Submission to

Regarding
Treasury Laws Amendment
(Your Future, Your Super) Bill 2021

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SDA Submission to the Senate Economics Legislation Committee, regarding Treasury Laws Amendment (Your Future, Your Super) Bill 2021

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Shop, Distributive and Allied Employees' Association, Superannuation and REST

1. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 210,000 members. Working in retail, fast food, warehousing, hairdressing, beauty, pharmacy, online retailing, and modelling, the majority of SDA members are women (60%, approx 131,000), under 35 years (57%, approx 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings and in 2018, the median weekly earnings of all Australians was some 34% higher than retail workers.

2. Most SDA members are award reliant or subject to enterprise agreements that see them paid the same as the guaranteed rate of superannuation. Many members of SDA will be reliant on the aged pension and rent assistance in retirement. With annual income levels of approximately $40,000 or less SDA members are within the low-income cohort ($48,000 or less) for whom the recently released Retirement Income Review estimated a retirement replacement rate of above 100%, rather than the benchmark of 65-75%. Retail and fast food workers are one of few groups of Australians directly affected by decisions of lawmakers on superannuation.

3. The superannuation fund for SDA members, retail and fast-food workers, is Rest Industry Super. Rest has around 1.7 million members, trusting Rest with more than $54 billion of their retirement savings (as at 30 June 2020). In February 2020, REST described that is has more than 267,000 members aged 50 years and older nearing retirement, who have an average balance of $87,420.[1] The balance recommended for a comfortable retirement for a single is $545,000, or $70,000 if the retirement is modest and supplemented with the aged pension[2].

4. The SDA supports the submission of the ACTU.

[1] https://treasury.gov.au/consultation/c2019-36292/submissions
[2] https://www.superannuation.asn.au/resources/retirement-standard

Your Future, Your Super

5. The Australian retirement income system is world class – Mercer Global Pension Index consistently confirms this is so. Australia is ranked 3rd, behind only the Netherlands and Denmark. That is because of the superannuation component of the 3-pillar system made up of the age pension, superannuation, and voluntary savings. Superannuation offers Australians the opportunity to achieve retirement saving, and the protection of those savings and planning for financial security in retirement through insurance and financial advice.

6. To further progress from a world-class system of retirement income to a first-class system, SDA supports improving Australian's superannuation with lower fees, better performance and more transparency. However, the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* needs to change if these outcomes are to be achieved and degradation of the good system is to be prevented.

7. Most relevantly, the test determining underperformance needs a long-term perspective, fees and costs to be accounted for, and business sustainability metrics (such as cashflow, growth rate and rollover ratio). The performance test is retrospective in nature, and while may be legal does sit uneasily with the rule of law. The performance test must change as it puts at risk the focus of a fund which should be on the total retirement income of its members, and this impacts low income workers proportionally more than others.

8. In its submission to the exposure draft of this legislation, REST Super noted that "If a member has a balance of $10,000, administration fees are likely to account for more than 55% of the fees charged, dropping to just under 30% when the account balance is $100,000. Even for members with $250,000 the administration fees charged for about one quarter of all MySuper funds is greater than 50%." In short, the performance test is worse the lower your balance.

9. The submission from REST also highlighted that "in a number of cases the Your Future, Your Super test approached a 50% likelihood of successfully identifying a "poor" fund as poor, and a similar likelihood of mistakenly identifying a "good" fund as poor." That is: governments get performance tests wrong. After a flawed assessment, the way the test will work is to stop members joining a fund if it has not 'performed', and then proceeds to lock those members into that fund which would be unable to grow and is restricted in its capacity to realign investments to respond to such a situation. Decision making of this kind requires significant checks and balances on the extensive powers being granted, which are lacking in the exposure drafts provided.

10. Unlike the Bill, the Budget version of *Your Super Your Future* included a dashboard with the ATO to empower consumers. Getting that right would be a logical first step before taking on: stapling which might not actually help, flawed testing of underperformance, and a financial interest test which is contrary to the recommendations of the Hayne Royal Commission into Banking and Financial Services. These proposals are responded to in turn.

ATO dashboard should be published before other reforms

11. With the Budget, the government announced a new more informative ATO dashboard intended to provide members information to make it easier to choose a well-performing product that meets their needs.

12. The SDA believes that convenient transparent information for members is a good thing, and it should include all relevant information. For example, the information should include:

    - long-term investment performance (retirement can be as far as 50 years away),
    - fees and costs (as these impacts on the retirement income of Australians),
    - sustainability metrics (as occurs and is continuing to develop in the APRA Heatmap)

13. The ATO dashboard must include all MySuper products and offer information about insurance and other benefits including advice. Getting this information right and publicly shared in an easy-to-use dashboard would be a sensible step prior to interventionalist regulation of underperformance with a flawed performance test that risks members being locked into funds. Using the expertise of behavioural psychologists or economists on getting such a process right would be step forward for engaging working Australians with their retirement savings.

Chapter 1 – Single Default Account: Stapling might not actually help

14. Single Default Account, known as stapling, is intended to result in superannuation paid to an existing account listed with the ATO unless the member nominates otherwise.

15. The policy goals are two-fold, reducing unintended multiple accounts with the assumed result being a higher balance at retirement. These issues have largely been dealt with through the Putting Members' Interests First (PMIF) and Protecting Your Super (PYS) reforms, and those reforms were not without fault. The last analysis of the need for this was completed earlier in 2018 as part of the Productivity Commission review which was released in 2019. This data predates the changes to single touch payroll, the changes allowing the ATO to share information and automatically combine accounts and changes to insurance. Pursuing more reforms without preparing new data on the impact of reforms to date would not demonstrate responsible government.

16. What the Bill attempts to do, is separate superannuation from the industrial system and that should be avoided. Workers should be permitted to collectively bargain and have their awards and enterprise agreements outline the conditions for their workplace rights including superannuation and its accompanying insurance.

17. Insurance offered in this way can be prepared and tailored to suit their occupational context. One of the great benefits of universal superannuation is the ability to provide affordable group insurance exempted from health tests that is relevant to members situation. For example, insurance at REST responds to the low incomes in the industry with low fees and the inclusion

of income protection as these workers often have less savings than others. The offer also has different working hours criteria due to the high proportion of part-time and casual work in the industries covered.

18. While low-paid workers with lower balances would likely benefit from stapling more than auto-rollover, that is not guaranteed. These changes may cause predatory behaviour by unscrupulous providers seeking to be a worker's first fund. As part of the Hayne Royal Commission into Banking we learnt that thousands of children's Commonwealth Bank accounts were fraudulently set up. These retail branch staff were scamming the system to earn bonuses and meet aggressive performance targets. Now that the community expects better for children, there is a risk such behaviour will be transferred towards workers when they get their first job.

19. The 2019 Productivity Commission review of the efficiency and competitiveness of the Australian superannuation system recommended that performance of funds be resolved prior to taking this step. Given the significant concerns outlined with the approach to performance, awaiting implementation of an effective alternative is necessary to avoid the situation in which the Government staples members into an underperforming fund.

Chapter 2 – Addressing Underperformance: The test is retrospective, and does not reflect the goals of superannuation

20. The proposal broadly described as 'underperformance' is that the Government should close funds to new members and intervene in governance where underperformance results in poor outcomes.

21. The intent is to encourage funds to lower costs and fees to boost Australians' retirement incomes. The process, an annual assessment against a retrospective and flawed test, does not achieve that objective, instead it encourages index hugging and investing in short term gains. Not only does this reduce the focus on retirement income and focus investors on their peers, it also reduces the ability of funds to invest in long term assets like renewable energy and agriculture.

22. Repeatedly poor performing funds with high fees should be removed from the system, and to do so a performance test must be designed to increase Australians retirement income. It is important that the test be modified to avoid validating poor performance, index hugging, and high fees – and that it applies to all products.

23. Firstly, the assessment and test should apply to all superannuation products that Australian's are defaulted into, all MySuper products. Retail and fast food workers are often engaged in small businesses where their employer has a heavy influence on their default arrangements. They are at significant risk of being cajoled into retail funds where there are incentives for the employer and their low incomes mean this will have an even greater impact.

24. Secondly, past performance is not a predictor of future performance and that is so true that it is often required to be said to members. Yet, this proposal takes that concept so far that it discourages taking any risk, even low ones, that support achievement of a higher return over a long period. Short term assessment will also limit the ability to invest in the interests of the economy through national savings.

25. The assessment also punishes actions retroactively – it imposes sanctions for decisions of trustees and investment professionals that occurred some 5 to 10 years earlier and that was appropriate when originally performed. While this may or may not be with the power of the parliament, it sits uneasily with the rule of law.

26. In a case example of an investment, if a super fund wished to invest in a rent to buy housing model, it might take 2 years to get the planning and construction complete, 5 years to receive the rental income, and in the 7^{th} year the capital gain. For social housing that would remain on the rental market in the long term, the return on investment might take longer - 10 to 20 years. If the test requires them to focus on the next three or six years, it will stand in the way of a national objective such as increasing supply in the housing market.

27. In the case example of performance of Rest Industry Super, it was founded in 1988, and its Core Strategy investment option has returned 8.21% per annum. Its current 10-year returns are 7.97%. In the last year, the returns were lower than other years at 3.07%. These returns are based on investment decisions over many years.

28. Historically, Rests peer performance has been exceptional. It made decisions that others didn't and when the economy fell, Rest outperformed, for example during the global financial crisis. Its more recent performance has been less comparable to some peers and significantly better than others. Actual returns to members inclusive of all fees rather than peer returns with selected fees would demonstrate actual impact on retirement savings.

29. Rest Industry Super is an excellent example of why a nuanced approach like taking what occurs in the APRA heatmap and working to improve specific areas of poor performance would be more effective – over the years Rest has consistently achieved good results and may change its way of investing due to the assessment process and the outlined consequences.

30. An alternative proposed by the Association of Superannuation Funds of Australia is known as 'Lifting the Bar' and would examine MySuper products and use APRA's annual Member Outcomes Assessment to determine whether a product is underperforming. It would first check if the fees and costs are reasonable, and if not the product's net investment returns would be assessed and benchmarked. There are also other ways of dealing with the flaws, such as a three or two strikes and you're out rule. At a minimum, fees should be included and modifications should be made to reduce the incentive towards underperformance.

31. The performance test is flawed, making the annual assessment unable to deliver on the positive intent of the reform. This legislation should not progress until the ATO dashboard is operational and there is a reasonable reference point in the broader community.

Chapter 3 – Best Financial Interests Duty: The test is contrary to Hayne's recommendation

32. Currently, under the SIS Act, Trustees are required to act in the best interests of members, and this is understood to mean their best financial interests in the long-term. The Bill proposes a requirement for superannuation trustees to act in the best "financial" interests, which Trustees already do and for which the documentation required will increase costs for members and create risks to appropriate governance.

33. This legislation expressly contradicts the recommendation of the Hayne Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Hayne expressly stated 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." (p.235, Final Report).

34. Most concerningly, the introduction of these requirements will be subject to much political debate. There has been and will continue to be much discussion of what is meant by this change when it is already assumed. The political narrative is likely to outline matters of climate and the investment in renewables, matters of labour standards and the investment in agriculture, and matters of investor activism about renumeration. The second reading speeches could go on for thousands of words, each of which would be poured over and considered as part of the intent of the legislation, when the intent of this legislation is to have trustees undertake their current behaviour of acting in the interests of members and specially their retirement incomes.

35. SDA notes that costs from biscuits at the annual member meeting, through office cleaning, and onto executive renumeration and investment are covered by this arrangement. The reverse onus of proof means that for all these decisions, you are assumed to have failed in your duty unless you prove otherwise. At every layer of governance, any expenditure will require a regulatory standard of documentation.

36. Remarkably, dividend payments to shareholders in the for-profit retail superannuation sector are not subject to the test. It seems that the disjunction between interests of shareholders and interests of members are apparent to the government, that it requires an exemption, yet these organisations continue to be permitted to offer superannuation products and services.

37. Amendments to the Bill might include not permitting an underperforming fund to make payments to shareholders, that the test should only apply to material matters and should not permit direct intervention by the Minister without due cause. Political intervention of this kind appears to be without precedent.

Conclusion

38. With these measures, the Government estimates a typical young Australian entering the workforce in their 20s could be around $87,000 better off at retirement. However, the implementation of this plan as outlined in the exposure drafts presents significant barriers to achieving this projected benefit. In that context, the SDA recommends this package of laws be rejected until the proposed dashboard of information about superannuation through the ATO is operational and providing the necessary community understanding from which to establish the appropriate way to further pursue lower fees, better performance and more transparency.