

# Your Future, Your Super package

## Submission to The Treasury

**Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Best Financial Interests Duty**

**Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Addressing underperformance in superannuation**

### Introduction

It is completely pointless for the Parliament to enact more superannuation laws for APRA to enforce when APRA refuses to enforce existing superannuation laws.

An extract from “*Banking Bank*” by Adele Ferguson {**Appendix A**} confirms that the APRA Deputy Chairman responsible for Australia’s COMPULSORY superannuation system is incapable of holding superannuation trustees to account, while over **\$100 billion** has been ripped out of retirement savings over the last decade.

Even when APRA was shamed by Royal Commissioner Hayne in taking enforcement action against executives of IOOF Holdings Ltd, APRA’s case was laughed out of Court by Justice Jagot.

### **APRA fails to disqualify IOOF executives, in case full of 'systematic weakness'**

By business reporter [David Chau](#)

Posted Fri 20 Sep 2019 at 2:43pm, updated Fri 20 Sep 2019 at 6:17pm

“But in a scathing 300-page judgment, Justice Jayne Jagot ruled that APRA had failed to prove its case and ordered the regulator to pay costs.

"APRA has failed to prove any of the contraventions of the SIS [Superannuation Industry (Supervision)] Act alleged against the respondents," she said.

The judge found the regulator's approach was "*unpersuasive*" and was riddled with "*systematic weakness*."

# Time to Ban “For-Profit” Super Funds

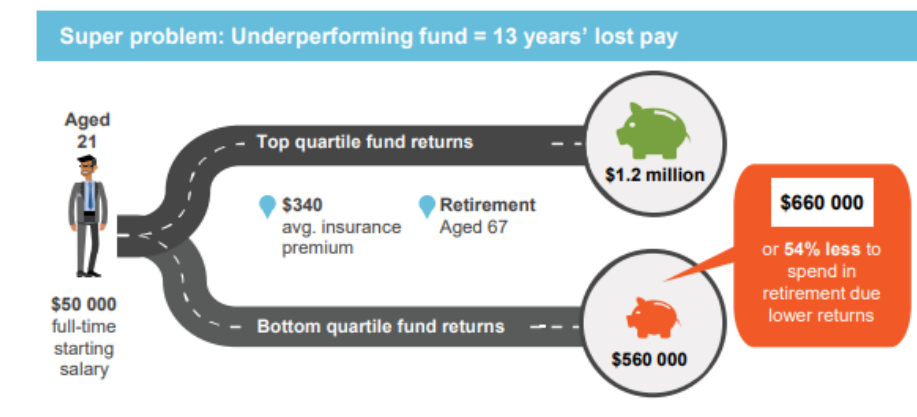
Instead of wasting time with new legislation that will not be enforced by APRA, it is time to ban “for-profit” super funds and to replace the corporate trustees of “for-profit” super funds, where all the Directors have a hopeless conflict of interests, with new trustees which have “equal representation” board structures to ensure that the superannuation fund is indeed administered in the *best interests* of fund members and beneficiaries.

It should be obvious to everyone that taking over \$10 billion out of the pockets of fund members every year and putting this money into the pockets of the shareholders of the parent companies of “for-profit” funds fails the “Sole Purpose Test” {Appendix B}.

The Productivity Commission found that “for-profit” {Retail} funds consistently underperformed “not-for-profit” funds – a finding that should surprise no one {Appendix C}.

The losses incurred by the hapless members of ‘for-profit’ funds are not trivial amounts as confirmed by the Productivity Commission.

## Cameo 1 Underperformance compounds to substantially lower retirement balances



## Recommendation

The proposed superannuation legislation is a complete waste of time since APRA will never enforce it.

Losses of over \$10 Billion per annum to retirement savings could be eliminated overnight by banning profit-taking from fund members and beneficiaries in a COMPULSORY superannuation system and by ensuring that ALL trustees have an “equal representation” trustee board structure.

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This submission has been made by Phillip Charles Sweeney in the public interest.

I have experienced firsthand the incompetence of both APRA and ASIC.

# Appendix A

## Extract from “*Banking Bad*” by Adele Ferguson

### The Testimony of APRA Deputy Chairman – Helen Rowell

By the time APRA's deputy chairman, Helen Rowell, appeared in the witness box on 17 August 2018 there was little goodwill towards the regulator. Rowell had worked at APRA for sixteen years. She had been appointed deputy chair in November 2015 then reappointed to the position for a further five-year term from 1 July 2018, ahead of her appearance at the royal commission.

Half an hour into Michael Hodge's cross-examination of Rowell, I received a text message from a senior public servant asking, 'Are you watching it? Think train wreck, followed by Chernobyl, followed by tsunami.'

It was a reasonable summation of the interrogation, which provided an extraordinary insight into the mindset of APRA – which, according to Rowell, preferred to be 'collaborative' instead of adversarial. This collaborative approach involved regular engagement with the boards of financial institutions, reviews of

these same institutions and – if there were problems – experts being appointed to conduct further reviews. When that didn't work, APRA would write the institution a stern letter.

When Hodge asked Rowell about APRA's use of penalties and sanctions for misconduct, her responses were embarrassing. In the previous decade APRA had only disqualified one super fund trustee – a director of the collapsed Trio Capital – and it hadn't taken any action against likely breaches of the sole-purpose test that might have occurred in the fees-for-no-service scandal.

Everything at APRA was conducted behind closed doors, except enforceable undertakings, but it hadn't made any of those either. To double-check that he was hearing correctly, Hodge asked, 'So enforceable undertakings, if they were to occur, they would be public?'

Rowell: 'Yes.'

Hodge: 'But they [enforceable undertakings] don't occur. So what other public conduct does APRA engage in which would identify specific trustees and specific conduct of those trustees?'

Rowell: 'None.'

For years APRA had shunned the media with a stock standard 'no comment' when asked about anything relating to the banks or super funds. This enabled the regulator to escape the glare of criticism, unlike ASIC, which was more public and transparent.

APRA's collaborative approach to dealing with institutions had resulted in a litany of misconduct that had escaped public scrutiny. One of the standouts was CBA, which had made at least 15,000 criminal breaches in relation to its not moving customers who hadn't selected a specific super product to a default no-frills, low-fee 'My Super' fund, as federal laws introduced in January

2014 obliged the bank to do. Yet APRA imposed no enforceable undertakings or fines.

When Hodge asked Rowell if APRA had contemplated taking action on fees for no service, she said no, and that APRA was waiting for ASIC's conclusions. Rowell even tried to defend the payment of ongoing trailing commissions by superannuation fund members on the basis that she couldn't be sure it wasn't in members' best interests. This was the same regulator that had taken until August 2017 to order an inquiry into CBA's culture and governance after watching a string of scandals, including the financial planning, life insurance and fees-for-no-service scandals, as well as alleged bank bill swap rate rigging and the AUSTRAC money-laundering scandal.

APRA's failure to take effective action in any of these cases was a damning indictment of the regulator.

# Appendix B

## SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 62

### Sole purpose test

(1) Each trustee of a regulated superannuation fund must ensure that the fund is maintained solely:

(a) for one or more of the following purposes (the **core purposes**):

(i) the provision of benefits for each member of the fund on or after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund);

(ii) the provision of benefits for each member of the fund on or after the member's attainment of an age not less than the age specified in the regulations;

(iii) the provision of benefits for each member of the fund on or after whichever is the earlier of:

(A) the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or

(B) the member's attainment of an age not less than the age prescribed for the purposes of subparagraph (ii);

(iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:

(A) the death occurred before the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; and

(B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;

(v) the provision of benefits in respect of each member of the fund on or after the member's death, if:

(A) the death occurred before the member attained the age prescribed for the purposes of subparagraph (ii); and

(B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both; or

(b) for one or more of the core purposes and for one or more of the following purposes (the **ancillary purposes**):

(i) the provision of benefits for each member of the fund on or after the termination of the member's employment with an employer who had, or any of whose associates had, at any time, contributed to the fund in relation to the member;

(ii) the provision of benefits for each member of the fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged and the cessation is on account of ill-health (whether physical or mental);

(iii) the provision of benefits in respect of each member of the fund on or after the member's death, if:

(A) the death occurred after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund); and

(B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;

(iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:

(A) the death occurred after the member attained the age prescribed for the purposes of subparagraph (a)(ii); and

(B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;

(v) the provision of such other benefits as the Regulator approves in writing.

(1A) Subsection (1) does not imply that a trustee of a regulated superannuation fund is required to maintain the fund so that the same kind of benefits will be provided:

(a) to each member of the fund; or

(b) in respect of each member of the fund.

(2) Subsection (1) is a civil penalty provision as defined by section 193, and Part 21 therefore provides for civil and criminal consequences of contravening, or of being involved in a contravention of, that subsection.

(3) An approval given by the Regulator for the purposes of subsection (1) may be expressed to relate to:

(a) a specified fund; or

(b) a specified class of funds.

# Appendix C

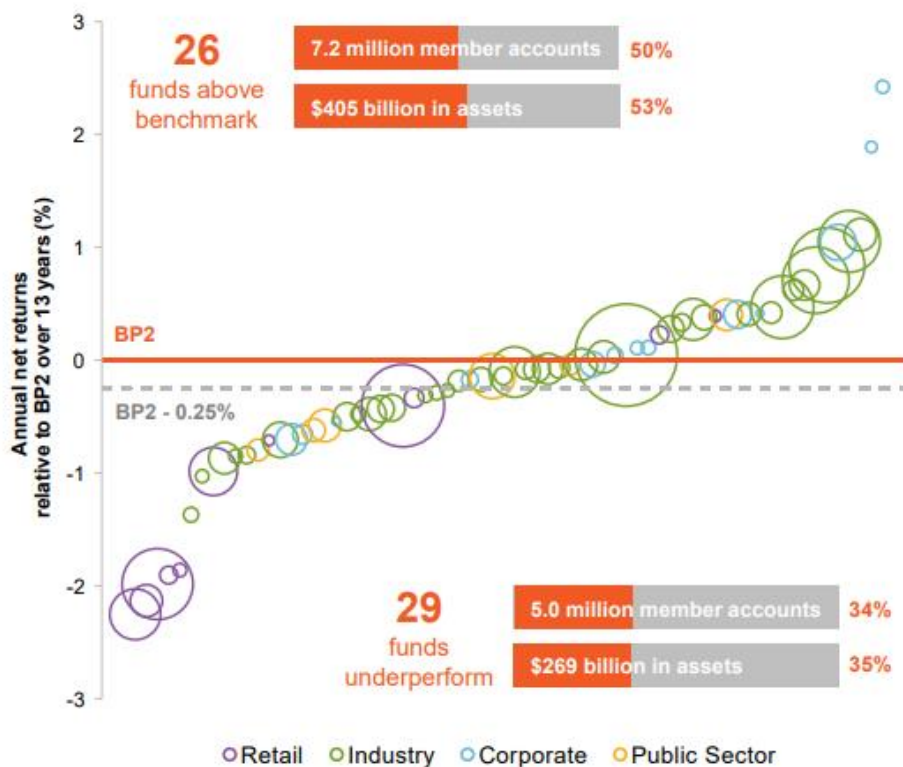
Superannuation:  
Assessing Efficiency  
and Competitiveness

Productivity Commission  
Inquiry Report  
Overview

No. 91, 21 December 2018

**Figure 5 Individual funds (with MySuper products): 5 million accounts are in underperforming funds**

Performance relative to individual funds' benchmark portfolios, 2005–2017  
Size of circles indicates the size of each fund's assets under management



<b>Source</b>	PC analysis of unpublished APRA data and financial market index data (various providers).
<b>Benchmark Coverage</b>	Fund-tailored BP2. All APRA-regulated funds with a MySuper product in the dataset over the full period (60% of assets and 66% of member accounts in all APRA-regulated funds with a MySuper product in 2017). Over the entire super system, the figure represents 68 funds, 30% of assets and 51% of member accounts in 2017.
<b>Survivor bias</b>	Yes.
<b>Further results</b>	13 funds performed between BP2 and 0.25 percentage points below BP2 (2.4 million member accounts and \$85.5 billion in assets).
<b>Selection bias</b>	Yes.