

Chapter 1

Introduction

1.1 On 14 September 2017, the Senate referred the provisions of the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 (Measures No. 2 bill) to the Senate Economics Legislation Committee for inquiry and report by 23 October 2017.¹ The Measures No. 2 bill is part of a broad package of reforms focused on protecting members' money, prioritising members' interests and strengthening the foundations of the superannuation system.²

1.2 As part of this package of reforms, the Senate also referred the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017, separately to the committee for inquiry and report by 23 October 2017.³

1.3 The Measures No. 2 bill, the focus of this report, would amend the *Superannuation Guarantee (Administration) Act 1992* (SGAA) 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 that salary sacrifice contributions are reflected in members' retirement savings.⁴

1.4 The Minister for Revenue and Financial Services, The Hon. Kelly O'Dwyer MP, noted in her Second Reading Speech that the measures in this bill would 'deliver on the findings of the 2014 Financial Systems Inquiry (FSI) and address issues identified in the Government's Superannuation Guarantee Cross-Agency Working Group report Superannuation Guarantee Non-compliance'.⁵

1 *Journals of the Senate*, No. 63, 14 September 2017, pp. 2007–2009.

2 The Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, Second Reading Speech, *House of Representatives Hansard*, 14 September 2017, p. 10424.

3 The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 contains eight measures, which propose to amend the *Superannuation Industry (Supervision) Act 1993*, the *Corporations Act 2001* and the *Financial Sector (Collection of Data) Act 2001* in order to 'modernise and increase confidence within the superannuation system'. The Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 seeks to introduce a definition of independence and to legislate a requirement that superannuation funds regulated by the Australian Prudential Regulation Authority have a minimum of one-third independent directors as well as an independent Chair.

4 The Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, Second Reading Speech, *House of Representatives Hansard*, 14 September 2017, p. 10424.

5 The Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, Second Reading Speech, *House of Representatives Hansard*, 14 September 2017, p. 10425.

Conduct of the inquiry

1.5 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 32 submissions, which are listed at Appendix 1.

1.6 Public hearings for the inquiry were held in Canberra on 9 October 2017 and in Sydney on 10 October 2017. The witnesses who gave evidence are listed at Appendix 2.

1.7 The committee appreciates the efforts of all stakeholders who contributed to the inquiry.

Overview of the bill

1.8 The Measures No. 2 bill extends choice of fund provisions for employees (schedule 1) and removes the capacity of employers to use salary sacrifice contributions to reduce minimum superannuation guarantee contributions (schedule 2).

Schedule 1—Choice of Fund

1.9 Schedule 1 amends the SGAA to ensure employees under workplace determinations or enterprise agreements have an opportunity to choose the superannuation fund for their compulsory employer contributions. This measure applies to new workplace determinations and enterprise agreements made on or after 1 July 2018.

Summary of new law

1.10 This schedule implements the 2014 FSI's Recommendation 12 to:

Provide all employees with the ability to choose the fund into which their Superannuation Guarantee contributions are paid.⁶

1.11 The FSI recommended removing the barriers to members engaging with their superannuation by ensuring all employees, to the extent possible, have the right to choose their superannuation fund. To this end, it was suggested the government should remove provisions in the SGAA that deny some employees the ability to choose the fund that receives their superannuation guarantee (SG) contributions due to the exclusions given to enterprise agreements, workplace determinations and some awards.⁷

1.12 Given the importance of compulsory superannuation contributions to individuals' retirement incomes, individuals should be able to decide where their compulsory superannuation goes. The government states that expanding choice of fund will also reduce the need for multiple accounts involving multiple fees and insurance premiums which can erode retirement savings.

6 *The Financial System Inquiry 2014 (Murray), Final Report*, p. 131, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 27 October 2017).

7 *The Financial System Inquiry 2014 (Murray), Final Report*, p. 131, http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf (accessed 27 October 2017).

1.13 In addition, giving more employees choice of fund would also promote member engagement and reduce fees through increased competition.

Schedule 2—Salary sacrifice integrity

1.14 Schedule 2 amends the SGAA to improve the integrity of the superannuation system by ensuring that an individual's salary sacrifice contributions cannot be used to reduce an employer's minimum SG contributions.

Summary of new law

1.15 This schedule implements the Superannuation Guarantee Cross-Agency Working Group's recommendations to prevent contributions made as part of a salary sacrifice arrangement from satisfying an employer's SG obligations (Recommendation 8); and specifically include salary or wages sacrificed to superannuation in the base for calculating an employer's SG obligations.

1.16 Under a salary sacrifice arrangement an employee agrees to forego part of their future salary or wages in return for their employer providing benefits of a similar value. Employees are also able to salary sacrifice amounts of their future salary and wages to be paid by their employer to a superannuation fund as superannuation contributions. These contributions are deductible for the employer and are not included in the assessable income of the employee (subject to concessional contributions caps). Instead, these contributions are included in the assessable income of the superannuation fund and generally taxed concessional at a rate of 15 per cent.

1.17 Currently, salary sacrificed amounts count towards employer contributions that reduce an employer's mandated SG contributions. In addition, employers can calculate SG obligations on a (lower) post salary sacrifice earnings base. While employees salary sacrificing may obtain other taxation benefits, employees who salary sacrifice to boost their superannuation savings may end up with lower superannuation contributions than they expect.

Financial savings, regulatory impact and human rights issues

1.18 The explanatory memorandum notes that schedule 1 has no financial impact nor does it raise any human rights issues. However, the regulatory impact will result in a total annual average regulatory cost of \$5.646 million; \$2.245 million for business and superannuation funds; and \$3.401 million for individuals.⁸

1.19 The date of effect for schedule 1 is 1 July 2018 for all new workplace determinations and enterprise agreements.

1.20 Schedule 2 notes that the measure has a small but unquantifiable impact on the fiscal and underlying cash balances. It is also compatible with human rights and does not raise any human rights issues. The date of effect for schedule 2 is also 1 July 2018.⁹

8 Explanatory Memorandum, p. 3.

9 Explanatory Memorandum, p. 5.

Structure of this report

1.21 The report is structured in two chapters—this introductory chapter, which provides a brief overview of the Measures No. 2 bill and the context; and chapter two which discusses the schedules and the related issues raised by submissions.

Acknowledgements

1.22 The committee would like to thank all individuals and organisations that participated in the inquiry, particularly given the tight timeframes requested for submissions and the hearing.