ACTU
australian council of trade unions

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President Michele O'Neil Secretary Sally McManus

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Director
Retirement Income Policy Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Director,

Re: Your Future, Your Super Regulations and associated measures

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. There is no other national confederation representing unions. For more than 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector. In making this submission we note and support the submissions of the Shop, Distributive and Allied Employees' Association (SDA) and the Finance Sector Union (FSU).

The regulations issued do not address the glaring issues with the legislation which include:

- Stapling more than 3 million workers to an under-performing product,
- Imperilling insurance for workers in high-risk industries like emergency services, front-line health and caring work during the global pandemic, forestry and construction,
- Excluding swathes of the worst-performing products from performance benchmarking,
- Lumping profit-to-member superannuation funds with hugely onerous regulation that for-profit funds would be essentially exempt from,

Australian Unions

- Determining that profits paid by for-profit superannuation funds to their shareholders are in *member*s' best interests,
- Creating a power for the Minister, and any future responsible Minister, to cancel investments that are in members' interests at a whim,
- Instituting a reverse onus test on superannuation fund trustees which is usually reserved for some terrorism and child sex offences, and
- Forcing not-for-profit industry funds to mount a business case and legal justification for any purchase, no matter how small.

Despite the glaring issues with the Bill, the regulations issued are inadequate. The benchmarks issued, despite an improvement from the original policy announcement, fail to take into account the diversity of sectors that superannuation funds have invested into. A notable absence is a category to measure and benchmark investments in agriculture, a sector crucial to the Australian economy, consigning it to 'other' investments and discounting its unique value generation. This oversight will discourage investment in Australian agriculture, limiting the ability of the finance sector to support Australian businesses and the regions.

No worker should be in an underperforming superannuation product. Around a third of funds under management will still not be subjected to benchmarks based upon the definition offered by Treasury. The exclusion of these products, particularly after the admission by Government that administration fees impact retirement outcomes, has no policy basis. There should be no circumstance where a worker is under the false impression that they are in a high-performing product, based on a lack of required communication from the fund under the consequences of underperformance. All superannuation funds should be benchmarked, and the regulations should reflect this.

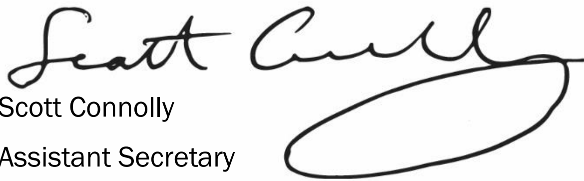
The regulations pertaining to Schedule 3 fail to outline reasonable categories of expenses that funds would be expected to undertake proactive justification prior to making an expense. Despite the prospect of guidance offered in the explanatory memorandum, the regulations fail to ensure that superannuation funds will not be required to mount a business case for the purchase of a stapler with the same rigour applied to the purchase of an infrastructure asset. Rather than improve members' outcomes, this will simply grind the operations of superannuation funds to a halt.

Under current practice and Treasury industry advice, profits will be deemed to be in the best interests of members and not subject to any business case. There does not seem to be a reasonableness test on dividends paid to a shareholding entity, who will be able to make expenses outside the scope of the regulations on behalf of the fund. This, therefore, will create an unfair competitive environment for not-for-profit funds where for-profit funds can run advertising campaigns and make expenses without regulatory scrutiny.

The regulations also fail to identify any expenses or investments which would be proscribed under 117A of the Bill. This is either obfuscation over the Government's intent to use the power or points to the fact the power is wholly unnecessary and inappropriate. Investments in projects and expenses made should not be subject to the arbitrary and political whims of Government.

The regulations do not address glaring issues with the Bill and perpetuate the issues with the bill that would discourage investment in the local economy and would competitively advantage for-profit bank-owned superannuation funds.

Yours sincerely,



Scott Connolly

Assistant Secretary