

CHAPTER 4:

OCCUPATIONAL LINK

Retirement income dependent upon occupational income is a masculine economic concept that has been given virility through legislation.¹

The nexus

4.1 People in paid employment receive employer sponsored superannuation. Generally, the amount of superannuation an employer must pay an employee is determined by the earnings of the employee. This is related to the employee's rate of pay and the number of hours they spend in the workforce. Self-employed people may contribute to their own superannuation, and attract certain taxation concessions, provided 90 per cent or more of their assessable income is derived from that self-employment.

4.2 Employees may make additional contributions to their superannuation, however the employee must have some link with the workforce in order for the concessional tax treatment to apply to any such contributions.

4.3 The essential link between workforce participation and superannuation entitlements is generally referred to as the occupational nexus. The justification for such a requirement has been questioned in this inquiry. The dilution of the nexus, or its complete removal, was mooted.

4.4 This proposal, in part, stems from a concern that the occupational link is a source of discrimination against women. The role, if any, of superannuation to address the broader inequalities in society is addressed in Chapter 7 on Discrimination.

The Superannuation Industry (Supervision) Regulations

4.5 The Superannuation Industry (Supervision) (SIS) Regulations outline the circumstances in which a superannuation fund may accept contributions from a person not in employment. People leaving the workforce may continue to contribute to a superannuation fund for up to two years, regardless of why they left their job and whether they intend to return.

¹ Olsberg D, Evidence, p 218

4.6 In July 1994 the Hon Paul Elliott, MP, Parliamentary Secretary to the Treasurer, responsible for superannuation, announced the Government's decision to extend the period during which parents out of the paid workforce can contribute to superannuation. From 1 July 1994, a person leaving employment for child rearing purposes is permitted to contribute to superannuation for up to seven years, provided they retain the right to return to their original job (for example, they are on leave without pay).

4.7 The Government considers this proposal will benefit women because they:

- traditionally have less money in their superannuation funds on their retirement than men, and
- typically have both lower salary levels and broken working patterns.²

4.8 SIS Regulations 7.04 and 7.05 now provide:

... a regulated superannuation fund may accept contributions (and in the case of a defined benefit fund grant a benefit accrual) in respect of a person who is under 65 years of age if:

- the contributions are "mandated contributions"; or
- the contributions are not mandated employer contributions and the member:
 - (i) has, at any time in the two-year period immediately preceding the date of acceptance of the contributions (or grant of accrual of benefit), engaged in full-time or part-time gainful employment; or
 - (ii) ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) that, at the date of acceptance of the contributions (or of grant of accrual), prevents the member from engaging in employment of the kind that the member engaged in at the outset of the ill-health; or
 - (iii) is on authorised leave from his or her employer for the purpose of raising children, where the leave is for less than seven years, the member has a statutory or contractual right to resume employment at the end of the leave, and either the member was a member of the fund immediately before going on leave or the fund is a standard employer-sponsored fund.

"Part-time" means gainfully employed for at least 10 hours, and less than 30 hours, each week. "Gainfully employed" means employed or self-employed for

² Statement by Mr Paul Elliott, MP, Parliamentary Secretary to the Treasurer, 28 October 1994.

gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

4.9 As noted by the Committee in its Fifteenth Report, the ability of individuals to take a period of leave for up to seven years, with a contractual right to resume work, may be beyond the reach of many workers.³

How well does the nexus work - an example

4.10 Ms Kaye Jenner had three periods of employment in the Australian Public Service beginning in 1961 and totalling some 22 years. She was concerned with a loss of ability for women such as herself to provide for a financially independent retirement. In Ms Jenner's words:

Even after deciding to make the maximum contribution of 10 per cent of salary to the superannuation scheme, I will still not be financially independent on retirement and, under current circumstances, I would be eligible for at least a part pension. In fact, should I retire at age 55 I may well be entitled to a full age pension by the time of eligibility at age 63¹/₂ years. **This appears paradoxical when all my years of full-time employment are taken into account.**⁴

Is the nexus necessary?

Treasury's rationale

4.11 The basic rationale of the occupational link derives from the notion of superannuation replacing wage and salary income:

Tax concessions for superannuation are intended to encourage and increase savings which will replace wage and salary income in retirement. Individuals who are not dependent on wages and salary (for example, those living on investment earnings) do not need this income replacement.⁵

4.12 The argument that the occupational link disadvantages women was taken up in the Treasury submission which listed the following reasons for breaking the occupational nexus:

³ *Super Guarantee - Its Track Record*, Feb 1995, p 91

⁴ Evidence, p 432 (emphasis added)

⁵ SW Sub No 90

- the occupational link makes it difficult for women with broken workforce patterns to participate in superannuation;
- women currently unable to meet the “gainfully employed” criteria due to family commitments, would continue to contribute if they were permitted to do so; and
- having superannuation of their own may provide women with greater security in the event of marriage breakdown.

4.13 In favour of maintaining the nexus Treasury submitted that:

- removing the occupational link will be of greatest advantage to those who can afford not to be in paid employment;
- the occupational link does not prevent people saving for retirement; and
- substantial costs to revenue.⁶

4.14 The enlightened approach taken by Treasury in acknowledging the arguments for a weakening or dissolution of the nexus was welcomed by the Committee.

Ability to make payments when outside the workforce

4.15 This is a very basic issue. There is little point in abandoning the occupational link if there is no actual assistance to those allegedly disadvantaged by it, even as it has been now modified. The Catholic Women’s League (CWL) acknowledged the option for women to continue to make personal superannuation contributions when they leave the workforce to have children. However they say of such women:

[T]hey lose access to any employer contribution and, having left the workforce and incurred the added costs of young children, there would be very few women able to maintain personal contributions even for the two year period.⁷

4.16 Accordingly, there is the risk that it will be only the high income group in the community that will be able to take advantage of further loosening in the occupational link. The current retirement income arrangements are adequate for this group.

⁶ SW Sub No 90

⁷ SW Sub No 6

Occupations outside the paid workforce

4.17 A key requirement in the SIS Regulations governing the occupational link is being “gainfully employed” (see paragraph 4.8). The Committee considered whether the definition of this term should be widened to include those presently outside its ambit.

Carers

4.18 Five categories of carers were identified by the Department of Human Services and Health (DHSS).⁸ They are:

- carers of babies and young children;
- carers of severely disabled or injured relatives;
- carers of frail aged parents or parents in law;
- carers of frail aged spouses; and
- people providing short term care.

4.19 In the first category, carers of babies and young children, there was a greater degree of control of their situation than in the other categories. The period of greatest dependency was finite, and return to the workforce could be planned.

4.20 Two types of payments are currently made to carers - income support payments and cash payments in acknowledgment of the costs of caring. Since eventual retirement incomes through superannuation are based on wage levels and contributions made throughout employment, ‘carers with a broken work history and those who move to less well paid jobs because of the demands of caring will be disadvantaged’.⁹

4.21 The Older Women’s Network (OWN) argued that the government should pay superannuation contributions on behalf of unpaid carers,¹⁰ while the Queensland Council of Carers went much further in advocating that:

all people who are outside the paid workforce, either because of care responsibilities or unemployment, should have superannuation

⁸ SW Sub No 16

⁹ *Ibid*

¹⁰ SW Sub No 32B

contributions maintained to a fund of choice, or as part of the Domiciliary Nursing Care Benefit (DNCB), Carer Pension or Unemployment Benefit.¹¹

4.22 It is clear that the demands on carers greatly reduce their long term career prospects,¹² which correspondingly affects their superannuation contributions and long term security. The Department of Social Security said:

we believe the age pension provides an adequate safety net for people unable to save for their retirement because of their caring responsibilities.¹³

4.23 The Committee recognises the difficulties associated with carers and other people in the community, such as volunteer workers, who are providing services which are valuable and otherwise would either not be done, or would require the commitment of public moneys. However, the Committee believes that the superannuation issue is secondary to the special income and employment issues relating to these people.

Recommendation 4.1:

The Committee notes the establishment of an Inter-Departmental Committee on Carer's Income, chaired by the Department of Social Security, and recommends the Government undertake further initiatives to improve employment and income opportunities for carers.

What about those over 65

4.24 Currently employees are not able to contribute to superannuation beyond the age of 65 and, apart from mandated contributions, employer contributions must also cease at that age.¹⁴ Transitional arrangements provided by subregulation 7.04(1) of the SIS Regulations allow a regulated superannuation fund to accept contributions from a member after age 65, who:

- is gainfully employed at least 10 hours per week;
- was at least 60 years of age on 1 July 1990; and

¹¹ SW Sub No 51

¹² Higgins M, SW Sub No 52

¹³ SW Sub No 92

¹⁴ Jaques Martin, SW Sub No 17

- is under 70 years of age.¹⁵

4.25 This inability to contribute to superannuation beyond age 65 is seen to disadvantage women who are particularly affected by broken work histories, and accordingly have insufficient years of employment in which to build a substantial superannuation benefit. Constructive Women Inc considered this cut-off constituted age discrimination and said:

[Many women] don't start earning a reasonable income until they are over 50. For the first time in their lives they are earning enough to be able to contribute substantially to their super fund and many will keep working well into their 70's or possibly longer. They will be severely disadvantaged by this arbitrary cut-off point at age 65.¹⁶

4.26 Jacques Martin Industry considered 'this restriction contradicts community expectations, namely that people should not be forced to retire at age 65'.¹⁷ Given the limits on Reasonable Benefit Limits (RBLs) there seemed 'to be little valid reason for such a restriction'.¹⁸ They continued:

The trend has been to abolish compulsory retirement in Australia and overseas and removal of this restriction would be consistent with that trend. Importantly, it would enable women and others who had accrued small superannuation benefits due to broken work patterns to have a longer period in which to accumulate a worthwhile retirement benefit.¹⁹

4.27 The Committee notes the current consideration by the Government of a proposal to abolish compulsory age retirement for Commonwealth public servants.

4.28 The New South Wales Government has taken legislative action to eliminate compulsory retirement and the Cabinet Office of New South Wales submitted:

The Commonwealth government should be urged to develop policies and legislation to abolish compulsory retirement thereby

¹⁵ Davison R, SW Sub No 101

¹⁶ SW Sub No 98

¹⁷ SW Sub No 17

¹⁸ *ibid*

¹⁹ *ibid*

opening the door for employee superannuation contributions to continue after the age of 65.²⁰

4.29 Mr Robert Davison provided details of his situation, being 64 years old and currently working on a three year contract which expires late in 1997. He is not covered by subregulation 7.04(1) of the SIS Regulations as he was younger than 60 at 1 July 1990. Mr Davison indicated that some of his older colleagues can contribute until age 70 and perceptively said:

I believe that this anomaly constitutes discrimination on grounds of youth.²¹

4.30 Accordingly, contributions cannot be accepted by a regulated fund on Mr Davison's behalf after he turns 65 on 14 December 1995, unless they are mandated employer contributions (subregulation 7.04(1B) of the SIS Regulations).

4.31 The Committee considered Mr Davison's case was an excellent example of the absurd inconsistency of removing fixed retirement ages while retaining an age limit for superannuation contributions. The Committee supports the move toward non-compulsory retirement. Encouraging people to work and pay taxes beyond 65 will reduce the demand on the old age pension and result in productivity gains as well. Constructive Women Inc said:

Why not allow everyone to contribute for as long as they work and pay taxes? If you are too old to contribute to your super fund, why aren't you too old to pay taxes?²²

4.32 In light of the importance placed on the occupational link in current superannuation policy, its dismissal at a given age is difficult to understand.

Age limits or RBLs

4.33 In correspondence from the Insurance and Superannuation Commission (ISC) to Mr Davison, no explanation of the rationale for the over 65 rule was given. In a supplementary submission to the Committee, the ISC provided three reasons in support of the age 65 restrictions. They are:

- to control the revenue costs of superannuation taxation concessions;

²⁰ SW Sub No 41

²¹ SW Sub No 101

²² SW Sub No 98

- to prevent the use of superannuation for estate planning purposes rather than retirement income; and
- to help maintain simplicity in the superannuation system.

4.34 Both Mr Davison and Constructive Women Inc pointed to the tax concessions that are lost once the age of 65 is attained. Constructive Women Inc asked why age is used as a 'cut-off point', given the existence of the RBLs,²³ and Mr Davison said:

In my opinion, arbitrary cut-off dates like that cited in Subreg 7.04 are unnecessary. Indeed, I can see no good reason why people should not contribute to superannuation for as long as they choose, because the amended RBL rules ensure that individuals will pay heavy taxes if they exceed their reasonable limits.²⁴

4.35 The RBL system operates to determine the maximum amount of superannuation and similar benefits that an individual is entitled to receive on a concessionally taxed basis. The principle behind providing tax concessions is to encourage people to provide for their own retirement rather than rely on the social security system. The system that has applied from 1 July 1994 is a fixed dollar system indexed to the CPI. (Prior to that RBLs were determined on the basis of highest average salaries.) Given the RBL rules, the Committee cannot see any justification for preventing individuals, who continue in bona fide employment beyond the age of 65 years from contributing to superannuation. The Committee does not find the ISC's rationale particularly compelling.

4.36 If there is concern with the cost of tax concessions, that matter should be addressed by openly reviewing the RBLs, not by preventing certain groups from achieving their RBL limit because of the pattern of their working life.

4.37 The Committee considers those over 65 should be able to continue to contribute toward their superannuation where a bona fide link with the workplace exists.

²³ ibid

²⁴ SW Sub No 101

Recommendation 4.2:

The Committee recommends the SIS Regulations be amended to allow regulated superannuation funds to accept contributions from and for persons over 65.

Administrative complexity from severing the occupational link

4.38 The Committee considered the administration implications for funds if the occupational link were severed, the two and seven year rules abandoned and contributions were allowed to be accepted from anyone if they had the money. Ms Carol Pagnon, a Certified Practising Accountant and an auditor of government superannuation funds, considered:

It might be a slight nightmare ... to administer that sort of arrangement. They would have to determine whether they are working and when the contributions will be coming into the fund in a broken employment situation.²⁵

4.39 Given the whole thrust of the Government's superannuation policy has been geared to occupational superannuation, the administration and the supervision of funds reflect the occupational link. While it should never be the case that the administrative tail ends up wagging the policy dog, there is no doubt that a substantial change in policy orientation toward non-occupational superannuation would require substantial and complementary changes in the administration and control of funds.

4.40 The Committee received evidence of the difficulties being now experienced by members of superannuation funds relating to errors in administration of their funds.²⁶ Accordingly, the Committee is not satisfied that the superannuation industry is prepared for such a dramatic change in its operation as would accompany open contributions if the occupational link was abandoned.

²⁵ Evidence, p 31

²⁶ Hudson K, SW Sub No 102

The economics of the link

4.41 The Committee considers there is support for maintaining the occupational link in making the connection of superannuation with productive paid work. While income distribution in Australia is neither perfectly equitable nor otherwise ideal, the productivity of the country is to a considerable extent reflected in the level of wages and salaries, and accordingly in the level of concessional superannuation benefits provided.

Conclusions

4.42 Although 'the occupational link is rooted in the origins of superannuation itself as an employer-sponsored savings scheme',²⁷ the changing demographics of the Australian community require that the parameters of retirement incomes policy be regularly reviewed. It can be seen from the previous chapters that structure of the Australian society and workforce has changed dramatically over the past few decades.

Social justice and the last refuge

4.43 Whilst the Committee found that there was insufficient evidence to justify the wholesale abandonment of the occupational link, it felt strongly that, now that the nexus between paid employment and superannuation has been bedded down, it was appropriate that the broader philosophical debate about access to superannuation be opened up for further discussion.

4.44 In considering the issue, the Committee was cognisant that over recent decades there has been a significant shift along the retirement income continuum, from a time when the age pension was universally available, free of any means tests, to the current time when the age pension is means tested, superannuation payments are compulsory for a significant proportion of the paid workforce and encouraged with attractive taxation treatment, and the government has announced it will provide matching payments for superannuation.

4.45 Of particular concern to the Committee is that this shift along the continuum towards self-funded retirement may result in a two-tier society in which those who are unable to provide for their retirement (a significant proportion of whom will be women) and therefore remain on the age pension will become 'second class citizens', scorned by society.

²⁷ Smith G, Evidence, p 593

4.46 Linda Rosenman, in her paper *Superannuation and the Restructuring of Women's Work, Wages and Retirement* presents the case clearly when she argues that:

The introduction of the SGC changes the societal compact that has been characteristic of the Australian age pension, a compact that has guaranteed an income in old age based on perceived need, and on a broadly defined societal contribution through paid employment, unpaid caring work or simply citizenship.

A contributory [superannuation] scheme [defined only through labour force status and earnings], managed privately for the purpose of maximising the return to the individual member, cannot reflect or reimburse the unpaid caring that has been the societal contract underlying the lives of many Australian women.

In the longer term, as superannuation entitlements accumulate, the beneficiaries of the age pension are likely to be fewer in number. The age pension runs the risk of becoming a residual program, the last refuge of those who are perceived to have been too lazy or too profligate to accumulate superannuation.²⁸

4.47 The Committee feels strongly that it is appropriate, therefore, to reopen the debate on what alternatives might be available for individuals (such as carers, unpaid partners of sole traders, social security recipients) who engage in extended periods outside the paid workforce and are, therefore, unable to accumulate sufficient superannuation assets in their own right to provide for their retirement.

4.48 In particular, the Committee is concerned that there be further discussion on the question of whether it is appropriate for:

- the Government to pay superannuation contributions for those in receipt of social security payments; and
- sole traders and similar to provide superannuation coverage for those who contribute significantly to their businesses but are not in receipt of income.

4.49 In seeking further discussion on this issue, the Committee is aware of the position put by the Department of Social Security, and others,²⁹ that social security is provided in times of need and that it is inappropriate to add such

²⁸ Rosenman L, *Superannuation and the Restructuring of Women's Work, Wages and Retirement*, in *Canberra Bulletin of Public Administration*, No. 76, April 1994, p 167

²⁹ For example, Timmins, SW Sub No 29

payments. The argument is that funds may be being provided to those who may well be in a very good position at a future date to self-fund their retirement. Given that the Government and the Opposition have announced that they will provide matching contributions up front towards the superannuation of those in paid employment, the Committee believes that there are equity issues that may need to be considered.