

Additional Comments by Labor Senators

Consultation Process

1.1 Labor Senators wish to make the same points about the consultation process as set out in the dissenting report for the bills 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.

1.2 At the outset, Labor Senators express their disappointment that these bills were introduced into Parliament on 14th September, 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 this bill and the bills mentioned previously, but also the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017.

1.3 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.

1.4 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 legislation can be debated in the Senate. These three weeks could have been put to good use.

1.5 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

Schedule 1—'Choice of fund', the role of collective bargaining and the call for greater consumer protections

1.6 Labor Senators wish to make comments on two principles that inform this proposed policy. The first is that the collective bargaining of workers has been able to lift superannuation services beyond community standards. The second is that when workers are offered “choice” in a mandatory financial service such as superannuation, there must be adequate safeguards so that workers are not left worse off.

Collective bargaining and going beyond current community standards

1.7 Superannuation is inextricably linked to the package of salary, wages and other benefits in workplace negotiations. Superannuation is a part of industrial bargaining and arguments that cast superannuation as a 'financial product' outside of workplace bargaining misrepresents the situation.

1.8 Collective bargaining by workers played an important role in establishing superannuation schemes well before there was a compulsory employer contribution scheme. Collective bargaining since 1993 has been able to lift superannuation contributions beyond the minimum rate in many workplaces, improve the provision of insurance within superannuation and to put safeguards in place to minimise superannuation guarantee non-payments.

1.9 As part of these negotiations between employers and employees, many industries determined that there would be benefits to both employers and employees in having all employees contribute to a single fund, often an industry fund.

1.10 For employers, the administrative costs of making contributions were lowered. In addition, industry, public sector and corporate funds (most likely to be receiving all contributions) on average have outperformed retail funds and so employers, by using these funds, would be likely to face a smaller risk of workplace disruption should workers become concerned about the management of their retirement savings.

1.11 For employees, single fund arrangements often had stronger safeguards to minimise superannuation guarantee non-compliance and would likely have easier access to staff who managed the fund (through workplace visits). Employees who used corporate, public sector or industry funds, on average, would also see higher returns from their contributions.

1.12 Where efficiencies were gained through a single fund arrangement, any savings would be apportioned through negotiations to both employers, via reduced administration expenses and employees, via mechanisms such as a higher contribution rate or an insurance product with greater risk coverage.

1.13 This schedule would disrupt these long standing arrangements and the Senate needs to be mindful of all the consequences of this bill should it be passed by the Senate.

1.14 As one example, the Senate should be made aware of UniSuper's submission which notes its open defined benefit plan for non-casual employees. Contributions are made at levels well above the superannuation guarantee rate. Opening up choice of fund could undermine the benefits that all members could receive:

In collectively-pooled arrangements, such as defined benefit schemes, the decisions of some members can have an effect on many members. By their very nature, defined benefit schemes are subject to adverse selection risks and have rules in place that, once a member has made a decision to remain in the defined benefit scheme, employers are then bound to fund that member's benefit for the duration of that member's employment.¹

1 Unisuper, *Submission 21*, p. 5.

1.15 Superannuation remains an evolving industry, and Labor Senators believe that careful consideration should be given to how opening up choice of fund might preclude other innovative product offerings if the risk pooling of membership cannot be achieved.

1.16 Labor Senators acknowledge the concerns raised about the consequences of limiting choice for employees in some circumstances. It is a valid concern when a worker faces the situation of not receiving contributions to their existing fund (even a well-performing industry fund) and has to either open a new separate account or consolidate to the new single fund.

1.17 On the argument of multiple accounts, Labor Senators thank AIST for raising ASIC's submission to the Financial Systems Inquiry which cast doubt on whether choice of fund was the appropriate policy solution to the problem of multiple accounts:

These [choice of superannuation fund] changes also made it possible for members with multiple accounts to more easily consolidate these accounts and reduce the amount of fees they pay for maintaining multiple accounts. However, in practice, this consolidation did not lead to a decrease in the number of accounts in the industry. The number of accounts continued to grow to more than 30 million, even though the number of employed persons in Australia is roughly 40% of this number. This means that for every employed person there are approximately 2.5 accounts. A large number of these accounts are small, unclaimed or lost and some are for retirees receiving superannuation in the form of a pension.²

1.18 Labor Senators also acknowledge that the introduction of SuperStream should significantly reduce the administrative costs of paying to multiple superannuation funds.

1.19 Given the nature of this proposed change, Labor Senators also find it strange that these arrangements are being debated while the Productivity Commission is reviewing the efficiency and competitiveness of the superannuation system, and includes in its scope default superannuation arrangements.

1.20 Labor Senators also note that the Superannuation Guarantee is scheduled to rise to 12%, with some stakeholders calling for rises beyond 12%.³

1.21 Labor Senators believe that workplace negotiations are an important mechanism for lifting superannuation contributions beyond the community standards where it is in the interests of workers in that industry. Care needs to be given to how this schedule might limit negotiations that could make workers better off.

2 Australian Institute of Superannuation Trustees, *Submission 20*, p. 11 (citing ASIC).

3 <http://www.actu.org.au/media/599617/retirement-incomes-superannuation-and-workers-capital-final.pdf>

Consumer protections

1.22 Choice of fund needs to be considered in a context where decision making is not always a rational evaluation of options. Marketing, sales techniques and other messaging can influence a person's choice away from the best rational choice. There need to be adequate safeguards when choice is exercised, particularly in the case of superannuation, where the benefits of additional net returns can accrue to substantial sums of money over a long time horizon.

1.23 The Rice Warner report commissioned by Industry Super Australia⁴ shows that the assumption of rational decision making needs to be questioned. In the case of costs, Rice Warner found 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.

20% of members pay lower fees after switching funds, while 49% of members pay higher fees. 31% of members did not have a notable increase or decrease in fees paid (with a margin of \$10 either way).

The aggregate fee outcomes from switching activity reveals a net increase of \$137 million in fees. The major component of this is a \$170 million increase in fees as a result of switching into funds with higher fees. Retail funds account for 92% of this increase in fees. This is modestly offset by a \$33 million saving in fees.

1.24 And on net returns, it was found that:

When comparing performance of funds (using a 4 year period to 20 June 2015) before and after a member switch, we observe that:

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 is 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. This is offset by an \$89 million increase in annual returns for those members switching into higher performing funds. 52% of this increase is accounted for by industry funds, while only 33% is by retail funds.

1.25 Concerns have also been raised that some superannuation funds might offer bundled incentives to an employer in return for default fund status in that workplace.⁵

4 Industry Super Australia, *Submission 20, supplementary submission 1*, pp. 30–31.

1.26 The Construction, Forestry, Mining and Energy Union also raised these same concerns:

It should not be assumed that employees will be completely free to choose the fund/s that best meets their interests if these measures are approved. The reality of the workplace applies here. The opening up of access to the full range of superannuation funds on an individual basis will expose employees to considerable pressure from both employers and superannuation funds to direct their superannuation contributions to a particular fund which favours them.⁶

1.27 Labor Senators note concerns raised in submissions about the impacts of this change on women. With so many women employed in part-time and casual work, often in low paid and insecure industries, a number of submissions explain that 'retail and industry funds are not equal options, and workers must not be positioned to consider them as if they were.'⁷

1.28 The ACTU for example, is particularly concerned about any regulatory measure which might have a further detrimental effect on the superannuation gender gap. A number of enterprise agreements exist in female dominated industries (the service sector, nursing, health, hospitality and the like) which include superannuation provisions which are better for women workers than alternative arrangements which would exist in an uncontrolled choice environment.⁸

1.29 Moving away from the current provisions may damage investment earnings potential for women workers, default insurance arrangements, and supportive mechanisms such as those which pursue unpaid superannuation. The ACTU argue that women's superannuation entitlements will be advantaged only by the retention of the current arrangements.

1.30 Labor Senators also note the Government's deferral of choice product dashboards, when these dashboards exist for MySuper products. To enable proper comparison of all choices available to a worker, these dashboards should be required across the industry. This is also endorsed by the FSC:

...the FSC supports extending product dashboards to choice products as well.⁹

5 <http://www.abc.net.au/news/2017-02-13/banks-to-secure-management-of-employees-superannuation-funds/8263844>

6 Construction, Forestry, Mining and Energy Union (CFMEU), *Submission 25*, p. 10.

7 Victorian Trades Hall Council, *Submission 3*, p. 3.

8 Australian Council of Trade Unions, *Submission 29*, p. 2.

9 Mr Blake Briggs, Senior Policy Manager, Financial Services Council, *Proof Committee Hansard*, p. 23.

1.31 Regarding questions of fee disclosure and portfolio disclosure, which would assist in evaluating the total fees charged for the asset allocation held, Labor Senators note problems raised by ISA about RG97¹⁰ and the concern regarding the carve-out of platform products in portfolio disclosure.¹¹

1.32 These disclosure problems, coupled with the current decision making of workers, raises concerns that there are insufficient current protections to ensure that choice of fund will leave workers better off.

Schedule 2—Closure of the salary sacrifice loophole and the Government's lacklustre approach to superannuation guarantee compliance

1.33 There was universal support in this inquiry for the closure of this salary sacrifice loophole.

1.34 Labor Senators believe that the closure of this loophole, while important, is only one small component of address the problem of superannuation guarantee non-payment.

1.35 Labor Senators have led the way in investigating superannuation guarantee non-payment. Labor Senators once again draw the Senate's attention to the Economics References Committee's report *Superbad—Wage theft and non-compliance of the Superannuation Guarantee* and its recommendations.

1.36 The Government has been dragged into addressing superannuation guarantee non-compliance. Labor Senators believe that the decision taken by the Minister for Revenue and Financial Services to establish a secret interdepartmental working group was in response to the Senate inquiry.

1.37 Labor Senators found out that this group existed through the media on the morning of the first public hearing of the Senate inquiry. This is an unsuitable way to approach such an important issue.

1.38 Labor Senator's welcome the interdepartmental report, but believe that it was constrained by Government in making more far-reaching recommendations.

1.39 The Government can take strong action on unpaid super. Closing the salary sacrifice loophole is not enough. Labor Senators call on the government to adopt the 32 recommendations in the Senate Economics References committee report, including:

- (a) Making it easier to calculate SG liability, by considering the removal of the \$450 threshold and reviewing the definition of ordinary time earnings (OTE);

10 Industry Super Australia, *Submission 20, supplementary submission 1*, p. 23.

11 Industry Super Australia, *Submission 8* (Economics Legislation Committee, Inquiry into 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 to the Economics Legislation Committee), p. 21

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- (b) Consider requiring the payment of SG on a monthly frequency, rather than quarterly (especially given the administrative burden of making payments is reduced with SuperStream);
 - (c) Notifying employees when the ATO enters a payment plan with a business for superannuation obligations;
 - (d) Moving compliance to a data driven, proactive model rather than a reactive, complaints drive process;
 - (e) That default funds have a rigorous arrears collection process;
 - (f) Taking strong action on the use of insolvency to avoid superannuation obligations;
 - (g) Applying single touch payroll to all businesses, covering all employees and contractors on payroll.

1.40 Labor Senators believe that the Government should act with haste on this issue and see no reason to delay. The interdepartmental report was issued on 31 March 2017, the Senate Economics References Committee report was released on 2 May 2017 and the end of the year is fast approaching. Given that superannuation underpayment is exacerbated by foregone investment earnings and compound interest, it is important that action is taken quickly to preserve retirement balances and to reduce the long term pressure on the Federal budget.

Labor Senators position on this bill

1.41 Labor Senators welcome the closure of the salary sacrifice loophole, but it is only one important small step in taking significant action on unpaid super

1.42 Labor Senators reiterate the recommendations made in the Senate Economics References Committee report “Superannuation Guarantee non-payment”. There is a pressing need to consider unpaid super as seriously as unpaid wages, bring superannuation guarantee reporting from the paper age to the digital age and shift the compliance model from a reactive complaints based approach to a proactive data driven one.

1.43 Labor Senators support the principle of collective bargaining and also support the principle that workers should be able to exercise choice of fund if there are sufficient safeguards. Given the difficulty of this policy problem, Labor Senators will seek to find amendments that support the principles of collective bargaining that seeks to lift superannuation arrangements beyond the community standard and fund choice where it can be exercised in an environment where there are adequate consumer safeguards.

1.44 Labor Senators also believe a better approach on Schedule 1 would be to await the results of the Productivity Commission inquiry before debating this bill in the Senate.

Recommendation 1

1.45 To amend the bill in the Senate so as to:

- **Ensure that there are no impediments to collective bargaining that would lift superannuation arrangements beyond the community standard; and**
- **Ensure that sufficient safeguards exist when workers exercise choice of fund.**

1.46 Labor Senators reserve their final voting position on the bill depending on the outcome of such amendments.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales