's response to a situation be directed towards or proportionate to the risks or potential costs of the situation. He explained:

> Relevance and proportionality are important qualities of any regulatory scheme. Limiting the directions power to crisis situations would partly address this concern, but such circumscription would reduce the capacity of APRA to employ a proportionate response to less severe situations, and so some express requirement that the direction be crafted and calibrated to address the specific risk or harm would be preferable.[33]

2.36 ASFA also raised concerns that the proposed directions powers to be given to APRA are too broad.[34] Indeed, in its submission to the inquiry ISA considered the expansion of APRA's powers, noting that:

> The breadth of the expansion, the sensitivity of the powers to discretion, and the fact that some of the powers are not prudential in nature mean that the powers could achieve both good outcomes as well as bad ones, with little public safeguards to ensure the former. As a result, the proposals are not without risks.[35]

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31 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 90.

32 Australian Institute of Company Directors, *Submission 21*, p. 5.

33 Dr Scott Donald, *Submission 24*, [p. 5].

34 Dr Martin Fahy, Chief Executive Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

35 Industry Super Australia, *Submission 8*, p. 11.

2.37 The committee sought evidence from APRA regarding these concerns and they explained that the new directions power is similar to the directions power that they currently have for other APRA-regulated industries. APRA's Deputy Chairman, Mrs Helen Rowell, described the new powers as a 'reserve power' which would be used rarely, and that 'in practice, provides sufficient impetus for issues that [APRA] raise[s] to get addressed without us having to actually resort to using the directions power'.[36]

Reporting standards

2.38 The Measures No. 1 bill amends the *Financial Sector (Collection of Data) Act 2001* (FSCODA) to provide APRA with the ability to obtain information on expenses incurred by the RSE and RSE licensees in managing or operating the RSE.[37] Specifically, it gives APRA the power to make reporting standards that require the RSE licensee to report expenses relating to investments of an RSE on a look through basis.[38]

2.39 These measures are aimed to ensure greater transparency, in that members and APRA alike will be able to more easily access information relating to how superannuation funds are spending members' money.[39]

2.40 APRA noted that the proposal to permit them to collect additional data about expenditure on a look-through basis will address deficiencies and inconsistencies in the information that is currently reported to APRA; and that it will also provide additional transparency on the ultimate purpose and destination of payments than is currently available.[40]

2.41 Stakeholders also brought to the committee's attention reporting requirements with which superannuation funds currently need to comply (such as, *ASIC's Regulatory Guide 97: Fee and cost disclosure* (RG 97)), and questioned the usefulness of the additional requirements. For example, ASFA commented that this measure had the potential to increase the reporting burden on superannuation funds and noted that funds are currently adjusting for the introduction of the RG 97 regime as well as producing the annual statistical returns and quarterly returns, which is information placed in the public domain. Dr Martin Fahy explained that:

> Our concern is not about transparency and disclosures per se. That's how the market for ideas works. What we are concerned about is the level of granularity and its usefulness. Is a particular level of granularity useful to a

36 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 88.

37 Explanatory Memorandum, p. 7.

38 Explanatory Memorandum, p. 113.

39 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7313.

40 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 86.

> fund member? We have concerns that it wouldn't be, because they are already overwhelmed.[41]

Director penalties

2.42 The Measures No. 1 bill amends the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of members.[42] As noted in Chapter One, these measures are proposed in response to concerns raised in the Financial System Inquiry (FSI), which the government accepted in 2015.

2.43 Currently trustees do not face civil or criminal penalties for breaching their duties, and this bill aims to:

> …strengthen the accountability of trustee directors by making them subject to civil and criminal penalties for breaches of their fiduciary duties.[43]

2.44 The proposed measures provide for a maximum penalty of five years jail for serious misconduct; and a maximum of $420 000 in civil penalties per director.

2.45 These measures were broadly supported by submitters to the inquiry who commented that, in principle, this reform is a positive step that seeks to discourage poor practices.[44]

2.46 Mr Beckett, Principal Adviser, Retirement Income Policy Division of the Department of the Treasury explained that the measures have been drafted to impose similar criminal and civil penalties on directors of managed investment schemes who have a fiduciary duty to members, as is provided for under the *Corporations Act 2001*. Mr Beckett also drew the committee's attention to the fact that the criminal and civil penalties proposed in the Measure No. 1 bill stem directly from Recommendation 13 of the FSI report.[45]

2.47 ISA, Mercer and the Law Council of Australia also commented that this schedule would expose superannuation trustee directors to greater risk of personal liability than other directors in Australia.[46]

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41 Dr Martin Fahy, Chief Executive Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

42 Explanatory Memorandum, p. 4.

43 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7313.

44 See for example Industry Super Australia, *Submission 8*, p. 15; Financial Planning Association of Australia, *Submission 20*, p. 1; Australian Institute of Company Directors, *Submission 21*, p. 7; SMSF Association, *Submission 32*, p.2; Australian Institute of Superannuation Trustees, *Submission 34*, p. 4.

45 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 84.

46 Industry Super Australia, *Submission 8*, p. 15; Mercer, *Submission 16*, [p. 1]; Law Council of Australia, *Submission 37*, p. 7.

2.48 The AICD supported the objective of the director penalties measures proposed in the Measures No. 1 bill; however, noted its concern that the measure 'goes beyond equivalence' because:

- there is already a mechanism in the SIS Act to hold RSE Licensee directors directly accountable to members with the leave of the court by virtue of the covenants imposed by section 52A of the SIS Act In addition, APRA can cause civil proceedings to be commenced in the name of a person if, after investigation, the proceedings appear to APRA to be in the public interest (section 298 of the SIS Act). The Bill anticipates that the SIS Act will contain two parallel systems for holding RSE Licensee directors accountable but does not address the consequences of that co-existence, most notably for a member-initiated suit which follows an APRA prosecution.
- The considerable information advantage that APRA will have as a result of the directions power would enable the regulator to acquire and use information that would not ordinarily be available under discovery in a litigation context, or to ASIC under its existing investigatory powers. These powers have been carefully calibrated over time to ensure they are balanced and fair, and accord with principles of justice and the rule of law. The analogous regime administered by ASIC with respect to responsible entities contains a carefully calibrated set of checks and balances to ensure that it cannot abuse its position as regulator in prosecutions. The requirement that the government be a model litigator is another manifestation of this concern that the coercive powers of the state not be abused.[47]

2.49 ASFA also questioned whether the proposed penalties for directors would have adequate protections, and suggested that there ought to be statutory defences available which reflect the common law defences.[48]

Portfolio holdings disclosure

2.50 The Measures No. 1 bill amends the Corporations Act to refine the requirements for RSE licensees to make their portfolio holdings publically available.[49]

2.51 The purpose of these amendments is to ensure that superannuation fund members, and others including financial analysts, have access to publicly available information about the portfolio holdings of superannuation funds, while minimising the compliance burden on RSE licensees. Under the proposed provisions, superannuation funds will be required to disclose on a semi-annual basis:

- investments (down to the underlying asset) that they hold directly or through associated entities; and
- their initial investments into non-associated entities.

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47 Australian Institute of Company Directors, *Submission 21*, p. 7.

48 Australian Superannuation Funds of Australia, *Submission 28*, p. 2 and pp. 4–5.

49 Explanatory Memorandum, p. 5.

The aim of these measures is to ensure Australia's superannuation system remains consistent with international best practice.[50]

2.52 Amendments are made to the existing public holdings disclosure obligations in the Corporations Act. Two important changes to the obligations are the removal of:

- the obligation to include information about financial products, or other property that non-associated entities have directly invested in; and
- the reporting obligations on parties to contracts and arrangements that acquire a financial product using the assets, or assets derived from assets, of an RSE.[51]

2.53 Mr Beckett from the Treasury explained that generally, RSE licensees in the retail, corporate, industry or government sectors will be required to disclose underlying financial assets on an option by option basis. He specified that this would apply to direct holdings and holdings through related entities, however, it would not apply to non-associated entities. Mr Beckett explained that the proposed portfolio measures were:

> …making the arrangement more manageable for superannuation funds by saying you go down to the financial product level for each option in terms of direct and associated holdings but you stop at the first non-associated entity level in respect of non-associated entities. That's the level at which you disclose, and there will be regulations saying exactly how that's done, and it will happen twice a year.[52]

2.54 While stakeholders supported the portfolio holdings disclosure measures, and agreed that they would improve transparency and assist consumers to better understand and compare super products in relation to direct holdings and holdings through related entities;[53] the majority of submitters expressed concerns that the measures will not apply to non-associated entities and thereby reduce the obligations of such entities.

2.55 ISA and the Australian Council of Trade Unions (ACTU) noted their concerns that the portfolio holdings disclosure measures would amend current requirements so that the disclosure requirement does not apply to choice products that contain multiple investment options (an intrinsic feature of choice products).[54] The ACTU also noted that a superannuation fund which invested its assets in a pooled superannuation trust (which was not a connected entity) would not be required to disclose its portfolio

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50 Senator the Hon. James McGrath, Assistant Minister to the Prime Minister, Second Reading Speech, Senate Hansard, 14 September 2017, p. 7314.

51 Explanatory Memorandum, p. 78.

52 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

53 See for example, Australian Institute of Superannuation Trustees, *Submission 34*, p. 26.

54 Industry Super Australia, *Submission 8*, p. 21; Australian Council of Trade Unions, *Submission 9*, p. 2.

holdings.[55] In addition to raising concerns about the reduced obligations for non-associated entities, AIST suggested that there was a need for consistent disclosure methodology reporting.[56]

2.56 However, in evidence before the committee, Treasury confirmed that there is no platform carve-out in the portfolio holdings disclosure provisions; and that they apply equally to platforms and other structures.[57]

2.57 ASFA also expressed concerns about the protection of confidential information about commercially sensitive assets and the effect this may have on disclosure and application for relief to ASIC (where asset values exceeds 5%).[58] They also raised concerns about the proposed 31 December 2018 commencement date of the portfolio holdings measures, arguing that:

> Given the time it will take to consult on the content of the regulations, some of which is highly complex, the 2018 target will not give our members enough time to make the necessary system changes. [59]

Annual members' meetings

2.58 The Measures No. 1 bill proposes to amend the SIS Act to require RSE licensees to hold annual members' meetings (AMMs)[60] to discuss key aspects of the fund and provide members with a forum to ask questions about all areas of the fund's performance and operations.

2.59 To provide flexibility and minimise compliance costs, trustees will have the option to hold AMMs electronically.[61]

2.60 Submitters broadly supported the principle of the amendments to increase member engagement. In particular, CHOICE said that they were pleased to see 'the attention on increasing member engagement with superannuation funds…through annual members meetings'.[62] However, CHOICE also noted that an AMM may not be the most productive or efficient way of achieving this outcome, noting that:

> …in principle an AMM is a positive step towards better member engagement, but greater thought could be given to how these meetings could empower members.[63]

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55 ACTU, *Submission 9*, p. 2.

56 Australian Institute of Superannuation Trustees, *Submission 34*, p. 24.

57 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 81.

58 Association of Superannuation Funds of Australia, *Submission 28*, p. 6.

59 Association of Superannuation Funds of Australia, *Submission 28*, p. 6.

60 Explanatory Memorandum, p. 6.

61 Explanatory Memorandum, p. 90.

62 Mr Alan Kirkland, Chief Executive Officer, CHOICE, *Proof Committee Hansard*, 10 October 2017, p. 25.

63 CHOICE, *Submission 26*, pp. 7–8.

2.61 ISA indicated their support for AMMs, noting that the Review into the Board Governance of Not-for-Profit Superannuation Funds conducted by Mr Bernie Fraser recommended regular member meetings.[64]

2.62 A number of submitters including ISA, Mercer, ASFA and AMP[65] also contended that introducing AMMs would involve significant costs and fund resources. These submitters noted that they considered the costs involved to be in excess of the estimated costings put forward in the explanatory materials to the bill.[66] ASFA also contended that there 'could be a better and more cost effective mechanism to address concerns about member engagement'.[67]

2.63 AIST also considered that superannuation funds should have the flexibility to determine how they engage with their members.[68] AICD further stated that the AMM measures in the Measures No. 1 bill are too prescriptive.[69] Dr Scott Donald also cautioned that the proposed AMM measures may not achieve their desired objective.[70]

2.64 Some submitters also raised concerns about the way the legislation has been drafted, noting that in its current form, it appears as though all defined benefit plan actuaries would be required to attend AMMs. ANZ recommended that the requirement be that only one actuary attend.[71] Mercer explained that:

> On our reading, the draft legislation would require every actuary to attend the AMM, which would clearly be impractical as well as costly.[72]

Committee view

2.65 The committee believes that the broader 'outcomes test' will deliver transparency and promote the interests of MySuper members. The committee acknowledges concerns expressed by submitters that choice superannuation products are not subject to the same test. However, the committee also notes that there has always been a higher standard for MySuper products given it protects default money. Despite this, the committee notes that APRA is currently consulting on a proposal to apply an 'outcomes test' to all products, not just default MySuper products. The

64 Industry Super Australia, *Submission 8*, p. 21.

65 Industry Super Australia, *Submission 8*; Mercer, *Submission 16*; ASFA, *Submission 28*; AMP, *Submission 20*.

66 Association of Superannuation Funds of Australia, *Submission 28,* p. 4.

67 Mr Glen McCrea, Chief Policy Officer, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 48.

68 Australian Institute of Superannuation Trustees, *Submission 34*, p. 28.

69 Mr Matthew McGirr, Policy Adviser, Australian Institute of Company Directors, *Proof Committee Hansard*, 10 October 2017, pp. 53–54.

70 Dr Scott Donald, *Submission 24*, p. 6.

71 ANZ, *Submission 1*, p. 1.

72 Mercer, *Submission 16*, p. 16.

committee is of the opinion that this is the most efficient means through which the choice sector can be strengthened for the benefit of members.

2.66 The committee is focussed on ensuring Australia's superannuation system delivers outcomes for members first and foremost; and believes that Australia needs a stronger regulatory framework to protect members' money and interests. The committee notes that the measures proposed in the Measures No. 1 bill to enhance APRA's capabilities, harmonise the directions powers across the banking, insurance and superannuation industries. The committee is of the opinion that strengthening APRA's direction powers will enable early stage intervention to address prudential concerns in a manner that prevents against consumer harm. The committee acknowledges submitters concerns about the breadth of APRA's new powers, however, the committee notes that the new directions powers are similar to the directions powers they have for other APRA-regulated industries. Indeed, the committee is of the view that further circumscription of the directions powers has the potential to reduce the capacity of APRA to employ a proportionate response to less severe situations.

2.67 The committee recognises that a compulsory superannuation system needs to be transparent and accountable for the way it spends members' money. The committee considers that by enabling APRA to make reporting standards that require funds to provide detailed expense information about their operations and management will give consumers much needed transparency, and both consumers and APRA alike, a better understanding of how funds are spending members' money. The committee is cognisant that superannuation funds are currently required to comply with other reporting requirements and notes stakeholder concerns about the impact of the proposed additional reporting requirements. However, in the committee's view the additional reporting requirements will address deficiencies and inconsistences in the information that is currently reported to APRA and provide additional transparency.

2.68 The committee welcomes stakeholders in principle support for the measures which strengthen the accountability of trustee directors by making them subject to civil and criminal penalties for breaching their fiduciary duties. The committee also notes that the director penalties provisions of the Measures No. 1 bill implement a recommendation of the Financial System Inquiry, which the government accepted in 2017. The committee acknowledges concerns raised by submitters about the exposure of directors and safeguards, however, notes that the proposed measures would impose similar civil and criminal penalties as those on directors of managed investment schemes who have a fiduciary duty to members under the Corporations Act.

2.69 The committee believes that Australia's superannuation system is among the best in the world; and that the proposed changes to portfolio holdings disclosure will ensure that Australia's superannuation system remains consistent with international best practice. The committee notes that while stakeholders supported the portfolio holdings disclosure measures, and agreed that they would improve transparency and assist consumers to better understand and compare super products in relation to direct holdings and holdings through related entities; concerns were raised about the fact that the measures will not apply to non-associated entities and thereby reduce the obligations of such entities. The committee notes evidence that there is no platform

carve-out in the portfolio holdings disclosure provisions; and that they apply equally to platforms and other structures, and importantly, will apply to all RSE licensees, in all sectors: retail, corporate, industry or government.

2.70 The committee believes that increased member engagement with their superannuation fund is an important part of ensuring accountability in the industry. The committee acknowledges that the new requirements to hold annual members meetings will impose additional costs on superannuation funds. However, the committee notes that the proposed changes allow superannuation funds to hold annual member meetings electronically, providing flexibility and minimising compliance costs. With respect to confusion among stakeholders surrounding the current form of the legislation requiring actuaries to attend annual members meetings, the committee encourages re-examination of the provisions to ensure they will operate as intended.

Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

2.71 The STA bill implements the intent of two major independent reviews of Australia's financial and superannuation systems: the 2010 Super System Review (Cooper Review) and 2014 Financial System Inquiry (FSI). Both reviews recommended the need for independent directors on all superannuation boards. Both Chairmen of these reviews, Mr Jeremy Cooper and Mr David Murray AO, provided evidence to the committee confirming their continued support for the need for independent directors on all superannuation fund boards and support for the measures in the STA bill to be implemented.

2.72 The reforms are designed to strengthen the governance arrangements across the entire superannuation industry by facilitating more diversity and skills and strengthening conflict management.[73] To achieve this, the STA Bill introduces a requirement for RSE licensees to have at least one-third independent directors and for the Chair of the Board of directors to be one of those independent directors as well as an independent Chair.[74] The evidence received in relation to these proposed measures is discussed below.

Support for a consistent definition of 'independent'

2.73 The STA bill introduces a definition of 'independent'[75] and gives APRA the power to determine whether an individual satisfies the legislated definition of independent.[76]

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73 The Hon Kelly O'Dwyer MP, Media Release, *Turnbull Government puts super members first*, 14 September 2017.

74 STA Bill, Schedule 1. It also amends the *Governance of Australian Government Superannuation Schemes Act 2011* to subject civilian and military superannuation schemes to these same standards. See: STA Bill, Schedule 2.

75 STA Bill, Schedule 1. The proposed definition of 'independent' is set out in section 87 of the bill.

76 STA Bill, Schedule 1. The proposed definition of 'independent' is set out in section 88 of the bill.

2.74 Under this new definition, individuals who would not be considered independent includes those who are substantial shareholders of the RSE licensee, or who have had a material business relationship with the RSE licensee within the last three years, or who have served as a director or executive officer of the RSE licensee.[77]

2.75 The majority of submitters to the inquiry supported the introduction of a consistent definition of 'independent'.

2.76 For example, Mr David Murray AO believed, 'this is black and white. It should be very clear what the expectations on independents are'.[78]

2.77 The Financial Services Council also supported the introduction of a consistent definition, noting that the SIS Act 'does not effectively deal with a range of potential conflicts that arise in different types of superannuation funds, including retail, industry, corporate and public funds'.[79]

2.78 However, in considering the definition of 'independent' proposed in the STA bill, some stakeholders suggested alternative constructions based on more discretion for trustees to determine the meaning of 'independence'.

2.79 ASFA supported the proposed requirement for superannuation trustees to have one-third independent directors but noted that under the proposed definition:

> …a large cohort of very qualified people who currently work in the sector, work in financial services, would be excluded by the current definition—and we think to the detriment of the overall system.[80]

2.80 ASFA also suggested that the definition of 'independent' that should apply is the definition that currently exists within the wider corporate governance requirement of the ASX, tailored to the reality of superannuation funds. Dr Martin Fahy explained:

> What that would do is not only give us consistency across the wider corporate-governance environment but also ensure that people who are currently defined as independents for that purpose would also be in a position to bring their skills and experiences to bear on the superannuation sector.[81]

2.81 As noted above, APRA will be given the role of determining whether a director is independent. Professor Graeme Samuel AC, who conducted the review of

77 Explanatory Memorandum, p. 11.

78 Mr David Murray AO, *Proof Committee Hansard*, 10 October 2017, p. 2.

79 Financial Services Council, *Submission 30*, p. 6.

80 Dr Martin Fahy, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, p. 46.

81 Dr Martin Fahy, Association of Superannuation Funds of Australia, *Proof Committee Hansard*, 10 October 2017, pp. 45–46.

Cbus and its governance in 2015, agreed that APRA would be well qualified to identify who is an independent director.[82]

2.82 Mrs Helen Rowell, Deputy Chairman of APRA explained to the committee that there would be a 'degree of judgement and flexibility around how those provisions would be interpreted in practice'. She further noted that an assessment of a director's independence would initially be made by the trustees themselves and that they would then consult APRA:

> They may consult with us on that but primarily the onus for those sorts of decisions is, in the first instance, with the trustee. We would expect them to look at the materiality of the particular relationship and whether it precluded a view that they were independent or not.
>
> If an RSE licensee determines that an individual does not meet the definition as set out in the legislation, however, still deems that the individual is sufficiently independent of the RSE licensee, the case can be taken to APRA for determination.[83]

The value of independence

2.83 As noted above, the STA bill implements recommendations made by the FSI and the Cooper Review. It proposes to introduce new trustee arrangements to require RSE licensees to have at least one-third independent directors and for the Chair of the Board of directors to be one of these independent directors.

2.84 Mr David Murray AO, who led the FSI, commented that:

> When a governing body sits to serve the interests of the people it's meant to serve, it shouldn't be constrained by peripheral interests. That's why, in my view, independence is very important—independence from the executive and independence from peripheral interests.[84]

2.85 Mr Jeremy Cooper, who led the Super System Review agreed that independent directors on the boards of superannuation funds would provide better governance in the industry.

> I think there's an abundance of evidence that independence is a good thing.[85]

2.86 Professor Graeme Samuel AC also pointed out the value of independent directors, commenting that:

> …independent directors can be very, very important, because if they have got the right quality and the right skills and the courage of their convictions—and I emphasise that, by the way—then they can have a

82 Professor Graeme Samuel AC, *Proof Committee Hansard*, 10 October 2017, pp. 15–16.

83 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, p. 92.

84 Mr David Murray AO, *Proof Committee Hansard*, 10 October 2017, p. 5.

85 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

> significant role to play in just ensuring that dispassionate, objective positions are put on any particular issues where conflicts might arise.[86]

2.87 FSC offered its support for the introduction of a legislative measure that requires at least one-third of independent directors. FSC had itself introduced a standard for its members that required them to appoint a majority of independent directors and an independent Chair as recommended in the Cooper Review. In evidence before the committee, Mr Briggs said:

> The package would, for the first time, establish a legislated minimum standard of governance that covers every single superannuation fund in the industry. There would be no outliers. This point is critical: this debate should not be viewed through the lens of one sector versus another.[87]

2.88 Mr Briggs went on to comment that:

> An efficient and well-run superannuation fund—whether it's an industry fund, retail fund, corporate fund or government fund—has nothing to fear from a high level of oversight in terms of not only prudential oversight but the introduction of independent directors on their boards.[88]

2.89 Similarly CHOICE supported the role of independent board director members in strengthening governance in the super sector. Mr Kirkland from CHOICE explained that:

> Informing that view, we note that super is compulsory for all employees, we all depend upon the quality and stability of the system, and we think it's important that funds are held to high standards of governance.[89]

2.90 AICD were also of the opinion that the introduction of the one-third independent directors will strengthen governance within the superannuation sector. Ms Louise Petchler from AICD explained that:

> Independent directors bring a unique perspective as they are not aligned or perceived to be aligned with management or sectional interests. Good governance codes around the world recognise that independent directors contribute positively to the decision-making of boards. Their objective view can support effective evaluation of performance for both the board and management.[90]

2.91 In contrast, Mr Bernie Fraser explained to the committee that in his view, mandating a quota of independent directors was not the key to good governance, but

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86 Professor Graeme Samuel AC, *Proof Committee Hansard*, 10 October 2017, p. 14.

87 Mr Blake Briggs, Financial Services Council, *Proof Committee Hansard*, 10 October 2017, p. 20.

88 Mr Blake Briggs, Financial Services Council, *Proof Committee Hansard*, 10 October 2017, p. 19.

89 Mr Alan Kirkland, CHOICE, *Proof Committee Hansard*, 10 October 2017, p. 25.

90 Ms Louise Petchler, Australian Institute of Company Directors, *Proof Committee Hansard*, 10 October 2017, p. 51.

rather that good governance stemmed from individuals who have the necessary skills and values to make decisions in the interest of the superannuation fund members. While Mr Fraser viewed the question of independence as peripheral, when compared with the desirable skills and values, he did not consider that mandating independence had negative consequences.[91]

2.92 AIST also raised concerns about the measures 'interfering' with superannuation fund's owner's rights to run their fund by mandating how their boards are structured. AIST advised the committee that this:

> …is not something that the government does for listed companies nor, indeed, any other APRA-regulated financial institution.[92]

2.93 However it was noted that government does not mandate the purchase of shares in listed companies or the purchase of products from other APRA regulated financial institutions. Mr Cooper commented that legislating the requirement for independent directors is necessary due to the fact that superannuation is a compulsory system:

> You cannot sell out of super. If you don't like it, that's just too bad—you have to be in it. So the government has an onus in this regard to make sure that there are uniform high standards.[93]

Equal representation model vs independent directors

2.94 In introducing new minimum independence requirements for directors on superannuation fund boards, the new law will replace the existing requirements relating to equal representation of members and employers on the boards of standard employer-sponsored superannuation funds.[94]

2.95 A number of submitters to the inquiry contended that the removal of equal representation and introduction of the proposed one-third set up could potentially lead to worse outcomes for members of superannuation funds.

2.96 Some of these submitters considered that the changes proposed in the STA Bill are unnecessary and unfairly target industry super funds. In particular, ISA contended that industry super funds should not be required to change their equal representation model given that their performance has been consistently stronger than that of retail super funds which are more closely aligned to ASX corporate governance principles. ISA noted that:

> If implemented, the measures contained in the Bill will impose additional costs on members and substantially undermine a key pillar of the not-for-profit superannuation industry. At risk is the distinctive culture and ethos of

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91 Mr Bernie Fraser, *Proof Committee Hansard*, 10 October 2017, p. 32.

92 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 57.

93 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

94 Explanatory Memorandum, p. 11.

> service to others that defines not-for-profit superannuation and which has helped to deliver superior returns to members.[95]

2.97 AIST also commented on the proposal to remove the requirement of equal representation, noting that this model has been 'the cornerstone of member representation and accountability in the superannuation industry for decades'.[96] Ms Eva Scheerlink, AIST's Chief Executive Officer argued that:

> Representation of members and employers on super fund boards ensures a balance in decision-making and a true understanding of the membership base.[97]

2.98 The committee also heard evidence from the ACTU who explained:

> We want to maintain an approach whereby the people who are on the boards of the fund are allowed to determine what's the most effective model for their industry. Having determined the most effective model, we want an arrangement where they concentrate on working on the interests of the members as the primary goal towards which they serve as trustees.[98]

2.99 Mr Jeremy Cooper noted that those funds that are currently using equal representation models, were complying with their own constitutions as opposed to relying on any current legislation.[99] Mr Cooper further noted that the proposed legislation is sympathetic to the equal representation model, pointing out that those funds that will be required to introduce one-third independent directors will 'merely need to rearrange themselves'. He explained:

> To me, that does not disrupt the benefits of equal representation: you still have member representatives and employer representatives sitting there with an independent chair. I regard that as a 21st century model, but it doesn't break the existing model.[100]

2.100 Mr Cooper also highlighted that three industry super funds—Hosptplus, Unisuper, and, Equip—had each already transitioned to a one-third independent board with an independent chair.[101] He also drew the committee's attention to the Netherlands and Hong Kong as countries with successful and strong performing superannuation industries with a majority of independent directors.[102]

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95 Industry Super Australia, *Submission 8.1*, p. 1.

96 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 56.

97 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, *Proof Committee Hansard*, 10 October 2017, p. 56.

98 Mr Brian Daley, Australian Council of Trade Unions, *Proof Committee Hansard*, 10 October 2017, pp. 74–75.

99 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 10.

100 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 12.

101 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 9.

102 Mr Jeremy Cooper, *Proof Committee Hansard*, 10 October 2017, p. 8.

2.101 Mrs Helen Rowell, Deputy Chairman of APRA informed the committee of APRA's support for the proposed amendments to require a minimum of one-third independent directors and an independent chair on superannuation boards, observing that:

> While some in the industry contend that the existing arrangements serve their members well, APRA sees little downside to an additional injection of independence.[103]

2.102 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division of the Treasury, also explained that the purpose of the STA Bill is to impose a minimum standard of independence across the entire superannuation industry. It will apply equally to retail, corporate, industry, and government funds. He further specified that:

> [W]hat the government is trying to do as part of this package is lift [governance] standards, especially on the management of conflicts and related party transactions. I think that is an issue in the not-for-profit sector and I also think it's an issue in the for-profit sector. Part of this legislation is also about lifting standards in the retail sector. So I don't see it as something that is specifically targeted at the not-for-profit sector.[104]

Committee view

2.103 The committee believes that ensuring directors on the boards of superannuation funds are independent is critical to providing better governance in the industry; and the committee notes that the majority of submitters to the inquiry supported the introduction of a consistent definition of 'independent'.

2.104 The committee acknowledges that a number of submitters have called for alternative, more flexible and discretionary definitions of 'independent' to be used, noting that the proposed definition does not align with the wider corporate governance requirement of the Australian Stock Exchange. However, superannuation is different because it is a mandated system. The committee considers that the certainty offered by an objective, legislated definition of independence is appropriate and will ensure the objective of the STA bill is achieved. This was the view of the regulator. The committee also considers that APRA is well qualified to identify who is and who is not an independent director according to the law.

2.105 The committee agrees with stakeholders that the introduction of a requirement on RSE licensees to have one-third independent directors, and a Chair of the Board of directors who is one of those independent directors, will strengthen governance in the superannuation sector. While the committee acknowledges that good governance also stems from ensuring directors have the requisite skills and values to perform their duties, the committee considers that establishing a legislative minimum standard of governance that covers the independence of directors is a step in the right direction.

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103 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, *Proof Committee Hansard*, 10 October 2017, pp. 86–87.

104 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, *Proof Committee Hansard*, 10 October 2017, p. 83.

2.106 The committee acknowledges the concerns raised by some submitters that the removal of the equal representation model, and the introduction of the proposed one-third set up, will unfairly target industry super funds. However, the committee considers that the amendments proposed in the STA bill are sympathetic to the equal representation model, and that it is reasonable to require those funds who are currently using equal representation models to rearrange themselves to introduce the one-third independent directors model.

Recommendation 1

2.107 The committee recommends that the Senate pass the bills.

Senator Jane Hume
Chair

Dissenting Report by Labor Senators

Consultation Process

1.1 At the outset, Labor Senators express their disappointment that these bills were introduced into Parliament on 14th September 2017, on a Thursday morning on the last day of a two week sitting period. This was made worse when very short reporting dates were set for not only these bills, but also the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 and Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017.

1.2 Labor Senators also note Senator Gallagher's request in the Senate to extend the reporting date for the three superannuation bills given the complexity of the reforms and note that this motion was voted down by the Senate.

1.3 Labor Senators are concerned that these bills, which claim to improve governance in the superannuation sector, are being rushed through the committee by this Government. What is worse, no clear explanation of the short reporting date was even offered by the Government as a concession. As this report is tabled, it will be three weeks before the first opportunity to debate this legislation in the Senate. These three weeks could have been put to good use.

1.4 Labor Senators thank the Chair of the Committee for allowing two days of hearings to cover the four bills mentioned previously. Labor Senators want to thank Senator Hume and her office for being cooperative despite the unreasonable timeframes set by the Government.

1.5 Labor Senators wish to make the following points about these two bills and at the outset, want to say that Labor Senators reject both bills.

Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

Introduction

1.6 Labor Senators are proud of the Labor movement's history in establishing the modern superannuation system.

1.7 Labor Senators are proud of Labor's record in helping to establish industry funds (profit-to-member) – capital and labour at the same board tables, working together to enable workers to have a decent retirement. Labor has a proud record of bringing employers and employees, labour and capital, together to take on challenges of the day.

1.8 Industry funds are an important element of Australia's financial system and they offer alternative ways to run financial services firms. Industry funds, according to

analysis of APRA data by a number of stakeholders, have outperformed retail and corporate superannuation funds on average. It appears that industry funds have done a better job of making their 'customers' rich. Financial services firms worldwide can be prone to making themselves wealthy at the expense of customers, and is stated well in Fred Schwed's well-regarded book titled 'Where are the Customers' Yachts?', first published in 1940.[1] Recent scandals in the banking sector in Australia underscore this problem.

1.9 This competitive tension between industry funds and their trustee governance structure and other financial services firms with their corporate governance structure is a good thing for the sector. Ideally, it should be a race to the top to offer the best outcomes for working Australians. Unfortunately, this government, by undermining industry funds, might be promoting a race to the bottom.

1.10 Labor Senators note 2015 Senate Economics Legislation Committee report into the predecessor of this bill, 'Superannuation Legislation Amendment (Trustee Governance) Bill 2015' and the dissenting report by Labor Senators. Many of the findings in this dissenting report are still relevant and Labor Senators encourage people reading this report to consider the well-made comments set out by Labor Senators in 2015.

1.11 Labor Senators hold the same primary concern with this bill, in that it seeks to impose a corporate governance model on funds which operate under a trustee governance model.

1.12 The primary difference with the 2017 bill is that is has been introduced as a package with other superannuation bills to make the bill look more appealing.

Problems of corporate governance that are mitigated by the presence of independent directors

1.13 Corporate governance faces particular issues which need to be addressed and include:

- Board members having a fiduciary duty only to their shareholder owners, which can put at risk the needs of a company's customers; and
- The presence of executive directors, that is, management of the company having a presence on the board, where decisions might be taken that advantage management over the needs of shareholders.

1.14 Labor Senators note that profit-to-member funds do not normally face these same issues. As AIST note, profit-to-member funds do not face the shareholder-customer conflict and also do not have executive directors on their boards.

> Prescribing independent directors does not take into account the fact that layers of independence are entrenched within the profit-to-member model,

1 https://www.amazon.com/Where-Are-Customers-Yachts-Street/dp/0471770892

> these layers are: independence from management, structural independence, and independence safeguards derived from the broader regulatory framework.[2]

1.15 The trustee governance model has different governance challenges compared to corporate governance. Independent directors might be a suitable policy for corporate governance risks, but they might not be the best policy solution for trustee governance risks.

Independent directors

1.16 This legislation, like its predecessor, seeks to prescribe in law a definition for independence.

1.17 The superannuation peak body, ASFA, raised concerns that this approach could prevent a particular individual who could exercise independent judgement from being a director. Instead, ASFA recommended a principles based approach be adopted.[3]

1.18 ASFA went further and also stated that the ASX definition of independence has worked well and there were no systemic issues found with its operation:

> I think Australian capital markets and the Australian business community in general enjoy a reasonably high level of esteem internationally, as reflected in the flow of funds that come into this country as investment. Anecdotally, there is no evidence of systemic shortcomings in corporate governance on the basis of that definition.[4]

1.19 In proposing to mandate a minimum percentage of independent directors, the Government expects that decision making on boards will be improved.

1.20 However, witnesses such as Jeremy Cooper and Graeme Samuel stated that what should really be desired in board member selection is the concept of 'cognitive independence', that is, that each board member is able to think independently of other board members, with diversity of thought leading to better group decisions.

> Let me say it this way: all of the legislative mechanisms you are looking at will achieve what you might call structural independence, but what you really want is cognitive independence. It's extremely difficult to legislate for the second—it's almost accidental. You only learn that by talking to someone and hearing their ideas and so on. But it's the cognitive independence that you want.[5]

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2 Australian Institute of Superannuation Trustees, Submission 34, p. 6.

3 Association of Superannuation Funds of Australia, Submission 28, p. 4.

4 Dr Martin Fahy, Chief Executive Officer, Association of Superannuation Funds of Australia, Proof Committee Hansard, 10 October 2017, p. 46.

5 Mr Jeremy Cooper, Proof Committee Hansard, 10 October 2017, p. 10.

> …the view that I've always had as to 'independent directors' is—I heard Jeremy Cooper just describe it then as the cognitive description of 'independence'—that I prefer to use the qualitative description.[6]

1.21 It is clear from these observations that labels of 'independence' are not the goal. Graeme Samuel made this point very clearly:

> You can have as many so-called independent directors as you like, but if the quality of the directors concerned—if their ability to represent a dispassionate view, an objective view, and to have the courage of their convictions—is non-existent, then the independent directors are irrelevant.

1.22 Mr Bernie Fraser made the observation that questions of independence are secondary order issues for profit-to-member funds and that skills and values should be the primary consideration:

> The question of independence is peripheral, in my view, compared with those skills and values. If you've got a board table that is comprised, as most not-for-profit funds are, of directors who are committed, who share the values of the members-first approach and who have the skills to make the right decisions most of the time to handle the risks, that is the critical thing. The question of how many of the directors who sit around a board table happen to be independent is peripheral, in my view. It's not germane to the task and the challenges facing all super funds. That's not to say that there's a problem in independence as such—that's fine—but the priorities are the skills and the values. If you can get those from members, that's good. If you have to go outside the representative groups, the employers and the unions, to get the skills—okay, some of those would be independent in terms of the definitions of independence, but the critical thing is the skills and the values.

1.23 The Corporate Superannuation Association also raised concerns about arbitrarily imposing independent directors on some of their members:

> The situation where members directly elect their own representatives rather than relying on appointments by unions or other representative bodies, has certain governance benefits arising from the alignment of interests of members and trustee. We contend that where there is immediate member accountability, the best interests of the members are observed. In a fund that is not a public offer fund, we believe that member interests are better served in this way than by statutorily imposed trustee directors who have no connection with the workforce and no prior understanding of the employment situation and the members.[7]

1.24 This legislation also gives significant powers to APRA in deciding whether a board has selected a director who is sufficiently 'independent'. By giving this power to

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6 Professor Graeme Samuel AC, Proof Committee Hansard, 10 October 2017, pp. 15–16.

7 Corporate Superannuation Association, Submission 3, p. 3

APRA, the Government has further blurred the lines of accountability between ASIC and APRA in regulating corporate governance.

1.25 Given this blurring of responsibilities, Labor Senators echo the Shadow Treasurer's comments that a banking Royal Commission should include in its work a review of the regulatory roles of the RBA, ASIC and APRA in the financial services and banking industries.

Independent directors and retail funds

1.26 Labor Senators are broadly supportive of the FSC's work in establishing a standard for majority independent directors for corporate boards:

> We have sought to move the industry towards a higher standard of governance when introduced standard 20, our FSC superannuation governance standard. This requires our member funds to appoint a majority of independent directors and an independent chair, following on from the Cooper review of superannuation. We believe that this sets the high-water mark for corporate governance in the industry and meets the standards set by APRA for all the financial services companies that it covers.[8]

1.27 Labor Senators are also aware of examples where significant banking entities have one governance structure for their retail fund and another for their staff fund. For example, the Commonwealth Bank has a staff fund which has an equal representation trustee model and a retail fund which has a majority independent director model.[9]

1.28 Labor Senators believe that the presence of independent directors hasn't stopped scandals from emerging from some of the for-profit superannuation funds. Industry Super Australia tabled a document claiming that $480m in compensation, reimbursements, refunds, payments, remediation and consumer loss for alleged misconduct between the big four banks, Macquarie and AMP.[10] This document also includes details of:

- ANZ paying an additional $10.5m in compensation to 160,000 superannuation customers;
- CBA paying $16.3m to staff after a review of superannuation guarantee arrangements;
- NAB's superannuation trustee company paying $35m in compensation for two breaches involving failures in relation to provision of general advice; and

8 Mr Blake Briggs, Financial Services Council, Proof Committee Hansard, 10 October 2017, p. 19.

9 Table 1, Column E, rows 38 and 41, http://www.apra.gov.au/Super/Publications/Documents/2017-AFLSS-201606.xlsx

10 Industry Super Australia, Additional Documents, Tabled Document No. 2 at a public hearing in Sydney on 10 October 2017.

- Westpac's BT Financial Group paying $12 million to customers whose life insurance claims were knocked back.

1.29 Labor Senators believe that independent directors are no silver bullet to problems in the financial services and banking industries.

Mergers

1.30 The FSC claimed that the presence of independent directors would help with the merging of underperforming default funds:

> For example, as detailed in our submission, a major issue facing the industry has been the ongoing resistance of subscale and inefficient funds to resist merging with larger and more efficient funds. This is a major drag on returns for consumers. Our analysis has shown that the average consumer defaulted into a subscale fund as a result of the modern award system and may be as much as $170,000 worse off by retirement. There are 1.7 million consumer accounts containing $94 billion currently languishing in the 33 subscale funds in the award system.[11]

1.31 The argument made is that independent directors would act in the interests of members when non-independent directors might be 'conflicted by their relationship to a sponsoring organisation that may want to continue the fund as a going concern'.[12]

1.32 Industry Super Australia refuted this claim and stated that:

> Independent directors are no panacea to merger activity. Many independent directors, if they're professional independent directors, owe their likelihood to their directorships. If they're in a situation where a board is merging and their board position no longer is in existence, then they stand to lose financially as a consequence of that. I think it's well worthwhile looking at the detail in the APRA statistics to see the prevalence of small retail funds, which—despite the apparent prevalence of independent directors—are not consolidating at the rate that probably everyone would expect to see.[13]

Removal of requirement for equal representation

1.33 The bill not only mandates a minimum one-third independent directors, but also goes further by removing the requirement for equal representation. As stated by AIST:

> The removal of equal representation from the SIS act is equally concerning to us. The equal representation model of governance has been the

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11 Mr Blake Briggs, Financial Services Council, Proof Committee Hansard, 10 October 2017, p. 19.

12 Mr Blake Briggs, Financial Services Council, Proof Committee Hansard, 10 October 2017, p. 20.

13 Mr Matthew Linden, Director of Public Affairs, Industry Super Australia, *Proof Committee Hansard,* 10 October 2017, p. 64.

> cornerstone of member representation and accountability in the superannuation industry for decades.[14]

1.34 Consumer representative group Choice also shared concerns about possible outcomes of this bill in their submission:

> The Bill has the potential to destroy the unique value and culture brought by member directors. Our review of the available evidence suggests that member directors, where appropriately selected, can contribute to good governance, so a role for them should be retained.[15]

1.35 Choice went further in testimony adding:

> We're particularly concerned, given our role as a consumer organisation, about the loss of member representation. This is consistent with our position over time. We've long maintained and supported member participation in the governance of super boards.[16]

1.36 The Australian Council of Trade Unions stated that this measure would be a significant step backwards on fund governance:

> You ask the question: is it possible for an organisation to basically hold the other two-thirds of the shares? That is correct. That could happen under the bill. And, if that was the case, then clearly you would have a situation where there was effective control over a company, and the model which I say we have eschewed for 30 years would be the model which took place for a default superannuation arrangement. We think that is inappropriate.[17]

1.37 Labor Senators believe that this move away from the concept of equal representation is an unwarranted step that could have significant adverse outcomes for members.

Trustee Governance

1.38 Profit-to-member funds have not been idle when reviewing their own governance arrangements. Two pieces of significant work have been carried out in parallel with each other.

1.39 The first is the AIST governance code that will be mandatory for members next year. As stated by AIST in testimony:

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14 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, Proof Committee Hansard, 10 October 2017, p. 56.

15 CHOICE, Submission 26, pp. 7–8.

16 Mr Alan Kirkland, Chief Executive Officer, CHOICE, Proof Committee Hansard, 10 October 2017, p. 25.

17 Mr Brian Daley, Australian Council of Trade Unions, Proof Committee Hansard, 10 October 2017, p. 74.

> In recognition of this and our commitment to a culture of continuous improvement in governance practices, AIST this year launched a governance code that will be mandatory for more than 50 AIST member funds from 1 July 2018. This builds on a voluntary set of guidelines that we published first in 2011. The code and accompanying guidance are designed to firmly position profit-to-member super funds at the leading edge of international best practice. The code was developed separately but in tandem with the Fraser review and follows a commitment made by AIST and Industry Super Australia to the Australian Senate at the end of 2015. The code mirrors ASX corporate governance principles, applying them obviously in the superannuation context, to reflect an industry that is structured and regulated differently to listed companies. The principles-based code contains 21 requirements that funds must report against annually on an 'if not, why not' basis. These requirements cover member engagement opportunities, equal director voting rights, strong risk culture, board renewal, chair appointment, disclosure, transparency, diversity and remuneration. Member compliance with the code will be monitored by an independent body which can make recommendations to AIST on areas where further guidance may be warranted.[18]

1.40 The second undertaking was the Fraser review, commissioned after the 2015 bill was not passed by the Senate. Mr Fraser was unequivocal in his view that the governance challenges for profit-to-member boards would be in finding people with the right skills and values:

> There's always scope to improve things, and these are dynamic things. Funds have been improving. The governance of all funds has been changing and improving over time, and this will continue to be a requirement. But what has really underlined the better performance and the better behaviour of the not-for-profit funds, as I say, has been their values and their skills. They're the critical things that are going to be important in determining the future performance of funds. That's going to be a very challenging circumstance. Investment risks and other risks, as you all know, are increasing. They're on the rise for all kinds of reasons: globalisation, technological changes and geopolitical developments of all kinds. It's going to be more and more challenging to maintain the values. More importantly, maintaining the values in the not-for-profit funds is pretty clear because there are no real conflicts with other parties and other interests. Maintaining the skills and developing the right skill mix—and these are going to be all sorts of skills: technological skills and geopolitical skills, not just financial skills, which have been the focus in the past. Getting those skills and keeping them is going to be a challenge for all funds, including the not-for-profit funds.[19]

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18 Ms Eva Scheerlink, Chief Executive Officer, Australian Institute of Superannuation Trustees, Proof Committee Hansard, 10 October 2017, p. 56.

19 Mr Bernie Fraser, *Proof Committee Hansard*, 10 October 2017, p. 30.

1.41 Labor Senators note the work by profit-to-member funds in improving their governance arrangements and welcome the introduction of the AIST governance code.

The justification for the requirement of independent directors

1.42 Several assertions were made to justify the introduction of this bill. Two notable arguments were made at the hearing by Mr Murray AO:

> Firstly, we had picked up a model in which employee representatives and employer representatives were present from the defined benefit system.[20]
>
> Next, the governance system is inconsistent with public offer rules under the corporations law and for managed investment schemes.[21]

1.43 In neither case was the argument made that there was a problem with existing governance arrangements in profit-to-member funds. In fact, the balance of evidence suggests, that on average, profit-to-member funds outperform their rivals.[22]

1.44 Regarding the first argument of equal representation and the defined benefit system, it should be noted that Denmark and the Netherlands require equal representation, and are ranked as the top two retirement income systems by the Melbourne-Mercer Global Pensions Index.[23]

1.45 Mr Cooper gave evidence to suggest that the Netherlands were moving away from strict equal representation:

> Leading pension systems are actually moving away from the strict equal representation model and are putting independent directors on their pension schemes—most notably—and, I suppose, of most relevance for Australia, the Netherlands, which is seen as being in the elite top two of pension systems.[24]

1.46 In questions on notice to this committee, Industry Super Australia responded, saying that the move by the Netherlands towards independent directors was a voluntary suggestion that boards could adopt if they believed that it was in the interests of their members:

> In 2014 the Dutch Labour Foundation (a joint union-employer body), in collaboration with the Federation of the Dutch Pension Funds, published a new 'Code of the Dutch Pension Funds.
>
> This Code contained suggestions for how Dutch pension funds could model their governance arrangements. These suggestions included giving

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20 Mr David Murray AO, Proof Committee Hansard, 10 October 2017, p. 1.

21 Mr David Murray AO, Proof Committee Hansard, 10 October 2017, p. 2.

22 Industry Super Australia, Tabled Document 3, tabled at a public hearing in Sydney on 10 October 2017.

23 Industry Super Australia, *Submission 8.1*, p. 13.

24 Mr Jeremy Cooper, Proof Committee Hansard, 10 October 2017, p. 8.

> consideration to appointing 1 or 2 external/independent members to a board if a fund believed such appointments would be in the best interests of members.
>
> The Code is principles-based and does not prescribe appointing external members. Funds can adopt some, all or none of the Code depending on their particular circumstances. Where funds have complying equal representation arrangements, they are free to continue with those arrangements if they believe them to be in the best interests of members.[25]

1.47 Regarding the second argument of rules in other laws, it does not seem clear that rules under corporations law and for managed investment schemes should automatically inform governance structures in the superannuation industry, particularly when there is no identified problem to solve.

1.48 Academics have also stated findings in their research raising doubts about the link between the presence of independent directors and fund performance. In particular, Dr Kevin Liu found that:

> There is insufficient empirical evidence supporting a (statistically and economically) significant relationship between a higher number (and proportion) of 'independent directors' and better fund performance.[26]

1.49 Dr Scott Donald also found that:

> Research I conducted with Associate Professor Suzanne Le Mire in 2015 found little empirical evidence that structural independence measures such as those envisaged in the Independence Bill are associated with higher investment returns or lower risk, the usual metrics of performance in the superannuation and pensions domain globally.[27]

1.50 Given the evidence received by this committee, Labor Senators believe that there is insufficient evidence to establish that a problem exists in Australian superannuation governance that warrants legislative change and that the presence of a proportion of independent directors can be linked to improved fund returns. The justification for this legislation is very weak.

Labor Senators' position on this bill

1.51 Labor Senators believe that no clear evidence has been offered to demonstrate why these changes are necessary. A Government which purports to be conservative, non-interventionist and pro-market would be expected to introduce additional regulation only where there is evidence of clear market failure.

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25 Industry Super Australia: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 17 October 2017)

26 Dr Kevin Liu, Submission 36, p. 2

27 Dr Scott Donald, Submission 24, [p. 2].

1.52 This bill would disproportionately impact profit-to-member funds when evidence suggests it is the retail and banking sectors which need Government focus.

1.53 Labor Senators are not opposed to independent directors as a principle. Where trustee boards believe that independent directors would enhance board decision making they should be appointed. Many profit-to-member funds have adopted such appointments. However, Labor Senators do not believe in prescribing an arbitrary quota of independent directors and defining independence in legislation. Labor Senators welcome the work of AIST in developing a governance code and endorse the idea that 'cognitive independence' is what policy makers should strive to achieve.

1.54 Labor Senators also have a preference to focus on 'outcomes' in superannuation (for example, net returns to members), rather than 'inputs' such as the number of independent directors. An outcomes approach enables different funds to pursue different business models in the pursuit of outcomes such as net returns to members.

1.55 Labor Senators remained concerned that the primary intent of this bill might not be related to policy matters.

Recommendation 1

1.56 To oppose the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017

Introduction

1.57 As set out in the Explanatory Memorandum – this bill has a number of schedules and is a dense piece of legislation. Before commenting on specific schedules, Labor Senators would like to express a number of high level comments.

1.58 Labor Senators are concerned that this legislation will not improve protections, accountability and outcomes for all members across the sector.

1.59 In particular, the need to strengthen outcomes for Choice products and to improve the reporting and accountability of retail RSEs with a large financial firm parent company have not been given due consideration in this bill.

The need for stronger protections for both MySuper and Choice products

1.60 Mr Cooper agreed with the assertion that his notable recommendation for the establishment of a MySuper product would act as a well performing default product. Choice products would have to compete against this high bar.

> Senator KETTER: Let me just ask you: would you envisage MySuper being a strong default product with the view of setting a high bar for competition,

> and that choice products need to compete against this MySuper high bar by offering stronger net returns to get people to switch?
>
> Mr Cooper: Yes, I would.[28]

1.61 The assumption in this thinking is that people have full information and are able to use that information to act in their own best interests – evaluating the returns on their default product, finding a choice product that offered some combination of stronger net returns and other benefits and then making the switch.

1.62 However, a recent Rice Warner report commissioned by Industry Super Australia finds that the evidence suggests that this is not what is occurring in practice. It would appear that people are increasingly switching to products that are more costly and have poorer returns.[29]

1.63 The Rice Warner report notes that:

> Members are unlikely to have used fee levels as a primary reason for switching between funds, as many members are charged a higher fee after switching… The aggregate fee outcomes from switching activity reveals a net increase of $137 million in fees.
>
> Members are unlikely to have used past performance as a proxy for their investment decision as the data shows on average that historical returns for the incumbent and successor fund tend to be similar.
>
> 36% of members would have received higher returns over the period, while 56% of members would have received lower returns. 8% of members did not see a notable increase or decrease in investment performance (with a margin of 0.05% either way).
>
> The aggregate estimated impact on investment returns reveals a net decrease of $284 million annually. This ls largely driven by a $373 million decrease in returns annually for members rolling into funds with lower returns. Retail funds accounted for 87% of this decrease in returns.

1.64 These findings raise significant questions about the ability of consumers to effectively compare across superannuation products.

1.65 Given the findings that many members are switching to lower performing products, Labor Senators believe that there needs to be stronger protections for both MySuper and Choice products.

1.66 This view is also endorsed by the Financial Services Council:

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28 Mr Jeremy Cooper, Proof Committee Hansard, 10 October 2017, p. 11.

29 Industry Super Australia, *Submission 20.1*, pp. 30-31 (to inquiry Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017)

> The FSC supports higher standards of governance, transparency and accountability for both choice and MySuper products.[30]

Retail fund performance

1.67 Objections are often made when the claim that industry funds outperform retail funds, citing asset allocation and a difference in member demographics:

> And the result of that is that the returns will inherently be lower because you have more in cash, more in bonds and less in growth assets. ISA will say, 'Therefore, you're a badly-performing fund.' But if I were a 75-year-old and I had a high-risk asset allocation, and we had something like the global financial crisis and I lost 30 or 40 per cent of my investments then I wouldn't have thanked the trustees in their decision. In fact, I would be wishing that there were independent directors on the board saying that it was more important to make the right investment decisions for my circumstances than it was necessary to top the league tables so they could defend our brand.[31]

> It's not just the governance structure; it's the underlying assets and investment strategy and the composition; it's the demographics; and it's the range of products. You've got a number of different features that are within any RSE. So comparing at fund level, and particularly comparing averages by sector, is just not meaningful.[32]

1.68 Both AIST and ISA offered criticisms of those claims—citing that their two percentage point performance advantage[33] over retail funds could not be fully explained by these issues.

1.69 Industry Super Australia in response to Questions on Notice cited evidence to show that the difference between Industry fund and Retail fund cash options (simple asset, easy to compare) still had a difference in returns of 0.8 per cent to 1.5 per cent.[34]

1.70 In testimony to the committee, AIST noted that:

> Research that AIST commissioned earlier this year showed that the choice sector underperformed generally across like-for-like asset allocations compared to MySuper asset allocations and that fee structures were

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30 FSC, submission 27, pg. 1, (to inquiry Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017)

31 Mr Blake Briggs, Financial Services Council, *Proof Committee Hansard*, 10 October 2017, p. 22.

32 Mrs Helen Rowell, Deputy Chairman, Australian Prudential Regulation Authority, Proof Committee Hansard, 10 October 2017, p. 89.

33 Industry Super Australia, Tabled Document 3, tabled at a public hearing in Sydney on 10 October 2017.

34 Industry Super Australia, Additional Document 7 – QoNs for public hearing held on 10 October 2017

> between 53 and 280 per cent more expensive in the choice sector. So we are concerned that this remains. In addition to that, all retiree money is in the choice sector. That is another very important reason that that be captured. That's our basic view in relation to choice.[35]

1.71 Labor Senators also note that Treasury have not undertaken work themselves to understand these claims:

> Senator KETTER: Thank you. Has Treasury done any analysis on what's driving the difference in performance in terms of net returns between the different types of super funds?
>
> Mr Beckett: We haven't done any analysis ourselves.[36]

1.72 Labor Senators remain concerned that issues of asset allocation and member demographics do not completely explain the gap in average fund performance.

1.73 Labor Senators would also encourage Treasury officials to use publically available APRA data to explore these issues and report to the committee on its findings.

Comments on the schedules in this legislation

Schedule 1 - Annual MySuper outcomes assessment

1.74 Labor Senators welcome the introduction of an outcomes test to replace the scale test.

1.75 Labor Senators note ISA's analysis that indicates that the benefits of scale are not accruing to members of all funds.[37] Figure 1 indicates that there are large funds operated by Westpac, ANZ, CBA, AMP and NAB which are clustered around the bottom quartile of performance. As scale remains as one factor in the outcomes test, this issue should be addressed.

1.76 ISA in their submission also noted that an outcomes test should also place as primary important the outcome of net returns to members.

1.77 Concerns were also raised that the MySuper outcomes test would be prescribed in legislation, whereas APRA has only committed so far to consulting on proposed changes to prudential standards to include an outcomes test for Choice products.

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35 Ms Karen Volpato, Senior Policy Adviser, Australian Institute of Superannuation Trustees, Proof Committee Hansard, 10 October, 2017, p. 66.

36 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, Proof Committee Hansard, 10 October 2017, p. 82.

37 Industry Super Australia, *Submission 8*, p. 6.

1.78 Labor Senators believe that an outcomes test should apply to all products, not just MySuper products.

Schedule 2 - Authority to offer a MySuper product

1.79 Labor Senators note concerns that APRA's proposed authority is different to its authority to refuse an RSE license, giving the appearance that there are different protections for those with MySuper products compared to Choice products.

Schedule 3 - Director penalties

1.80 Labor Senators note concerns from stakeholders about:

- Whether penalties should be extended to directors of superannuation funds that offer Choice products[38] (AIST)
- The proposal exposed superannuation trustees directors to greater risk of personal liability than other company directors[39] (Mercer)
- Whether a set of protections, such as good faith actions, should be considered[40] (ASFA)
- The interaction of the directions power with these penalties[41] (AICD)

Schedule 5 - APRA directions power

1.81 Labor Senators note concerns raised by a variety of stakeholder that APRA's proposed powers are too broad. As ASFA stated in their submission:

> In particular we question the breadth of the proposed APRA directions powers and whether they could be more precise[42]

1.82 AIST also raised concerns that the directions power does not adequately consider the corporate structures of the retail fund sector:

> While we support the expansion of the directions power to cover connected entities, the current provision is fundamentally flawed because it does not have consistent application across sectors of the superannuation industry – notably, superannuation funds operating in a retail environment would attract less scrutiny.[43]

38 Australian Institute of Superannuation Trustees, Submission 34, p. 16.

39 Mercer, Submission 16, p. 1.

40 Dr Martin Fahy, Association of Superannuation Funds of Australia, Proof Committee Hansard, 10 October 2017, p. 48.

41 Australian Institute of Company Directors, Submission 21, p. 7.

42 Association of Superannuation Funds of Australia, Submission 28, Attachment 1, p. 2.

43 Australian Institute of Superannuation Trustees, Submission 34, p. 22.

Schedule 6 - Portfolio holdings disclosure

1.83 ISA raised the concern that 'this Bill seeks to amend the current requirements so that the disclosure requirement does not apply to choice products that contain multiple investment options (an intrinsic feature of platform products).[44]

1.84 Treasury officials responded to this concern by stating 'I would like to make a very brief opening statement simply to confirm that there is no platform carve-out in the portfolio holdings disclosure provisions'.[45]

1.85 Labor Senators note the Treasury's advice that the portfolio holdings disclosure requirements in this Bill will cover platform products.

Schedule 7 - Annual Member's Meetings

1.86 Labor Senators note the number of submissions that raised concerns about the prescriptive nature of the requirements of an Annual Member's Meeting and whether the cost of running these meetings would be outweighed by the benefits of practical member engagement.

Schedule 8 - Reporting standards

1.87 Labor Senators endorse the concept of improving transparency to members.

1.88 Labor Senators note that some funds are currently reporting zero investment fees and expenses under current reporting standards.[46]

1.89 Labor Senators call on the Government to fix the current reporting regime before introducing new reporting requirements.

1.90 Labor Senators call on the Government to end the five year deferral on the rollout of choice product dashboards.

Labor Senators' position on this bill

1.91 Labor Senators believe that there needs to be proper protections for both MySuper and Choice products. Given the findings in the Rice Warner report, it is likely that customers are not being provided easy access to sufficient information so as to enable ready comparison of products.

1.92 Labor Senators believe that this bill fails to sufficiently strengthen protections and outcomes for choice products and to sufficiently increase scrutiny of retail funds.

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44 Industry Super Australia, *Submission 8*, p. 21.

45 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Department of the Treasury, Proof Committee Hansard, 10 October 2017, p. 81.

46 Industry Super Australia, *Submission 8*, pp. 15–18.

1.93 When considered alongside the trustee arrangements bill, Labor Senators are concerned that the primary intent of this bill might not be related to policy matters.

Recommendation 2

1.94 To oppose the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 unless the bill applies consistently and comprehensively across the superannuation system.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

Appendix 1
Submissions and additional documents received

Submissions

1. ANZ
2. Mr Phillip Sweeney
3. Corporate Superannuation Association
4. SCOA Australia
5. Dixon Advisory
6. Tailored Superannuation Solutions Ltd
   Attachment 1
7. Menzies Research Centre
   Attachment 1
8. Industry Super Australia
   Supplementary submission
9. Australian Council of Trade Unions (ACTU)
   Supplementary submission
10. Queensland Nurses and Midwives' Union (QNMU)
11. Transport Workers' Union of Australia (TWU)
12. Unions Tasmania
13. UnionsWA
14. Governance Institute of Australia Ltd
    Attachment 1
15. Electrical Trades Union of Australia
16. Mercer
17. Australian Manufacturing Workers' Union (AMWU)
18. Financial Planning Association of Australia
19. Unions ACT
20. AMP
21. Australian Institute of Company Directors (AICD)
    Supplementary submission
22. Health Services Union Western Australia (HSUWA)
23. National Foundation for Australian Women (NFAW)
24. Dr Scott Donald

25. Construction, Forestry, Mining and Energy Union (CFMEU)
26. CHOICE
27. Community and Public Sector Union

    Attachment 1
28. Association of Superannuation Funds of Australia Limited (ASFA)

    Attachment 1

    Supplementary submission
29. Queensland Council of Unions
30. Financial Services Council
31. UniSuper
32. SMSF Association
33. Professionals Australia
34. Australian Institute of Superannuation Trustees

    Supplementary submission
35. REST Industry Super

    Supplementary submission
36. Dr Kevin Liu
37. Law Council of Australia

Answers to Questions on Notice

1. Menzies Research Centre: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 13 October 2017).
2. Mr Jeremy Cooper: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 13 October 2017).
3. Association of Superannuation Funds of Australia: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 13 October 2017).
4. Australian Council of Trade Unions: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 16 October 2017).
5. The Treasury: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 16 October 2017).
6. Australian Institute of Superannuation Trustees: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 17 October 2017).
7. Industry Super Australia: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 17 October 2017).
8. Financial Services Council: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 17 October 2017).
9. Australian Institute of Company Directors: Answers to questions taken on notice from a public hearing on 10 October 2017 (received 23 October 2017).

Tabled Documents

1. Document tabled by Mr Jeremy Cooper at a public hearing in Sydney on 10 October 2017.
2. Document tabled by Industry Super Australia at a public hearing in Sydney on 10 October 2017.
3. Document tabled by Industry Super Australia at a public hearing in Sydney on 10 October 2017.
4. Document tabled by ACTU at a public hearing in Sydney on 10 October 2017.
5. Document tabled by ASIC at a public hearing in Sydney on 10 October 2017.
6. Document tabled by APRA at a public hearing in Sydney on 10 October 2017.

Additional information

1. Correspondence from Industry Super Australia, attaching a letter from TWU Super, to correct the record in relation to the Trade Union Royal Commission, as raised at the public hearing on 10 October 2017, received on 20 October 2017.

Appendix 2

Public hearings and witnesses

9 October 2017, Canberra ACT

Members in attendance: Senators Bushby, Hume, Ketter, Paterson

Witnesses

MARONEY, Mr John, Chief Executive Officer, Self Managed Super Fund Association

10 October 2017, Sydney NSW

Members in attendance: Senators Bushby, Hume, Ketter, Williams

Witnesses

BECKETT, Mr Ian, Principal Adviser, Retirement Income Policy Division, Department of the Treasury

BEYDOUN, Mr Maan, Senior Specialist, Investment Managers and Superannuation, Australian Securities and Investments Commission

BRIGGS, Mr Blake, Senior Policy Manager, Financial Services Council

CABARRUS, Mr Julian, Director of External Affairs and Strategy, Association of

Superannuation Funds of Australia

COOPER, Mr Jeremy, Private capacity

DALEY, Mr Brian, Capital Stewardship Officer, Australian Council of Trade Unions

FAHY, Dr Martin, Chief Executive Officer, Association of Superannuation Funds of Australia

FITZPATRICK, Mr Ged, Senior Executive Leader, Investment Managers and Superannuation, Australian Securities and Investments Commission

FOGARTY, Mr Wayne, Senior Adviser, Retirement Income Policy Division, Department of the Treasury

FRASER, Mr Bernie, Private capacity KIRKLAND, Mr Alan, Chief Executive Officer, Choice

LINDEN, Mr Matthew, Director of Public Affairs, Industry Super Australia

McCREA, Mr Glen, Chief Policy Officer, Association of Superannuation Funds of Australia

McGIRR, Mr Matthew, Policy Adviser, Australian Institute of Company Directors

MITCHELL, Mr Joseph, Strategic Organising Officer, Australian Council of Trade Unions

MORRIS, Ms Carolyn, Senior Manager, Policy Development, Australian Prudential Regulation Authority

MURRAY, Mr David, AO, Private capacity

O'HALLORAN, Mr Xavier, Policy and Campaigns Advisor, Choice

PETSCHLER, Ms Louise, General Manager, Advocacy, Australian Institute of Company Directors

PREMETIS, Mr Spyridon, Director of Policy and Research, Menzies Research Centre

PRZYDACZ, Mr Jonathan, Policy Analyst, Retirement Income Policy Division, Department of the Treasury

PURVIS, Ms Alex, Senior Manager, Australian Securities and Investments Commission

ROWELL, Mrs Helen, Deputy Chairman, Australian Prudential Regulation Authority

SAMUEL, Professor Graeme AC, Private capacity

SCHEERLINCK, Ms Eva, Chief Executive Officer, Australian Institute of Superannuation Trustees

TSITSIS, Ms Litsa, General Counsel and Senior Policy Manager, Industry Super Australia

VOLPATO, Ms Karen, Senior Policy Adviser, Australian Institute of Superannuation Trustees