Submission to the Senate Standing Committee on Economics on the Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 [Provisions]

January 2020

ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We received $2.5 million in funding from an ASIC arranged enforceable undertaking with the CBA and ANZ for mis-selling superannuation. In order to use the funds in the most efficient and effective way, the Board contracted CHOICE to deliver support services. CHOICE is the leading consumer advocate in Australia, established 60 years ago, it is an independent voice, ensuring consumers get a fair go.

We work to advance and protect the interests of low and middle income people in the Australian superannuation system.

Super Consumers Australia

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Introduction

Super Consumers Australia supports the proposed legislation allowing Australians the freedom to choose their own superannuation fund.

Everyone should have the opportunity to pursue better financial returns, improved customer service and lower fees. They should also be able to consolidate their accounts to avoid paying multiple sets of fees and insurance premiums.

Imposing constraints on people's ability to make their own financial decisions damages competition. This lack of competition weakens incentives for superannuation funds to deliver better outcomes for their members. Without competition people are left with higher costs and lower returns. Moreover, denying a choice of fund exacerbates many of the issues that plague the superannuation system, such as duplicate accounts, inappropriate insurance and consumer disengagement.

However, giving people choice alone will not drive competition in the superannuation market. This needs to be coupled with pro-consumer measures which break down information asymmetry and help people end up in better performing funds. To get the most out of extending choice there is an urgent need to address the lack of competition in the default system and introduce consumer protections which will improve people's decision making.

Summary of recommendations

Recommendation 1: That the Federal Government pass the Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 [Provisions] without amendment.

Recommendation 2: 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.

Recommendation 3: That the Senate Economics Committee recommend 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.

Recommendation 4: That the Federal Government adequately resource ASIC to develop a consumer-facing comparator tool for superannuation.

Recommendation 5: That the Federal Government follow its Royal Commission implementation roadmap by introducing anti-hawking measures by June 2020.

Systemic problems

Denying people choice is emblematic of the problem at the heart of the superannuation system. As a cure to consumer disengagement and limits on people's financial capability, the superannuation system has been designed to take decisions away from consumers. Some of these are appropriately designed consumer protections, while others are simply regulatory overhang. Denying people a choice of superannuation fund falls into the latter category.

The cost of ending up in a poor performing fund

For Australians to fully benefit from the superannuation system, they must be able to choose high-performing superannuation funds. In 2018, the Productivity Commission estimated that around 1.6 million accounts in default MySuper products underperformed benchmarks over the previous decade.[1] It found that poor fund performance in the default sector can cost a person as much as $502,000 over their working life.[2] This amount could mean the difference between financial hardship and comfort in retirement.[3]

Analysis by Super Consumers Australia found that in financial year 2018-19, almost 150,000 new super accounts were created in poor performing MySuper products.[4] Being defaulted into one of these funds could lead to catastrophic retirement outcomes when combined with the denial of a choice of fund.

The Productivity Commission pointed to evidence which showed around one million members may be caught up in restrictive workplace agreements that deny choice.[5] More recent analysis from the Attorney-General's department found that 85 current enterprise agreements locked

[1] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 12
[2] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 13
[3] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 11
[4] These are defined as MySuper products that ranked in the bottom quartile of products in terms of five year annualised net returns to September, 2019 and underperformed their benchmark portfolios in APRA's MySuper Product Heatmap, released December 2019.
[5] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.265

almost 14,000 people into underperforming funds.[6] Based on the evidence a lack of choice of fund is doing material damage to the retirement savings of Australians.

Case study: Alice's story*

Alice, who works casually at a university, contacted us because the university had employed her under an industrial agreement that forced her to maintain a UniSuper account against her wishes.

She had initially taken to consolidating her UniSuper account into QSuper, her preferred fund, to avoid paying two sets of fees. However, she had to pay fees to UniSuper for the first month before she was able to enact a transfer. This was a sizeable proportion of her balance, given she worked limited hours on a casual basis. She had eventually resolved to maintain two accounts but take up a cash investment option with UniSuper to minimise the fees on her small balance.

In terms of net profits, the default UniSuper and QSuper perform comparatively well against the market, so either would have been a sound choice. However Alice wished to choose QSuper because she preferred the customer service experience it provided. Under a properly functioning market she would have been able to exercise this choice and QSuper would have been rewarded for its superior customer service in its customer's eyes.

*Name changed.

The cost of duplicate accounts

Requiring employees to open accounts with a specific superannuation fund can lead to the creation of multiple accounts, particularly for those in the 'gig economy' working more than one job. Denying choice of fund also disadvantages those with pre-existing superannuation accounts, forcing them to either consolidate into their new fund or maintain multiple accounts. This is a poor outcome for people for whom the new account is inappropriate. Multiple accounts means paying more administration fees and insurance premiums.

[6] AFR, 2019, 'Agreements lock thousands into underperforming super funds', available at: https://www.afr.com/work-and-careers/workplace/agreements-lock-thousands-into-underperforming-super-funds-20191205-p53h3o

The Productivity Commission estimates that up to one third of superannuation accounts, 10 million in total are unintended duplicates.[7] This adds significant and unnecessary cost, leaving a typical full-time worker $51,000 worse off at retirement.[8]

Inappropriate insurance

Denying people choice of fund may bind them to a superannuation fund that is offering inappropriate bundled insurance.

Insurance policies vary in the level of cover they provide, and how they assess eligibility for a pay out. For example, a person would be eligible under many total and permanent disability (TPD) policies if it is unlikely that they will engage in gainful employment for which they are reasonably qualified by education, training or experience.[9] Some insurers apply different TPD definitions to people because they work in hazardous occupations or because they work limited hours, are casual, part-time or seasonal workers.[10] These people can be subjected to activities of daily living (ADL) tests in which they must prove that they cannot perform basic tasks, such as bathing, feeding, dressing, toileting or getting in and out of a chair.[11]

ASIC's report on TPD insurance found that 60% of claims assessed under the ADL test were rejected, compared with just 12% of general TPD claims. Due to poor data collection on the part of insurers these figures do not count the number of people who dropped out of making a claim when faced with the high bar of an ADL test. So the real number of people ineligible under an ADL test is unknown.

People who are being denied choice may presume that their union or employer has done so because the bundled insurance is tailored to their needs. However as the case study below demonstrates, this is not always the case.

Case study: Wayne's story

Wayne has worked as a long-haul truck driver for much of his life. During one of his cross-country jobs in 2016 he suffered from a stroke that had a devastating impact on his health, particularly his vision.

"I keep running into (things). If people come up the left hand side of me, I don't see them." - Wayne.

[7] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.16
[8] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.2
[9] Superannuation Industry (Supervision) Regulations 1994 (Cth), regulation 1.03C
[10] ASIC Report 633: Holes in the safety net: A review of TPD insurance claims, p.5
[11] ASIC Report 633: Holes in the safety net: A review of TPD insurance claims, p. 34

His doctor has told him that he will likely never work as a truck driver again.

Wayne had been paying for total and permanent disability (TPD) insurance through his employer's default superannuation plan. The insurer had listed long-haul truck drivers as a 'hazardous' occupation, which meant that Wayne had to satisfy an 'activities of daily living' (ADL) test to be eligible for a payout. Wayne's claim was rejected, as he could still do basic activities such as walking and speaking.

Had Wayne's job not been classified as hazardous, the insurer would not have subjected him to the ADL test and he would have been eligible for a payout.

In this case, the trucking company that employed him defaulted him into a fund that provided insurance that was inappropriate for its truck driving employees. While Wayne was not denied choice, this demonstrates that employers cannot always be trusted to choose the right superannuation fund and associated insurer.

Consumer disengagement

The Productivity Commission uncovered strikingly low levels of member engagement, particularly among young people and those with low balances.[12] The report highlights "complexity of products, a lack of easy to understand information, and challenges in finding where to go to get help" as barriers to engagement. As a result, many people never give thought to insurance premiums, fees and net returns.

It also found that those who cannot choose their own fund may become even more disengaged if they are powerless to seek better options.[13] The aim of the superannuation system should be to drive positive engagement. Denying choice compounds the disengagement problem and can lead to poor member outcomes.

Recommendation 1: That the Federal Government pass the Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 [Provisions] without amendment.

[12] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 21
[13] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 248

Assisting people to make better choices

Unfortunately, due to the complexity of the superannuation market and high levels of disengagement, providing choice alone will not lead to better outcomes. Structural issues in the default market also need to be addressed, so that people can easily find and compare funds or be defaulted into funds that will deliver good member outcomes.

People's ability to make good choices would be greatly enhanced if chronically underperforming funds were no longer on the market. APRA has stepped up action on this front by releasing heatmaps and enacting 'member outcomes' standards to send a signal to trustees that are not delivering. As the Productivity Commission recommended, all MySuper and choice products should have to earn the 'right to remain' in the system under elevated outcomes tests. Weeding out persistent underperformers will make choosing a product safer for members.

The Productivity Commission specified that to be effective the test must:

- require the net return of a MySuper or choice product over a rolling eight year period to not underperform by more the 0.5 percentage points the return of a tailored (by asset allocation) benchmark portfolio, and
- This benchmark portfolio should be constructed with listed indexes.

APRA has recently made some inroads in its update of SPS 515, however no clear test on the 'right to remain' exists. The Member Outcomes legislation was designed so that this type of test could be prescribed in the regulations, such a test is yet to be enacted.

If people are to gain the most benefit from increased choice, we need to ensure that the stock of funds to choose from are delivering appropriate member outcomes. To do this we urgently need a clear test in the Superannuation Industry (Supervision) Regulations.

Recommendation 2: That the Senate Economics Committee recommends 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.

Increasing competition

The Productivity Commission spent three years studying the efficiency of the superannuation system, and found it riddled with the consumer issues outlined above: chronic fund underperformance, high fees, duplicate accounts, inappropriate insurance and consumer disengagement. It highlighted the need for more competition, predicting that "robust competition between funds" would lower costs, maximise net returns and improve member outcomes.[14] Restricting employees' choice of fund runs counter to initiatives that introduce competition into the system.

However, delivering increased consumer choice alone will not create a competitive market. Without the trustworthy, comparable information at the right times people will not be able to make the most of increased choice.

Addressing information asymmetry

The Productivity Commission found that there is a "high level of information asymmetry regarding superannuation products" and that planning for retirement involves navigating an "increasingly complex maze" of products and packages.[15] People struggle to compare apples with apples when choosing a superannuation product, due to the lack of trustworthy, independent information sources.

Allowing more Australians to choose their own superannuation fund will make it all the more important to find a long-term solution to information asymmetry. An important step will be ensuring people have access to simplified information about the key features of a performance option. To date people only have access to this type of information for MySuper products. As the Productivity Commission recommended, member-friendly dashboards for all superannuation products need to be produced and published on an independent website such as MoneySmart (recommendation 6). The dashboards should also be "readily accessible from the area of myGov that allows for consolidation of accounts."[16] Currently, even if a person had the skill and inclination to compare products they would struggle to find quality comparable data from the funds.

[14] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 22
[15] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 284
[16] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 68

This was a recommendation of the Productivity Commission in 2018 and the Stronger Super reforms in 2013, but without the creation of the enabling regulations this reform has currently been pushed out until 2023.[17]

It is disappointing that it will take over a decade, or potentially longer to implement this simple measure. Without this information the ability of increased choice to transform the superannuation market will be severely hampered.

These product dashboards should be made available as a priority. The underlying data should also be made available in standard machine readable format to facilitate use by regulators and third parties.

Recommendation 3: That the Senate Economics Committee recommend 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.

Comparison tool

Making information accessible does not in itself solve the problem of information asymmetry.[18] Consumer decision-making studies have shown that people's judgment worsens when they have to consider more than three factors.[19] The Federal Government can further aid people's decision making by implementing the Productivity Commission's recommendation to develop a 'best in show' shortlist of top superannuation products. The proposed list would guide people towards products with good member outcomes.[20]

In the interim we see significant value in testing a best in show short-list through the creation of new comparator tools. This could test important concepts like the type and amount of information people require to make good decisions. Rather than present a static list, it could also experiment with more tailored options, for example a tool which asks key questions about a person (e.g. expected distance to retirement) before presenting a list of appropriate investment

[17] ASIC, 2019, '19-081MR ASIC extends temporary disclosure-related relief for product dashboards', available at:
https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-081mr-asic-extends-temporary-disclosure-related-relief-for-product-dashboards/
[18] Disclosure: Why it shouldn't be the default - A joint report from the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for the Financial Markets (AFM), October 2019, p.4
[19] Lunn,. Bohacek, Somerville, Choisdealbha & McGowan, 2016, 'PRICE Lab: An investigation of consumers' capabilities with complex products', report, Economic & Social Research Institute, May 2016
[20] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.31

defaults. Given ASIC's track record in developing high quality consumer facing tools we recommend it be adequately resourced to develop a comparison tool to help people identify high-value products.

Recommendation 4: That the Federal Government adequately resource ASIC to develop a consumer-facing comparator tool for superannuation.

Anti-hawking

As Justice Hayne outlined in the Financial Services Royal Commission Final Report, information asymmetry makes people vulnerable to unethical practices such as the hawking of superannuation products.[21] We are pleased to see the government commit to action on this front. To ensure these protections are effective they need the widest possible remit, including coverage to digital platforms.

Recommendation 5: That the Federal Government follow its Royal Commission implementation roadmap by introducing anti-hawking measures by June 2020.

[21] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report: Vol.1, p.13