

# Your Future Your Super Regulations & Associated Matters

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### Contents

Introduction.....	3
Stapling .....	4
Best Financial Interests Duty .....	4-5
Conclusion .....	5

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## Introduction

The Finance Sector Union (FSU) is a registered industrial organisation under the *Fair Work (Registered Organisations) Act 2009*. FSU represents members in the finance and insurance industry in Australia. This industry consists of approximately 459 000 employees nationwide (approximately 3.5% of the workforce)<sup>1</sup> with women making up approximately 54.7% of the total number of workers within the sector.

The FSU represents thousands of workers in the superannuation industry who work diligently to ensure that the Australian retirement system is one of the World's best. These workers must navigate a system that is subject to significant regulatory pressures, political interference, and a difficult economic environment. Whilst the current system may not be perfect the draft Bill does not address any systemic issues in a meaningful way and if passed could have the detrimental affect for member savings accounts and the staff whose job it is to look after these savings.

This submission will address stapling, the best financial interests duty, and ministerial over-reach. Each of these policies on their own have the potential to do more harm then good however taken as a package they will have a drastic impact on individual member accounts, the integrity of the superannuation system, and ultimately our economy.

These proposed changes are anti-competitive and anti-market. In particular giving the Minister of the day the power to interfere with the investment and operational decisions of funds is unprecedented especially for a Government that claims to be a supporter of free market principles and a light regulatory touch. How can any fund plan manage risk, and invest with confidence when they are subject to the whims and dictates of a single Minister? And crucially how do workers save plan for their future with confidence?

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<sup>1</sup> <http://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/FinancialandInsuranceServices>

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## **Stapling**

Preventing the incidence of multiple superannuation accounts is a good idea if it is implemented correctly. The Government proposes to staple workers to a fund, for most workers this will be their current fund or the last fund their employer paid superannuation into. Stapling was a recommendation of the Hayne Royal Commission as well as the Productivity Commissions (PC) 2018 review of superannuation with the PC review also recommending that a list of quality or 'best of show' funds be developed as a quality filter in tandem with account stapling. As it currently stands the regulations do not allow for a quality filter and workers risk being tied to an underperforming fund for life and consequently worse off.

If this law is passed millions of workers will be stapled to underperforming funds for the rest of their working lives if they do not exercise a choice. In addition, should these funds go on to fail changes to fund performance benchmarks (changes that are part of this same legislative package) there is no conceivable way for these workers to move to a better performing fund. This condemns workers to lower superannuation balances on retirement but also makes the Government's commitment to people exercising choice over their financial decisions seem hollow.

The FSU supports the ACTU and ISA position of stapling funds to the member and not to the fund. Under this model members are stapled to their balance which is automatically rolled over into their new account when they join a new employer.

## **Best Financial Interests Duty**

The proposal to change the 'best interests' duty to 'best financial interests' duty is one of the most controversial changes to superannuation laws in that it prohibits certain investments and expenditure yet there is a lack of guidance on these issues. The regulations have failed to identify which payments or investments are banned. This change will place a significant administrative burden on the day to day operations of industry super funds. In addition, the Bill gives the Treasurer near limitless powers to cancel investments, activities, or expense items that they do not like.

As the Australian Industry Group noted in their Your Future Your Super submission"

"The proposed approach is extremely prescriptive. It would impose a set of onerous requirements on the decision-making of trustees and fund directors; it unreasonably imposes an evidential burden of proof on trustees by requiring them to be able to prove their actions are in the best financial interests of members; and it proposes that there would be no materiality threshold below which these onerous obligations would not apply. The approach would create a red tape nightmare in the oversight of

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superannuation funds. Instead of concentrating on running funds in the best interests of their members, funds would be embroiled in compliance with an exceptionally intrusive regime”.<sup>2</sup>

The current best interests’ duty already implies a ‘best financial interests’ duty, Trustees already have a fiduciary duty to their members. According to the ACTU the Treasury Department has advised that dividend payments to shareholders will not be required to pass a best financial interest’s test. They argue that:

“These payments, no matter how they are used by the parent company, are not required to pass the best financial interests test. This allows for-profit funds to advertise without obligation, engage in political advocacy or make political donations. The passage of this Bill would create a wholly uneven market for superannuation funds, especially when combined with other aspects of the package, like the exclusion of administration fees from benchmarking”.<sup>3</sup>

This is blatantly unfair and discriminatory against industry super funds and the FSU believes these changes will have a catastrophic impact on the industry fund sector. This proposal represents one of the most egregious attempts by a Government to interfere in the running of commercial enterprise especially a Government that claims to believe in free market principles and that is against the intrusion of Government into the lives of citizens and business.

## **Conclusion**

We restate what we said at the beginning of this submission that each of these proposals on their own have the potential to do more harm than good however taken as a whole they will have a drastic impact on individual member accounts, the integrity of the superannuation system, and ultimately our economy. These proposed changes are anti-competitive and anti-market and are not in the best interests of workers. The FSU urges the Government to withdraw the Bill.

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<sup>2</sup> Your Future Your Super Submission, AIG, March 2021,p,7

<sup>3</sup> Your Future Your Super Submission, ACTU December 2020,p,8

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