



29 September 2017

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee Secretariat

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

The Financial Services Council (FSC) welcomes the opportunity to provide a submission in relation to the collection of Bills that are designed to make the superannuation industry more transparent and accountable to consumers.

The FSC has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

FSC members provide services to all sectors of the industry, including industry, retail, corporate and public sector superannuation schemes.

FSC member companies are major participants in both the 'choice' and the 'MySuper' markets. The FSC supports higher standards of governance, transparency and accountability for both choice and MySuper products.

Please contact me with any questions in relation to this submission on (02) 9299 3022.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Blake Briggs', is positioned above the printed name.

Blake Briggs  
Senior Policy Manager

## Enterprise Agreements

Current legislation allows enterprise agreements to remove the capacity for approximately 800 000 consumers to choose their own superannuation fund.<sup>1</sup> Where the removal of choice has resulted in consumers being forced to create duplicate accounts, the Productivity Commission has concluded that each effected consumers may be as much as \$25 000 worse off by retirement.

The removal of choice not only violates the principle that consumers should be empowered to manage their own money, but it also results in the duplication of administration fees and insurance premiums, which erode their retirement savings.

Enterprise agreements can nominate a default super fund for a workplace and also prescribe that this fund is the exclusion of all other funds. These requirements apply to an employer and prevent an employer from making contributions to any other fund, even where an employee chooses to switch between funds and may attempt to lodge a 'choice of fund' form.

Enterprise agreements can therefore prevent an employee from choosing a different superannuation fund if they do not like the fund chosen for them by a union and employer.<sup>2</sup>

Enterprise agreements can also create complexity for employers by requiring them to make default super contributions into different funds for different workplaces based on which trade unions have coverage in each workplace.

Research by Deloitte Access Economics (DAE) demonstrated the prevalence of enterprise agreements restricting choice of fund in the Australian economy. As outlined below DAE concluded:

- 41% of all employees are covered by enterprise agreements;
- 67% of all agreements nominated a default fund; and
- 19% of agreements completely removed a consumer's right to choose an alternate fund.

Proportion of employees	41%	19%	37%
Employment agreement type	Enterprise Agreements	Modern Awards	Individual contracts
Choice of default superannuation fund	<ul style="list-style-type: none"> <li>• MySuper fund(s) chosen as part of the enterprise negotiation in 67% of agreements.</li> <li>• In remaining agreements employer chooses from Modern Award list.</li> <li>• Employee is prevented from changing their fund in 19% of agreements.</li> </ul>	<ul style="list-style-type: none"> <li>• FWC panel chooses MySuper funds available for an award.</li> <li>• Employer chooses from this list.</li> <li>• Employee free to change fund.</li> </ul>	<ul style="list-style-type: none"> <li>• Employer chooses a MySuper default fund.</li> <li>• Employee free to change fund.</li> </ul>

*Sources: DAE analysis, ABS Employee Earnings and Hours. FWC refers to the Fair Work Commission. The EA figures for funds chosen and restriction employee choice are based on analysis of a random sample of 457 EAs entered into in 2015. Note: these proportions are representative and do not sum to 100 as a result of different data sources.*

<sup>1</sup> <http://kmo.ministers.treasury.gov.au/media-release/036-2015/>

<sup>2</sup> Section 32C(6)(h) of the *Superannuation Guarantee (Administration) Act 1992*

The FSC notes that the proposal to extend a consumers' right to choose their fund to consumers covered by enterprise agreements is also a component of the Nick Xenophon Team's (NXT) Fair Work Amendment (Recovering Unpaid Superannuation) Bill 2017 that was recently introduced to the House of Representatives by Rebekha Sharkie MP.

The FSC supports the amendment as provided in both the bill currently before the inquiry, as well as the Bill introduced by the NXT.

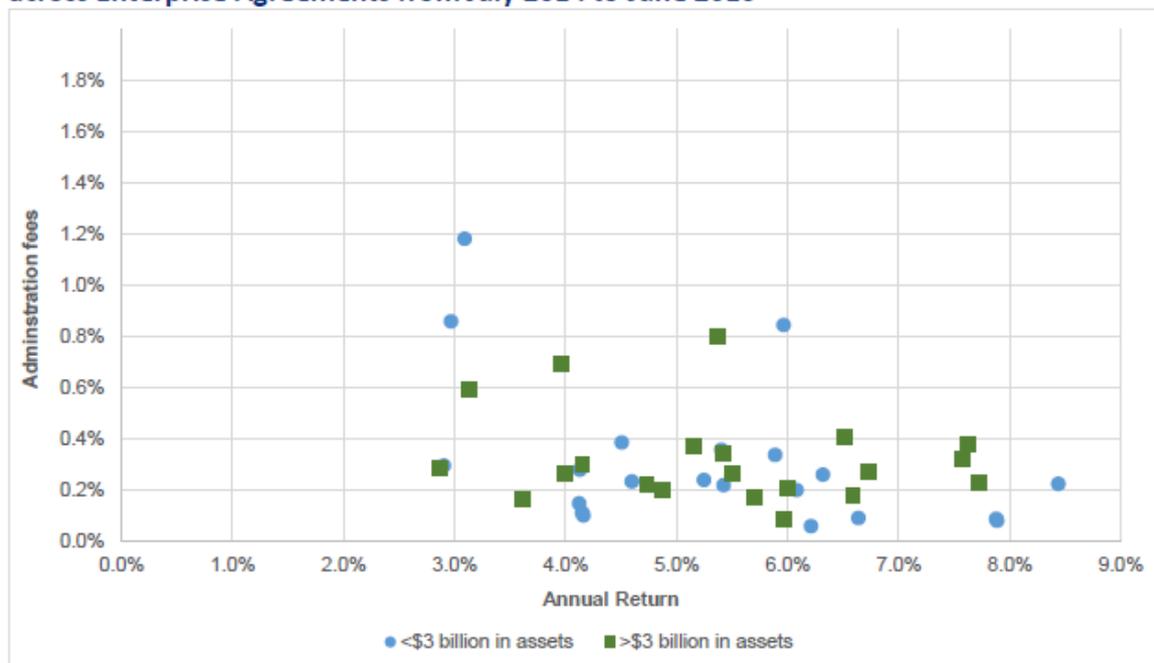
Parties negotiating enterprise agreements are conflicted

The trade unions and employers who negotiate enterprise agreements also sit on the boards of industry superannuation funds. This creates a conflict of interest if the unions and employers agree to nominate 'their' fund at the expense of a better performing fund.

Research by Deloitte Access Economics demonstrates that if an employee is defaulted into an underperforming fund chosen by the union and their employer they can be materially worse off. In particular, the DAE research demonstrates:

- A 5% gap in net returns between the best and worst performing funds in enterprise agreements; and
- A 100 basis point gap in the fees charged between the cheapest and most expensive funds in enterprise agreements.

**Figure 2.5: Average annual administration fees and returns for MySuper products offered across Enterprise Agreements from July 2014 to June 2016**



Source: APRA Annual MySuper Statistics back series (issued 1 February 2017) and DAE analysis of a sample of EA entered into in 2015. The data chosen corresponds with the two full years since the commencement of the MySuper regime.

The significant dispersion in fees and performance amongst the funds listed in enterprise agreements would materially impact the retirement incomes of Australian employees. A consumer should be entitled to leave a poorly performing or expensive fund and choose a better performing

fund. A consumer should not be prevented from doing so by the conflicted arrangement between their union and employer who may also sit on the board of the poorly performing fund.

### Examples of conflicts of interest

The Royal Commission into Trade Union Governance and Corruption exposed examples of unions using anti-competitive clauses in enterprise agreements to prevent employees from being able to switch out of poorly performing industry funds.

The Royal Commission heard evidence that this occurs:

1. For individuals at the workplace level; and
2. At the industry level, through template agreements negotiated by the relevant union and employer organisations that also sit on the board of the industry fund.

### **Box 1. Removal of choice at an individual workplace**

#### **TWUSuper**

In 1984, the Transport Workers' Union (TWU) established TWUSuper.<sup>3</sup> TWUSuper is a \$4.5 billion industry fund with 120 000 members and is also a member of Industry Super Australia (ISA).

TWUSuper's has an 'equal representation' board with four employer representatives, four representatives of the TWU and an independent chair.

The TURC examined TWUSuper and concluded that the TWU in certain enterprise negotiations insisted that employers pay contributions to TWUSuper only, whether the particular employee agrees or not. The TURC concluded that "It is a practice that has no real justification."<sup>4</sup>

The TURC also concluded that as a result of this practice by the TWU, the superannuation fund "provides a large income stream each year to the TWU."<sup>5</sup> \$4.63 million has been paid from TWUSUPER to the TWU over the last five years,<sup>6</sup> including payments for Superannuation Liaison Officers that admitted doing no work for their salary<sup>7</sup> and for ill defined 'sponsorship payments'.<sup>8</sup>

The TURC details the specific example of a truck driver for Toll Holdings, Paul Bracegirdle's, who attempted to choose his own superannuation fund but had his efforts rejected by a TWU official.

One TWU official even told Mr Bracegirdle "fuck off. No one cares, Paul. Go away".<sup>9</sup>

Mr Bracegirdle explained his motivation to switch to a new fund as being based on a desire to boost his savings to adequately provide for his daughter:

<sup>3</sup> Chapter 6.2 TURC Interim Report, page 902

<sup>4</sup> Chapter 6.2 TURC Interim Report, page 903

<sup>5</sup> Chapter 6.2 TURC Interim Report, page 903

<sup>6</sup> Chapter 6.2 TURC Interim Report, page 929

<sup>7</sup> Sydney Morning Herald, *TWU billed super fund \$93,000 for 2 days' work*, 3 July 2014

<http://www.smh.com.au/national/twu-billed-super-fund-93000-for-2-days-work-20140702-3b8tq.html>

<sup>8</sup> Chapter 6.2 TURC Interim Report, page 518

<sup>9</sup> Chapter 6.2 TURC Interim Report, page 918

“I think you should be able to look into which super funds offer the best rates of return, the least fees – various things. And I just didn’t think that TWUSuper was stacking up as well as some of the commercial organisations...”<sup>10</sup>

Mr Bracegirdle also explained a common sense objection:

“I just thought it was wrong. You know, I just couldn’t believe it, that, you know, we could be told where to put 10 per cent of our income. I was shocked.”<sup>11</sup>

Mr Bracegirdle wrote to his member of parliament and, in return, received confirmation from the then Minister for Superannuation who confirmed that it was lawful for an employee’s right to choose a fund to be removed through an enterprise agreement.

Toll advised Mr Bracegirdle that it has “received requests from a number of employees seeking to exercise choice as to their superannuation fund” and that Toll’s “preferred position is to allow every employee the ability to choose their own superannuation fund.”<sup>12</sup>

Toll confirmed, however, that this issue was “sensitive” to the TWU and that Toll will continue to comply with the obligations in enterprise agreements negotiated with the TWU to only make payments to TWUSuper.<sup>13</sup> TWUSuper provided evidence to the TURC that the requirement that employer only contribute to TWUSuper was, in part, to protect their “collective strength”.<sup>14</sup>

The TURC concluded, however, that the conflicted relationship between TWUSuper and the union resulted in both parties acting in the interest of the TWU, not fund members. The self-interest of the union is put ahead of the interests of fund members due to the “income stream which flows back to the TWU.”<sup>15</sup>

The TURC concluded that “there are strong grounds for repealing” the sections of superannuation legislation that prevents employees from exercising choice of fund when covered by an enterprise agreement.<sup>16</sup>

## **Box 2. Removal of choice at an industry level**

### **LUCRF and Association of Market and Social Research Organisations**

LUCRF is a \$5.6 billion superannuation fund with 162 000 members. It is a member of lobby group ISA. LUCRF has an equal representation board with five directors, including the chair, appointed by the National Union of Workers (NUW), five directors from various employers and two independent directors.<sup>17</sup>

The NUW periodically negotiates enterprise agreements with the Association of Market and Social Research Organisations (AMSRO). AMSRO is also the peak employer body covering 70 per cent of the

<sup>10</sup> Chapter 6.2 TURC Interim Report, page 905

<sup>11</sup> Chapter 6.2 TURC Interim Report, page 905

<sup>12</sup> Chapter 6.2 TURC Interim Report, page 909

<sup>13</sup> Chapter 6.2 TURC Interim Report, page 909

<sup>14</sup> Chapter 6.2 TURC Interim Report, page 922

<sup>15</sup> Chapter 6.2 TURC Interim Report, page 938

<sup>16</sup> Chapter 6.2 TURC Interim Report, page 943

<sup>17</sup> <https://lucrf.com.au/about-lucrf/our-people>

employers in that industry.<sup>18</sup> These agreements follow a template that requires employers to make superannuation contributions on behalf of employees into LUCRF and only that super fund.

AMSRO employees sought the ability to choose their own fund. AMSRO sought in negotiations with the NUW to provide that right for senior staff, but not junior staff.

AMSRO manager explained that based on their “experience in negotiations with the NUW, a clause providing full choice of superannuation fund to all employees of AMSRO’s members would have been resisted by the NUW and would have required AMSRO to make other concessions to the NUW.”<sup>19</sup>

Katherine Cole is an employee covered by one such agreement. Ms Cole is in her 60s and advised the TURC that she wished to have her contributions paid to her and her husband’s SMSF. Ms Cole’s husband was retired and payments of Ms Cole’s superannuation to LUCRF, not the SMSF, would impact the age pension Mr Cole received and result in them being financially worse off.<sup>20</sup>

If Ms Cole withdrew her contributions from LUCRF each month, of the \$64 per month in contributions she received, LUCRF would charge her fees and \$60 per withdrawal.<sup>21</sup>

Ms Cole subsequently restricted her working hours to fewer than 18 hours per month to ensure that she is below the \$450 per month threshold so her employer does not make contributions on her behalf. Ms Cole would like to work more but there is no financial incentive for her to do so.<sup>22</sup>

Ms Coles’ employer gave evidence to the TURC that she is approached by employees around every six months with requests to change super funds that she must reject because of the agreement with the NUW.<sup>23</sup>

These case studies provide clear evidence that the conflicts of interest and poor governance in the current superannuation system is inconsistent a consumer’s right to choose their own fund and manage their own retirement savings.

## **Salary Sacrificing and Unpaid Superannuation**

The FSC supports the removal of the loophole that allows employers to reduce their contributions if an employee salary sacrifices into their superannuation account.

The loophole is an unjustifiable arrangement that may leave employees materially worse off by retirement.

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<sup>18</sup> Chapter 6.3 TURC Interim Report, page 959

<sup>19</sup> Chapter 6.3 TURC Interim Report, page 963

<sup>20</sup> Chapter 6.3 TURC, page 964

<sup>21</sup> Chapter 6.3 TURC, page 964

<sup>22</sup> Chapter 6.3 TURC, page 965

<sup>23</sup> Chapter 6.3 TURC, page 965-6