Submission to

The Treasury

Australian Government

Regarding

Your Future, Your Super

Regulations and Associated Measures

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SDA Submission to *The Treasury, Australian Government* regarding *Your Future, Your Super Regulations and Associated Measures*.

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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. 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. Many members of SDA will be reliant on the aged pension and rent assistance in retirement.

[1] https://treasury.gov.au/consultation/c2019-36292/submissions

[2] https://www.superannuation.asn.au/resources/retirement-standard

Key risks: lessened local investment; lack of competitive neutrality; directional non-personalised advice; excessive red-tape; and superannuation-Dollarmites.

5. The Your Future, Your Super package has been much debated with a Budget announcement, exposure drafts of the Bill, and a Senate inquiry. These reforms have stemmed from parts of The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and parts of the Productivity Commission review of the efficiency and competitiveness of the Australian superannuation system. But it is notable that some parts have not come from any of these processes. For example, the best financial interests' duty was recommended against by the Royal Commission and the capacity for the Treasurer to make investment decisions as well as growing power in regulations has had no policy driver explained.

6. This submission is in response to the Exposure Draft Regulations and Explanatory Statement for Your Future Your Super and Associated Measures which were released for public consultation with responses due on 25 May. It would be irresponsible for the Parliament to pass legislation for royal assent before the responses to those draft regulations have been properly considered by The Treasury and shared publicly.

7. In its 2020 Budget announcement of the Your Future Your Super reforms, the government indicated that a dashboard would be prepared through the ATO to empower consumers. Getting that effective is a logical first step before implementing other reforms which risk:

    7.1. local investment – by testing performance with such serious consequences (the closure of the fund) which will see investment professionals invest consistent with the regulatory indexes rather than for Australians savings. For example, the retirement savings of members should be invested our and other economies in a way that delivers good jobs and wages as well as returns on investment.

    7.2. competitive neutrality – by applying regulations unequally in the Bill and regulations through exclusions resulting in some but not all parts of a system adhering to varied rules.

    7.3. poor personal advice - sending a letter that says "Your superannuation product [insert the name of the superannuation entity and the name of the Part 6A product] has performed poorly. You should consider moving your money into a different fund." when its possible the fund will recover or the new fund will be required to write a similar letter.

    7.4. red tape - the financial interest duty will see funds focussed on financial transactions rather than retirement savings of members. At every layer of governance, any expenditure will require a regulatory standard of documentation – a regulatory red tape risk – made even worse by a requirement (a reverse onus of proof) that for all financial decisions, one is assumed to have failed in their duty unless they prove otherwise.

    7.5. a burgeoning industry of dollarmite-super accounts – stapling to an underperforming work-ready product from a bank where young workers are encouraged to set and forget into an account chosen by their employer rather than their representatives. These products may suit members with a large balance but may not be suited to the first dollars of retirement savings being contributed.

Draft Regulations for Addressing Underperformance

8. Early in the public discourse about these reforms, it was proposed that the performance test exclude admin fees and that unlisted assets be indexed in a way that would encourage investment consistent with US, rather than Australian, policy settings. The draft regulations have demonstrated some welcome changes.

9. However, there remain three significant issues with these regulations:

   9.1. Indexing of "other" assets (which usually includes agriculture) remains unclear. Further, setting time frames remain a barrier for long term (20-40 year) investments including those with volatile risk profiles (farms and innovation projects) and reliable but long-term returns (like affordable housing projects or renewables). Given that investment in superannuation includes investment for some workers for over 50 years, these investments can define the difference between poor and well performing funds. This is a local investment risk.

   9.2. For workers in large or reputable companies who respond to their workers representatives, My Super products are used for defaults. For many workers in small and medium sized businesses, Trustee Directed products (Choice) are in practice the default. There are also other super accounts holding vast amounts of Australians retirement saving. All these funds should be subject to publishing of performance testing. This is a competitive neutrality risk.

   9.3. The regulations require a fund to provide advice to members, including the phrase "You should consider moving your money into a different fund." The submission to the Bill from REST 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. The regulations therefore require, after a flawed assessment, the fund to provide advice without knowing the impact. This is an advice risk.

Draft Regulations for Improving Accountability and Member Outcomes

10. These regulations cover portfolio holdings disclosure, Annual members' meetings and Use of goods or services to influence employers.

11. With regard to Schedule 1—Portfolio holdings disclosure, the intent of disclosure as outlined in the explanatory memorandum is for asset class clarity. However, this clarity is only required for regulators not the public. Publication of valuations by those investors that are part of the superannuation system and not those that are not will undermine investment in unlisted and other assets. So, for example, if a private investor and the super fund are competing for an investment, this disclosure may undermine the ability of working Australians' to have their

retirement funds invested in the best of unlisted long-term assets that support the economy in their communities and/or have long term benefits. This is a local investment risk.

Draft Regulations for Single Default Account Exposure Draft

12. The model of stapling risks creating superannuation version of the Dollarmite. Rather than entering primary schools under the guise of financial literacy, banks will be able to offer a young worker a bank account, a super account and a credit card. The superannuation component of these would be 'work-ready' products are likely to be exempt from the legislative requirements for disclosure, performance, and dashboarding. There is no detail in the legislation or these regulations as to how unscrupulous banks would be stopped from this predatory behaviour.

The problems of the Bill are not fixed by these draft regulations.

13. These regulations are described as part of the Your Future Your Super reforms. They are intended to improve Australian's superannuation with lower fees, better performance and more transparency. They, along with the Bill, are flawed because the first step should be to assess performance of funds in a coherent and accessible way and publish that material on the ATO website. Only once that information is clearly articulated and published should regulators take action to close funds or require funds to provide advice to members that they should leave the fund. There should be a continuing best interest test for all activities of trustees, and that should be about ensuring that working people have higher balances in their retirement not about whether or not a purchase has the right paperwork.