30 July 2018

The Productivity Commission
Superannuation Industry Inquiry

Please find attached our response following the hearing held between myself and my Chairman Mark McKenzie with your commissioners as part of your inquiry into the competitiveness and efficiency of the Australian superannuation system.

Basically, an Australian worker has a guarantee that an employer will pay their superannuation into a superannuation fund. We believe that this forced arrangement combined with the nature of the make-up of superannuation funds has created a collection process that creates confusion and inefficiencies for businesses and superannuation funds as well as for members of funds.

It also provides opportunities for vested interests to manipulate the system to their advantage and to the disadvantage of members in their funds as well as to the employers forced to collect their contributions.

Indeed, the only individuals in the system who do not get paid for the work they do is the small business person who is also the only person who can get fined.

Furthermore, as discussed at the hearing, we believe the current threshold for payment of superannuation has been set at $450 earnings over a period of a month (in most cases) since the inception of the Superannuation Guarantee. This was originally determined based on the tax free threshold, that threshold has now risen from what was around $5,000 to over $18,000. The threshold must rise to match that increase. We do note however that under our proposal to remove employers from the collection process that the idea of a threshold for earnings for superannuation to be paid becomes redundant.

We would like to reinforce that the current superannuation collection process is overly complicated and lacking in transparency for employers and employees. It seems that the only people or groups who benefit from the system are the funds and their corporate and union stakeholders.

Please contact me for further information.

Yours sincerely
Peter Strong
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SMALL BUSINESS AUSTRALIA

1 May 2018

Submission to The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Superannuation collection

COSBOA has been concerned for many years with the nature of the collection process for superannuation and the behaviour of superannuation funds.

Currently employers are required to collect and distribute the superannuation accrued by its employees. An employer is also responsible for selecting a default superannuation fund for employees who do not have a fund or do not nominate a fund.

We believe the collection system is flawed and is open to corruption and abuse. For many years we have called for employers to be removed from the collection process and for superannuation to be included in PAYE payments made to the Australian Taxation Office (ATO) by employers. This would create many benefits for stakeholders in superannuation.

> This would create greater certainty for employees on where their contributions are located.
>
> It would give the owner of those funds greater say in where their retirement funds are invested.
>
> It would save the superannuation funds substantial administration costs, this could be as much as one billion dollars a year.
>
> Unclaimed funds would be managed by the government.
>
> Non-payment of superannuation funds would not be a major problem as the ATO has a strong history of managing GST and PAYE payments.

Further and more detailed information is at attachment A.

The superannuation funds do not support removing businesses from the collection process but do complain that businesses do not comply with the system and billions of dollars of peoples' funds are not collected or remitted.

We agree that there may be some two billion dollars of outstanding payments. We have a solution to the problem that is valid and is still rejected by the funds. Why would they reject a solution that saves them administrative costs, provides better certainty for workers and makes business easier?

We believe the reason is that too many organisations are making an income from superannuation process and are not interested in finding a workable feasible solution.

The industry superannuation funds are a particular problem, as are some of the retail funds.

These funds threaten employers with legal action even though the fund has no proof that any money is owed. They have a 'guess' that money might be owed and so threaten the business person with legal action unless they pay the money or tell the fund there is no funds outstanding.

When challenged the CEO of one fund stated that 'we have to look after our members and we don't know if they still work for that employer, so we have to send the letter of demand." When asked why they don't contact the member instead there was no reply.

The administration of the funds involves bullying and threatening of innocent small business people when that is unnecessary. It should actually be easier to contact their member.

As an example of the lengths the funds will go to scam employers we have copied below comments from a bookkeeper for a small business on letters received from Retail Employees Superannuation Fund (REST).

> *For this particular client we use the ATO Clearing House for superannuation payments. Everything is up to date so was taken aback when I received this very threatening letter.*
>
> *I contacted REST as I initially thought it may be some kind of scam letter. They advised that yes, this employer number was my client, that there were 2 employees that had previous payments made on their behalf and that REST engages Industry Funds Credit Control (IFCC) to chase up outstanding payments. She also advised that REST had no record of engaging IFCC to chase my client up for any outstanding funds. She also confirmed that the 1800 number listed in the letter was correct and I should give them a call to find out what it was in relation to.*
>
> *I did that and was advised that they had tried to call me on the 17 June and since I had not responded, their next step was to send out this letter. I asked them how they came to the figure of $26,573.28 as needing to be paid within 7 days - she advised that it was just 'an estimation'. I asked, based on what - considering the 2 people that had been paid was somewhere in the total amount of $120 & $2000 for the period of their employment. She couldn't explain or justify their estimation.*

The fact that REST or its collection agent would just estimate an amount and then start legal action is unprofessional. An amount of many thousands of dollars that has cents included in it is hardly an estimation. If a bank were to behave in a similar way there would be a place to go and complain but with superannuation no agency seems to have responsibility.

At attachment B we have included copies of letters of demand and other comments on the threats and bullying process embedded in the system. More are available

Conflicts of interest in negotiating enterprise agreements

Some of the largest funds also work with employers, who have an interest in the funds as directors, to force employees to use their fund. An example of this is the Retail Employees Superannuation Fund commonly known as REST.

There are nine Directors of REST. As of the time of writing this submission four directors are from the retail union, the SDA; one is from Coles; one is from Woolworths; one is from the retail council; and one from Myer. There is an independent Chairman. These organisations negotiate among themselves to force union members/employees to use REST.

One agreement (among many), the Coles Supermarkets Australia and Bi-Lo Retail Agreement 2011, requires all superannuation contributions to be paid to REST. This established REST as the default fund for Coles employees and also prevented those employees from joining a different fund if they believe other superannuation funds are performing better than REST or if they already had substantial investment in another fund.

This agreement was negotiated between the SDA union and Coles, who are represented through separate Directors on REST.

The same organisations that negotiate the enterprise agreement are the same organisations who sit on the board of REST. This is an obvious conflict of interest that protects REST from competing with other funds for the Coles employees' contributions.

The Coles agreement applies to over 100,000 employees. The agreement results in approximately $340 million in annual contributions flowing to REST without REST being required to compete on the basis of cost or investment performance. There are similar agreements with Woolworths, Myer, McDonalds and more large businesses.

When challenged on REST being a compulsory fund we were informed that it was designed like that to ensure employees under 18 had superannuation payments. (Employees do not have to pay superannuation in certain circumstances for under 18 years old). We highlighted that an employee may have money in another superannuation fund and prefer the contributions to be paid into that account. By forcing an employee to put contributions into a new fund there is a good chance that fees and charges from the funds would quickly take these smaller amounts until the account was empty. If the contributor was allowed to put contributions into their other account there is a better chance that the level of funds would be past the threshold where fees and charges are more than interest earned.

The system of forcing employees into a fund not of their choice could cost the contributor all their investment in REST. This would be particularly true for young people and people returning to the workforce after a long break.

Our concern is that the current collection process is still supported by the superannuation industry who are aware of its failings. Our belief is that the funds, particularly the industry funds who are the biggest and seem to benefit the most, do not want to change the process as it would make the system more transparent and impact on the capacity of organisations represented on industry funds boards to maintain the income stream provided.

There are two main issues that inform our concern about the health of the superannuation collection process: one is the way directors are appointed to superannuation funds particularly the industry funds; and the other is the inclusion of superannuation payment processes in modern awards and enterprise agreements as mentioned above. These two issues are connected as half the representatives on the boards of industry funds are union appointed directors and the inclusion of superannuation in awards is a key policy for unions.

The industry representatives have also not achieved any savings for their funds by ensuring efficient supply chain management.

There are also other concerns that we have in the make-up of boards. When it again comes to REST the big business representatives on that board are appointed by the biggest retailers.

In their day job these directors see small retail businesses as competitors. The SDA have very few if any members in small business so their concern for small business people will be minimal. There are no small business representatives on the REST board which goes some way to explaining why there appears to be no concern for how difficult their collection process is and the problems that it causes.

So, we know that the harder it is for small business people to do the paperwork involved in superannuation the less time they can spend on their business. This may be to the benefit of the bigger retail businesses. Inefficient overstretched small businesses will close, this means less competitors and a greater share of the marketplace for the biggest retailers and as a result more members for the SDA.

We doubt if this is would be a conscious decision by directors as a superannuation fund could not possibly be used to deliberately shore up the market power of the organisations represented by the directors to the detriment of the members. But the sub conscious works deep down inside, even inside the minds of directors which is why in most cases due diligence and good governance must be practised on boards of financial institutions. With more than thirty one billion dollars of peoples' retirement funds under care we expect that REST would have due diligence of the highest quality and governance would be beyond reproach – it is obvious this is not happening.

There are many other industry superannuation funds that select their directors the same way as REST.

Any lack of transparency will always create questions and fears, the overt and public appointment of directors by independent consultants is necessary for our superannuation industry and to avert those fears. Independent directors should provide the additional checks and balances against the myriad conflicts of interest.

In the end, almost all super contributions going to a fund come from business, over 90% of businesses are small. Nearly all the industry funds and many of the retail funds make it difficult to pay that money. The payment processes are convoluted and ask the businesses for unnecessary information.

Businesses that use the superannuation clearing house run by the ATO or the superstream process are still threatened and harassed by the funds.

The funds argue that their first priority are their members and that's why they pursue contributions so aggressively. We know that job security and workplace safety is not enhanced by asking employers to do extra unnecessary work. If the funds truly cared for their members and also understood how small business operates they would make the process easy not hard. If they had independent directors chosen for their skills and understanding of small business then they would probably change the contribution process

to make it efficient and quick. Some funds do make it easy but they are in the minority.

The next issue is that most stakeholders agree that the choice of superannuation fund should be made by the person who owns the money not by an employer or by the workplace relations system. Yet we have a system that removes choice for the worker.

Debt Collection

We are concerned that there is a strong financial incentive for industry superannuation funds and related party service providers, to make a claim against small businesses, even where, as mentioned above, there is inadequate evidence to make such claim. Industry Super Holdings, a financial conglomerate wholly owned by industry superannuation funds, owns an entity called Industry Fund Services (IFS), which itself manages a company called Industry Fund Credit Control, which is responsible for pursuing unpaid superannuation.

The operating model of IFS is not clear, it is a wholly owned private investment out of industry fund members/investors retirement savings, however it boasts such activities as "only charging for successful collection", which means it is willing to use one consumer's retirement savings to cross subsidise the attempt to recover the unpaid savings of another consumer.

Further, whilst the relationships between industry funds, sponsoring organisations and the credit control company is not clear, AEC declarations have shown almost $5 million has been paid by various ISH companies to other organisations over the past decade, including over $3.3 million from IFS itself. There are also individual large payments such as:

Over $1.1 million from IFS to the AMWU in 2015-16

Over $1 million across multiple payments from IFS to the AMWU in 2014-15; and

$300 000 from IFS companies to United Voice union between 2013-2017.

The superannuation collection process is linked to poor behaviours by superannuation funds and the mistreatment of small business people. We must be removed from the process. We should highlight the disgraceful behaviour of some funds.

Ends