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Salary sacrifice integrity measures – Treasury Legislation Amendment (Improving Accountability and Member Outcomes in Superannuation) Bill 2017

Cbus welcomes the opportunity to provide some comments on the draft legislation.

Closing the Salary Sacrifice Loophole and the Broader Problem of Unpaid Super

Cbus, together with Industry Super Australia, has highlighted the loophole that allows salary sacrifice to be counted towards SG compliance in December 2016.¹ The joint report, *Overdue: Time for Action on Unpaid Super*, clearly called for this to be addressed.

The issue was subsequently raised on several occasions during the Senate Economics Inquiry into Superannuation Guarantee non-payment and the final report in May 2017 again recommended the loophole be fixed.

We are therefore pleased that this draft legislation includes measures to fix the anomaly in relation to salary sacrifice; however, we remain concerned that this will only address a small part of a very big problem.

Unpaid superannuation is a serious issue which significantly undermines the integrity of the system and erodes the level of adequacy of retirement income for many Cbus members. Cbus, along with other organisations, including the Inspector-General of Taxation and the Australian National Audit Office, have been highlighting the issue for many years.

A series of Cbus research papers have documented the disturbingly high level of non-compliance with superannuation guarantee obligations over recent years. In particular, a recent report jointly published by ISA & Cbus estimated that the annual cost of non-compliance is between \$3.6 billion and \$5.6 billion.

This is a staggering amount of unpaid superannuation that creates;

1. A delayed and detrimental impact on individuals' retirement savings, robbing them of the benefits of investment earnings and compound interest;
2. An immediate and negative effect on the collection of government revenue through lost taxation – eg 15% of \$3.6 billion is \$540 million;
3. A reliance on the age pension and other Government services which leads to greater strain on the Federal Budget.

¹ *Overdue: Time for Action on Unpaid Super* – Industry Super Australia & Cbus 2016.

Given this context and the heightened awareness of the issue, we would strongly urge that the Bill be amended to include all the recommendations made by the Senate Economics Committee in *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*.²

We have reiterated our recommendations below.³

Recommendations:

1. Require real time payment and reporting of SG payments; and requiring SG contributions to be paid congruently with the payment of wages.
2. Facilitate collection of unpaid SG by superannuation funds directly.
3. That funds seeking default status in industry awards be required to have a rigorous arrears collection process in place.
4. That the ATO should measure and report on the extent of unpaid SG – noting that the ATO has indefinitely deferred the release of its gap reporting on super non-compliance.⁴
5. Increase ability of regulators to recover unpaid SG.
6. Enforce non- compliance through use of penalties.
7. Extend the safety net for unpaid entitlements in the event of employer insolvency.

Other measures

Cbus does not intend to make detailed submissions in relation to the other measures in the draft legislation; having provided input to the submissions made by ASFA, ISA and AIST.

However, we would emphasise the following:

- While we are supportive of the revised outcomes test, we would simply note that net returns are fundamental to the retirement outcomes for members, and should be given priority in any assessment of members outcomes. We also note that the proposed test will not apply to products and members outside the enhanced regime given that the annual assessment requirements would only apply to *MySuper* products (i.e. not choice products).
- Cbus supports the introduction of annual members' meetings to “to discuss the key aspects of the fund and provide members with a forum to ask questions about all areas of the fund’s performance and operations.” Cbus has been holding Annual Member Briefings for several years and believe they are a valuable forum to promote engagement with members and accountability from the Fund. However, we urge that the provisions avoid being overly prescriptive in terms of limiting trustee decision making regarding the most appropriate way to deliver member briefings.

² http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperannuationGuarantee/Report/b01

³ These are taken from the Cbus submission to the Senate Economics Inquiry into SG non-compliance – Sub number 48 - http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperannuationGuarantee/Submissions

⁴ <http://www.superreview.com.au/news/superannuation/ato-detail-sg-gap>

- We also query the proposed powers to enable APRA to 'look through' the operational and managerial expenses made by RSEs. It is unclear the rationale for this policy, given that trustees are already accountable for ensuring that commercial terms of contracts and outsourcing arrangements are in members' best interests (of which Cbus is supportive). Unlike 'look through' provisions for fee disclosure which seek to create greater transparency of underlying fees within layered investment structures, this provision seems to go beyond reasonable accountability mechanisms for operational and managerial expenses. We also note that the detail of this measure is yet to be released and will be contained in APRA data standards.

Please do not hesitate to contact James Bennett on (03) 9910 0218 if you have any queries in relation to our submission

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Atkin', with a stylized flourish at the end.

David Atkin
Chief Executive Officer
11 August 2017