Your future, bank super

Submission by the Australian Council of Trade Unions to the Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (*Your Future, Your Super*) Bill 2021

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ACTU
australian council of trade unions

Contents

Summary 1
Schedule 1– Single default account ('stapling') 2
  Members knowingly stapled underperforming funds 2
  Frustrating for employers 3
  A better alternative: stapling money to the member 3
  Essential workers' insurance under attack, again 4
  Dudded from the start: loose anti-hawking laws and unfair restrictions on expenditure 5
Schedule 2 — Performance benchmarks 6
  Inscrutable legislation 6
  Discouraging long-term, active investment 7
  All fees and all products should be included 8
  Consequences for underperformance are poor 9
Schedule 3 — Best interests duty 10
  Profits excluded 10
  No materiality and impossible to implement 11
  Unlimited power for the Minister 11
  Disclosure rules will make members poorer 12
Conclusion 12

Summary

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU and its affiliated unions played a foundational role in winning superannuation as an industrial right for all working people, and with employers established and continue to be custodians of workers' retirement savings through industry superannuation funds. Living well after work is fundamental to the wellbeing of working people and attaining dignity and independence in retirement for all working people is a core goal of the union movement.

This Bill differs little from the exposure draft presented to the Australian people late last year. Despite releasing the policy intent in October 2020, the Government is yet to publish draft regulations meaning most of the Bill's impact is not fully assessable by Parliament.

The Bill represents an attack on working people, their retirement savings, and the best-performing and best-governed superannuation funds. Where the Government could be addressing real issues that cause harm for working people including the prevalence of multiple accounts and underperformance, it has chosen an option which will leave workers materially worse off.

The measures aimed at ensuring funds are acting in the best interests of members, too, could have been targeted at for-profit funds which blatantly rorted members as uncovered by the Banking Royal Commission. However, the Government has drafted laws which would, in effect, only apply to the operation of industry super funds and significantly encumber their operations with tests not applied to for profit funds. The most egregious power the Government is seeking to give itself and the regulator is to ban investments and purchases that are demonstrably in the best financial interests of members that it does not approve of. Members will be worse off in retirement as a result of these proposed laws.

The Government has missed the opportunity to address systemic flaws that impede workers accumulating adequate retirement savings. This package of laws does nothing but erode the best interests of Australian workers retirement savings in our superannuation system.

Accordingly, the ACTU recommends this package of laws be rejected.

Schedule 1– Single default account ('stapling')

The proposed measure would undermine the most successful aspect of Australia's superannuation system, industrially determined defaults. If this Bill becomes law, from 1 July 2021, all people with an existing superannuation fund will be stapled to their current fund. Workers with an existing superannuation fund would not join their workplace default. Only those who do not have an existing superannuation fund would default into their workplace default fund. That first fund will be their fund for life unless they choose otherwise. On every measure of intent, this policy decision is a poor way to achieve its goals. The major policy goal is to remove the incidence of unintended multiple accounts, however by simply drawing a line under everyone's primary account, those who are unaware and have existing multiple accounts will still have unintended multiple accounts. The minor policy goal is to improve retirement savings for workers, however both due to the lack of sequencing with performance measures and the lack of opportunity to roll into a better-performing default, many workers will be left worse off compared to no change in the law. This policy decision also has a major impact on workers in high-risk industries, such as police, construction workers, truck drivers, and nurses whose default insurance covers them when most others don't. The industrially determined default system has been an outstanding success for working people. Default funds are the best performing segment of the superannuation sector and industry funds the best segment of that. Rather than throwing out the system, we should be reinforcing it. The ACTU supports a proposal which would see the retention of industrially determined defaults and minimise unintended multiple accounts by stapling the money to the member rather than the member to the fund.

Members knowingly stapled underperforming funds

If the whole package of Bills pass, on 1 July 2021 millions of workers will be stapled to funds which on the same day will be ordered to issue notices to their members that they have failed their first underperformance test. Some of these failures are so sustained and egregious, there will be no conceivable way for these funds to perform in such a way which pulls their eight-year average above the benchmark. Twelve months later these funds will be barred from accepting new members. There are more than 470,000 members in [redacted] who will be notified they've been stapled into an underperforming fund, potentially condemning them to a retirement with hundreds of thousands of dollars less than they should have. The Productivity Commission found that a worker in a bottom quartile fund is likely to be $660,000 worse off than an identical worker in a highly performing fund.[1]

It would be morally reprehensible for Parliament to knowingly staple members to underperforming superannuation funds. This, however, could be the Government's intent given the disproportionate number of for-profit funds in the list of underperforming funds using its current measure.

The final report of the Productivity Commissions inquiry into superannuation, from which the Bill claims to take its impetus, recommends dealing with underperformance prior to implementing stapling.

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[1] Productivity Commission, "Superannuation: Assessing Efficiency and Competitiveness" (Canberra: Productivity Commission, 2018), 11.

While the ACTU disagrees with the recommendations of the report, the union movement agrees that no worker should default into an underperforming fund. If passed this Bill would essentially default millions of workers into underperforming funds with an expectation that though largely disengaged, they switch. This expectation flies in the face of decades of evidence of member behaviour. There is no mechanism in the Bill which would ensure members are not left languishing in legacy, underperforming products that trustees and for-profit shareholders have abandoned in favour of new ventures.

Further to this, some members may have more than one superannuation fund at the time the Bill would take effect. Those members whose balances exceed $6,000 in an inactive account are not affected by auto-consolidation laws and their opportunities to default into a better fund are lost in these laws.

This law would also break existing enterprise agreements workers and their employers have made. Workers and their employers sometimes agree to have a single fund in the workplace. This mutually beneficial arrangement helps workers access better quality products, appropriate insurance, and ensures employers pay super on time and in full. This law would render those clauses in enterprise agreements inoperable. This breaks a promise to workers by the Government. In its 2020 legislation *Your Superannuation, Your Choice*, the Government legislated to allow workers to bargain for a single fund in an agreement until 1 January 2021 and promised to respect those agreements – this law breaks that promise.

Frustrating for employers

It is likely employers will find this legislation difficult to comply with. Large employers with significant hiring rates or greenfields employers will be required to do significantly more administration in order to find workers' existing superannuation funds. **Businesses will be required to look up workers through the ATO Business portal, copy down the account details of each employee. This difficulty may cause an increase in unpaid super for new starters.** The proposed system to do this does not yet exist, and with the implementation date of 1 July 2021, employers have no time to develop familiarity with a new system.

The Government should be clear with employers what it expects of them.

A better alternative: stapling money to the member

Industrially determined default funds are successful. Workers in industry funds can expect to retire, on average, with a larger balance at retirement due to better performance and lower fees. A key objective of the union movement when campaigning for universal superannuation was the establishment of superannuation funds which are transparent, have workers' representatives governing the funds in their interests, and ensure that the funds perform well and minimise fees. This model is in stark contrast to the existing for-profit funds, which exist to skim workers' retirement savings through profit and the use of vertically integrated service providers. The result is that for-profit super funds are opaque, poor performing, and as the Banking Royal Commission found – ridden with scandals and conflicts.

The success of default funds is in no small part to the diligence of unions favouring industry super funds in industrial instruments, like Awards and Enterprise Agreements. Industry funds are favoured by unions in industrial instruments, such as Enterprise Bargaining Agreements and Awards due to their transparency, investment returns, fees, and insurance. The democratic representation of workers in the process of choosing funds has been an outsized success and this should be reinforced, rather than essentially legislated away. The Abbott-Turnbull-Morrison

Figure 2.7 **Products by segment: default beats choice and its benchmarks, but selection bias materially lifts results[a,b,c]**

Benchmarks adjusted for asset allocation, 2005–2017

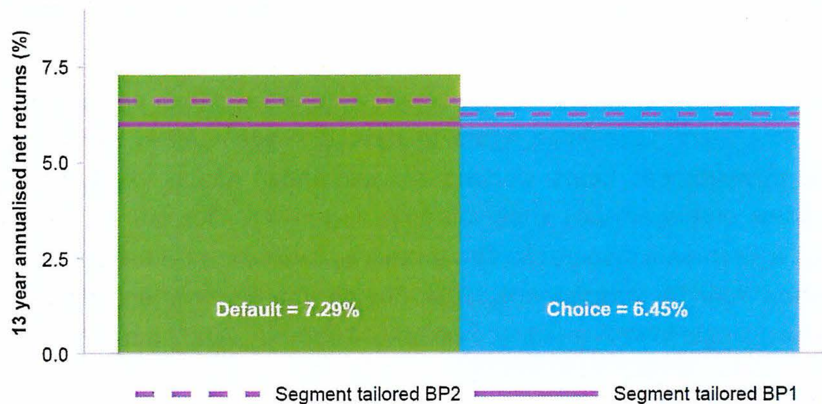

Figure 1 Productivity Commission figure on default fund outperformance

Government's continuing refusal to appoint the Fair Work Commission Expert Panel to determine industrial defaults has allowed poor-performing for-profit funds to remain in the system.

The ACTU supports Industry Super Australia's proposal to staple money to the member and calls on the Government to finally appoint the Fair Work Commission expert panel. This would have the synergistic benefits of creating a quality filter for industrially determined default funds, progressively remove unintended multiple accounts from the system, and ensure that the superannuation fund a worker is defaulted into is appropriate for their industry.

Essential workers' insurance under attack, again

The Government has begrudgingly accepted the necessity of valuable, industrially relevant insurance for workers in high-risk industries through its acceptance of union-movement recommended dangerous occupation exceptions to the *Putting Members' Interests First* (PMIF) package. The Government are once again threatening the valuable insurance of police officers, construction workers, truck drivers and nurses through the proposed stapling measure. Workers changing into high-risk careers and who do not choose their fund will likely remain in their previous fund which, despite having insurance which is suited to a different cohort of workers, may have insurance which is inappropriate for their heightened risk.

Both the NSW Police Force[2] and the superannuation fund for NSW Police, Aware Super (then, First State Super)[3] highlighted the insurance arrangements for police officers who receive subsidised insurance as part of their employment. Their cover is particularly expensive due to the increased risk of injury and death on the job, and disproportionate impact of mental health issues arising from their occupation. Other workers that have gained exceptions to the PMIF package include our military, other emergency service workers, construction workers and truck drivers.

Case Study: Insurance for high-risk workers

Cbus member Andrew was 23 years old when he was injured at work, crushed by two glass plates, weighing in at an excess of 1.6 tonnes. He sustained serious spinal and pelvic injuries which he was fortunate to survive. Andrew was hospitalised for over a month during which time he watched his wife give birth to their first child while he was in a wheelchair.

Today, Andrew is recovering well but experiences ongoing health issues. His Cbus insurance has made an enormous difference to his health and quality of life outcomes. He says he cannot imagine where he and his family would be without the default cover that he was able to rely upon in his time of need.

Cbus, 2019, *Submission to Senate Inquiry into TLAB (Putting Members Interests First) Bill 2019*, p. 5

This Bill threatens to undermine the provisions of the PMIF bill which relate to dangerous occupations. Finding valuable insurance as a worker in a high-risk industry is difficult and will be made more difficult if the Bill passes, and all members become 'choice' members. Workers who do not default into their cover face higher premiums, may be underwritten, or may be entirely excluded from cover.

Dudded from the start: loose anti-hawking laws and unfair restrictions on expenditure

Despite the Government's recent and loose restrictions on hawking of superannuation products, the significant advantage the for-profit funds have in the choice marketplace will mean more members are potentially going to be dudded from the start. Other aspects of the Government's 2020 budget measures will restrict *only* the best-performing all-profit-to-member funds in

Cameo

16-year-old Nabil has been offered his first job at a café and establishes a bank account at the local branch. While there, he is asked if he would like to set up a super fund, too? Nabil agrees and is unaware he has been placed in an underperforming MySuper product, well before his first contribution.

Nabil's employer complies with the stapling law and as a result, Nabil will face a retirement with $500,000 (Productivity Commission, 2019) less in retirement because he wasn't defaulted into his top-performing industry super fund.

[2] NSW Police Force, *Superannuation Regulatory Reforms and PBRI Scheme – Request for Clarification* (Sydney: NSW Police Force, 2019).

[3] First State Super, *Submission to the Senate Standing Committee on Economics: Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* (Sydney: First State Super, 2019).

marketing themselves. This will be discussed in more detail in a later section.

It is highly likely that young people opening a bank account for the first time will be prompted or offered a superannuation fund then and there. They will never have the opportunity to default into a better fund and may be stuck in an underperforming fund unless they switch later in life. The Banking Royal Commission showed that lax regulators and a culture of greed allowed for illegal activity to flourish in the banking sector which will cast doubt on the effectiveness of new laws to prevent hawking, given the Government has not allocated more resources to have those enforced. Rather than a workers' first job determining their superannuation fund their first interaction with a financial services entity, and their related for-profit superannuation fund, will result in a sale of a superannuation product well before that member can expect a contribution.

Young workers may then be stapled to legacy underperforming products, which reinforces the pressing need to meaningfully address underperformance in superannuation.

Schedule 2 — Performance benchmarks

The legislation sets out the obligation upon APRA to conduct annual performance benchmarking of MySuper products from 1 July 2021 and to 'other products determined by regulation' from 2022. The legislation outlines the consequences for failing the currently uncertain performance benchmarks, to be determined through regulation. Critically, the policy and legislation does not require the regulator to measure net benefit to member but invents a new metric which excludes administration fees paid by members.

The objective of performance benchmarking is to encourage and promote high performance and to remove underperforming funds from the market. This policy does neither, by driving funds to mediocrity in performance, applying to a subset of super products rather than all, and inventing a new measure of performance which excludes fees paid by members. No worker should be in an underperforming superannuation product and products which persistently underperform should be removed from the system. These benchmarks, however, fail to achieve the policy goal by discouraging high performance and potentially consigning workers to poor performing funds for life.

Inscrutable legislation

The legislation does not state the benchmarks that funds will need to meet. Nor does the legislation state the nature of those benchmarks, other than strongly indicating there will be no consideration of administration fees in the measure (mentioning only investment returns). This overreliance of the legislation on regulation issued by the Minister increases uncertainty for members, funds and for investment. It limits the scrutiny of Parliament, members, and stakeholders as to the impact of the legislation given it could change at any time. This uncertainty is increased as there are no restrictions on the benchmark the Minister could set or how much notice funds and members will be shown. Given the current Government's distaste for funds actively investing in unlisted assets – like Australian businesses, nation-building infrastructure, and job-creating property construction – rather than passively in equities or index funds, this presents a significant risk for funds which may be expected to anticipate the Minister's desires and expectations or those of the party room.

In legislation	Not in legislation
APRA is required to conduct performance tests. Funds are required to inform members of a failure of a performance test. Funds will be closed to new members if they fail two consecutive performance tests. APRA has the power to tell funds to plan for their dissolution and ask them to enact those plans.	The benchmarks. The assumed fees and taxes for the benchmarks. The time period which funds will be evaluated within. The formulae and method of benchmarking. The tolerance for underperformance APRA will have. The kinds of Choice products which will and will not be subject to performance testing.

By delegating most of the bill to regulation, the Parliament is not able to determine the impact of the legislation it is passing which is unacceptable when determining the future of all working Australians' retirement savings.

Discouraging long-term, active investment

In policy material released at the Budget, the Government has stated its intention of wholly using listed indices to benchmark the performance of products. The explanatory memorandum and policy explainers issued indicate the benchmarks will be based on *net investment return* (NIR) rather than net benefit to member. This approach may herd trustees toward passive investments, at a time when actively investing to support the economic recovery is needed. In choosing passive, listed index based, *net investment return* benchmarks, the Government is indicating to investors it would prefer funds invest passively and with low effort. The risk trade-off for funds when determining the benefit of active investment as a result becomes unevenly weighted. High performing funds have invested actively, benefiting Australia's economy, and generating a virtuous cycle for members. This active investment has been rewarded with higher returns for members, seen Australian businesses thrive, and built infrastructure for the nation.

Active investment is put at risk by this proposal as it creates an uneven trade-off for members. Rather than simply risking a lower return in one period, funds which invest actively risk both a lower return and being shut out from accepting new members. This may also not be as a result of underperformance, but due to the decision of benchmarking fully liquid asset classes against highly illiquid asset classes. This will likely herd trustees towards investing *the benchmark* rather than seeking to outperform the benchmark. By only discouraging perceived poor performance, the Government has not created a benchmark which encourages better performance. Its explanation that in creating a new website to compare products against each other will do this is unconvincing. Websites already exist. But their existence does not, in and of itself, prevent people from joining poor performing products offered by funds [redacted].

Liquid assets respond with high volatility to market events and are not perfect comparators to their illiquid counterparts. Indeed, at a time where the Australian and international Governments are pumping trillions of dollars liquidity into investment markets through aggressive bond purchases,

these liquid exchanges are more volatile than ever whereas the real infrastructure assets they are supposedly compared to are relatively stable. Given exchange traded funds and index funds are more a function of demand and price movements rather than value generated, they are inappropriate to benchmark the real income received from Melbourne Airport against, for example.

The impact of this volatility and how it might inform assessments of performance is inconsistent with current investment objectives of superannuation funds. Superannuation funds should invest for the long term and the highest performing ones do.

Establishing benchmarks which do not fit the investment horizon anchor funds' investment horizons to an eight-year cycle. This is limiting, in that investments in infrastructure, some private equity and venture capital have longer time horizons. The impact of the eight-year timeframe may decrease the ability for superannuation funds to invest for the long term, and once again encourage the short-term thinking which leads to unsustainable business models in search of quick profit.

All fees and all products should be included

The proposed carve-out of administration fees and use of a new measure, *net investment returns*, also understates the significant impact high administration fees have on retirement outcomes and may overstate the performance of some high fee products. Administration fees are set by the trustee, reflecting the fund's cost base and efficiency, and are not optional.

If the Government successfully excludes administration fees from performance benchmarking, otherwise underperforming MySuper products [redacted] will pass above the benchmark.[4] These benchmarks are supposed to inform consumer behaviour, but by excluding a raft of fees paid by members from the benchmarks the Government will be deliberately misleading members into thinking they are members of a well-performing product. It is likely no coincidence that administration fees are higher in for-profit funds than industry super funds, meaning that for-profit funds' performance will be overstated to members and potential members.

The legislation applies only to MySuper products, indicating there is an option for the Minister to issue regulations from 1 July 2022 to apply to other products. Even if you believe the Minister will exercise the option of extending the powers to Choice products in July 2022, this is little comfort for those members who will now be trapped in underperforming funds. The Financial Services Royal Commission and Productivity Commission found significant misconduct and underperformance, respectively, in the choice sector. Relying on a promise that this scheme will therefore extend to choice products as planned is no comfort. This government has demonstrated that it is unable to keep its promises, especially within the financial services sector.

For-profit funds charged fees for no service, charged advice fees to the dead among a litany of gouging and rorts. The policy material released alongside the budget announcement creates new segment of superannuation product called *Trustee Directed Products* (TDCs) which are defined by the trustees influence over their design. The definition is not given substance; however, it is clear

[4] Ronald Mizen, "Admin Fees Make $37b in Super Funds Duds: ISA," *Australian Financial Review*, November 19, 2020, sec. tax-and-super, https://www.afr.com/policy/tax-and-super/admin-fees-make-37b-in-super-funds-duds-isa-20201119-p56g28.

that choice products like 100% cash options are not TDCs, but this definition might extend to products like an index fund from a third-party provider or a super wrap. It is in these products, though, that customers face significant harm. AMP was forced to refund more than 12,500 members of a 100% cash option superannuation product after members lost money on a $100,000 investment. When questioned on the performance of the product at the Financial Services Royal Commission, an AMP executive replied, "you'd have to ask the client."[5] It is a poor policy decision that the products which have done the most harm to consumers would be deferred or entirely excluded from consequential performance benchmarks.

Consequences for underperformance are poor

The consequences for consecutive failures for products are not strong enough. In a compulsory superannuation system, no member should be able to choose nor should they be defaulted into a poorly performing product. Failing one performance benchmark requires trustees to send a letter to their members, and a second closes the product to entry by new members. Neither of these helps disengaged members, who need most protection by the Government, from going to a better product.

> *"I left in 1998 after 10 years' service. I left my Super in the ex-employees fund. 10 years later the sum had grown by 1%. That's correct 1% total in 10 years. Because of this I have enough Super to pay off my mortgage and that is about all. For living money, I will be forced on to the pension. That or keep working way past retirement age.*
>
> *Steven – ASU Member*
>
> (ACTU Survey of Union Members, 2020)

The performance benchmarks presented do nothing to ensure that workers like Steven are protected from persistent underperformers.

This proposed solution is likely to leave members languishing in products which have been condemned and abandoned by trustees in favour of new products from which to generate profit. Condemning members to stagnant products presents a significant risk for disengaged members. Assuming engaged members start to transfer to better performing products, after the product is closed to entry there is a risk that the product could become unsustainable and leave too few members for the operation of the fund. These members in grandfathered schemes have no guarantees they'll join a better product, nor any guarantee APRA could force a successor fund transfer – particularly in for-profit funds. This would compound the impacts of underperformance, as members may have their retirement savings drained by losing the benefits of scale.

The Government should abandon these proposed benchmarks and return with a solution that encourages high performance, includes all costs paid by the member, and applies to all products.

[5] Gareth Hutchens, "AMP to Compensate Super Investors after Fresh Humiliation at Royal Commission," *The Guardian*, August 16, 2018, https://www.theguardian.com/australia-news/2018/aug/16/amp-admits-fees-were-so-high-100000-super-investment-made-a-loss.

Members should have certainty to what benchmarks their products are measured against, and this should be made clear in legislation. Something as important as this should not be left to the whims of the Minister.

Schedule 3 — Best interests duty

> ***I consider that the existing rules, especially the best interests covenant and the sole purpose test,* set the necessary standards. Those standards should be applied according to their terms and without more specific elaboration. – Commissioner Hayne**[6]

Discussion around the impetus to change the best interests duty should be prefaced with the understanding that Commissioner Hayne specifically considered changes to both the sole purpose test and the best interests covenant and explicitly recommended against changing them. This legislative change is based upon nothing other than an attempt to shift the regulatory landscape once again to favour bank-owned, for-profit funds. They put hugely onerous obligations on the regular running of a superannuation fund, which won't need to be complied with in for-profit funds. The Bill grants the Minister enormous and unwarranted powers to unilaterally and at any time proscribe any investment or expense they do not like. It specifically grants the Government the power to act against the best financial interests of members. This attempt to quash a diversity of voices and successful all-profit-to-member funds should be rejected.

Profits excluded

The changes to the duty itself are relatively inconsequential, industry funds already act in the best financial interests of members. For-profit funds, however, do not. Dividend payments to shareholders in the form of profit are *never* in the interests of members.

Trustee directors have a fiduciary duty to their members that whenever there is a conflict of interest between shareholders and the member, they defer to the member. Changing the best financial interest duty has the potential to ensure that for-profit funds are no longer able to pay dividends to their shareholders and vest all profit back into member accounts.

However, Treasury has confirmed through industry consultations that dividend payments to shareholders by trustees will not be required to pass a best financial interest's test.

This means that any level of dividend paid, no matter how high, is essentially considered in the best financial interests of members. The specific and warrantless exclusion of dividend payments to parent companies from being required to comply with the newly worded best *financial* interest test means this Bill is shockingly hypocritical and unfair.

These payments, no matter how they are used by the parent company, are not required to pass the best financial interest's test.

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[6] Commissioner Kenneth Hayne, "Final Report of the Financial Services Royal Commission" (Canberra: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2019), 235.

This will allow for-profit funds to advertise without obligation, engage in political advocacy or make political donations. The passage of this Bill would create a wholly uneven market for superannuation funds, especially when combined with other aspects of the package, like the exclusion of administration fees from benchmarking.

No materiality and impossible to implement

Compounding this unfairness is the creation of an administrative onus on the trustee to essentially obtain legal advice and conduct quantitative evaluations of every purchase decision, no matter its materiality. Down to buying a stapler, trustee directors will be assumed to have misappropriated members' money unless they have shown that purchasing a stapler is in members' best financial interests. This reverse onus is entirely unnecessary and will be hugely expensive to administer costing members money for a likely worse service than they already receive.

Payments to third parties are required to be ensured to be in the best interests of members. The obligation upon trustees to ensure that third parties are using the money for no other purpose than they were engaged for is impossible at the minimum. When funds engage third parties, they often engage profit making entities. Some Funds might sign contracts with Microsoft for IT services, pay for energy, buy stationary from office suppliers, or buy computers from HP.

What steps are practically open to trustees to satisfy themselves 100% of these commercial expenditures are in the members' interests. Microsoft pays profits to shareholders; the energy company may be a member of the Business Council of Australia. Neither of these activities are in members' interests. In drafting this legislation, the Government have made nearly every expense illegal.

In the explanatory memorandum, the Government has invented a new distinction for expenditure, 'core' and 'discretionary' to theoretically assist trustees. However, the legislation doesn't have this distinction, nor is there a legislated or regulated definition of a 'core' as opposed to 'discretionary' expense – making the explanatory memorandum entirely irrelevant to the obligations of trustees.

Unlimited power for the Minister

The most significant change, however, is that the entirety of the Bill does not matter as it grants the Minister the supreme authority to deem any expense, investment, or activity, by any fund, at any time, illegal.

This Bill, if passed, would grant the Minister unprecedented power over commercial entities, and render the Parliament irrelevant in the determination of the country's laws.

The Bill specifically grants the relevant Minister the authority to ban expenses or investments which *are* in the best interests of members, for no other reason than the Minister's preference. The Minister is not required to give notice nor give a reason, and these regulations are not able to be challenged in court. There is no other Minister who has, to this degree, the power to unilaterally and without restriction make illegal a commercial activity they don't like.

Combined with the Government's obvious campaigns against industry super funds, this is an extreme risk for members whose funds, despite acting in their best interests, could face impossible tasks and hurdles to their position.

Members of funds could face the proposition that Government backbenchers would have more of a say over the investments of their money than they would. It represents an extreme investment risk for superannuation funds as investments the fund has already made could be subsequently deemed illegal. The Government and members of the backbench have already criticised industry super funds for investing in Australian media, new builds of renewable energy, and in nation-building infrastructure – this Bill gives the Minister the authority to ban these investments.

All investments and expenses are covered by this power, and Government members have already suggested that superannuation funds should be barred from investing in residential property under this power.[7]

The Government have denigrated consideration of key risks to members' savings. Both APRA, ASIC and the UN PRI have issued guidance calling for investors to take into consideration additional material risks when measuring the risk profile of their investments. Action to mitigate those key risks such as those posed by climate change, social and governance risks have been criticised by the Minister, encouraged by those on the backbench who deny climate change and its material impact on investments.

"The mission of a super fund is not to change the earth's temperature it is to create a return on investments for those individual members." – Assistant Minister Hume[8]

Implementing these laws will take Australia backwards on the global stage by enabling Ministers with no understanding of investment frameworks to declare consideration of clearly established and emerging global risks by fiduciaries irrelevant and not in members' interests. Members would, ultimately, be left worse off if Ministers could override the duty to members based on party room politics and gut feelings.

Disclosure rules will make members poorer

The disclosure exemption is used by superannuation funds to ensure that internal valuations of unlisted assets, like infrastructure or private equity holdings, are not published and that their publication does not undermine any potential sale value. Industry super funds, as active investors, invest in unlisted assets like medium-sized companies.

If funds are forced to disclose the minimum acceptable price for a particular asset then funds would not be able to extract more value from a buyer, making retirees poorer and disincentivising investment in Australian businesses and infrastructure assets.

Conclusion

This package, taken together, will mean an underperforming for-profit fund would be easier to run and have a competitive advantage to a highly performing industry super fund.

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[7] Ronald Mizen, 'Ban Super Funds from Buying Houses: Wilson', *Australian Financial Review*, 2021 <https://www.afr.com/politics/federal/ban-super-funds-from-buying-houses-wilson-20210216-p572yk> [accessed 9 March 2021].

[8] Josephine Cumbo, "The Senator Shaking up Australia's A$3tn Pensions Sector," October 6, 2020, https://www.ft.com/content/f7a0c0a7-9921-4ce1-8513-7a4f17333204.

A fund member could be sold into and stapled to an underperforming for-profit fund which is funnelling money to shareholders through exorbitant administration fees and be assured by the Minister, Government, and regulators they are in a good fund.

The Government, at every possible juncture in these proposed laws, have made a policy decision which leave fund members worse off.

Administration fees excluded from benchmarking while discouraging active investment. Members losing access to highly valuable insurance and being stapled to dud funds for life.

Overall, for-profit funds will have a systemic advantage over all-profit-to-member funds to our nations detriment if these laws are passed.

Accordingly, this package of laws should be rejected.

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