

The Senate

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Economics Legislation Committee

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Treasury Laws Amendment (Your  
Superannuation, Your Choice) Bill 2019  
[Provisions]

March 2020

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# Recommendation

## Recommendation 1

**2.79 The committee recommends that a review is conducted into the effect of this legislation on defined benefit schemes two years after its implementation.**

## Recommendation 2

**2.83 The committee recommends the government considers changes as suggested by submitters to further improve superannuation arrangements.**

## Recommendation 3

**2.84 The committee recommends that the bill be passed.**





# Chapter 1

## Introduction

### Referral of the inquiry

- 1.1 The Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 ('the bill') was introduced in the House of Representatives and read a first time on 27 November 2019.<sup>1</sup>
- 1.2 On 28 November 2019, the Senate referred the provisions of the bill to the Economics Legislation Committee for inquiry and report by 21 February 2020.

### Purpose of the bill

- 1.3 This bill reintroduces amendments to the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) that were previously introduced into the 45th Parliament on 14 September 2017 through Schedule 1 to the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017.
- 1.4 The amendments enable employees under workplace determinations or enterprise agreements to have an opportunity to choose the superannuation fund for their compulsory employer contributions.<sup>2</sup>
- 1.5 The Minister for Education, the Hon. Mr Dan Tehan MP, summarised the bill's aims in his second reading speech:

Providing choice of fund to individuals should be simple. It was a recommendation of the Financial System Inquiry and the trade union royal commission. The Productivity Commission also found in their recent landmark report into superannuation that denying choice of fund can discourage member engagement and that this reform was 'much needed'...

Under this bill, it will no longer be possible to deny choice to individuals on the grounds that they are employed under an enterprise agreement or workplace determination that specifies their fund for them...

Moreover, lack of choice can force people to be stuck in poorly performing funds... At least 14,000 employees are forced to contribute to one of seven funds identified by Super Consumers Australia as the worst performing funds as a result of the restrictions.

Even when members are not forced into poorly performing funds, restricting choice often leads to the opening of another unnecessary account. The Productivity Commission report highlighted the negative effects that holding unintended multiple superannuation accounts were

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<sup>1</sup> *Votes and Proceedings*, No. 30, 27 November 2019, p. 457.

<sup>2</sup> *Explanatory Memorandum*, p. 3.

having on millions of Australians through duplicate fees and insurance premiums...

This bill is the next step in fixing the problem of multiple accounts by preventing Australians from being forced into having multiple accounts because of their enterprise agreement or similar workplace determination...

To be clear, this bill does not prevent enterprise agreements from specifying a particular fund. It just allows individuals to choose a different fund if it suits them better. And in doing so, it puts those individuals on an even footing with the majority of the workers who already have this choice. Also, this bill will have no impact on default funds specified in modern awards.<sup>3</sup>

## Overview of the bill

- 1.6 The Explanatory Memorandum (EM) argued that workers cannot choose the superannuation fund into which their compulsory employer superannuation is paid. This puts them out-of-step with the majority of workers and prevents them making key decisions around their retirement savings, can result in the payment of unnecessary fees and insurance premiums, and can reduce competition between superannuation funds.<sup>4</sup>
- 1.7 Choice of fund for compulsory contributions can be restricted by some employers under existing Commonwealth legislation. The EM argued that without reform, individuals under certain collective agreements will continue to face restricted choice of fund.<sup>5</sup> Moreover, by expanding choice of funds for individuals will also reduce the need for multiple accounts involving multiple fees and insurance premiums, which can erode retirement savings.<sup>6</sup>
- 1.8 Giving more employees choice of fund also aims to promote member engagement and reduce fees through increased competition.<sup>7</sup>

## Comparison of key features of new law and current law

- 1.9 The table below summarises the changes to the current law.<sup>8</sup>

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<sup>3</sup> The Hon. Mr Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 27 November 2019, p. 15.

<sup>4</sup> *Explanatory Memorandum*, p. 4.

<sup>5</sup> *Explanatory Memorandum*, p. 4.

<sup>6</sup> *Explanatory Memorandum*, p. 6.

<sup>7</sup> *Explanatory Memorandum*, p. 6.

<sup>8</sup> The table can be found at pages 6-7 of the *Explanatory Memorandum*.

**Table 1: Summary of changes<sup>9</sup>**

<i>New law</i>	<i>Current law</i>
Compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or enterprise agreement made before 1 July 2020 will comply with the choice of fund requirements.	Compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or enterprise agreement comply with the choice of fund requirements.
An employee will be able to choose their own superannuation fund where they are employed under a workplace determination or enterprise agreement that is made on or after 1 July 2020. New employees to whom such a determination or agreement applies must be provided with a standard choice form and if there is no chosen fund for a new employee the default fund arrangements apply. An employer does not have to provide existing employees with a form unless requested once a new determination or agreement is made. Where there is no chosen fund for an existing employee, an employer that continues to make compulsory contributions for that employee with the same fund, in accordance with the previous determination or agreement, will comply with the choice of fund requirements	Employees of employers that make compulsory employer superannuation contributions to a fund under, or in accordance with, a workplace determination or an enterprise agreement, may not be able to choose their own superannuation fund.
Notional contributions for an employee in relation to a defined benefit scheme will not cause an employer to have an increase in their superannuation guarantee shortfall if the employee's benefit in the scheme would not be affected by the employer making contributions to another fund.	Notional contributions for an employee in relation to a defined benefit scheme may cause an employer to have an increase in their superannuation guarantee shortfall even if the employee's benefit in the scheme would not be affected by the employer making contributions to another fund.

<sup>9</sup> Explanatory Memorandum, pp. 6-7.

## **Date of effect**

1.10 This measure applies to new workplace determinations and enterprise agreements made on or after 1 July 2020.<sup>10</sup>

## **Regulation impact on business**

1.11 The EM stated that although the financial impact of this bill is expected to be zero, the total annual average regulatory cost is \$5.646 million; \$2.245 million for business and superannuation funds and \$3.401 million for individuals.<sup>11</sup>

## **Legislative scrutiny**

1.12 The bill was considered by the Senate Standing Committee for the Scrutiny of Bills, which had no comment.<sup>12</sup>

## **Compatibility with Human Rights**

1.13 The EM argued that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and does not raise any human rights issues.<sup>13</sup>

## **Conduct of the inquiry**

1.14 The committee advertised the inquiry on its website and wrote to relevant stakeholders inviting written submissions by 17 January 2020.

1.15 The committee received 18 submissions, one supplementary submission, as well as answers to questions on notice and additional information, which are listed at Appendix 1.

1.16 The committee held one public hearing for the inquiry in Sydney on Monday, 9 March 2020. The names of witnesses who appeared at the hearing can be found at Appendix 2.

1.17 References to the Committee Hansard are to the Proof Hansard and page numbers may vary between Proof and Official Hansard transcripts.

## **Acknowledgements**

1.18 The committee thanks all individuals and organisations who participated in the inquiry, especially those who made written submissions and participated in the public hearing.

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<sup>10</sup> *Explanatory Memorandum*, p. 3.

<sup>11</sup> *Explanatory Memorandum*, p. 3.

<sup>12</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 10 of 2019*, 5 December 2019, p. 28.

<sup>13</sup> *Explanatory Memorandum*, p. 13.

# Chapter 2

## Views on the bill

### Overview

- 2.1 The committee received eighteen submissions and one supplementary submission to the inquiry and evidence received at the public hearing further illuminated the positions taken by the submitters.
- 2.2 Most of the evidence received focussed on the consumer choice issue – that the bill had either a positive or negative impact on workers by allowing individual choice of superannuation fund. Support or opposition to the bill was essentially based on this question. However, some submitters, even if supportive of the individual's right to choose, were more nuanced and argued for further reforms or amendments. Evidence was also received – mostly by UniSuper – about the bill's potential impact on defined benefit schemes.
- 2.3 This chapter reviews the positions put by the interest parties and provides committee comment on:
  - the individual choice of fund;
  - the bill's potential impact on defined benefits; and
  - further considerations raised by those interested parties.

### Support for the bill

#### *Mr Luke Zhou*

- 2.4 Mr Luke Zhou supported the bill's emphasis on consumer choice and recommended further changes:

This legislation should be supported in principle, as it allows all employees to have choice of fund, benefiting young workers in particular

The legislation should be amended in the following aspects:

- (a) All employees should receive a modified choice of fund form in a timely manner after the legislation is in force;
- (b) The choice of fund form should be modified so that employees elect to contribute to only one superannuation fund, with consolidation of accounts to be undertaken by the employee's elected fund;
- (c) There should be a uniform start date for all workers, regardless of the date an enterprise agreement is made, to limit confusion for employers and employees.

These amendments are warranted to improve transparency and communication for employees, who are often disengaged from their

superannuation. It will also give effect to the Financial Services Royal Commission's recommendation for 'stapling' of accounts.<sup>1</sup>

### *Equity Trustees*

- 2.5 Equity Trustees supported the proposed amendments and argued that the bill ensures that all employees under workplace determinations or enterprise agreements have the opportunity to select their own superannuation fund.<sup>2</sup>
- 2.6 Equity Trustees encouraged the Government to consider extending choice to all employees and proposed that further legislation be enacted to ensure all employees are provided the opportunity to select a superannuation fund. Equity Trustees believed that this will remove the propensity for multiple superannuation accounts (unless they are the result of a conscious member choice) and ensure increased member engagement with their superannuation which will lead to improved retirement outcomes for more Australians.<sup>3</sup>

### *Chartered Accountants ANZ*

- 2.7 The Chartered Accountants ANZ (CAANZ) supported the bill:

Overall we support superannuants right to choose their preferred retirement vehicle both before and after retirement. It is unfair that all retirees and some employees have complete freedom to choose their own super investment whilst others are denied this independence.<sup>4</sup>

- 2.8 However, CAANZ believed that the bill should not be enacted without firm commitments by government to implement other important reforms. CAANZ argued that:
- choice of super fund makes addressing widespread 'information asymmetry' between consumers and super funds an urgently priority that must be addressed by government and by the superannuation industry;
  - access to quality and timely financial advice has always been difficult but the recently enacted financial advice reforms will make this task even more difficult; and
  - an urgent solution to this problem needs to be identified and put in place.<sup>5</sup>

### *Super Consumers Australia*

- 2.9 Super Consumers Australia (SCA) supported the proposed legislation. They support Australians:
- having the freedom to choose their own superannuation fund;

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<sup>1</sup> Mr Luke Zhou, *Submission 1*, p. 1.

<sup>2</sup> Equity Trustees, *Submission 2*, p. 1.

<sup>3</sup> Equity Trustees, *Submission 2*, p. 2.

<sup>4</sup> Chartered Accountants ANZ (CAANZ), *Submission 6*, p. 1.

<sup>5</sup> CAANZ, *Submission 6*, p. 1.

- the opportunity to pursue better financial returns, improved customer service and lower fees and consolidate their accounts to avoid paying multiple sets of fees and insurance premiums.<sup>6</sup>
- 2.10 SCA argued that imposing constraints on people's ability to make their own financial decisions damages competition and this weakens incentives for superannuation funds to deliver better outcomes for their members. Moreover, denying a choice of fund exacerbates many of the issues confronting the superannuation system, such as duplicate accounts, inappropriate insurance and consumer disengagement.<sup>7</sup>
- 2.11 SCA argued, however, that giving people choice alone will not in itself drive competition in the superannuation market. They argued that further pro-consumer measures which break down information asymmetry and help people end up in better performing funds are needed and that there is an urgent need to address the lack of competition in the default system. Furthermore, other consumer protections should also be introduced which will improve consumer decision making.<sup>8</sup>
- 2.12 SCA recommended:
- that the Federal Government:
    - pass the bill without amendment;
    - adequately resource ASIC to develop a consumer-facing comparator tool for superannuation; and
    - follow the Royal Commission implementation roadmap by introducing anti-hawking measures by June 2020; and that the
  - that the Senate Economics Committee recommend:
    - that the Federal Government urgently legislate a 'right to remain' test in the SIS Act Regulations which requires the net return of a MySuper or choice product over a rolling eight year period not to underperform by more the 0.5 percentage points the return of a tailored (by asset allocation) benchmark portfolio. This benchmark portfolio should be constructed with listed indexes, as recommended by the Productivity Commission; and
    - that funds be required to publish simple, single-page product dashboards for all superannuation investment options and standard machine readable versions of this data be made available by June 2020.<sup>9</sup>

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<sup>6</sup> Super Consumers Australia (SCA), *Submission 8*, p. 3.

<sup>7</sup> SCA, *Submission 8*, p. 3.

<sup>8</sup> SCA, *Submission 8*, p. 3.

<sup>9</sup> SCA, *Submission 8*, p. 3.

### *Financial Services Council*

2.13 The Financial Services Council (FSC) has consistently supported choice in superannuation, and have advocated for the removal of restrictions on superannuation choice in workplace agreements. Accordingly, the FSC strongly supported the measures contained in the bill.<sup>10</sup>

2.14 At the public hearing, the FSC summarised their position clearly:

Fundamentally, there is no justification for preventing up to one million Australians from choosing a superannuation fund. Repeated reviews have found that restricting choice provides poorer outcomes for superannuation members. The Productivity Commission found that restricting choice contributes to the proliferation of multiple accounts and associated duplicate fees and insurance premiums. The same report found that an individual with two accounts over the course of their working life could be six per cent worse off at retirement and recommended removing restrictions on choice of fund. The financial system inquiry also found that restricting choice contributed to employees holding multiple accounts and that it was likely to promote disengagement with superannuation. The Fair Work Commission has also recently raised concerns with restricting choice, with the deputy president noting that the proposed restrictions for Kmart employees would be less beneficial for workers than allowing choice of fund. The commission did not find that there were offsetting benefits that would flow from restricting choice.<sup>11</sup>

2.15 The FSC also supported:

- employers being required to provide choice of fund forms to employees under new agreements from the start date; and
- the changes not applying to certain defined benefit funds.

2.16 The FSC further recommended:

- Parliament support passage of the bill; and
- the bill be amended so that all employees on existing or expired agreements must be granted choice of fund by a certain date, for example one year after royal assent, to provide certainty to employers and ensure workers are not disadvantaged.<sup>12</sup>

### *Self-Managed Super Funds (SMSF) Association*

2.17 The Self-Managed Super Funds (SMSF) Association expressed concerns about employees who do not have a free choice of superannuation fund. SMSF argued that constraining employee choice has negative effects of disengaging

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<sup>10</sup> Financial Services Council (FSC), *Submission 12*, p. 4.

<sup>11</sup> Ms Jane Macnamara, Senior Policy Manager, Superannuation and Retirement Incomes, Financial Services Council, *Committee Hansard*, Sydney, 9 March 2020, p. 1.

<sup>12</sup> FSC, *Submission 12*, p. 7.



people from their superannuation, reducing competition and increasing superannuation account proliferation.<sup>13</sup>

- 2.18 The SMSF Association believed that the ability for all employees to choose their superannuation fund is an important element in promoting an efficient and competitive superannuation sector. In addition, SMSF believed that all employees should be provided information about what choices they have in the superannuation sector available to them.<sup>14</sup>
- 2.19 SMSF argued that arrangements which do not give employers or employees any choice as to where superannuation contributions are made create a multitude of issues, the most significant being account proliferation and the consequent multiple set of fees and insurance premiums which continually erode superannuation balances.<sup>15</sup>

### *Australian Small Business and Family Enterprise Ombudsman*

- 2.20 The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) acknowledged the importance of individual employees being empowered to make key decisions around their retirement savings. However, the ASBFEO argued that this must not be at the expense of small businesses and family enterprises who may suffer under an additional administrative burden to comply with the 'Choice of Fund' obligations for compulsory superannuation guarantee contributions.<sup>16</sup>
- 2.21 ASBFEO observed that an Enterprise Agreement (EA) or Workplace Determination (WD) remains in force past its nominal expiry date. Small businesses whose EAs and WDs were made before 1 July 2020 will continue on 'as is' until the agreements and determinations are terminated or replaced, or there are no remaining employees subject to them. This 'grandfathering' will, the ASBFEO argued, effectively exempt these small business employers from the 'Choice of Fund' regulations until some future date.<sup>17</sup>
- 2.22 ASBFEO argued that it is imperative that strong, education and publicity mechanisms should be implemented urgently to inform small business owners about the amendments. Additionally, relevant agencies such as the Australian Taxation Office (ATO) and Fair Work Commission (FWC) should provide assistance to small business employers on and how to implement this change.<sup>18</sup>

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<sup>13</sup> Self-Managed Super Funds (SMSF), *Submission 13*, p. 1.

<sup>14</sup> SMSF, *Submission 13*, p. 1.

<sup>15</sup> SMSF, *Submission 13*, p. 1.

<sup>16</sup> Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Submission 7*, p. 1.

<sup>17</sup> ASBFEO, *Submission 7*, p. 1.

<sup>18</sup> ASBFEO, *Submission 7*, p. 1.

### *Colonial First State*

- 2.23 Colonial First State (CFS) argued that the reform proposed by this bill should be seen in the context of the changes to the default system put forward by the Productivity Commission in its final report *Superannuation: Assessing Efficiency and Competition*.<sup>19</sup> In its findings and recommendations, the Productivity Commission sought to ensure the interests of members were given primacy.<sup>20</sup>
- 2.24 CFS noted that the Productivity Commission concluded by recommending:
- default superannuation accounts should only be created for members who are new to the workforce or do not already have a superannuation account (Recommendation 1); and
  - a single 'best in show' shortlist of up to 10 superannuation products should be presented to all members who are new to the workforce (or do not have a superannuation account), from which they can choose a product (Recommendation 2).<sup>21</sup>
- 2.25 The Productivity Commission believed, according to CFS, that a new system which placed members at the centre of the process, removing inefficiencies and the influence and interests of agents, would achieve better member retirement outcomes and a more efficient and competitive superannuation system.
- 2.26 CFS broadly supported these recommendations and note the Government has committed to implementing Recommendation 1 and is actively considering how best to reform default fund selection as expressed in Recommendation 2.<sup>22</sup>
- 2.27 CFS argued that passing the bill is critical to achieve the necessary reforms initially envisaged by the Choice of Fund model and which are complementary to the systemic improvements proposed by the Productivity Commission in its assessment.<sup>23</sup>

### *Australian Chamber of Commerce and Industry (ACCI)*

- 2.28 The Australian Chamber of Commerce and Industry (ACCI) supported the bill's provisions that it believes they will result in employees under new enterprise agreements and workplace determinations being able to have a choice of super fund.<sup>24</sup>

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<sup>19</sup> The Productivity Commission's report can be found at: <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report> (accessed 3 March 2020)

<sup>20</sup> Colonial First State (CFS), *Submission 18*, p. 2.

<sup>21</sup> CFS, *Submission 18*, p. 2.

<sup>22</sup> CFS, *Submission 18*, p. 2.

<sup>23</sup> CFS, *Submission 18*, p. 2.

<sup>24</sup> The Australian Chamber of Commerce and Industry (ACCI), *Submission 16*, p. 1.

2.29 ACCI argued that extending choice to employees under new rather than existing enterprise agreements and work determinations will minimise the cost and compliance burden on business while delivering the potential for improved outcomes for individual employees.<sup>25</sup>

2.30 ACCI also challenged the view that many Australians lack financial literacy and argued they are more than capable of exercising responsible choice:

Whether that is into another industry fund or another retail fund or whether it's the same fund, Australians—or a proportion of Australians—are a lot more financially literate. There is a lot more engagement with the stock market by more people and I think you had the self-managed people in earlier. There's a lot more interesting ones—personal wellbeing—a lot more differentiation by the stage of life you're at and your financial goals. We struggle to see why working Australians across the board don't have the right to exercise those choices if they wish to.<sup>26</sup>

2.31 ACCI does not share the concern about the potential administrative burden that mandatory choice may have on business as the introduction of SuperStream has significantly reduced the administrative costs of superannuation choice.<sup>27</sup>

2.32 Finally, ACCI argued that the passing of the bill should have minimal administrative costs on business if it is introduced for new rather than existing enterprise agreements.<sup>28</sup>

### *Australian Institute of Superannuation Trustees*

2.33 Australian Institute of Superannuation Trustees (AIST) was more ambiguous in its support. AIST supported the principle of choice in superannuation but highlighted evidence that members in the choice segment are at risk of having materially lower retirement incomes.<sup>29</sup>

2.34 AIST argued that choice must only be provided in a way that does not leave consumers worse off and must operate in an environment of meaningful disclosure and consumer protections.<sup>30</sup> In summary:

The nub of AIST's position today, as it has been for many years, is that this bill jeopardises the superannuation entitlements of people receiving more than the superannuation guarantee, and that the law—that is, the removal of the SG [Superannuation Guarantee] exemption from EBAs [Enterprise

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<sup>25</sup> ACCI, *Submission 16*, p. 1.

<sup>26</sup> Mr Scott Barklamb, Director Workplace Relations, ACCI, *Committee Hansard*, Sydney, 9 March 2020, p. 45.

<sup>27</sup> ACCI, *Submission 16*, p. 1.

<sup>28</sup> ACCI, *Submission 16*, p. 1.

<sup>29</sup> Australian Institute of Superannuation Trustees (AIST), *Submission 10*, p. 1.

<sup>30</sup> AIST, *Submission 10*, p. 1.

Bargaining Agreements]—shouldn't apply in circumstances where people receive additional benefits under an enterprise bargaining agreement.<sup>31</sup>

2.35 AIST proposed that the existing exemption remain for enterprise agreements where superannuation benefits in excess of the community standard are negotiated between the employer and their employees.<sup>32</sup>

2.36 As an example of such a fund, AIST advocated that defined benefit funds, such as UniSuper, should be exempted:

Members in DB [Defined Benefit] schemes are clear examples of people receiving higher benefits under an EBA, higher employer contributions or nominal employer contributions in schemes that promise a guaranteed retirement outcome and do not involve members wearing investment risk.<sup>33</sup>

2.37 AIST also argued that this bill would not have any impact whatsoever on the proliferation of unnecessarily duplicated accounts.<sup>34</sup>

## **Opposition to the bill**

### *Australian Council of Trade Unions (ACTU)*

2.38 This Australian Council of Trade Unions (ACTU) opposed the bill arguing that it is an attack on workers' rights to collectively bargain for a superannuation fund in their interests, and abolishes the ability for workers and their employers to agree to specific benefits only available with single fund workplaces.<sup>35</sup>

2.39 The ACTU also believed that the bill undermines action against unpaid super undertaken by workers, unions and their funds.<sup>36</sup>

2.40 The ACTU's concerns also extend to the bill's effect on defined benefit schemes. The ACTU noted:

Should the bill pass, some superannuation funds would need to re-evaluate how and if they could offer their products. UniSuper is one of the best performing super funds in the country. It offers one of the rarest and most valuable retirement products available, which is an open defined-benefits scheme. This is an incredibly generous product which guarantees retirement incomes for life, and that is why the National Tertiary Education Union bargains for this fund for their workers. Its viability is centred on longevity risk of each member and the fact that it is

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<sup>31</sup> Mr David Haynes, Senior Policy Manager, AIST, *Committee Hansard*, Sydney, 9 March 2020, p. 48.

<sup>32</sup> AIST, *Submission 10*, p. 1.

<sup>33</sup> Mr David Haynes, *Committee Hansard*, Sydney, 9 March 2020, p. 48.

<sup>34</sup> Mr David Haynes, *Committee Hansard*, Sydney, 9 March 2020, p. 49.

<sup>35</sup> Australian Council of Trade Unions (ACTU), *Submission 5*, p. 1.

<sup>36</sup> ACTU, *Submission 5*, p. 1.

compulsory. If workers were to choose to be a member then this would be evidence of self-selection into the fund and thus would increase the risk of the product failing.

Should the bill pass, the fund could seriously reconsider the offering of the product to its members and potentially close off entry to one of the most beneficial outcomes for hundreds of thousands of members. The ACTU opposes this bill and is seeking amendments which would protect workers in circumstances where they would be better off having a single fund.<sup>37</sup>

### *Electrical Trades Union of Australia (ETU)*

2.41 The Electrical Trades Union of Australia (ETU) opposed the bill which they see as unfairly taking away the rights of workers to bargain for their preferred super fund in the workplace.<sup>38</sup>

2.42 The ETU argued that superannuation is an initiative of working people and where workers choose to negotiate a default fund with their employer, in their own best interests, and is not something that should submit to government intervention. The ETU pointed out that each time an industrial instrument is re-negotiated the workforce has ample opportunity to review the fund and determine any changes they may wish to make.<sup>39</sup>

### *Maurice Blackburn Lawyers*

2.43 Maurice Blackburn Lawyers (MBL) if not outright opposed to the bill, saw it as a missed opportunity to implement reforms to the existing superannuation regime. That is, to ensure that employees are not victims of the abdication of responsibilities in relation to the payment of superannuation by unscrupulous employers.<sup>40</sup>

2.44 Accordingly, MBL recommended that the Committee consider where the following matters of consumer protection could be embedded in the bill:

- a legislated right of action for damages caused by employer's failure to make on time superannuation guarantee contributions;
- a legislated obligation on employers to conduct due diligence over any default superannuation fund; and
- consumer protections when choice is available.<sup>41</sup>

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<sup>37</sup> Mr Joseph Mitchell, Workers' Capital Lead, Australian Council of Trade Unions (ACTU), *Committee Hansard*, Sydney, 9 March 2020, pp. 7-8.

<sup>38</sup> Electrical Trades Union of Australia (ETU), *Submission 3*, p. 1.

<sup>39</sup> ETU, *Submission 3*, p. 1.

<sup>40</sup> Maurice Blackburn Lawyers (MBL), *Submission 4*, p. 2.

<sup>41</sup> MBL, *Submission 4*, pp 2-4.

### *McKell Institute Victoria*

- 2.45 The McKell Institute (the Institute) was concerned that the bill will not achieve any positive outcomes believing that the evidence available suggests the bill is more likely to undermine its core objectives; that is to maximise retirement savings.<sup>42</sup>
- 2.46 Overall, the Institute found the fewer the restrictions or limitations placed on individual choice, either by employees or by employers, the worse the overall performance outcomes were for employees. The Institute argued that of the six main cohorts identified, employees under agreements with 'collective choice' or 'group choice' were the most likely to be placed in high-performing funds and almost the least-likely to be placed into under-performing funds.<sup>43</sup>
- 2.47 The Institute argued that many employers are capable of selecting a good default fund for their staff and there is evidence that with less restriction on employers comes an increased risk of a poorer selection being made.<sup>44</sup>
- 2.48 The Institute argued that, if passed, the bill would effectively inhibit one form of choice, collective or group choice, in favour of another, individual choice, without clear evidence that the latter is more effective in driving better outcomes. In doing so, the Institute argued that it will put more Australians at risk of ending up in an under-performing fund and limit mechanisms for ensuring ongoing accountability of and improved performance by superannuation funds.<sup>45</sup>

### *Industry Super Australia (ISA)*

- 2.49 Industry Super Australia (ISA) support choice of funds as an inherently good thing and generally supports the bill's direction. However, ISA argued that informed choice was essential and that this cannot currently be guaranteed:

...helping consumers to make good choices remains an ongoing challenge. A good place to start is simple product disclosures for choice super products. ISA's position is that for choice to be genuinely available to consumers it needs to be informed choice. At this point in time we don't have an environment of informed choice.<sup>46</sup>

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<sup>42</sup> McKell Institute, *Submission 9*, p. 1.

<sup>43</sup> McKell Institute, *Submission 9*, p. 1.

<sup>44</sup> McKell Institute, *Submission 9*, p. 1.

<sup>45</sup> McKell Institute, *Submission 9*, p. 2.

<sup>46</sup> Mr Richard Watts, Consultant, Industry Super Australia (ISA), *Committee Hansard*, Sydney, 9 March 2020, p. 54.

- 2.50 ISA recommended that there be a presumption of choice unless it can be demonstrated that it is in an employee's interest to restrict choice of fund through an EBA.<sup>47</sup>
- 2.51 ISA noted that most workers do currently have choice of fund citing its 2017 analysis of a sample of enterprise agreements ratified by the FWC. It found that 82 per cent of all employees covered by agreements had no restriction on choice of fund and that only 1.9 per cent of the workforce had some form of restriction.<sup>48</sup>
- 2.52 ISA argued that the success of the system is appropriately measured by the quality of funds that are selected as default funds and that the Productivity Commission's findings recognise that in this respect the system has performed well to date.<sup>49</sup>
- 2.53 ISA believed that a critical factor in the system's success is ensuring that employers and workers are supported through the vetting of default funds by the Expert Panel of the Fair Work Commission (FWC) to ensure that only high quality and appropriate funds receive employer superannuation contributions on behalf of those employees who do not exercise choice.<sup>50</sup>
- 2.54 ISA argued that a strengthened default system is critical to achieving this outcome and government should take the necessary steps to appoint members to the FWC Expert Panel to enable the expert panel to convene and begin the process of ensuring that only high-quality funds are named as default funds in modern awards.<sup>51</sup>

### *Transport Workers Union Superannuation (TWUSUPER)*

- 2.55 TWUSUPER argued that the changes contained in bill would not improve retirement outcomes or transparency but would instead cause detriment to many Australians, including members of TWUSUPER, who have chosen the deemed collective choice provisions of the *Superannuation Guarantee (Administration) Act 1992* (alongside the *Fair Work Act 2009*) to achieve a better overall outcome.<sup>52</sup>
- 2.56 The choice of workers to seek a collective mechanism is, according to TWUSUPER, an effective and important exercise of choice, which arguably delivers superior outcomes to other models. Eliminating collective choice as

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<sup>47</sup> Mr Richard Watts, *Committee Hansard*, Sydney, 9 March 2020, p. 54.

<sup>48</sup> ISA, *Submission 11*, p. 2.

<sup>49</sup> Industry Super Australia (ISA), *Submission 11*, p. 2.

<sup>50</sup> ISA, *Submission 11*, p. 2.

<sup>51</sup> ISA, *Submission 11*, p. 2.

<sup>52</sup> TWUSUPER, *Submission 14*, p. 3.

this bill intends would, according to TWUSUPER, actually diminish choice overall, and leave many workers access to inferior and less informed models of choice.<sup>53</sup>

2.57 TWUSUPER argued that this was the potential unintended consequence of the legislation:

I think there is a danger of unintended consequences if we fall into the trap of talking about this amendment as something that addresses the denial of choice. It is in fact precisely the opposite. Putting this amendment through denies workers an iteration of choice that currently exists. It's just that some people don't like that iteration of choice because it's a collective iteration of choice...

We're not saying there shouldn't exist a range of different types of choice in superannuation; we're simply saying don't deny the collective aspect of choice.<sup>54</sup>

2.58 Furthermore:

When you remove the right of workers to collect as an exercised choice, in the way that they are currently permitted to do, you remove and you start to unpick the very collective nature of superannuation being treated as an industrial right.<sup>55</sup>

2.59 Finally, TWUSUPER argued that the bill also does nothing to improve the situation for those not able to access superannuation at all, and consideration of the bill would be best deferred until after the Retirement Incomes Review<sup>56</sup> has concluded.<sup>57</sup>

### *UniSuper*

2.60 UniSuper was one of the few submissions that make specific reference to the defined benefit aspect of the bill. They believed that one of the great strengths of a multi-employer defined benefit scheme is that employees and employers in the relevant sector have consistent superannuation arrangements across the sector and upon changing employment. They argued the bill would put these

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<sup>53</sup> TWUSUPER, *Submission 14*, p. 3.

<sup>54</sup> Mr Michael Kaine, Employee Director, TWUSUPER, *Committee Hansard*, Sydney, 9 March 2020, p. 26.

<sup>55</sup> Mr Michael Kaine, *Committee Hansard*, Sydney, 9 March 2020, p. 28.

<sup>56</sup> The Treasurer, the Hon Joshua Frydenberg MP, announced a review into the retirement income system on 27 September 2019 and was recommended by the Productivity Commission. The review will be undertaken by an independent panel and will provide its final report to the Government by June 2020. See: <https://treasury.gov.au/review/retirement-income-review>, accessed 11 March 2020.

<sup>57</sup> TWUSUPER, *Submission 14*, p. 3.



arrangements at risk and strongly suggested reconsidering the bill's application to defined benefit schemes.<sup>58</sup>

2.61 UniSuper argued that should the bill be adopted in its present form, its members would be exposed to elevated risks, risks which are avoidable while retaining the legislation's underlying objective to provide choice to individuals.<sup>59</sup> UniSuper strongly suggest that the Committee recommend that:

- the current exemption from the choice of fund requirements for existing defined benefit members should continue; and
- an exemption for those who are newly eligible to become defined benefit members should also be provided for in the legislation.<sup>60</sup>

2.62 In its appearance at the public hearing, UniSuper further explained its concerns:

A change in the total number of DBD [Defined Benefit Division] members by the number of new DBD members or even a lack of new members would not concern us. What does concern us is the potential material increase in what's called selection risk. We do think that what is proposed in this bill likely would introduce much higher risk. Selection risk, particularly in relation to the salary growth profile of new members and the skewing of the average age of new DBD members, would likely increase if permanent higher education sector employees were not automatically enrolled in the DBD and instead new members were just given the ability to opt into the DBD. As UniSuper has neither a government guarantee nor an employer guarantee to cover funding shortfalls, adverse outcomes from changes to experience will ultimately be borne by fund members.

If as a result of adverse selection the actuarially determined average cost interventions to the DBD became greater than the 21 per cent of salary amounts contributed to the DBD, it is likely that the DBD would need to be closed to new employees to ensure that the financial security of existing DBD members would not be compromised. This would lead to a loss of a very good superannuation choice as a unique offering by the higher education sector. It's salient to note that the contributions to many Commonwealth, state and territory defined benefit schemes are exempted from the choice fund requirements by the SG [Super Guarantee] regulations.<sup>61</sup>

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<sup>58</sup> UniSuper, *Submission 15*, pp. 1 – 2.

<sup>59</sup> UniSuper, *Supplementary submission 15.1*, p. 6.

<sup>60</sup> UniSuper, *Supplementary submission 15.1*, p. 6.

<sup>61</sup> Mr Kevin O'Sullivan, Chief Executive Officer, UniSuper, *Committee Hansard*, Sydney, 9 March 2020, pp. 37-38.

2.63 UniSuper have provided draft amendments to the *Superannuation Guarantee (Administration) Act 1992* that UniSuper believe would, if adopted, address these concerns.<sup>62</sup>

### *National Tertiary Education Union (NTEU)*

2.64 National Tertiary Education Union (NTEU) does not believe the bill is necessary to protect its members. Furthermore, the bill may, due to the unique nature of both the higher education industry and the current industry-wide superannuation arrangements, potentially result in reduced choice and higher costs for its members and their employers.<sup>63</sup>

2.65 NTEU recommended:

- consideration of the proposed legislation should be deferred until the completion of the current inquiry into retirement incomes;
- that enterprise agreements or other industrial instruments that provide for payment of employers at greater than the superannuation guarantee contribution rate be exempt from the legislation; and
- failing the above, the unique character of the higher education industry, fund, and products requires UniSuper to be explicitly excluded from this Bill (by the addition of the following words at 32C (1):
  - ; or
  - if the employee is an employee of a university.<sup>64</sup>

2.66 Finally, the NTEU supported the proposed Australian Labor Party's amendment which would provide for the Fair Work Commission to apply a test as to whether the specification of a fund in an industrial instrument is in the best interests of the employees.<sup>65</sup>

## **Committee comment**

### *Choice*

2.67 As the title suggests, the issue of choice is at the bill's heart. That individual workers in some industries are required to belong to one particular fund as part of their employment limiting their options not only in terms of choice but also in terms of avoiding holding multiple funds is not, in the committee's view, a desirous outcome.

2.68 The argument ventured by TWUSUPER regarding collective choice is not a strong one. While it carries a certain logic, it is difficult to argue that an

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<sup>62</sup> Mr Kevin O'Sullivan, *Committee Hansard*, Sydney, 9 March 2020, p. 37.

<sup>63</sup> National Tertiary Education Union (NTEU), *Submission 17*, p. 9.

<sup>64</sup> NTEU, *Submission 17*, p. 9.

<sup>65</sup> NTEU, *Submission 17*, p. 9.

individual being denied their own choice of super fund in the name of an overall collective workplace agreement qualifies as choice. In any case, it is not consistent with the bill's intent.

2.69 The committee agrees with ACCI on the question of what constitutes 'choice':

Choice is either choice of an individual—if you're not having the right to choose and you're putting it in the hands of someone else, we don't see how that is choice. We note that, in preparing for this hearing we were looking at some perspectives of others, and even the Australia Institute pointed out in a report they did in 2008 that, from a psychological perspective, choice has been shown to enhance people's sense of self-determination and motivation. We really fail to see how that's an outcome where there is somehow this term 'collective choice'—when that involves no self-determination and no motivation on behalf of the individual.<sup>66</sup>

2.70 The committee notes the evidence provided by FSC demonstrating the bill does not stop employees in a union collaborating together to make a collective choice:

There's nothing in this legislation that prevents that. All this legislation prevents is there then being a clause that says that no-one can move outside of that other fund. So there's nothing in this legislation that prevents employees, either separately or as part of a union, banding together and making a choice as to the default fund for their workplace.<sup>67</sup>

2.71 Moreover, when asked, the ACTU also acknowledged that under this bill, a workplace and a union can, in an enterprise agreement, agree on a default fund and have workplace-tailored insurance:

**ACTING CHAIR:** Okay. I'll finish on this point. If this bill passes, can you still have a default fund in an enterprise agreement?

**Mr Mitchell:** Yes.

**ACTING CHAIR:** And can you still have workplace-tailored insurance?

**Mr Mitchell:** Yes.<sup>68</sup>

2.72 The committee supports the bill's focus on individual choice and notes that even the bill's critics acknowledge that enterprise agreements can still have default funds for their workers. Accordingly, the committee recommends the bill should be passed.

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<sup>66</sup> Ms Tamsin Lawrence, Deputy Director Workplace Relations, ACCI, *Committee Hansard*, Sydney, 9 March 2020, p. 12.

<sup>67</sup> Ms Jane Macnamara, *Committee Hansard*, Sydney, 9 March 2020, p. 3.

<sup>68</sup> *Committee Hansard*, Sydney, 9 March 2020, p. 12.

### *Defined benefit funds*

2.73 The committee notes the existing exemptions in the bill for defined benefit funds. A number of submitters have argued that there should be further exemptions.

2.74 UniSuper is one of those funds. UniSuper provided evidence through the hearing and two submissions and their arguments were put to Treasury. Treasury argued that the bill would not change UniSuper's default arrangements – employees would still be defaulted into the defined benefit.<sup>69</sup>

2.75 Treasury explained:

UniSuper, as they outlined, currently have a two-year window in which employees can choose to opt out. Because they are defaulted into their defined benefits arrangements, they can choose to opt out within that two-year period. On the evidence presented by UniSuper, currently somewhere between 15 and 20 per cent of people are choosing to opt out in that period... So what this bill will do is ensure that, beyond that two-year period, the employees can also choose another fund other than the defined benefit fund.<sup>70</sup>

2.76 Treasury had also been in consultation with UniSuper and are of the view that the bill will not cause any concerns:

We've been in discussions with UniSuper, have seen their submissions and have also spoken with them. We are yet to receive any detail from them that would suggest there is an issue with proceeding with this legislation.<sup>71</sup>

2.77 The committee understands – particularly now – the attraction of a defined benefit scheme; a scheme which is essentially unaffected by the vicissitudes of financial markets. The evidence provided by Treasury indicates that these schemes should remain unaffected by this bill.

2.78 However, changes may emerge over time and the committee believes that it would be prudent to review the status of defined benefit schemes after a two-year period to ascertain if there have been some unintended negative consequences.

### **Recommendation 1**

**2.79 The committee recommends that a review is conducted into the effect of this legislation on defined benefit schemes two years after its implementation.**

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<sup>69</sup> Mr Alex Maevisky, Manager, Retirement Income Policy Division, Treasury, *Committee Hansard*, Sydney, 9 March 2020, p. 59.

<sup>70</sup> Mr Robert Jeremenko, Division Head, Retirement Income Policy Division, Treasury, *Committee Hansard*, Sydney, 9 March 2020, p. 59.

<sup>71</sup> Mr Robert Jeremenko, *Committee Hansard*, Sydney, 9 March 2020, p. 59.

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*Further considerations*

- 2.80 The Committee acknowledges that the findings and recommendations of the Treasury's Retirement Incomes Review could also be a significant opportunity to further improve the superannuation system.
- 2.81 The Committee also notes the positive suggestions by many submitters to this inquiry. These would need further consideration and consultation before being incorporated into future reform.
- 2.82 In that regard, the committee is of the view that any well-considered amendments which provide greater transparency, streamlines the decision making process, helps funds improve performance and ultimately, enables workers to make more informed choices about superannuation funds should be considered in the future.

**Recommendation 2**

- 2.83 The committee recommends the government considers changes as suggested by submitters to further improve superannuation arrangements.**

**Recommendation 3**

- 2.84 The committee recommends that the bill be passed.**

**Senator Slade Brockman  
Chair**



# Dissenting report from Labor Senators

- 1.1 Labor are committed to Australia's superannuation system and any changes that will make it stronger are fairer. Shadow Assistant Treasurer and Shadow Minister for Financial Services Stephen Jones MP outlined the reasons for this in his second reading speech:

Labor has a very proud track record when it comes to superannuation and we'll continue to fight for a stronger and fairer superannuation system. Because a few things have been said in this parliament today about the role of the Australian trade union movement in respect of superannuation, I want to take the opportunity to acknowledge the great contribution that the Australian union movement has made, together with the Australian Labor Party, in establishing our modern superannuation system.

Labor and the union movement won compulsory employer-paid superannuation through national worker-led campaigns, together with legislative action in this parliament to put together what today is a universal workplace right to occupational superannuation—a right that, in my lifetime, was once available only to politicians, public servants, senior managers and long-serving employees in certain industries, such as the banking and financial industries. Today, it is a universal right and one that is enjoyed by the people who attend us around this parliament, whether they're cleaning our offices or helping us here in the chamber, by the members of parliament, and by other parliamentary staff. It is a universal right.

- 1.2 Labor have publicly stated support for the principle of choice. The reasons are articulated in Stephen Jones MP's second reading speech:

Labor supports the objects of this bill which are to provide choice in superannuation, but we're committed to ensuring that every worker is in a high-performing fund and that adequate information is available to empower consumers with the information that they need to make choices that are in their own best interests. What is clear is that people do want to make the right choice and do want to have the right to choose their super fund, and the law should support that. But we also are very cognisant of the fact—a fact brought into stark relief by the Hayne royal commission into the financial services industry—that, often, a lot of evil can be done in the name of choice. We want to ensure that workers are not forced into funds either ill-informed of the consequence of those choices or because some other contrary or corollary arrangements have been made by an employer in a workplace with a proponent of that fund which is not in the worker's interests. People are already voting with their feet. In the last 12 months, \$20 billion has moved into the not-for-profit sector, with consumers in search of lower fees and higher performance. Choice is already happening.

The Senate Economics Legislation Committee is currently inquiring into the provisions of this bill, and Labor reserves our position on the proposed choice of fund changes until after the Senate committee has reported. We are using the Senate inquiry process to ensure that there are no unforeseen

consequences. A lot of evil has been done in the past in the name of choice. It's blatantly obvious that if a consumer, if a worker, is to have choice then that should go hand in hand with them having all of the information available to them. The choice has to be a genuine one. We want to ensure that consumers are empowered with the information they'll need to make choices in their best interest. I foreshadow that Labor will be moving amendments to the Treasury Laws Amendment (Your Superannuation, Your Choice) Bill in the Senate at the conclusion of the ongoing Senate inquiry.

- 1.3 Labor referred the Super Choice legislation to this inquiry to ensure the bill had no unforeseen or unintended consequences which left superfund members worse off or with less choice.
- 1.4 Labor notes the evidence given by the Australian Council of Trade Unions, Electrical Trade Union, Maurice Blackburn, McKell Institute of Victoria, Industry Super Australia, TWU Super and the National Tertiary Education Union in opposition to the bill.
- 1.5 Labor notes in 2.40 of the Committee report the ACTU highlight the detrimental effects that the bill could have on defined benefit product offerings.
- 1.6 Labor notes in 2.62 of the Committee report that Unisuper gave evidence that highlighted the detrimental effect that the bill unamended could have on their defined benefit product offering.
- 1.7 Labor note that in 2.63 of the Committee report that Unisuper have provided to the committee an amendment that addresses their concerns.
- 1.8 Labor Senators support this amendment and believe that any risk to defined benefit offerings lessens choice and achieves the opposite objective to what the bill intends.
- 1.9 Labor support the principle and important role of collective bargaining in Australia's industrial relations system and note that the NTEU, ETU and TWU argued their members were better off as a result of collective bargaining.
- 1.10 The ACTU provided evidence to suggest that the bill could include a provision that allows for workers to bargain for a single fund or set of funds, where it is determined by the Fair Work Commission it is in their best interests.

**Senator PATRICK:** You say that a resolution to this could be an alternate or an amended bill that permits a super fund to be nominated in an EBA but with an opt-out provision?

**Mr Mitchell :** That could be explored. I think it would be interesting to see how that would be presented. Similarly, there is an amendment that we would advocate for, which is one that was put in the last parliament, which allows the Fair Work Commission to make a ruling over a clause as a line item, essentially saying, 'Are these workers better off for having this kind of restriction in their agreement?' That would take into account, in



our mind and in the previous parliament's amendment's mind, whether or not the insurance is appropriate for workers—like in the TWUSUPER case, where there is no affordable insurance offering in the same way—or whether or not those employers are at a higher risk of unpaid super. It would be an ability for the Fair Work Commission and an independent tribunal to make a ruling saying, 'In this case, and for this agreement, we believe that the workers are better off.' Perhaps, as part of that amendment, we can explore ways to say that if the clause has a way to deal with multiple accounts that should be considered in that clause's favour. If it doesn't, it should be to the detriment of that clause.

### **Recommendation 1**

**1.11 That Unisuper's suggested amendment referenced at 2.62 of the Committee report be adopted to allow the continued operation of open Defined Benefit Schemes.**

### **Recommendation 2**

**1.12 That any amendments include a provision that allow for workers to bargain for a single fund or set of funds, where it is determined by the Fair Work Commission it is in their best interests.**

### **Recommendation 3**

**1.13 That the bill be passed subject to recommendations 1 and 2 being adopted.**

**Deputy Chair**

**Committee Member**

**Senator Kimberley Kitching**

**Senator Jenny McAllister**



# Additional comments by Senator Rex Patrick

## Not just choice, informed choice

- 1.1 I thank the Committee and the Secretariat for their work in relation to the examination of this bill.
- 1.2 This bill is about worker's choice. At the moment, some workers are denied the opportunity to individually select the super fund that their employer compulsory superannuation contributions are paid into. This is particularly the case when the choice of super fund is embedded in an Enterprise Bargaining Agreement (EBA).
- 1.3 Lack of choice is not the only issue the bill seeks to remedy. It will also address circumstances where a person may end up with more than one super fund account (because one is mandated because of an EBA, whilst other preferred super funds are active), meaning they are paying multiple fees and may be paying multiple insurance premiums.
- 1.4 Centre Alliance strongly supports the principle that workers are entitled to choose their super fund. Workers should have the freedom to manage their retirement savings as they wish.

### Recommendation 1

- 1.5 **That the bill be passed with amendments.**

### *Collective Choice*

- 1.6 The Electrical Trades Union of Australia and others oppose the bill as they see it unfairly taking away the rights of workers to bargain for their preferred super fund in the workplace.
- 1.7 They and others suggested that the bill will erode the ability for workers to benefit from 'collective choice', where a 'collective choice' was a choice of super negotiated into an EBA by a union.
- 1.8 Whilst such a 'collective choice' is voted on, the vote does not have to be unanimous. This approach denies those who dissent such a choice. It also does not cater for new workers who arrive on the scene after the EBA has been negotiated and have no opportunity to have any real say in the 'collective choice' that is in place.
- 1.9 The issue was explored by the Committee and it was found that the bill does not prevent a collective choice being offered. A 'collective choice' can be made by nominating a default fund. Mr Mitchell, representing the Workers' Capital

Lead, Australian Council of Trade Unions, confirmed this was the case at the hearing:

**ACTING CHAIR:** Let me try it this way: under this bill, can a workplace and a union agree on a default fund in an enterprise agreement?

**Mr Mitchell:** Yes.

- 1.10 The Financial Services Council advised the committee that there are super funds which are mandated, as a result of enterprise agreements, and their performance is not particularly good when compared across the entire range of super funds available.
- 1.11 This bill strikes a good balance. The collective can choose a default fund (and note that, according to the Financial Services Council, "... most Australians don't engage with their super and remain with their default fund"). Those that dissent or are aware of better performing funds can make a different choice. Those that arrive on scene after the 'collective choice' has been made can benefit from the 'collective choice', or choose otherwise.

### *Informed Choice*

- 1.12 However, I am cognisant that you can give people a lot of choice but without proper information they can go on to make a rotten choice.
- 1.13 Numerous submitters and witnesses raised concerns about this.
- 1.14 The Chartered Accountants ANZ said:
- ... access to quality and timely financial advice has always been difficult but the recently enacted financial advice reforms will make this task even more difficult; and an urgent solution to this problem needs to be identified and put in place.
- 1.15 Super Consumers Australia argued:
- ... that giving people choice alone will not in itself drive competition in the superannuation market. They argued that further pro- consumer measures which break down information asymmetry and help people end up in better performing funds are needed.
- 1.16 They went on to say:
- ... that funds be required to publish simple, single-page product dashboards for all superannuation investment options and standard machine readable versions of this data be made available by June 2020.
- 1.17 The Self-Managed Super Funds Association believed that all employees should be provided information about what choices they have in the superannuation sector available to them.
- 1.18 One option would be to encourage workers to seek their own financial advice. This was canvassed at the hearing. The Financial Services Council said:

I couldn't tell you specifically on choice of superannuation. I believe it's around an average of \$3 1/2 thousand to get a full suite of advice. If you go

to a financial adviser about all of your financial affairs, and your insurance could be part of that, that generally costs about \$3 1/2 thousand. That's obviously quite expensive, and that's something else that we do have concerns about.

- 1.19 The Government must put in place a regime that mandates the publication of independently vetted and approved standard dashboards. In addition, a more detailed heat map as currently produced by APRA should be available so that workers can be informed about the available choices and their respective performances in the market.

## **Recommendation 2**

- 1.20 The bill be amended to require a formal 'dashboard' and 'heatmap' regime to inform workers of their super choices.**

### *Defined Benefit Schemes*

- 1.21 The Committee recognised that there was the possibility that the bill might cause some unintended consequences for Defined Benefit Schemes.
- 1.22 The Committee states in main report that:
- ... changes may emerge over time and the committee believes that it would be prudent to review the status of defined benefit schemes after a two-year period to ascertain if there have been some unintended negative consequences.
- 1.23 The Committee made a recommendation that a review occur but did not propose that the review be legislated.

## **Recommendation 3**

- 1.24 That the bill be amended to include a legislative review after 2 years by APRA, involving industry consultation, into the effect and any unintended consequences of the passage of this bill on Defined Benefit Schemes.**

**Rex Patrick**

**Senator for South Australia**



# Appendix 1

## Submissions and additional information

### *Submissions*

- 1 Mr Luke Zhou
- 2 Equity Trustees
- 3 Electrical Trades Union of Australia
- 4 Maurice Blackburn Lawyers
- 5 Australian Council of Trade Unions
- 6 Chartered Accountants ANZ
- 7 Australian Small Business and Family Enterprise Ombudsman
- 8 Super Consumers Australia
- 9 McKell Institute Victoria
- 10 Australian Institute of Superannuation Trustees
- 11 Industry Super Australia
- 12 Financial Services Council
- 13 SMSF Association
- 14 TWU Super
- 15 UniSuper
  - 15.1 Supplementary to submission 15
- 16 Australian Chamber of Commerce and Industry
- 17 National Tertiary Education Union
- 18 Colonial First State

### *Answer to Question on Notice*

- 1 Trade Workers Union Super: Answers to questions taken on notice at a public hearing in Sydney on 9 March 2020 (received 16 March 2020)
- 2 Financial Services Council: Answer to Question taken on notice at a public hearing in Sydney on 9 March 2020 (received 16 March 2020)
- 3 Australian Institute of Superannuation Trustees (AIST): Answers to questions on notice taken on notice at a public hearing in Sydney on 9 March 2020 (received 16 March 2020)
- 4 Treasury: Answers to questions on notice taken on notice at a public hearing in Sydney on 9 March 2020 (received 17 March 2020)

### *Tabled Document*

- 1 Rice Warner Industry Super Member Switching Report of 12 September 2017, tabled at a public hearing in Sydney on 9 March 2020 by Mr Richard Watts, Consultant for Industry Super Australia.





# Appendix 2

## Public hearing

*Monday, 9 March 2020*

Portside Centre

Sydney

*Financial Services Council*

- Ms Jane Macnamara, Senior Policy Manager, Superannuation and Retirement Incomes
- Mr Michael Potter, Senior Policy Manager, Economics, Tax & Strategy

*Australian Council of Trade Unions*

- Mr Joseph Mitchell, Workers' Capital Lead

*Super Consumers Australia*

- Mr Xavier O'Halloran, Director
- Mr Cameron Sinclair, Senior Policy Advisor

*Trade Workers Union Super*

- Mr Frank Sandy, Chief Executive Officer
- Mr Paul Ryan, Employer Director (Alternate)
- Mr Michael Kaine, Employee Director

*SMSF Association*

- Mr Peter Hogan, Head of Technical

*UniSuper and National Tertiary Education Union*

- Mr Kevin O'Sullivan, Chief Executive Officer
- Professor Peter Dawkins AO, Director
- Mr Anand Thomas, Chief Strategy & Marketing Officer
- Ms Gabe Gooding, National Assistant Secretary
- Mr Peter Summers, Executive Manager

*Industry Super Australia*

- Mr Richard Watts, Consultant

*Australian Institute of Superannuation Trustees*

- Mr David Haynes, Senior Policy Manager

*Treasury*

- Ms Michelle Dowdell, Principal Advisor, Retirement Income Review Division
- Mr Robert Jeremenko, Division Head, Retirement Income Policy Division

- Mr Alex Maevsky, Manager, Retirement Income Policy Division

*Australian Chamber of Commerce and Industry*

- Mr Scott Barklamb, Director, Workplace Relations Team
- Ms Tamsin Lawrence, Deputy Director, Workplace Relations Team