



29 September 2017

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Inquiry into the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.2) Bill 2017, the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Bill 2017 and the Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 ('the Bills')

United Voice welcomes the opportunity to make a submission to the above Inquiry.

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing. United Voice plays an active and critical role in representing workers' interests across these industries in relation to superannuation, including as a sponsoring organisation of AustralianSuper, Hostplus, HESTA, Intrust Super, QIEC Super, Clubs Plus Super and GESB Super. Consequently, United Voice members have a vested interest in the success of these funds, other Industry Super Funds, and superannuation funds more broadly, to protect their retirement savings. It is in this capacity that we provide this submission to the Inquiry.

This submission is intended to be read in full support of the Australian Council of Trade Unions' submission.

Our submission refers to all the afore-referenced Bills, as combined, they will adversely impact the operation of Industry Super in Australia and leave many workers worse off in retirement.

For more information on this submission, please contact [REDACTED] via [REDACTED] or [REDACTED]

Yours Sincerely,

[REDACTED]
Joanne Schofield
National Secretary

United Voice holds serious concerns about the Bills which will have the effect, perhaps intended, of allowing financial institutions with highly questionable governance practices to profit from the retirement savings of Australian workers. The Bills have nothing to do with accountability, good governance and the integrity of the superannuation system – they are part of an ongoing legislative attack to curtail unions and to weaken Industry Super for the benefit of banks.

Recent scandals in the banking sector highlight that the banks cannot be trusted with super. In August of this year, ANZ has had to pay \$10.5 million in compensation to 160,000 customers after ASIC found ANZ had incorrectly processed members' super contributions and failed to deal with lost inactive member balances correctly. Similarly, the Commonwealth Bank has had to repay almost \$105.6 million, plus interest, for charging fees where no advice was provided. As of May 2017, CBA has so far only repaid or offered to repay \$5.85 million.

Our retirement income system is ranked third best in the world. Critical to its 30 year success is the default product allocation in modern awards and enterprise agreements, and the equal representation of worker and employer representatives on the not-for-profit Industry Super boards. These arrangements have safeguarded fund member interests and effectively managed their retirement savings when compared with for-profit retail funds. Any attempt to reform the operation of Industry Funds aimed at making Industry Funds' governance practices emulate that of the retail funds should be absolutely rejected.

If the Government was serious about addressing the shortfalls in the superannuation system, it would address the systemic underpayment of superannuation by employers and the significant gender pay gap which persists in superannuation savings that mean women retire with on average less than half the savings of men. Certainly if the Government genuinely sought to address governance issues in the superannuation system, these Bills would seek to impose Industry Super governance arrangements on the retail funds, not the reverse. Instead, the Government is fixated on its legislative and political attack on unions.

Bill 1: Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017

Schedule 1 of this Bill is designed to dilute union representation on Industry Super funds by mandating that the chair of the board and a third of directors are independent. The model of equal worker and employer representatives on Industry Super boards has existed since the compulsory superannuation system was created and has demonstrably worked in the best interests of fund members.

Historically, it was the unions that campaigned for decades for workers' superannuation entitlements. In exchange for wage constraints under the Accord process under the Hawke-Keating Governments, unions, on behalf of all workers, agreed to compulsory superannuation as deferred wages. The equal representation model of governance therefore exists so that workers and employers have an equal say in how their money is invested. It is deliberately different to other boards to reflect that the funds are profit-to-member funds and are dealing with what is an industrial entitlement - one conceived, negotiated and achieved by the trade union movement in

partnership with employer associations. It is therefore incongruous that the Government now seeks to control who can be put on the boards of union created entities, entities whose success have ultimately benefited workers and the Australian economy.

There is no evidence that the equal representation model is failing fund members. In fact, the reverse is true. The consistent high performance of the not-for-profit industry funds in comparison to retail funds over one, five, 10 and 15 years makes no case to change the composition of industry fund boards. Rather, industry funds' performance strongly indicates the success of the equal representation model. Consequently, there is no case to reform the entities that have had over 30 years of success.

It is also inappropriate for the Government to compare superannuation funds with the banking and insurance industries. The purpose of Industry Super is to manage workers' retirement savings, with profits put back into the fund for the benefit of all members. As noted above, the Government should not seek to emulate banking governance particularly given the banking sector scandals with super over recent years.¹ Despite the fact that banks have shown that they cannot be trusted with the public's money, the Government chooses not fix this sector but to continue its attack on unions.

This Bill gives the clear impression that the Government's interest in mandating independent directors to super boards is being driven not by the interests of fund members, but to dilute the union role on Industry Super fund boards and ultimately give banks more power to access the vast pool of workers' savings.

Bill 2: Improving Accountability and Member Outcomes in Superannuation Measures No. 1

Schedule 8 of this Bill amends the *Financial Services (Collection of Data) Act 2001* (Cth) to provide the Australian Prudential Regulation Authority with the ability to obtain information on expenses incurred in managing and operating the super fund.

This Bill is not about enhancing transparency and accountability in the governance of super fund boards in the name of protecting fund members' money and interests. Its effect will place a much higher burden of regulation and oversight on superannuation funds than exists elsewhere in the developed world, including to those that apply to banks and other financial institutions. Ultimately, it will erode members' funds as administrative costs will increase to comply with this unnecessary regulatory burden.

The real agenda of this Bill is to limit the role unions play in protecting members' interests and delivering the best outcomes for members. This is evident in the number of curiously timed media articles that misrepresented formal arrangements between industry funds and their relevant union

¹ See above and see also for example, The Guardian, 'Timeline: banking scandals in Australia since 2009,' 29 April 2016, <<https://www.theguardian.com/australia-news/ng-interactive/2016/apr/29/timeline-banking-scandals-in-australia-since-2009>> and Andrew Robertson, 'Commonwealth Bank: Will senior management at last be held to account?' ABC, 3 August 2017 <<http://www.abc.net.au/news/2017-08-03/commonwealth-bank-latest-scandal-might-be-the-one-that-hurts/8772390>>.

stakeholders as illegitimate.² Such commercial arrangements are commonly made with employer organisations and trade unions affiliated with the relevant industry fund for marketing and in respect of director fees.

As an entity affiliated to a political party, the *Electoral Act 1918* (Cth) requires United Voice to provide the Australian Electoral Commission with an Associated Entity Return annually which lists basic details regarding all receipts received greater than \$13,200.³ Each year misleading articles assert that industry funds give money to unions and fail to report that this money is, as noted above, legitimately provided in respect of directors' fees and/or pursuant to commercial marketing agreements, even though on the form it is noted that it is not a donation.

Bill 3: Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017

United Voice supports Schedule 2 of the Bill that removes the loophole that permits employers to pay less than their 9.5% superannuation contribution where a worker is salary sacrificing into super.

Schedule 1 of the Bill, however, removes the right of workers to bargain for their default fund in enterprise agreements, an industrial right that has been central to the success of Australia's superannuation system.

Super fund selection is a legitimate matter for inclusion in an enterprise bargaining agreement. As workers' deferred wages, workers and employers have collectively decided where their retirement savings will go through the default fund selection process at the Fair Work Commission (and its various predecessors) and through their bargained agreement. This system has provided many workers the necessary protections to select high performing funds. Consequently, this Bill removes a long held industrial right from workers and is an affront to collective bargaining and decision-making, a clear objective of the *Fair Work Act 2009* (Cth).

A lack of fund choice does not lead to member disengagement and it is misleading to state that the existing arrangements in the industrial relations system forces workers to have multiple superannuation accounts. Workers rely on, and have confidence in, the default fund system through modern awards and collective bargaining to select top performing funds. Mostly, these are Industry Super funds as they are run for the benefit of fund members and consistently outperform for-profit retail funds. Whilst the Bill's objective is seemingly to offer further choice to employees, it overlooks that named funds in a collective bargaining agreement eases the administrative burden on employers. Furthermore, the superannuation industry has worked tirelessly to encourage workers to combine their superannuation accounts, which is now a quick and easy step and is largely facilitated by the funds themselves.

² See for example, Simon Benson, 'Unions "skim" \$130m from worker funds,' *The Australian*, 7 September 2017 < <http://www.theaustralian.com.au/national-affairs/industrial-relations/unions-skim-130m-from-worker-funds/news-story/2a9b3fcce68ccad00f93f5877de46e0c>>. In terms of United Voice, the article cited funds that are part of commercial arrangements for marketing and payment from funds in respect of director fees.

³ Industry Funds also have similar arrangements with other bodies. Since these bodies are not affiliated to any political party, these bodies are not required to declare these payments.

Moreover, the Productivity Commission continues to review the current default settings in the superannuation system as part of its inquiry into the competitiveness and effectiveness of the superannuation system. In Stage 3 of the Inquiry, the Government has tasked the Productivity Commission to consider whether the current default settings in the system are appropriate and whether an alternative fund allocation mechanism should be introduced that would deliver net benefits to default fund members.⁴ This three stage Inquiry has been on foot since early 2016 with a final report expected in June 2018.

As a matter of proper governance and due process, it is inconceivable that the Government would initiate a bill that significantly erodes workers' rights prior to the Productivity Commission finishing the Inquiry, which was in any event initiated by the Government. The Government is clearly not protecting fund members but pursuing a misconstrued agenda against Industry Super.

With the exception of Schedule B of the Improving Accountability and Member Outcomes in Superannuation Measures No.2 Bill, United Voice urges the Committee to reject these Bills in their entirety. These Bills will leave workers worse off in retirement and will ultimately force future governments to increasingly support Australians in retirement.

⁴ Productivity Commission, 'Superannuation: Assessing Efficiency and Competitiveness – Terms of reference,' <<http://www.pc.gov.au/inquiries/current/superannuation/assessment/terms-of-reference>>.