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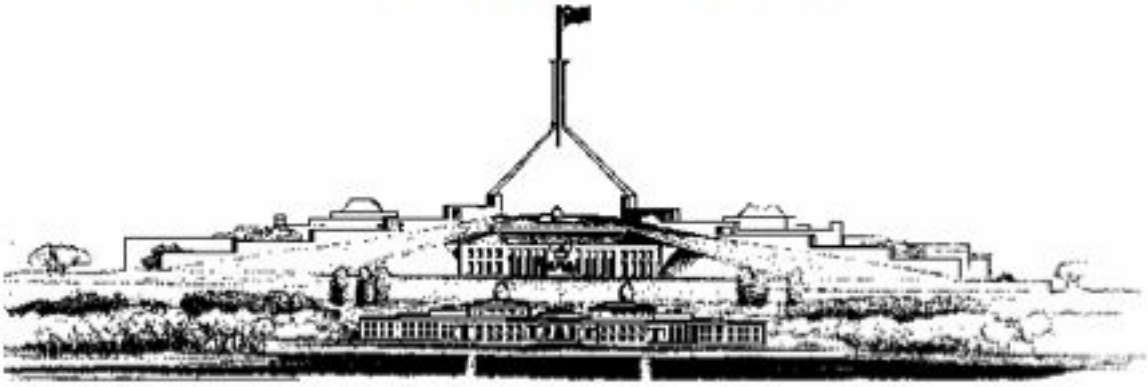

THE SENATE

BILLS

Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012

Second Reading

SPEECH

Thursday, 22 November 2012

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker	Cormann, Sen Mathias	**Question No.**	

Senator CORMANN (Western Australia) (19:22): The Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012 seeks to implement a recommendation of the Cooper review into Australia's superannuation system to introduce a new, low-cost superannuation product known as MySuper, which will replace existing default superannuation fund products. Madam Acting Deputy President Boyce, we were involved together in the Parliamentary Joint Committee on Corporations and Financial Services inquiry into this particular bill, so I know that you are also very familiar with the issues I am about to address.

Let me say at the outset that the Gillard government's handling of this reform—which, incidentally, we in the coalition have supported in principle from the outset—has been a complete shambles. In particular, Minister Shorten's handling of this has been all over the place. It has been disjointed and ad hoc—a change here, a change there. Instead of a strategic approach, we have three tranches of individual pieces of legislation. Rather than being able to deal with the MySuper reform package as a whole, the government has been introducing it in a piecemeal fashion. In the last sitting fortnight, the government insisted that two bills had to be joined together so they could be dealt with by the Senate. Earlier this week, they decided that was not a good idea after all and it had to be split again. We said right from the beginning that, given the way the government had introduced the bills, it was never going to work in the way they proposed. One minute they wanted to rush it, then they wanted to delay it, then they wanted to rush it again, and then they wanted to make another change. Along the way they failed to properly consult with key stakeholders, who are of course at the receiving end of all of the chopping and changing arrangements, and there are significant implications for the way they run their systems. Those implications are ultimately very costly for the Australians we are trying to do the right thing for by helping to create the most efficient, transparent and competitive superannuation system possible. So, let me say right at the outset that the government's handling of this very important reform has been nothing short of utterly incompetent.

The coalition will be moving some amendments to this bill to address a number of concerns that we have, in particular in relation to the need to improve the definition of the large employer threshold and also in relation to replacing the additional authorisation requirement for funds with a reporting requirement to APRA. We would also have liked to have used this opportunity to ensure that any MySuper product, which will ultimately be the legislated default product, could compete freely in the default fund market, but we have been given technical advice that we will have to do that in the context of a future MySuper bill, given the way this current bill has been structured.

We commend the amendments that I am about to put to the chamber. If they are not supported, the coalition will not ultimately stand in the bill's way and we will not oppose it. This bill defines the MySuper product. It limits the regulated superannuation fund to offering only one MySuper product, except in certain circumstances. It allows registrable superannuation entity licensees to apply to the Australian Prudential Regulation Authority for authorisation to offer a MySuper product and it sets out various rules on the payment of contributions and account transfers for MySuper products. It also sets out the fees that can be charged and the basis on which those fees can be charged to members of a MySuper product.

I add that the MySuper design contained in this bill is quite different from the original government proposal. I commend the government for reconsidering what they initially thought they wanted to do. The original proposal would have imposed uniform pricing across all MySuper products, which would have had the very counterproductive effect that hundreds of thousands of Australians would be forced into default funds that charge higher fees than the funds they are currently in, which would not have been the intention. By making the sorts of changes that we have promoted for some time, by removing the approach of uniform pricing that the government were pursuing, we will make sure that the risk is somewhat reduced, although we still have some concerns with one of the subsequent MySuper bills, so there is a bit more to be done in this area.

Under this bill, from 1 October 2013 employers must make default superannuation contributions for employees who have not chosen a fund to a fund that offers a MySuper product. However, it does not open the default fund

market to competition and choice. Of course, this is a real indictment on the current government. The process by which default funds are currently selected under modern awards is a real indictment on this government. It is a process that was established by the government through Fair Work Australia. It is an anticompetitive, closed shop arrangement which is littered with inherent conflicts that ultimately act to the detriment of people in superannuation. Only if we have a truly competitive, a truly transparent and a truly efficient system will retirement returns for people in superannuation funds, including default superannuation funds, be maximised.

The bill also introduces the concept of intrafund advice, favoured by industry super funds, in a way which we believe is inconsistent with the government's stated transparency objective in the Future of Financial Advice changes. However, since this legislation was first introduced some time ago, the government has acted to provide some clarification around how the intrafund advice provisions are to operate. At this stage we reserve final judgement, until we get some further clarity around all of this.

The coalition have consistently supported any changes which make our superannuation system more efficient, transparent and competitive and which improve value for super fund members. We have been concerned that the initial MySuper proposal to design a superannuation product and impose uniform pricing through legislation would have created unnecessary inefficiencies and left many consumers worse off. The best way to maximise value for consumers across all parts of the superannuation value proposition—that is fees, fund performance and service—is to maximise competitive tensions in an appropriately transparent system. Low-fee, no-frills products are already available across both retail and industry superannuation funds without the need for legislation. Research from Chant West found that, under the initial one-fee government mandated model, over 750,000 Australians would have been forced to pay higher fees than they currently pay.

There has been extensive debate in the sector around these issues over the past 12 months, and the government has now backed down from its original proposal to impose such a uniform fee structure as part of its MySuper proposal. The government's proposal now is to allow MySuper funds to offer differentiated fee structures. We are still concerned, though, that the creation of a MySuper product through legislation is an unnecessary interference in an existing, highly competitive market for low-fee, no-frills superannuation products. However, what is proposed now is certainly much better than where we started a year ago.

There are some issues that the bill fails to address, and I will just go through some of them in turn. As to default funds, this bill mandates that from 1 October 2013 only MySuper products can be used by employers to make default superannuation contributions for employees who do not have a chosen fund. However, as I have mentioned before, the government has not made any attempt to address the current closed-shop, anticompetitive arrangements for the selection of default funds under modern awards. The recent process through the Productivity Commission was completely compromised when Minister Shorten—in quite an unprecedented intervention, for him—effectively responded to the Productivity Commission report before it had reported. He effectively responded to the Productivity Commission review of the selection of default funds under modern awards and other matters before the Productivity Commission had actually reported. In doing so, he placed a lot of pressure on the Productivity Commission and, quite unsurprisingly, the final report and recommendations were quite somewhat weaker than the original recommendations that had been made by the Productivity Commission in its draft report.

In its initial draft report the Productivity Commission was quite keen on ensuring genuine competition in the default fund market, but the final recommendations on the back of the minister's intervention were much less far-reaching and, we would argue, far less adequate. But even those weaker recommendations by the Productivity Commission have not been adopted by the government. So not only did it take Bill Shorten forever to get around to asking the Productivity Commission to look at this important issue, and not only did the minister intervene in the process in an unprecedented fashion by effectively responding to the review before it had reported, but now the government has introduced legislation into parliament which, instead of ensuring genuine competition, will impose an additional layer of government intervention on the default fund market. The government is also seeking to limit the number of MySuper products in modern awards to just 10—contrary to the clear recommendation of the Productivity Commission, which was that there should be an unlimited list of default funds.

In fact, the government has ignored the Productivity Commission's findings in a number of key areas. The Productivity Commission has proposed that the default superannuation panel will not be created as recommended; rather, it will be subsumed in the existing minimum wage panel. But the new panel is not the final decision maker under this bill, as recommended; the full bench of Fair Work Australia will approve default

funds in each award after recommendation from the expert panel. But the process of including funds in awards will only occur every four years, starting in 2014 when modern awards are due for review, as opposed to an ongoing application process. And all awards must have default funds. Currently there are 13 awards that do not list default funds.

Genuine competition in the default fund market is critically important to ensuring that efficiencies and value for Australians in default super are maximised, which of course is supposed to be the objective of this bill. This legislation, and the other pieces of legislation that are supposed to come along with it, are really designed to enshrine in legislation the consumer protection mechanisms that the government judges are necessary for default super fund products. Once those consumer protection mechanisms are enshrined in legislation, there is no reason that those products which qualify for registration as MySuper products should not be able to compete freely in the default fund market. The only reason the government is not all that keen on letting that happen is that the current government and the current minister in particular are very keen to continue to protect the vested interests of a particular segment of the superannuation industry, which happens to be very close to the union movement.

I would just make the point here, on the record, that we will be moving amendments to the other bill, which has now been disjointed from this bill and which will no doubt come to the Senate sometime next week, to ensure that there is genuine competition in the default fund market and that any MySuper product can compete freely in that market. If those amendments are unsuccessful—and given that the current government is clearly not prepared to do what needs to be done to ensure genuine competition in the default fund market for the benefit of people in superannuation—then a future coalition government will do exactly that. A future coalition government will make sure that there is an open, transparent and competitive process and that there is genuine competition between all and any products that qualify for registration as a MySuper product.

Let me make the point here that competition is important not just between individual businesses or between individual superannuation funds; competition is also important between different business models. The industry fund business model clearly has some attractions to it, and some downsides. The retail fund business model also has some attractions to it, and it might have some downsides for certain people in certain circumstances. It is the same with a self-managed super fund. Not every avenue is right for everyone. But in a system that is appropriately transparent, open and competitive, people can make choices, and the choices that people are able to make drive innovation and maximisation of value for people who ultimately aspire to get the best retirement savings returns possible.

We did have some concerns in relation to the intrafund advice provisions in this bill. The explanatory memorandum indicated that superannuation funds would be able to charge for expenses incurred in the provision of intrafund advice as part of the overall administration fees charged to all fund members of a MySuper product. Neither the bill nor the explanatory memorandum defined what 'intrafund advice' was, and there was no definition of this term in any existing legislation. The explanatory memorandum foreshadowed that the term would be defined in subsequent legislation but, of course, in recent times there has been some effort in relation to the term 'intrafund advice' in particular through ASIC.

We agree with the government when they say that people should not be paying for advice that they do not get and that people should not be forced to pay for advice that is provided to others. In the context of this legislation, why should fund members be forced to pay for personal advice that is accessed by some members but not all? Why should people be forced to pay through the administration fee for the personal advice that is provided to some individual members of a fund but not to all? There was a need to clarify some of these arrangements and some of that work has been done.

In relation to the large employer threshold, there was significant concern expressed to the Parliamentary Joint Committee on Corporations and Financial Services, which inquired into this bill, about the benchmark above which large employers can tailor funds for their employees. The provisions of the bill allow for such tailoring where an employer contributes to a fund on behalf of 500 or more members. Many participants in the superannuation industry submitted to the committee inquiry that the threshold in its current form is 'complex, unworkable and may have a number of unintended consequences.' The coalition will move amendments to seek to amend the bill by replacing this complex and unworkable threshold with a simple, easily quantifiable and effective test that defines the large employer threshold as an employer that has 500 or more employees at the relevant time.

In relation to reporting large employer funds to APRA, the bill as drafted will require a superannuation fund with a MySuper licence to apply to APRA prior to providing superannuation services to each large employer. The superannuation industry has argued strongly and very effectively that the additional authorisation process for tailored MySuper products for large employers is unnecessary, given that all funds offering such tailored plans are already authorised to provide a MySuper product. The superannuation industry has pointed out that this is an additional process which would be cumbersome, time-consuming, unnecessary and costly—with those costs ultimately borne by people in the MySuper funds. They also express strong concerns that this additional authorisation process would move APRA away from its proper and very important role as a prudential regulator focused on risk and governance into areas of commercial interest between funds and large employers which have nothing to do with its regulatory role. If this provision is not amended, fewer Australian workplaces will have super arrangements which reflect their specific employees' needs. That, of course, would be a very concerning development. Australians would have a reduced suite of products in a less competitive market and further unnecessary costs and regulation would be introduced into the financial services industry. So the coalition will move amendments that would require superannuation funds to report the existence of these arrangements rather than apply to APRA prior to issuance.

We believe that one licence to operate a business in any industry is sufficient. The amendments would still allow APRA to disallow a noncomplying fund. Such a process would address the public policy concern that the existence and number of employer plans is unclear to APRA. It would require regular reporting without undermining the efficiency, competitiveness and commerciality of tender processes. The coalition amendment would also ensure that APRA continues to fulfil its proper role as a prudential regulator which should be focused on risk and governance, without entangling it in commercial matters which affect neither factor.

I would like to quickly clarify the coalition's position in relation to a Greens amendment in the House—the amendment in relation to so-called 'flipping'. The amendment has created a prohibition on moving an individual's investment from a tailored MySuper product to another, without a member's consent. We are concerned that costs in large-employer MySuper schemes would be higher, as they would have to deal with the inefficiencies implied in having to retain and deal with ex-employees. The coalition did not support that amendment. However, it was clear that Mr Bandt had support from the government and other Independent members of the House of Representatives that would secure passage of the amendment through parliament. In light of this, the coalition did not call a division on the amendment.

As I have mentioned, the handling of this whole package of bills has been disjointed, ad hoc and, frankly, incompetent. It is a real shame. *(Time expired)*