Submission to

Senate Standing Committee on Economics

Regarding

Treasury Laws Amendment (Putting Members' Interests First) Bill 2019

Date Submitted:	15 July 2019
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Executive Summary

1. This submission first outlines what the Shop, Distributive and Allied Employees' Association (SDA) is, then the relevance of the Bill to SDA members, describes their needs regarding insurance, counters the claims in support of the Bill, shares a unique perspective on income protection, highlights that the transitional provisions have not been modelled, and stresses that the circumstances in the industry have changed making the Bill retrospective and having the potential to cause unintended consequences. It concludes the Bill should not be passed. At Appendix 1, SDA policy positions on Superannuation are provided for background.
2. The SDA opposes the *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* (the Bill) because it will unfairly impact on low-income earners, women and young people. They may be less likely to opt-in. If they choose to opt-in later, they are likely to be penalised for doing so. If many people choose not to opt-in, which is anticipated, premiums are likely to go up across the board. If low-income earners, women and young people don't opt-in, many of them do not have large sums of cash on hand for when things go wrong.
3. The objective of reducing systemic fee erosion is reasonable, but the assumption that this is occurring to a great extent and without benefit is baseless, and the method proposed for dealing with it – opt-in insurance for those who are under 25 and those who have a balance of less than $6,000 – will not address the concern. Further, the state of play has changed markedly since the Senate last considered default insurance. The main reason given to move insurance to opt-in was erosion of accounts, and it was argued that this was exacerbated by lack of visibility of duplicate accounts. It is now necessary to wait for implementation of *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019 [Provisions]* (the previous Bill) and implementation of an updated Insurance in Superannuation Voluntary Code of Practice before further reforms would be appropriate.
4. It would be better to focus on alternative methods of reducing risk of systemic fee erosion in the new context, which requires time for implementation of the most recent reforms and modelling of impacts on accounts as of 2019. The SDA looks forward to continuing to work with the Parliament more broadly on superannuation and insurance.
5. **Recommendation 1: That the Committee recommend the Bill not be passed.**
6. **Recommendation 2: That the Committee recommend the Government review the extent of, reasons for, and methods of minimising erosion of superannuation accounts.**

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SDA, Superannuation and Insurance

7. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 215,000 members[1]. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy, online retailing and modelling. Members are predominately low-income earners, women and young people. The SDA has a long history of advocating on behalf of members. The SDA does this through enterprise bargaining; ensuring Awards and the NES provide a relevant safety net; and through numerous submissions made to Senate Inquiries and other important reviews that relate to their experiences.

8. Superannuation is an industrial right for all workers and is deferred earnings designed for dignity and justice in retirement. That right resulted from campaigns by union members in the 1970s and 1980s, when superannuation was largely reserved for high-income earners. Compulsory superannuation began operating in 1992, and over the past 25 years industry super funds have developed into sophisticated, competitive providers of retirement income products. The default fund for SDA members is Retail Employees Superannuation Trust (REST).

The Bill is unfair, unnecessary and yet-to-be modelled

9. The SDA opposes the *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* (the Bill) because it will unfairly impact on low-income earners, women and young people. The changes impose arbitrary limits, such as periods of activity and minimum balance. This has a disproportionate impact on these cohorts. They will be less likely to opt-in when they first start work and may take many more years to reach a $6,000 balance than others. As a result, if they choose to opt-in prior to reaching a $6,000 balance, they are likely to be perceived as doing so because they are a risk. They are likely to need to make a health declaration that is not needed with default insurance and doing so may impact those with pre-existing conditions about which they would otherwise have been unaware. It also is likely to cause low-income workers higher premiums. If many people choose not to opt-in, which is anticipated, premiums are likely to go

[1] Internal SDA data.

up across the board. Secondly, many of them are casual and part-time workers and do not have large sums of cash on hand for when things go wrong. By denying these workers default group insurance, when things go wrong, they will be likely to have to rely on the health and social welfare system.

10. The objective of reducing systemic fee erosion is reasonable, but the assumption that this is occurring to a great extent and without benefit is baseless, and the method proposed for dealing with it – opt-in insurance for those who are under 25 and those who have a balance of less than $6,000 – will not address the concern. Firstly, the extent of the issue of erosion is described by the AIST as representing 0.27% impact on retirement balances[2] and, if they are with REST and 20-years-old, cost as little as $82 per year. Secondly, there are clear benefits in monetary terms for members if they have default insurance. This is outlined with below [See PN26] where the claims made to Retail Employees Superannuation Trust (REST) are described. Finally, there are other ways to manage the risk of fee erosion.

11. Industry Superannuation funds have taken a proactive step to addressing the risk of fee erosion with the Insurance in Superannuation Voluntary Code of Practice. The code took effect in July 2018 and was developed by AIST, Association of Superannuation Funds of Australia (ASFA) and Financial Services Council (FSC).[3] Following the passing of legislation during the last parliament, there will be further updates to the code. Public awareness raising is an important aspect and should be encouraged by the Government.

12. The Bill is largely as drafted for the previous Bill, which saw several key changes pass into law, and now needs to be implemented before further changes are agreed. The Senate Economics Committee outlined that "trustees must only offer insurance cover if it does not inappropriately erode members' retirement savings. However, … this requirement is impeded by lack of visibility of other superannuation accounts…"[4] Since the committee reported, the Senate passed sections of the previous Bill that sees inactive superannuation accounts now due to be transferred to the ATO in April 2019, where no insurance will be offered. The main reason given to move insurance to opt-in was erosion of accounts, and it was argued that this was exacerbated by lack of visibility of duplicate accounts.

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[2] AIST, *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 [Provisions] Submission 10* (6 July 2018) Australia, Senate Economics Legislation Committee, p.3

[3] See https://www.superannuation.asn.au/policy/insurance-in-superannuation-voluntary-code-of-practice

[4] Australia, Senate Economics Legislation Committee, Report, *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018 [Provisions]*, August 2018, p 3

Relevance of the Bill to SDA members

13. The majority of SDA members are low-income earners, women and young people who are directly affected by the Bill. Retail and food services are two of the three lowest industries for median weekly earnings.[5] In 2018, the median weekly earnings of all Australians was $1066[6], some 34% higher than retail workers. Approximately 40% of SDA members are under the age of 25 (approximately 83,000 people) and 60% are women (approximately 131,000).[7]

14. The Fair Work Commission described retail (along with hospitality) as "more likely to be female, younger (under 25 years), work part-time hours, be employed on a casual basis and be award reliant than employees in other industries. Employees in these industries are also more likely to be low paid."[8] The Commission was also "satisfied that a substantial proportion of Fast Food industry employees are 'low paid'; are more likely to reside in lower income households and are more likely to experience financial difficulties."[9] With heightened financial needs, comes a need for superannuation and insurance.

15. SDA members mostly contribute their superannuation to REST, and most of them fall within the cohort defined in the Bill. As described by the CEO of REST to the Senate Economics Legislation Committee (the Committee) in 2018, 62% of members of REST are women and 35% are under 25 years of age. While the average account balance is around $26,000, almost half—around 924,000—have balances under $6,000. At that time, more than 880,000 members would lose their cover. [10] A year on, many more will be affected.

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[5] ABS, "6333.0 - Characteristics of Employment, Australia, August 2018" (https://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0 accessed 9/7/2019)
[6] ABS, "6333.0 - Characteristics of Employment, Australia, August 2018" (https://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0 accessed 9/7/2019)
[7] Internal SDA data.
[8] [2017] FWFCW 1001 PN 80
[9] [2017] FWFCW 1001 PN 1356
[10] Australia, Senate Economics Legislation Committee, Hearing, 20 July 2018, pp. 77-78

The nature of insurance for SDA members

16. Insurance is a means of protection. Be it financial protection or reimbursement against losses, insurance makes recovery from adverse events possible. It allows risk to be shared and makes those events easier to recover from.

17. In responding to their needs, the SDA observes members have insurance in several forms. There is the insurance they hold personally for their home and car, workers compensation, SDA member insurance, and the insurance linked to superannuation.

18. Some members and their families come to the SDA following significant incidents including death, total and permanent disability, and other events resulting in loss of income. Members also report the top health issue SDA members tell us about is mental health including workplace bullying and harassment and workplace abuse which resulted in the No-one Deserves a Serve Campaign. SDA members also raise large numbers of muscular skeletal injuries with a focus on falls in supermarkets and warehouses, burns and falls in fast food and falls at home and in the community.[11]

19. Insurance in the superannuation context is designed to assist and support workers experiencing unexpected health and wellbeing challenges. As superannuation is an industrial right of workers, it is the most cost-effective method of providing death, total and permanent disability (TPD) and income protection. 1.9 million Australians are members of REST, and group insurance provides benefits where others don't.

Opt-in has negative impacts for SDA members

20. In support of the Bill, it has been argued that group insurance requires those who are under 25, with low balances, and who are not currently contributing to have insurance that doesn't meet their needs.

21. On the contrary, taking away group insurance has negative impacts. Currently, members can opt-out, they can increase or decrease their cover, and choose which parts of the insurance they will take up. If the Bill goes ahead, opt-in would involve a range of different restrictions and conditions. For example, there is likely to be a period during which a person can opt-in and

[11] Internal SDA data.

if they miss that timeline, those who opt-in may require underwriting because they will be considered by insurers as a higher risk. It is also likely that there will be an increase in premiums across the board as numbers decline. This is likely to have an impact on affordable insurance for low paid workers.

22. The argument that the Bill supports choice also assumes that members are not engaged in thinking about their super. Not saying 'no' does not mean members are not engaged in a decision. Following the passage of the previous Bill, REST communicated with its members that change was coming. Over 62,000 REST members either actively elected to maintain their insurance or took actions to maintain cover (such as making contributions to their previously inactive account)[12]. This represented approximately 15% of REST members impacted by the reforms taking action. Given engagement for this type of communication is typically between 2.5%[13] and 6.1%[14]. this would indicate a high level of interest in maintaining cover. REST also anticipated approximately 4,000 telephone calls based on standard call centre assumptions but received over 30,000. We understand that this experience was similar for other superannuation funds.

23. The notion that an inactive account means a person is not engaged with their insurance is also inaccurate. As the previous Bill passed, accounts are due to be moved to the ATO in April next year, which is expected to effect women disproportionally. The current Bill will further exacerbate the impact on women by inhibiting default insurance coverage for those with balances under $6000. It is well documented and acknowledged that caring responsibilities impact women's retirement savings, and this Bill proposes to make their insurance situation worse as well.

24. In the SDA Submission regarding the ISWG Draft Insurance in Superannuation Code of Practice the SDA highlighted that lack of action related to insurance should be measured as at least 24 months. The period of 24 months is both relevant to SDA members experience and to industrial consistency. A survey of SDA members conducted a few years ago showed that 10% of members who return to work take between 12months and 24 months parental leave. Section 70 of the Fair Work Act 2009 provides a right for permanent and regular casual employees with more than 12 months service to take 12 months parental leave on the birth or adoption of a child.

[12] Internal REST data

[13] MailChimp *Email Marketing Benchmarks March 2018* (https://mailchimp.com/resources/email-marketing-benchmarks/ accessed 10/7/19)

[14] Constant *Contact Average Industry Rates for Email as of June 2019* https://knowledgebase.constantcontact.com/articles/KnowledgeBase/5409-average-industry-rates?lang=en_US accessed 10/7/19)

Section 76 of the Fair Work Act 2009 provides the right for employees to request a further 12 months parental leave which an employer may only refuse on reasonable business grounds.[15] Therefore a total of 24 months, and as such the Bill should reflect this period.

25. The bill has the potential for regressive impact. Arbitrary limits, such as periods of activity and minimum balances, disproportionately impact low-income earners. They will be less likely to opt-in when they first start work and may take many more years to reach a $6,000 balance than others. As a result, if they choose to opt-in prior to reaching a $,6000 balance, they are likely to be perceived as doing so because they are a risk. They are likely to need to make a health declaration that is not needed with default insurance. It also is likely to cause low-income workers higher premiums. Secondly, many of them are casual and part-time workers and do not have large sums of cash on hand for when things go wrong. By denying these workers default group insurance, when things go wrong, they will be likely to have to rely on the health and social welfare system.

SDA members do need income protection, and other forms of insurance

26. Insurance is an important component of superannuation and is needed. In the two years to 2018, REST paid out $213 million to members with an account balance of less than $6000, $203 million to those with inactive accounts and $50 million to those who are under 25 and have passed away or experienced a disability.[16]
27. The suggestion that income protection is not relevant for low income earners is also inaccurate. The majority of those caught by this Bill are reliant on their income and therefore need income protection as well as Death and TPD insurance. They may be low-income earners whose super contribution is low and be dependent on the social security systems, women who have taken more than 16 months off work to have and raise their children, young people who are supporting themselves to establish a career or get through study, or in a range of other circumstances.
28. SDA members do have income protection needs, and the SDA has experience of assisting members with claims. An example of one SDA member was a young man who contacted an SDA branch when he was at risk of homelessness following an injury that was exacerbated by work. The SDA supported him through the process, and because of support from the SDA, REST and

[15] SDA, *Submission regarding the ISWG Draft Insurance in Superannuation Code of Practice* (October 2017), p.3
[16] Inactive as defined under the previous Bill prior to amendment, 13 months.

the insurer, he was able to avoid eviction. He returned to work a few months later. This is a positive outcome because of access to insurance, which was affordable because of superannuation.

29. REST described in its submission to the inquiry into the previous Bill that the number of income protection claims for the defined cohort in this industry is greater than death and TPD. Nearly 60% of claims in the 2017 and 2018 years were for income protection.[17] Many of those caught by this Bill would be reliant on the social security system if income protection was not available. Case studies provided by REST demonstrate that income protection has supported workers to address their health and wellbeing challenges and return to work.

The insurance offered is flexible and limits cross-subsidy

30. Insurance is designed for life stage and is not designed to cross-subsidise. It is outdated to say that insurance is inflexible, and that cross-subsidies occur.
31. For many years, trustees have updated and changed the approach to insurance to achieve continuous improvement. Instead of a cross-subsidy approach, there is a life-stage or age-based approach. Some young people live with their parents and study, but many are married and do have children. If they are with REST, a 20-year-old is likely to be paying as little as $82 per year. This rises over time. The default cover with REST changes on your birthday. So, at 18, it's $1.11 per week and by the time you're 25 it's $4.85 ($252.20 per year).[18] The insurance is designed to avoid unfair impacts on particular age groups. Young people can also elect different levels of cover.
32. Other examples of responses to insurance changing needs include removing minimum balance requirements, supporting new members even if they stop working, changing the default for under 18s, increasing income protection to align with inflation, better linkages between terminal illness and death benefits, and making it easier to opt out and in and increase or reduce cover through technology.
33. At the hearings into the previous Bill, the CEO of REST said:

    "For the past 10 years Rest's insurance design has taken a life-stage or age based approach to cover, which you would have heard about. This means that benefits and costs are lower for our younger members, with default cover increasing as their financial commitments rise. For example, a 20-year-old pays just $1.58 per week for insurance. That's $82 a year. That would be

[17] REST, *Key Facts,* 2018, Unpublished.
[18] REST, *Key Facts,* 2018, Unpublished.

a fraction, to use an analogy, of the cost of a CTP green slip of car insurance, which is up around $700 for a 20-year-old. That $1.58 or $82 would give them $50,000 of death cover, $28,000 in TPD and—really importantly—$1,650 per month income, which is a very important insurance for younger and all age groups. Importantly, this type of design also means that there is no cross-subsidisation between the younger and older members, and I know that's been an area of real concern. Rest members can immediately opt out, reduce or increase their cover online via email, over the phone and in the app. Just to give you some numbers, 30 per cent have done that and have actioned it, and 14 per cent have changed their level of cover."[19]

34. As a REST member gets older, their default premiums and benefits change to meet their needs and the likelihood of events. Young people, who you might anticipate having a death benefit flow to parents rather than to children usually receive a lump sum that is adequate to cover costs. In the SDAs experience, this can include funeral, personal loan and other general expenses. As they get older, the death cover increases – perhaps they've married, have a mortgage, and children. This is particularly helpful for low paid workers do not always have sums of money on hand.

The Bill overlooks the previous Bill and transitional provisions have not been modelled

35. As outlined above, the Bill is drafted on the basis of previous legislation, *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019 [Provisions]*. The Senate has since passed that inactive superannuation accounts be transferred to the ATO. The main reason given to move insurance to opt-in was erosion of accounts, and it was argued that this was exacerbated by lack of visibility of duplicate accounts and duplicate insurance. These accounts held by the ATO will not have insurance, so the risk that duplicate insurance will occur is now changing.
36. Other circumstances in the industry have also changed, including the implementation of the code of practice, changes in numbers of accounts and greater engagement by members in their superannuation and insurance. The Bill fails to consider the impacts that will flow from the alterations already made. It is necessary to model the impact of the changes consistent with the new circumstances after they have come into effect in April next year.
37. The explanatory memorandum outlines transitional provisions of the Bill, which do not appear to be in the Bill. The provisions have complex interactions of eligibility with dates and require time for modelling the impact on those currently insured and making claims. The drafting has

[19] Australia, Senate Economics Legislation Committee, Hearing, 20 July 2018, pp. 77-78

unreasonable dates by which Trustees must act (e.g. 1 August), different arrangements for those who joined after 1 July 2019 and before 1 October 2019, and will almost certainly cause cost not accounted for in the Regulatory Impact Statement (RIS).

38. The Bill is an unnecessary "reform" and appears to be politically motivated with a view that something rejected by the previous parliament be taken up by the new Parliament.

Conclusion and Recommendations

39. It would be better to focus on alternative methods of reducing risk of systemic fee erosion in the new context, which requires time for implementation of the most recent reforms and modelling of impacts on accounts as of 2019. The SDA looks forward to continuing to work with the Parliament more broadly on superannuation and insurance.

40. **Recommendation 1: That the Committee recommend the Bill not be passed.**

41. **Recommendation 2: That the Committee recommend the Government review the extent of, reasons for, and methods of minimising erosion of superannuation accounts.**

Appendix 1:
SDA policy position on Superannuation

Workers Capital & Superannuation

Workers capital and superannuation is an industrial right for all workers and must be treated as deferred earnings designed for dignity and justice in retirement. This requires:

1. Superannuation rights and entitlements to be provided for and enforced within the industrial (Fair Work) system.
2. Superannuation for all workers on all earnings.
3. Superannuation equality for women, including those who have taken time away from work to have and raise children.
4. Superannuation equality for low-income earners.
5. Superannuation default arrangements and industry superannuation funds linked to relevant awards.
6. A safety net – through insurance and a commonwealth pension system – configured to assure a dignified and just working life and retirement.