

**Parliament of the Commonwealth of Australia**

**Seventeenth Report of the  
Senate Select Committee on Superannuation**

**Super  
and  
Broken Work Patterns**

**Canberra  
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## **RECOMMENDATIONS**

### **CHAPTER 4**

#### ***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.

#### ***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.

### **CHAPTER 5**

#### ***Recommendation 5.1:***

The Committee recommends that measures be taken to redress the tax imbalance experienced by low income earners.

### **CHAPTER 7**

#### ***Recommendation 7.1:***

The Committee recommends that the Government ensure that appropriate transfer protocols are adopted by all accumulation funds accepting compulsory contributions.

**Recommendation 7.2:**

The Committee recommends that the exemptions relating to vesting, portability and preservation, together with all other exemptions relating to superannuation in the *Sex Discrimination Act 1984*, be removed before the end of March 1997.

**Recommendation 7.3:**

The Committee recommends that the superannuation legislation be amended to require immediate vesting of all employer contributions.

**CHAPTER 8****Recommendation 8.1:**

The Committee recommends that the Government encourage and monitor research on the use of gender and morbidity actuarial tables in respect of the provision of annuities with a view to either:

- amending the *Sex Discrimination Act 1984* to exclude the exemption for actuarial or statistical data, or
- declaring the gender based actuarial tables to be not covered by the exemption,

if it is discovered that reliance on these tables cannot reasonably justify the resulting discrimination.

**CHAPTER 9****Recommendation 9.1:**

The Committee recommends that the Office of the Status of Women develop a comprehensive educational strategy to raise understanding and awareness amongst women of the components of, and the imperative to engage in, financial planning.

***Recommendation 9.2:***

The Committee recommends that the government, in conjunction with the superannuation industry, develop an education strategy to promote understanding and awareness of superannuation which goes beyond the provision of information only and which involves active participation of the community. In particular, the strategy should address the needs of women, both in terms of the type of information they receive and the mechanisms by which this information is delivered.

***Recommendation 9.3:***

The Committee recommends that, simultaneously with the development of an education strategy, the effectiveness of the 'Super: It grows on you campaign' be closely monitored, especially in relation to its impact on women

**CHAPTER 10*****Recommendation 10.1:***

The Committee recommends that strategies be developed which provide avenues through which women can gain the necessary confidence and expertise to participate as trustees.

***Recommendation 10.2:***

The Committee recommends that the Affirmative Action Agency develop reporting requirements for superannuation funds of programs that will enhance equal opportunities for women to act as fund trustees. It is recommended that these reporting requirements be ready for implementation by the 1996/97 financial year.

***Recommendation 10.3:***

The Committee recommends that regulated, non-excluded superannuation funds be required to comply with affirmative action program development and annual reporting in relation to developing equal opportunities for women to act as fund trustees in order to maintain their complying status.

***Recommendation 10.4:***

The Committee recommends that the appointment of female alternates be a matter upon which superannuation funds must report to the Affirmative Action Agency and the Insurance and Superannuation Commission.

**CHAPTER 13*****Recommendation 13.1:***

The Committee is greatly concerned with the serious delay that has occurred in the resolution of the treatment of superannuation assets in the event of marriage breakdown and recommends that the rectification of this matter be given priority.

**CHAPTER 14*****Recommendation 14.1:***

The Committee recommends that the superannuation regulations be amended so that those in bona fide domestic relationships and single people are treated in the same manner as married and de facto superannuants.

## **CHAPTER 15**

### ***Recommendation 15.1:***

The Committee recommends that the Government undertake an information program specifically targeted at those women who are likely to be affected by the increase in the pension age which explains the change and outlines the alternative maintenance benefits available. This should be supported by an identified officer within the Department of Social Security to whom women concerned about the change can seek advice.



# CHAPTER 1:

## INQUIRY BACKGROUND

### Background

1.1 With the increase in the number of workers receiving superannuation since the introduction of the Superannuation Guarantee in 1992 has come the debate of the level of cover for those who move in and out of the workforce. A large number of this group are women. The debate has arisen because the retirement income system now comprises an *occupationally linked* superannuation component as well as the traditional form of retirement income in this country, the old age pension.

1.2 Prior to the introduction of award superannuation in 1986 and the Superannuation Guarantee in 1992, superannuation was generally reserved for white collar workers. Despite the impressive increase in superannuation coverage since 1992, there has been a growing concern that those members of the community who do not have the 'traditional male working pattern' of a 30 to 40 year working life may be disadvantaged by the current superannuation arrangements. Women comprise a major proportion of those whose working life does not reflect a 30 to 40 year period of paid employment. The Committee acknowledges that an increasing number of men are falling outside the 'traditional male working pattern' and, whilst this report has focused its attention on the issue of women and superannuation, much of the material is applicable to both men and women whose paid working lives are intermittent.

### Terms of reference

1.3 In September 1994 the Senate Select Committee on Superannuation was given the following terms of reference:

That the following matters be referred to the Senate Select Committee on Superannuation for inquiry and report on or before the last sitting day in 1995:\*

(1) The adequacy of current retirement incomes policy arrangements in meeting the needs of those members of the community, in particular women, whose participation in the workforce falls outside the traditional 30 to 40 year working life pattern.

(2) Steps which could be taken to address any deficiencies identified in paragraph (1), including the advisability of implementing the following policies:

(a) initiatives to address equity issues which arise during the contributions and benefits phases of the retirement incomes cycle; and

(b) providing superannuation support for those members of the community who experience broken labour force participation and/or are in receipt of social security payments.

(3) The implications of the Government's decision to progressively raise the pension age for women from 60 to 65.

(4) Any other relevant matters, including measures which, if implemented, would enhance the capacity of Australians to save for retirement.

\* Original reporting date 28 February 1995; amended by the Senate on 8 February 1995 and 19 September 1995

## **Conduct of the inquiry**

1.4 The Committee invited submissions to the inquiry from individuals and organisations by placing advertisements in the print media, by writing to parties who had previously expressed an interest in superannuation and by contacting a large number of women's organisations.

1.5 The Committee received 114 written submissions.

1.6 The Committee conducted nine public hearings which were held in Melbourne on 15 March 1995; in Sydney on 27 and 28 April 1995; in Brisbane on 2 May 1995; in Canberra on 31 May, 6 June, 20 June, 27 June, and 1 August 1995. The Committee heard evidence from 85 witnesses during these hearings.

1.7 In order to facilitate discussion of the issues raised in its inquiries, the Committee agreed that unless otherwise ordered written submissions would be published on receipt. For the same reason, the Committee decided that the uncorrected Hansard transcripts would be circulated as soon as they became available. Oral evidence is cited by reference to Hansard as 'Evidence, p XX'. References to written submissions are by their registration number: 'SW Sub No XX'.

1.8 The Committee records its appreciation of the written submissions and oral evidence made to the inquiry. The Committee particularly notes the



contribution of Mr Frank Burke, of the Australian Society of Certified Practising Accountants, who, sadly, has passed away since he appeared before the Committee at its Melbourne hearing.



## CHAPTER 2:

# WOMEN IN THE WORKFORCE: HOW, WHEN AND WHY

*Whilst their employment rates have changed, life patterns for most women are not changing simultaneously. The majority of women still expect to withdraw from the labour force to care for families.<sup>1</sup>*

### Background

2.1 The labour force participation rate of women workers in Australia has changed dramatically since the beginning of the century when there were few women in the paid workforce. Some of this change can initially be attributed to Australia's move from an economy based on primary industry (agriculture and mining) to a more industrialised/service-focused economy. Women have also taken on a more active role in society generally.<sup>2</sup>

2.2 A number of events have been catalytic in increasing equality for women workers. During World War II women began to enter the workforce in larger numbers to take the place of men who had left their jobs to join the war effort and to work in industries that had developed to support the war. A workforce with larger numbers of women who were higher paid and often in non-traditional jobs was necessitated by the war. However, many of the gains made during the war were reversed at its conclusion, when the Australian Government, like governments elsewhere, adopted policies to ensure men returning from the war were given employment.<sup>3</sup>

2.3 A strong demand for labour arose again in the late 1960s and early 1970s, when inflows of foreign capital and migrant labour saw a massive growth in the Australian manufacturing and service sectors. The expansion of manufacturing industries increased job opportunities for unskilled manual

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1 NSW Women's Advisory Council Report, *Superannuation and Women: Issues of Access and Equity*, June 1993, p 5

2 Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 47

3 *ibid*

workers. Clerical and service opportunities expanded more rapidly than the traditionally male dominated industrial sectors.<sup>4</sup>

2.4 It was at this time that measures to remove both formal and informal discriminatory practices against women were considered - the marriage bar in the Commonwealth Public Service was removed in 1966; equal pay cases were brought by the Australian Council of Trade Unions in 1969 and 1972; the Child Care Act providing for publicly funded child care was passed in 1972; ILO Convention No. 111 on Discrimination in Employment and Occupation was ratified in 1973; and training programs to assist women were developed, such as the Employment Training Scheme for Women.<sup>5</sup> The marriage bar, and its implications for the superannuation assets of those affected, are addressed in detail in Chapter 12.

2.5 In the 1980s, international commitments were made and legislation was enacted to ensure basic equity conditions of employment for women, including the *Convention on Elimination of all Forms of Discrimination Against Women* and the *Sex Discrimination Act 1984*, *Public Service Reform Act 1984*, *Affirmative Action (Equal Opportunity for Women) Act 1986*, *Human Rights and Equal Opportunity Commission Act 1986*, and the ratification of ILO Convention No 156 (*Workers with Family Responsibilities*).<sup>6</sup>

2.6 Changes towards flatter organisation structures with more devolution and integration of functions (including affirmative action) and requirements for flexibility in employing and deploying labour, which have given rise to more part-time work and other flexible employment practices, have improved women's access to and opportunities for employment. However, as Mitchell and Dowick point out in their paper *Women's Increasing Participation in the Labour force: Implications for Equity and Efficiency*, some of these opportunities have been in insecure jobs with low pay and poor prospects in peripheral employment.<sup>7</sup>

2.7 The strong rise in the labour force participation of women over the past few decades is also attributable in part to the rapidly improving access of women to full secondary and tertiary education and recognition that educational attainment raises the economic benefits of working outside the home. Between the generation of women born in the 1930s and the generation

<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> ibid, pp 47, 48

<sup>7</sup> Affirmative Action Agency, *Quality and Commitment: The Next Steps*, Dec 1992, pp 46, 47

of the 1970s, rates of both secondary school completion and post school qualifications have doubled.<sup>8</sup> The Australian Institute of Family Studies report *Work and Family: Employers' Views*, published in 1991, identified that women now held 27 per cent of degrees in administration, 24 per cent of law degrees and 32 per cent of degrees in science, medicine and computing.<sup>9</sup>

2.8 Other factors affecting women's participation in the paid workforce are the long developing trend for women to have fewer children at a later age (with a consequence that they are likely to have acquired greater skills and experience prior to leaving the workforce to have children) and a significant decrease in the expectation that a woman could only be fulfilled through motherhood.<sup>10</sup> An increasing range of job opportunities contributes to women's participation in the paid workforce.

2.9 The present workforce participation rates of women suggest that there are relatively few women who will follow the once frequent pattern of stopping paid work on marriage and not resuming in any significant way. However, women continue to have different employment patterns to those of men, with a lower overall rate of participation in the paid workforce due to a greater proportion undertaking part-time or casual work and earning significantly less.

### Participation rates

2.10 In 1947, female participation in the paid workforce was 24.9 per cent and only a small percentage of these women were married. By 1961, female participation had risen to only 28.9 per cent and the majority of these were still unmarried. In 1976, the participation rate was beginning to change - total female participation was 48.8 per cent with equal numbers of married and unmarried women in the labour force.<sup>11</sup>

2.11 In August 1994, just over half (52 per cent) of women in Australia participated in the labour force compared to almost three-quarters (73 per cent) of men. Married women (including de facto) aged 35-44 years had a higher participation rate than married women aged 20-24 years, reflecting the return of women to work after child bearing. Single women aged 20-24 years had the

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<sup>8</sup> Mitchell D, and Dowick S. *Women's Increasing Participation in the Labour force: Implications for Equity and Efficiency*, Centre for Economic Policy Research Discussion Paper No 308, March 1994, p 1

<sup>9</sup> Woolcott I, *Work and Family: Employers' Views in Quality and Commitment: The Next Steps*, Affirmative Action Agency, Dec 1992, p 56

<sup>10</sup> Affirmative Action Agency, *Quality and Commitment: The Next Steps*, Dec 1992, pp 48, 49

<sup>11</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 47

highest participation rate of all female groups. This compares to men who maintained high levels of participation throughout the prime working years (aged 20-54 years).<sup>12</sup> These figures do not take into account the many women who contribute to family businesses for which they receive no formal income.

**Table 2.1: Labour force participation, 1994**

Age group (yrs)	Women		Men	
	'000	%	'000	%
15-19	337.5	54.4	347.2	53.3
20-24	539.4	76.0	626.1	86.5
25-34	937.9	66.6	1287.5	92.5
35-44	948.2	70.1	1239.4	92.6
45-54	688.1	65.0	971.2	88.4
55-59	146.0	37.6	288.5	72.5
60-64	50.5	14.3	165.9	47.3
65 and over	27.4	2.3	82.8	9.0
Total	3674.9	51.8	5008.6	72.9

Source: *Australian Women's Year Book 1994*, ABS Catalogue No 4124

### Pattern of employment

2.12 Both married (including de facto) and single women have employment patterns which, in aggregate, are significantly different from those of most men. Most male workers enter the paid labour force full-time (or are available for full-time work) at the end of their schooling or post-school further education or training, and stay there until retirement. Most women, while following such a pattern at least in their twenties, are likely to have a break from paid employment at some stage to provide care for children or elderly relatives.<sup>13</sup>

<sup>12</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, Catalogue No 4124.0, p 74

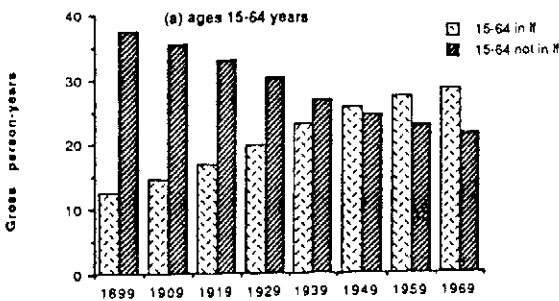
<sup>13</sup> Clare R. *Women and Superannuation in Women and Superannuation: Selected Seminar Papers*, EPAC/OSW, August 1994, pp 4-7

For example, 53 per cent of women with pre-school children age children are not in the labour force.<sup>14</sup>

2.13 It has been contended by Ross Clare of the Economic Planning and Advisory Council and others that, at the current time, women spend on average 17 years in the labour force, compared to 39 years for men.<sup>15</sup>

2.14 In *Balancing Families and Work: A Demographic Study of Women's Labour force Participation*, Christabel Young presents more detailed information on labour force participation according to cohorts. According to Young, between the 1899 birth year cohort and the 1959 birth year cohort, gross person years in the labour force per woman are expected to increase from 12.5 to 28.4 years within the age range 15-64 years, or an increase of 14.6 years. Although women born in 1899 on average spent only one-quarter of the 15-64 year age range in the labour force, those born in 1959 are expected to spend more than one-half of their time in economic activity. The number of years in the labour force first exceeded the number of person-years not in the labour force with the experience of women born in 1949 (see Figure 2.1).<sup>16</sup>

**Figure 2.1:** Estimated and projected gross person-years in the labour force and not in the labour force among cohorts



Source: *Balancing Families and Work: A Demographic Study of Women's Labour Force Participation*, 1990, p 103 (ff = labour force)

2.15 Labour force participation rates for married women and all women show an M-shaped pattern with the peaks occurring in the 20-24 and 35-44 years age

<sup>14</sup> Australian Council of Social Service, SW Sub No 62

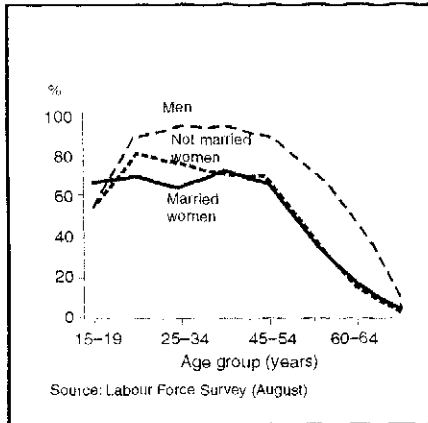
<sup>15</sup> Clare R, *Women and Superannuation in Women and Superannuation: Selected Seminar Papers* EPAC/OSW, August 1994, p 7; NSW Women's Advisory Council *Superannuation and Women: Issues of Access and Equity* June 1993 piii; Olsberg D, SW Sub No 9

<sup>16</sup> Young C, *Balancing Families and Work: A Demographic Study of Women's Labour force Participation*, 1990, p 38

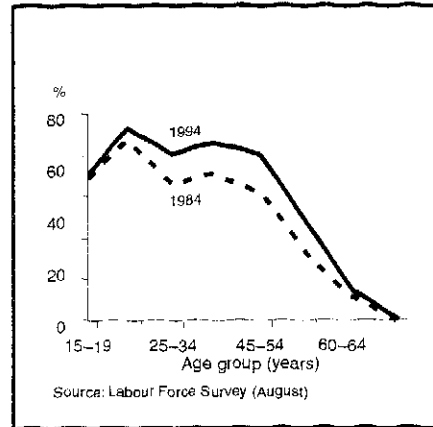
groups. The trough in the 25-34 years age group largely reflects that this is the prime child bearing age group.<sup>17</sup>

**Table 2.2: Labour force participation rates**

**Participation rates all, 1994**



**Participation rates of women**



Source: *Australian Women's Year Book 1994*, ABS Catalogue No 4124.0

2.16 A survey of work patterns of women was conducted in Victoria in October 1991. The survey looked at over one million women employed between 1975 and October 1991. Some of the results included:

- two-thirds of Victorian women who had been employed at some time between 1975 and October 1991 had had at least one break of three months or more from employment;
- women who have or who had children under 12 years of age were more likely to have had a break than women without children;
- among women who took a break from employment and who have or who had children under 12 years of age, 56 per cent had taken the most recent break because of the birth of a child and 30 per cent took the break to care for a child or other person; and
- 88 per cent of Victorian women who had been employed at some time between 1975 and 1979 resigned because of the birth of their

<sup>17</sup>



child. This figure fell to 39 per cent in 1990-91. During this time, the proportion of women taking maternity leave rose from 11 per cent to 44 per cent.<sup>18</sup>

2.17 Career breaks, which may last for a number of years, may result in loss of career momentum and difficulties in updating skills when returning to work. In their report, *More Brilliant Careers: The effect of career breaks on women's employment*, Rimmer and Rimmer identified that consequent to a woman's initial break from employment is a shifting downwards to jobs with lower skill requirements.<sup>19</sup>

2.18 According to the report, short breaks of a year or less were the most common for the first break in employment (41.8 per cent of women) with over half the women (56.4 per cent) giving pregnancy/child care as the reason for taking the break.<sup>20</sup>

2.19 Only 47.4 per cent of women returned to the same kind of work in their second working spell as they had done when they first worked. Half of the women returning to work were again employed as clerks. For professionals and para-professionals the proportions were nearly two-thirds and over three-quarters. In the other occupations, women were less successful than the clerks in regaining the occupations in which they had previously worked.<sup>21</sup> The shift downwards to positions which required a lower level of skill does not appear to be the consequence of subsequent career breaks, perhaps because it has occurred following the initial break.<sup>22</sup>

2.20 The Victorian report referred to above identified that balancing paid work with family responsibilities was the most commonly reported difficulty for women returning to work after a break, with the degree of difficulty increasing for those whose break had been for a period greater than a year.<sup>23</sup>

2.21 A 1988 study by Begg and Chapman, titled *The Foregone Earnings from Child-Rearing in Australia*, clearly indicated that women's overall shorter period in the paid workforce substantially reduced their overall earnings:

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<sup>18</sup> Australian Bureau of Statistics *Women in Australia*, Catalogue No. 4113.0, pp 139, 140

<sup>19</sup> Rimmer R J, and Rimmer S, *More Brilliant Careers: The effect of career breaks on women's employment*, 1994, p 52

<sup>20</sup> *ibid.*, pp 50, 51

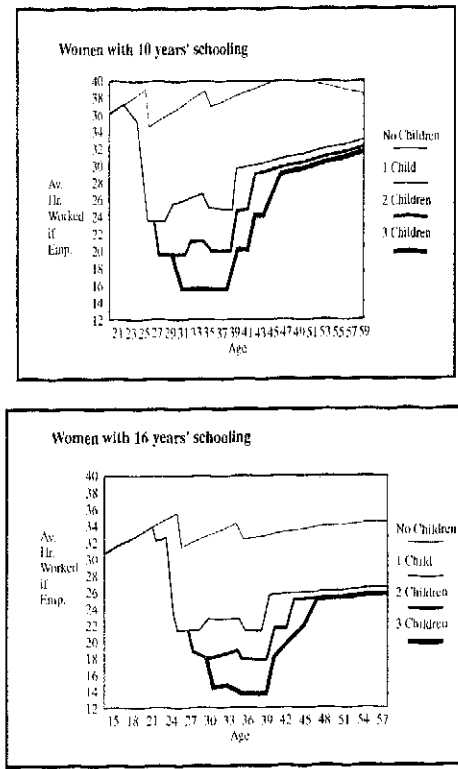
<sup>21</sup> *ibid.*, p 50

<sup>22</sup> *ibid.*, p 52

<sup>23</sup> Australian Bureau of Statistics, *Women in Australia*, Catalogue No. 4113.0, p 141

even controlling for a host of labour market factors, the presence of children, particularly young children, has a considerable effect on women's earnings, most importantly through the substantially diminished probability of labour force participation. As well, hours worked given participation are considerably reduced from child-rearing, although hourly wage rates are virtually unaffected.<sup>24</sup>

2.22 The effect of the parenting role on women's work patterns is reflected in the following graphs prepared by Beggs and Chapman as part of their report.



Source: *The foregone earnings from child-rearing in Australia*

2.23 Women are also the primary carers of people other than children. About seventy-two per cent of those who care for those over 75 years of age, and 75.9 per cent of those who care for people with mental illnesses, are women. In

<sup>24</sup> Beggs and Chapman, *The foregone earnings from child-rearing in Australia*, Centre for Economic Policy Research, Discussion Paper No 190, June 1988, pp ii, iii

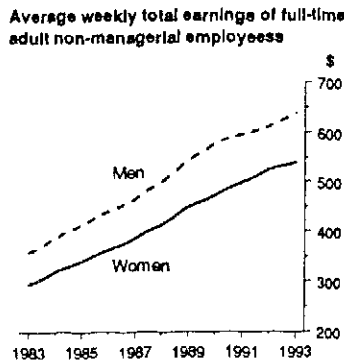
Australia, 708 000 women are primary care givers for elderly relatives and adult family members with disabilities. The foregone earnings of women who work as unpaid carers have been estimated at \$3.3 billion, not including the monetary value of opportunities foregone by carers who do manage a paid as well as unpaid job.<sup>25</sup>

**Pay inequity and occupational and industrial segmentation**

2.24 While economic and cultural circumstances vary widely from country to country, there are two issues which are common. These are the lack of pay equity between men and women and the occupational and industrial segmentation of workers. Australia offers no exception to this pattern.<sup>26</sup>

*Pay inequity*

2.25 It is over twenty years since the policy of equal pay for equal work was introduced in Australia. However, women still earn significantly less than men, even in occupations considered to be traditionally female.<sup>27</sup>



Source: Australian Bureau of Statistics. *Women in Australia*, Catalogue No 4113.0, p 181

<sup>25</sup> Minister for Women's Affairs (Victoria), SW Sub No 66

<sup>26</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 2

<sup>27</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, Catalogue No. 4124.0, pp 98, 99.

**Table 2.3: Average weekly earnings and hours paid for full-time adult non-managerial employees, 1993**

	Women	Men	Female/male ratio
	\$	\$	%
<i>Total ordinary time earnings</i>	526.5	577.8	91.1
- Award/agreed base rate	518.4	557.2	93.0
- Pay by measured result	1.9	10.0	19.0
- Over award pay	6.2	10.5	59.0
Overtime	13.5	61.8	21.8
Total earnings	540.0	639.6	84.4
	hours	hours	%
Ordinary time	37.5	37.9	98.9
Overtime	0.7	2.7	25.9
Total hours	38.2	40.7	93.9

Source: *Australian Women's Year Book 1994*, ABS Catalogue No 4124.0

2.26 In 1993, female and male full-time adult non-managerial employees both worked, on average, 38 hours *ordinary* time per week, but women's *ordinary* time earnings were only 91 per cent of men's. The difference is greater for average weekly *total* earnings (that is, including overtime) with full-time adult non-managerial female employees receiving only 84 per cent of men's.

2.27 The difference in the amount of overtime worked is significant. In 1993, men worked nearly four times more overtime than women and consequently women's overtime earnings were only 22 per cent of men's. This reflects both occupational segregation, with women less likely to work in occupations where overtime is worked, and that women are more likely to have family

responsibilities which limit the time they have available to undertake overtime.<sup>28</sup>

2.28 The difference in earnings is more marked for men and women in full-time managerial positions. In 1993, women earned 75 per cent of the equivalent earnings of men.<sup>29</sup>

### *Occupational and industrial segmentation*

2.29 According to OECD figures from 1985, Australia had the highest incidence of gender segmentation in the workforce among member countries. This significant segmentation of the sexes persists despite the pursuit by the Australian Government of an active policy of equality for women workers, and despite increased participation of women in education, training and the labour market. Indeed, studies have suggested that gender segmentation has actually increased slightly over the last 20 years.<sup>30</sup>

2.30 In 1994, women remained concentrated in a relatively narrow range of occupations. For example, for those in full-time employment:

- 52 per cent of women employees were concentrated in two occupational groupings: clerks (34 per cent) and salespersons/personal service workers (18 per cent) (compared to 7 per cent and 8 per cent respectively for males); and
- 54 per cent of males were concentrated in the three leading occupational groups: tradespeople (24 per cent), managers and administrators (16 per cent) and professionals (14 per cent).<sup>31</sup>

2.31 Both women and men employed full-time increased their representation among managers and administrators between 1989 and 1994, with an increase from 7.2 per cent to 8.9 per cent for women and 14.5 per cent to 16.1 per cent for males.<sup>32</sup>

2.32 When considered by industry the statistics show the three leading industry groups employing women are:

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<sup>28</sup> *ibid*, p 99

<sup>29</sup> *ibid*

<sup>30</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 2

<sup>31</sup> Australian Bureau of Statistics, *Australia Women's Year Book 1994*, Catalogue No 4124.0, pp 76, 77

<sup>32</sup> *ibid*, p 76

- Wholesale and retail trade 18.0%
- Health and community services 15.2%
- Education 11.1%

compared to the three leading industry groups for males being:

- Manufacturing 19.5%
- Wholesale and retail trade 18.6%
- Construction 11.4%<sup>33</sup>

2.33 Industrial and occupational segregation have occurred because of continuing assumptions regarding what is appropriate work for men and women, employment restrictions previously placed on women's employment, higher unionism and militancy among traditionally male occupations and differences in training schemes and education which effectively cluster women within certain occupations.<sup>34</sup>

2.34 The effects of occupational segregation have been seen in various ways including:

- occupational crowding in female-dominated occupations holds down pay;
- career paths from female-dominated occupations to higher level positions are less well articulated;
- narrow occupational choices increase prospects for unemployment especially where regional economies are structurally dependent on male-dominated industries; and
- access to satisfying work is constrained by barriers to occupational choice.<sup>35</sup>

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<sup>33</sup> *ibid*, pp 77, 78

<sup>34</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 3

<sup>35</sup> *Quality and Commitment: The Next Steps*, Affirmative Action Agency, Dec 1992, p 53

**Table 2.4: Occupation of full-time and part-time employed**

Occupational group	Full-time				Part-time	
	1989		1994		1994	
	Women	Men	Women	Men	Women	Men
	%	%	%	%	%	%
Managers and administrators	7.2	14.5	8.9	16.1	4.0	4.2
Professional	14.5	12.9	16.6	14.4	9.9	10.4
Para-professionals	7.0	5.6	6.8	5.4	5.8	3.1
Tradespeople	4.6	25.6	4.4	24.1	2.9	10.2
Clerks	35.4	6.8	33.7	6.7	25.3	4.8
Salespersons and personal service workers	17.5	7.7	18.0	8.2	33.8	22.7
Plant and machine operators, and drivers	4.3	11.4	2.8	11.1	1.5	7.6
Labourers and related workers	9.5	15.4	8.7	13.8	16.8	36.9
Total	100.0	100.0	100.0	100.0	100.0	100.0
	'000	'000	'000	'000	'000	'000
Total	1 891.5	4 217.5	1922.2	4 039.6	1 427.7	496.2

Source: *Australian Women's Year Book 1994*, ABS Catalogue No 4124.0

2.35 Efforts to reduce the level of occupational segregation have tended to date to focus on assisting women into male-dominated, often trades, areas. However, it can be argued that this approach is not working and that raising the status of female dominated areas and improving skills recognition, remuneration, career paths and access to training for full and part-time workers

in female dominated occupations and industries is likely to prove more effective.<sup>36</sup>

2.36 A second factor which has had the effect of reinforcing both segmentation of the workforce and wage differentials has been the significant increase in part-time and casual employment particularly for women workers.<sup>37</sup>

### Part-time and casual work

2.37 Women are considerably more likely to be in part-time employment compared to men. In 1993-94, 42 per cent of women in paid employment were employed part-time, compared to 10 per cent of males.<sup>38</sup>

2.38 This employment pattern reflects the recent pattern of job and industry growth but also corresponds to the pattern of demands on women inside and outside the paid work context. Explanations put forward for the predominance of women in part-time work on one hand include the availability of child care, commitment to study, family commitments (including aged and invalid care) and personal choice. On the other hand, overseas evidence and recent Australian studies conclude that a majority of women would prefer full-time work (and return to it after maternity leave) if more full-time jobs, better childcare and help with older persons cared for in the household and other domestic responsibilities, were available.<sup>39</sup>

2.39 In August 1994, there were 308 000 women and 200 000 men employed part-time who preferred to work more hours, 22 per cent and 40 per cent respectively of part-time workers. The number of women in this category has consistently exceeded the number of men over the last ten years, a result of the greater number of women working part-time. The proportion of part-time workers who prefer to work more hours also varies according to age. In August 1994, the highest incidence was among women in the 20-24 years age group, of whom 39 per cent wanted to work more hours.<sup>40</sup>

2.40 Part-time work restricts earnings in a number of ways in addition to simply reducing hours worked and hence wages earned. Surveys in Australia

<sup>36</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 4

<sup>37</sup> *ibid*, p 3

<sup>38</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, Catalogue No 4124.0, p 75

<sup>39</sup> Council for Equal Opportunity in Employment *Women, Work and the Future*, Book 10 in the series *Equal Opportunity at Work - 112 Studies from Major Australian Companies*, 1990, p 12

<sup>40</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, Catalogue No 4124.0, pp 78, 79



have indicated that part-time jobs tend to be restricted to the lower grades within occupations. Part-time employees have largely been cut off from career paths, and it is estimated that around 60 per cent of those working between 10 and 29 hours per week are employed on a casual basis. Also, some of the industries employing a high proportion of part-time employees in Australia correspond to those with the lowest wages for full-time workers.<sup>41</sup>

2.41 Part-time workers also tend to have fewer opportunities for training, skill development and promotion. Recent data from the Australian Bureau of Statistics indicated that training is disproportionately provided to those with greater seniority, those in managerial positions and those who are permanent or full-time employees - all characteristics of men's employment.<sup>42</sup>

2.42 In short, it is unusual for intermittent or part-time work to be consistent with resumption of a career path or steady promotion.<sup>43</sup>

### **Not in the labour force**

2.43 People who are classified as neither employed nor unemployed are defined as being 'not in the labour force'. Between 1984 and 1994, the proportion of women not in the labour force decreased from 55 per cent to 48 per cent.

2.44 The main activities for people not in the labour force in 1993 differed according to gender. Ninety-seven per cent of people who were mainly engaged in home duties/child care were women while 69 per cent of those who were retired/voluntarily inactive or suffering from an illness, injury, disability or handicap were men. To some extent these figures reflect women's traditional caring role in the family.<sup>44</sup>

2.45 Between 1988 and 1993 there were noticeable increases in the proportion of women attending educational institutions and the proportion who were retired/voluntarily inactive. This was accompanied by a decrease in the proportion whose main activity was home duties/child care. For men, except

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<sup>41</sup> Department of Industrial Relations, *Labour Standards for Women in Australia*, April 1991, p 3

<sup>42</sup> *ibid*

<sup>43</sup> Clare R, *Women and Superannuation*, in *Women and Superannuation: Selected Seminar Papers*, EPAC Background Paper No 41, August 1994, pp 4-7

<sup>44</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, Catalogue No 4124.0, p 82

for the decrease in the proportion involved in home duties/child care, the activity pattern changed little over time.<sup>45</sup>

**Table 2.5: Main activity of persons aged 15-69 years not in the labour force**

Main activity	Women		Men	
	1988	1993	1988	1993
	%	%	%	%
Home duties/child care	77.9	69.0	7.7	4.3
Attending an educational institution	12.9	15.1	32.0	32.2
Retired/voluntarily inactive	2.9	8.8	35.0	37.4
Own illness/injury (a)	2.7	3.7	19.1	19.8
Worked in unpaid voluntary job	1.3	1.3	1.2	1.7
Other (b)	2.3	2.6	4.9	4.6
Total	100.0	100.0	100.0	100.0
	'000	'000	'000	'000
Total	2481.9	2484.7	1073.8	1193.8

a) includes own disability and handicap

b) includes looking after ill/disabled person, travel/moving house, unpaid leave and persons not asked.

Source: *Australian Women's Year Book 1994*, ABS Catalogue No 4124.0

### What the future holds

2.46 It is expected that in the future women will make up an increasing proportion of the workforce. The Australian Bureau of Statistics has estimated that about 66 per cent of new entrants to the workforce in the next 20 years will

<sup>45</sup> *ibid*, p 83

be women. The Federal Department of Employment, Education and Training has projected that women's employment will increase on average by 2 per cent a year to the year 2001, while men's employment will increase at 1.6 per cent per year.<sup>46</sup>

2.47 The report, *Australia's Workforce in the Year 2001*, released in June 1991 by the Department of Employment, Education and Training, identified that the proportion of jobs which are part-time was expected to continue to increase by 2.1 per cent per annum to the year 2001 compared to a growth rate of 1.3 per cent for the full-time labour force. This translates into the share of jobs held by part-timers increasing from 21 per cent in 1989 to 23 per cent in 2001.<sup>47</sup>

2.48 However, even with the predicted increase in female labour force participation, future projections estimate that women will spend, on average, no more than 28 years in paid employment.<sup>48</sup>

#### *Questioning the notion of the standard work pattern*

2.49 As pointed out by the Australian Council of Social Service in its submission the notion of a 'standard' work pattern, being 40 years of full-time employment, is increasingly being brought into question. The majority of people are now likely to leave the labour force temporarily, or become unemployed, at some stage in their working life.<sup>49</sup>

2.50 That this move away from the 40 year full-time pattern will continue is supported by the findings of the report *Australia's Workforce in the Year 2001*, released in June 1991 by the Department of Employment, Education and Training. The following are some of the more significant changes to participation rates projected in the report:

- further decreases in male full-time labour force participation rates, especially at older ages;

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<sup>46</sup> Affirmative Action Agency, *Quality and Commitment: The Next Steps*, Dec 1992, p 48

<sup>47</sup> Department of Employment, Education and Training, *Australia's Workforce in the Year 2001*, 1991, pp 42-44

<sup>48</sup> SW Sub No 9

<sup>49</sup> SW Sub No 62

- strong increases in part-time labour force participation rates for 15 to 24 year old males, reflecting increasing participation in full-time education; and
- continued strong increases in female part-time participation rates for all age groups.<sup>50</sup>

2.51 The report also addressed the issue of unemployment, in particular long-term unemployment. The report acknowledged that the outlook for the long term unemployed in the year 2001 will largely depend upon the path of the business. However, it presented the view that micro-economic reform could lead to substantial retrenchments in electricity, water and gas, transportation, communication and parts manufacturing and that retrenchees who are older, do not have readily marketable skills and are in disadvantaged regions are vulnerable to long term unemployment.<sup>51</sup>

2.52 It is important to recognise that long term unemployment is not distributed equally across groups in society. The long term unemployed are typically older than the average person in the workforce. In 1990, 32 per cent of those unemployed for 1 year or more and 40 per cent of those unemployed for 2 years or more were over 45 years of age, while this group only represented 25 per cent of the labour force.<sup>52</sup>

### **At the end of the day**

2.53 At the end of the day, there is an expectation that all Australians will retire with sufficient resources to maintain a dignified standard of living. Participation in the labour force provides an opportunity to accumulate superannuation assets, which in turn, contributes to ensuring that standard is achieved. However, what has become evident is that many women choose or are required, for family or other reasons, to engage in activities more traditionally associated with the home.

2.54 The following chapters look at the superannuation needs of those with broken work patterns and those engaged in home duties, how they are currently being met and how best they might be improved.

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<sup>50</sup> Department of Employment, Education and Training, *Australia's Workforce in the Year 2001*, 1991, p 39

<sup>51</sup> *ibid*, p 7

<sup>52</sup> *ibid*, p 94

## CHAPTER 3:

# INCOME IN RETIREMENT

*It was drummed into me that you have to start thinking about retirement at 40. [But] I think you probably need to start thinking [about it before that]...but at 20 it is the last thing people think of.<sup>1</sup>*

3.1 Changes to superannuation legislation over recent years have increased access to and membership of superannuation schemes by women. However, superannuation represents only one aspect of retirement income. For many, especially those on lower pay, the overall benefits may be minimal. The recency of superannuation will also limit the benefits for those who are near to retiring age. The full benefits of superannuation will accrue to those who are of younger age and still have many years ahead of them in which they will be able to accumulate superannuation assets.

3.2 Other choices of retirement income for women include the age pension, based on the expectation that the government will provide an adequate retirement income for the aged in the community, personal investment in housing and other assets, and other financial arrangements to ensure their well-being.<sup>2</sup> The concern that women have, in particular, to ensure housing needs are met was consistently presented to the Committee during the course of this inquiry, as well as during the Committee's previous inquiry on the use of accumulated superannuation for the purchase of housing.<sup>3</sup> This issue is discussed in more detail in Chapters 13 on Divorce and 9 on Education.

3.3 In October 1992, for women, the main source of income at the start of their retirement was either government benefits or 'someone else's income', with slightly more than a third coming from each source. On the other hand, 50 per cent of men had retired with government benefits as their principal income source. Twenty-two per cent of men compared to 14 per cent of women retired with income mainly from their investments and savings. For superannuation, the respective figures were 16 per cent and 4 per cent.<sup>4</sup>

3.4 The main source of income at retirement also differed depending on whether people had retired early. 'Someone else's income' was the main source

<sup>1</sup> Alexander E, Evidence, p 144

<sup>2</sup> Office of the Cabinet, Queensland, SW Sub No 48

<sup>3</sup> Senate Select Committee on Superannuation, *Super and Housing*, May 1994

<sup>4</sup> Australian Bureau of Statistics, Catalogue No. 4124.0, *Australian Women's Year Book, 1994*, p 105

of income for 46 per cent of women who retired at age 45-59 years, compared to 13 per cent of women who retired aged 60 years and over. Regardless of the age at retirement, men were more likely to have retired with superannuation, life assurance or another retirement scheme providing their main source of income.<sup>5</sup>

## Age pension

3.5 The unfunded age pension was introduced by the Federal Government in 1909 and has had, for most of its history, a primary objective linked to the alleviation of poverty amongst the aged. The pension is paid from Consolidated Government Revenue each year and, as such, it represents an unfunded retirement income system. The pension is currently payable from age 65 for males and 60.5 for females and the Government is currently increasing entitlement age for females incrementally to 65.<sup>6</sup> That policy is examined in Chapter 15.

**Table 3.1: Main source of income and age at retirement, 1992**

Main source of income at retirement	Women		Men	
	45-59 years %	60 years & over %	45-64 years %	65 years & over %
Superannuation, life assurance and other retirement schemes	3.3	7.3	19.0	10.9
Government benefits	25.6	58.3	44.4	63.9
Investment and savings	12.2	16.7	23.5	17.4
Someone else's income	46.4	13.3	3.2	1.1
Other income	12.6	4.5	9.8	6.6
Total	100.0	100.0	100.0	100.0

Source: *Australian Women's Year Book 1994*, ABS Catalogue No. 4124.0

3.6 The maximum level of the pension that can be received by a person is not linked to the individual's lifetime earnings but is set by the Government and is equal to approximately 25 per cent of the average wage for a single

<sup>5</sup> *ibid*, pp 105, 106

<sup>6</sup> Knox D, *The Relationship Between the age pension and Superannuation Benefits, Particularly for Women in Women and Superannuation: Selected Seminar Papers*, EPAC Background Paper No 41, August 1994, p 51

person and 40 per cent of the average wage for a married couple. The income and assets tests reduce or negate age pension entitlement for those who have significant superannuation or other income or assets.<sup>7</sup>

3.7 In summary, the means tested age pension provides a reasonable safety net for Australians over the pension age and thereby limits the level of poverty amongst the aged population.<sup>8</sup>

3.8 In June 1994, there were 1 034 127 female age pensioners compared to 544 571 male pensioners.<sup>9</sup>

3.9 Of the women that receive the age pension:

- just under two-thirds are paid at the single rate, reflecting the increasing proportion of widows amongst the older aged. Whilst almost 70 per cent of women aged 60-64 are married, virtually the same proportion of women aged over 75 are widows;
- just over two-thirds of women are paid at the full rate, that is, they do not have sufficient private income to reduce their age pension;
- around 10 per cent have no other income than the age pension; and
- the main source of private income for age pensioners is interest on bank accounts, with the average received only around 16 per cent per week.<sup>10</sup>

## Superannuation

3.10 The amount of superannuation an individual will accrue is largely dependent on his or her employment history. Typically, an individual will accrue, over his or her lifetime, a superannuation benefit the size of which is largely dependent on both income and length of employment. Generally, the largest benefits are accrued by those who have superannuation from the time they first enter the workforce, achieve earnings equal to or above average weekly earnings, and are continuously employed for 40 to 45 years. However, superannuation will increase overall retirement income. The Retirement Income

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<sup>7</sup> *ibid*, pp 51, 52

<sup>8</sup> *ibid*, p 52

<sup>9</sup> Department of Social Security, *DSS Quarterly Survey* (yet to be published), in *DSS Clients - A Statistical Overview, 1995*

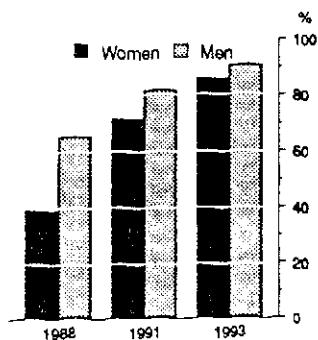
<sup>10</sup> Clare R, *Women and Superannuation*, in *Women and Superannuation: Selected Seminar Papers*, EPAC Background Paper No. 41, August 1994, p 14

Modelling Task Force estimates that two individuals, aged 25 and 60 in 1992, who retire at the age of 65 and who receive employer Super Guarantee contributions, would respectively receive a net retirement income, comprising a superannuation and age pension component, of 168.8 per cent and 103.8 per cent of the full age pension.<sup>11</sup>

3.11 Employees with non-traditional employment patterns, that is, those who spend a number of years outside the paid labour force or in part-time employment, will inevitably accrue far less superannuation than those employees who follow a more traditional employment pattern. Generally speaking, those members of the community most likely to have non-traditional employment patterns are women who temporarily leave the labour force to raise children, or who work part-time because of their family responsibilities.<sup>12</sup>

3.12 Between 1987 and 1992, the proportion of employees with superannuation cover has doubled (from 39.9 per cent to 80.3 per cent), with a near trebling in the coverage of women employees (23.9 per cent to 76.2 per cent), a consequence of the spread of industrial award superannuation and the introduction of the Superannuation Guarantee (SG).<sup>13</sup>

**Figure 3.1 Superannuation coverage of employees**



Source: *Australian Women's Year Book*, 1994, p 96

3.13 However, as pointed out by Professor Linda Rosenman and Dr Sharon Winocur in their paper *Women's Work Patterns and the Impact Upon Provision*

<sup>11</sup> SW Sub No 103

<sup>12</sup> AMP Superannuation, SW Sub No 55

<sup>13</sup> Brown C, *The Distribution of Private Sector Superannuation Assets by Gender, Age and Salary of Members*, Conference Paper 94/2 Retirement Income Modelling Task Force, 1994, pp 3.6



for Retirement, at any time only about 52 per cent of women of working age are in paid employment in comparison with 74 per cent of men. Therefore, the actual rates of coverage of the total female population by superannuation are obviously much lower.<sup>14</sup>

3.14 In 1994, the Retirement Income Modelling Task Force studied the distribution of private sector superannuation assets and contributions categorised by gender, age, salary level of fund members. The preliminary report of this study revealed that women had substantially lower average superannuation asset accumulations than men:

- on average, male members of superannuation funds had superannuation assets 2.7 times those of women. Before the age of 30, men had around 1.5 times the superannuation assets of women, mainly reflecting the differences in their relative earnings. From age 30 until middle age, the relative disparity in average superannuation assets widened as the workforce participation patterns of men and women diverge; and
- on average, women superannuation fund members of *retirement age* (over 55) had less than half the superannuation assets of their male counterparts - in the range \$21 000 to \$31 000 compared to \$50 000 to \$67 000.<sup>15</sup>

3.15 A 1991 ABS Survey indicated that 56 per cent of the lump sums received by women were less than \$5 000, with over 75 per cent less than \$20 000.<sup>16</sup>

3.16 Factors contributing to the asset accumulations detailed above include:

- women's lower average earnings (since SG contributions are based on a percentage of employees' salaries, the dollar amount of contributions for women will be lower on average than those for males);
- women's higher incidence of part-time work;
- past levels of superannuation coverage;
- lower total contribution rates of women employees (4.8 per cent of salary for males compared to 3.5 per cent for females) (see Table 3.2); and

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<sup>14</sup> Rosenman L, and Winocur S, *Women's Work Patterns and the Impact Upon Provision for Retirement in Women and Superannuation: Selected Seminar Papers*, EPAC Background Paper No. 41, August 1994, p 99

<sup>15</sup> Brown, op cit, pp 4,5

<sup>16</sup> Clare, op cit, p 14

- women's broken workforce participation patterns mean that they have fewer years of contributory service and are more likely to dissipate benefits due to lack of vesting and preservation of benefits on changing employment or workforce.<sup>17</sup>

3.17 Fewer women than men supplemented their employer's mandated superannuation contribution with contributions of their own. In November 1993, 44 per cent of women made personal contributions while 61 per cent of men did so. The difference is due to employee contributions per week of \$20 or more, with only 27 per cent of women compared to 44 per cent of men making this level of contribution. This may be partly explained by women's lower earnings.<sup>18</sup>

**Table 3.2: Contributions of people aged 15-74 years with superannuation coverage, 1993**

Weekly contribution	Women	Men
	%	%
<i>Makes personal contribution (a)</i>	44.0	60.6
Under \$10	4.0	3.0
\$10 and under \$20	11.4	11.9
\$20 and under \$50	21.7	31.5
\$50 and over	5.8	12.7
Employer/business contributions only	56.0	39.4
Total	100.0	100.0

(a) Includes those who do not know what contributions were made

Source: *Australian Women's Year Book 1994*, ABS Catalogue No. 4124.0

3.18 The Government has introduced measures over the past decade which have significantly improved the position of women in the superannuation system and overcome direct and indirect forms of discrimination. These measures include:

- support for employer superannuation contributions (3 per cent of wages) under industrial awards, introduced in 1986, which resulted in rapid extension of superannuation coverage in the late 1980s;

<sup>17</sup> Brown, op cit, 1994, pp 13,15

<sup>18</sup> Australian Bureau of Statistics, Catalogue No. 4124.0. *Australia Women's Year Book 1994*, p 107

- introduction of the SG arrangements in 1992 which require employers to make superannuation contributions for their employees, to 9 per cent of wages by the year 2002-03. These contributions are fully vested<sup>19</sup> so that women who resign from employment do not have lower entitlements to these employer-funded benefits, as can occur with long vesting periods;
- provision in the *Superannuation Industry (Supervision) Act* 1993 for people to contribute to a superannuation fund for up to two years while outside the paid workforce. In June 1994, the Government announced that the *Superannuation Industry (Supervision) Regulations* 1994 would be amended to enable funds to accept contributions for up to seven years from people who are on leave without pay for childrearing purposes (where the person has the right to return to their previous employment);
- changes to the Reasonable Benefit Limits rules from limits based on the 'highest average salary' to flat dollar limits, which apply equally to fund members irrespective of their salary level;
- changes to the *Sex Discrimination Act 1984* (Commonwealth) to limit the general exemption which previously applied to superannuation funds and which allowed them to discriminate on the grounds of marital status and gender in the provision of superannuation benefits;
- the development of measures to ensure that small amounts in superannuation funds are not eroded by fees and charges; and
- the establishment of a Government Working Group to develop a streamlined scheme for splitting the superannuation entitlements of a contributing spouse on marriage breakdown.<sup>20</sup>

3.19 These measures are discussed in subsequent chapters.

3.20 There is cross-party support for the measure announced in the 1995-96 Budget<sup>21</sup> supporting the inclusion of provisions for employee superannuation contributions beginning at 1 per cent of earnings in July 1997 and rising to 3 per cent of earnings by July 1999 and government matching of dollar for dollar contributions paid by most employees.

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<sup>19</sup> *Full vesting* is the inclusion in an employee's superannuation benefit of the total amount of the employer's contribution: *County NatWest Dictionary of Investment Terms*, 1994, 3rd ed.

<sup>20</sup> Insurance and Superannuation Commission, SW Sub No 37

<sup>21</sup> Appropriation Bill (No.1) 1995-96, First Reading

3.21 It should be noted that the Committee has yet to complete its inquiry into increasing SG from 9 to 12 per cent and the role of employee contributions in this process.

3.22 In its report on asset distribution in private superannuation funds, the Retirement Income Modelling Task Force pointed out that, even with the improvements in superannuation coverage under the SGC, women might still only accrue around half the superannuation benefits of men because of the differences in average earning levels and workforce participation levels.<sup>22</sup>

3.23 The presentation of the relative superannuation assets such as that provided above by the Retirement Income Modelling Taskforce clearly articulates the substance of the concern at the heart of the Committee's inquiry and provide benchmarks against which progress can be assessed.

### **Integration of superannuation and social security benefits**

3.24 In the course of the inquiry, the issue of integration of superannuation with social security benefits was raised. The Institute of Actuaries of Australia argued that a means tested age pension discouraged voluntary savings for retirement as the means tests rewarded those who disposed of their savings before retirement and who did not receive income from other sources. The Institute recommended that incentives be increased and barriers be removed to encourage individuals to supplement their provisions to make up any shortfalls.<sup>23</sup>

3.25 Jacques Martin Hewitt supported the need to 'fine tune' the system so that people with smaller lump sums received a fair level of overall income in relation to their circumstances. Jacques Martin Hewitt argued for a progressive cut-off of social security pension as other income and assets rise, structured in such a manner that there was still incentive for even small balances to be accumulated for retirement.<sup>24</sup>

3.26 Ms Helen Martin, a member of the Institute of Actuaries of Australia, Superannuation Practice Committee, presented a paper to the ASFA 1995 National Conference in which she expanded on the argument presented in the submission made by her organisation. She suggested a modification of the means test to exclude superannuation income up to, say, 25 per cent of average

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<sup>22</sup> Brown, *op cit*, 1994, pp 3,6

<sup>23</sup> SW Sub No 61

<sup>24</sup> SW Sub No 17

weekly earnings, with the exclusion assessed on a 'combined family income'. The exclusion would only be available for benefits taken as non-commutable pensions. She argued that this proposal would remove some of the disincentive to contribute to superannuation, with the additional contributions more likely to result in an improvement in total retirement provision rather than simply reducing age pension entitlements.<sup>25</sup>

3.27 Ms Martin acknowledged there would need to be adequate controls to minimise manipulation and ensure that it was appropriately targeted to those on lower income and superannuation levels. She also recognised that there may be additional costs to Government and that, to be effective, such a proposal would need to be considered as part of a broader package so that savings in some areas can offset costs in other areas.<sup>26</sup>

3.28 The Committee recognises the importance of ensuring effective integration of the social security system and superannuation so that any barriers, perceived or real, inhibiting an individual's incentive to contribute to superannuation can be minimised.

### **Change will benefit all**

3.29 The future of women's retirement incomes generally, and superannuation assets particularly, will depend on changes in the pattern of their workforce participation and earnings, as well as changes to the retirement incomes support system. These will, in turn, be influenced by changes in the economy and community expectations.

3.30 Throughout the report there are indications that community expectations about women's lives have changed dramatically, and will continue to change. It is difficult to even imagine, for example, what it was like for women when they were unable to obtain a bank loan in their own right. Legislation, such as the Sex Discrimination Act, and the establishment of such agencies as the Affirmative Action Agency, provide a clear demonstration of the community's support for equal opportunity.

3.31 However, it must be acknowledged that some women's working patterns will never be such that occupationally linked superannuation will be sufficient to provide for them in their retirement. Making changes which accommodate

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<sup>25</sup> Martin H, *Superannuation and those who can't find full life-time employment*, presented at the ASFA '95 National Conference, Melbourne, 2 November 1995

<sup>26</sup> *ibid*

this reality will also have benefits for the increasing number of males who also do not have traditional work patterns.

### **Challenging the status quo**

3.32 During the course of the inquiry it has become clear that the past and present experience of women, and their capacity to provide for their retirement, is such that it would be irresponsible for any government to ignore the arguments for change and allow the status quo to continue.

3.33 It has also become clear that resolving the obstacles inherent in the superannuation system which mitigate against many women achieving a retirement income that will ensure a dignified standard of living will benefit all members of society, both male and female and paid and non-paid workers alike.

3.34 Despite the success of the SG in increasing superannuation coverage, there are still some obstacles to be overcome. The Committee is aware that many solutions will be found in areas outside the scope of this inquiry. However, the challenge remains to ensure that the superannuation system that Australia carries into the 21st century is the most equitable system possible so that in future years it will be judged resoundingly as a significant contribution towards ensuring equality and dignity for all members of the community.

## CHAPTER 4:

# OCCUPATIONAL LINK

*Retirement income dependent upon occupational income is a masculine economic concept that has been given virility through legislation.<sup>1</sup>*

### 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.

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<sup>1</sup> 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.<sup>2</sup>

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

<sup>2</sup> 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.<sup>3</sup>

### **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 63½ years. **This appears paradoxical when all my years of full-time employment are taken into account.**<sup>4</sup>

### **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.<sup>5</sup>

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:

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<sup>3</sup> *Super Guarantee - Its Track Record*, Feb 1995, p 91

<sup>4</sup> Evidence, p 432 (emphasis added)

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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.

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<sup>6</sup> SW Sub No 90

<sup>7</sup> 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).<sup>8</sup> 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’.<sup>9</sup>

4.21 The Older Women’s Network (OWN) argued that the government should pay superannuation contributions on behalf of unpaid carers,<sup>10</sup> 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

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<sup>8</sup> SW Sub No 16

<sup>9</sup> Ibid

<sup>10</sup> 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.<sup>11</sup>

4.22 It is clear that the demands on carers greatly reduce their long term career prospects,<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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

<sup>11</sup> SW Sub No 51

<sup>12</sup> Higgins M, SW Sub No 52

<sup>13</sup> SW Sub No 92

<sup>14</sup> Jaques Martin, SW Sub No 17

- is under 70 years of age.<sup>15</sup>

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.<sup>16</sup>

4.26 Jacques Martin Industry considered 'this restriction contradicts community expectations, namely that people should not be forced to retire at age 65'.<sup>17</sup> Given the limits on Reasonable Benefit Limits (RBLs) there seemed 'to be little valid reason for such a restriction'.<sup>18</sup> 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.<sup>19</sup>

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

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<sup>15</sup> Davison R, SW Sub No 101

<sup>16</sup> SW Sub No 98

<sup>17</sup> SW Sub No 17

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

opening the door for employee superannuation contributions to continue after the age of 65.<sup>20</sup>

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.<sup>21</sup>

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?<sup>22</sup>

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;

<sup>20</sup> SW Sub No 41

<sup>21</sup> SW Sub No 101

<sup>22</sup> 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,<sup>23</sup> 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.<sup>24</sup>

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.

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<sup>23</sup> ibid

<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.

<sup>25</sup> Evidence, p 31

<sup>26</sup> 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',<sup>27</sup> 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.

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<sup>27</sup> 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.<sup>28</sup>

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,<sup>29</sup> that social security is provided in times of need and that it is inappropriate to add such

<sup>28</sup> 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

<sup>29</sup> 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.



## CHAPTER 5:

### TAX AND SUPER

*With a high income comes a tax problem and the Government reaches out to help. More thought needs to be put into what is a good incentive for women who tend not to have tax problems ... and what would help them make retirement plans.<sup>1</sup>*

#### **Super is concessionally taxed for some**

5.1 Super is a concessionally taxed savings vehicle.

5.2 Whilst the current superannuation system has greatly improved the potential retirement incomes of women, it must be conceded that the historical development of the system has meant that what currently exists is a superannuation system based upon a regular, reasonably high income working life. It is a system that has focused on male working patterns. Consideration has only just begun on how to accommodate those who have intermittent workforce participation and those on low incomes.

5.3 Given that superannuation is a concessionally taxed vehicle and that it has grown out of a system based on full time paid employment, the tax advantages fall disproportionately to higher income earners.<sup>2</sup>

5.4 Lower income workers pay a higher overall rate of tax than they would have paid had they not received superannuation.<sup>3</sup> Whereas, the tax rate of higher income earners is lowered by the superannuation tax structure.

5.5 Taxation incentives have played a central role in Government policies to encourage saving for retirement through superannuation. Albeit there is now a degree of compulsion in superannuation through the Superannuation Guarantee Charge (SGC), taxation legislation continues to offer concessions for superannuation funds, contributions and benefits.

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<sup>1</sup> Women's Legal Resource Centre, SW Sub No 58

<sup>2</sup> Office of the Status of Women, New Zealand, SW Sub No 7

<sup>3</sup> Playgroup Council of Australia, SW Sub No 13

5.6 The Committee considered whether existing taxation incentives were equitably and sufficiently targeted to provide assistance to women, and to others whose working lives do not fit the traditional model.

### **Why taxation has been used as an incentive for superannuation**

5.7 Because the Commonwealth has no express power under the Constitution to make laws on superannuation, it has relied almost exclusively on its taxation power, especially through provisions in the *Income Tax Assessment Act 1936*, to provide incentives for superannuation. The 1992 SGC legislation is an example of use of the tax power. It imposes a tax on employers who fail to make the minimum Superannuation Guarantee contributions, rather than require compulsory contributions to be made.

5.8 With the advent of award superannuation and the SGC the government needed to increase its level of supervision and regulation of superannuation funds. Accordingly it used a combination of its powers in respect of both corporations and old age pensions to enact the *Superannuation Industry (Supervision) Act 1993* (SIS).

5.9 The Government continues to rely on its taxation powers for the purpose of conferring tax advantages on those funds which comply with the requirements of SIS.

### **Superannuation taxes and incentives**

5.10 Superannuation is taxed at three points:

- on entry to the fund - a contributions tax of 15 per cent;
- whilst in the fund - an earnings tax of 15 per cent, which may be reduced by dividend imputation credits, etc; and
- on receipt of benefits - a benefits tax at 0, 15 or 30 per cent, depending upon the tax that has been previously paid and the amount of the benefit. Benefits over the Reasonable Benefit Limit are taxed at a member's marginal rate.

5.11 Employer contributions are deductible for the employer (subject to upper limits) and are taxed at 15 per cent upon receipt by the fund.

5.12 The end benefit, when paid on or after age 55, is subject to a further tax on that benefit above \$83,168 (indexed to average weekly earnings each 1 July).

5.13 Generally, member employee contributions are not taxed, and for persons on assessable incomes of less than \$31 000, a rebate of 10 cents in the dollar up to \$1 000 per year of contributions is payable, providing a maximum rebate of \$100 per year. The rebateable contribution is \$1 000 for incomes of \$27 000 or less, declining to nil for incomes \$31 000 and above.

5.14 Persons self-employed enjoy full deductibility on the first \$3 000 of contributions, plus 75 per cent of any excess over \$3 000, at their marginal rate of tax. Contributions for which a deduction is claimed are taxed at 15 per cent on receipt by the fund.<sup>4</sup>

5.15 The taxation arrangements for superannuation disadvantage those on low incomes who are most likely to be female, and either part-time or casual employees. Persons on incomes in the range \$5 401 to \$20 700 per annum pay personal income tax at 21.4 per cent while those below \$5 401 pay no tax. Therefore, taxing employer contributions at 15 per cent provides little or no advantage from superannuation for this group.<sup>5</sup> In fact, given the tax on benefits above \$83 168 should such people be able to achieve that amount, there is a tax disincentive to participate in superannuation.<sup>6</sup>

**Recommendation 5.1:**

**The Committee recommends that measures be taken to redress the tax imbalance experienced by low income earners.**

*Capital Gains Tax*

5.16 The Committee is aware of concern in some quarters that pressure for increased efficiency may induce some funds to merge and to risk suffering a capital gains tax impost. At the time of writing, the Senate was due to consider a Bill passed by the House that will ameliorate some of these concerns for a

<sup>4</sup> Jacques Martin Industry, SW Sub No 17

<sup>5</sup> Delphin K, SW Sub No 76

<sup>6</sup> SW Sub No 17

limited period. If enacted, the change to the *Income Tax Assessment Act 1936* will allow certain superannuation funds that merge before 1 July 1997 to effectively roll-over any accrued capital gains or losses that would have been realised by the merger.

### **The taxation of superannuation lump sum benefits**

5.17 Prior to 1 July 1983, only five per cent of a superannuation lump sum was taxed (at the taxpayer's marginal rate). This contrasts to pensions and annuities which were fully assessable, subject to a deduction for the undeducted purchase price (if any) provided by the taxpayer. The very generous tax treatment afforded to lump sums meant any taxpayer with a choice of benefit would inevitably choose a lump sum.

5.18 From 1 July 1983, superannuation lump sums were taxed by considering the benefit in two parts. The pre-July 1983 component continued to be taxed at 5 per cent, while the post-30 June 1983 component was fully assessable, though subject to a rebate that effectively capped the percentage tax liability. (In addition, the tax-free threshold of \$83 168 is applied to the post-30 June 1983 component.)

5.19 The rebate was designed to encourage people to defer receiving a lump sum benefit until they were at least age 55. Amounts received by a person on or after their 55th birthday are subject to a maximum rate of tax of 15 per cent on the first \$50 000 (indexed annually), and a maximum of 30 per cent on the balance. Benefits paid to individuals prior to their 55th birthday are taxed at a uniform rate not exceeding 30 per cent.

#### *Reasonable Benefit Limits (RBLs)*

5.20 The purpose of the RBLs is to limit the amount of concessional tax benefits which a taxpayer can receive. Funds are not permitted to accept tax deductible contributions in excess of the maximum funding limits. However, the amount by which a total benefit paid exceeds the RBL is taxed at the highest marginal rate.

5.21 In a submission calling for the simplification of the tax of superannuation, Mr Phillip Ho submitted that the RBL system should be abolished on the basis that '95 per cent of Australian tax payers are funding the RBL system to ensure the other five per cent would not be significantly better off in their old age'. Mr Ho proposed that if the RBL remain, the following fixed dollar RBL should apply:



- lump sum RBL: zero, or at most twice AWOTE
- pension RBL: unlimited.<sup>7</sup>

5.22 Currently, in accordance with the policy of encouraging retirement income streams rather than the taking of lump sums, two different reasonable benefit limits apply. The RBL set in July 1 1994 was \$400 000 for beneficiaries who elect to take their benefit as a lump sum, while an RBL of \$800 000 applies to benefits taken as an income stream, even if up to half the total benefit was taken in the form of a lump sum. These amounts are adjusted for inflation each year and the current 1995-96 RBLs are \$418 000 and \$836 000 respectively. The Committee considered these levels and some members were of the view that the removal of the indexation of the flat dollar amounts may go some way to alleviating the inequitable distribution of tax concessions between high and low income earners.

#### *Comment*

5.23 The Committee concurs with Mr Tony Cole of LIFA, that while there is an obvious incentive for people with a total retirement benefit of more than \$400 000 to take at least some income stream, it really 'does not impact on the vast majority of the population'.<sup>8</sup> The amounts are simply beyond the likely benefits of most superannuants.

#### **The impact of taxation concessions**

5.24 One argument put to the Committee was that the current arrangements do not make superannuation attractive for low income people. The Australian Council of Social Services (ACOSS) considered:

the tax subsidies for superannuation should be restructured to increase the effective subsidy for low income earners and reduce that for high income earners.<sup>9</sup>

ACOSS also considered that the 'excessive' tax concessions for high income people were wasteful, as:

high income earners are likely to save in the absence of tax concessions for superannuation.<sup>10</sup>

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<sup>7</sup> SW Sub No 45

<sup>8</sup> Evidence, p 264

<sup>9</sup> SW Sub No 62

5.25 This latter view accords with accepted economic theory which asserts there is a greater ability to save among high income earners than low, and with common sense which suggests if you haven't got it you can't save it. Another aspect of the relative greater advantage afforded higher income earners is they have a greater capacity to forgo current income in favour of superannuation.

5.26 Mr David Vernon of Jacques Martin Pty Ltd, discussed the rebate on member contributions which cuts out at income level \$31 000. He believed the rebate 'should be looked at to encourage people to make voluntary contributions'.<sup>11</sup> On the other hand, Mr Donald Blyth from the Trustee Corporations Association of Australia, advocated tax deductibility. He believed tax incentives were necessary as people would not voluntarily contribute.<sup>12</sup>

5.27 Perhaps the position of lower income people was made most clear in the submission of the Victorian Minister for Women's Affairs quoting ABS Statistics:

For those on a high marginal tax rate, the key incentive to make superannuation contributions is the 15 per cent tax rate applying to scheme earnings in salary sacrifice arrangements. However, 52 per cent of women earn less than \$400 per week. At an income lower than \$400 per week the marginal tax rate is 20 per cent, accordingly the overall rate is 15 per cent. Therefore, for many women who forgo some part of a small income for membership in a superannuation scheme, there is no tax advantage whatsoever.<sup>13</sup>

#### *Other parts of retirement incomes policy*

5.28 Taxation concessions are part of retirement incomes policy. It was pointed out that the welfare and age pension system is 'highly progressive in its design and should be seen as offsetting, to some extent, the regressive feature of the tax deduction arrangements'.<sup>14</sup> The Committee considers this fair comment.

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<sup>10</sup> ibid

<sup>11</sup> Evidence, p 55

<sup>12</sup> Evidence, p 100

<sup>13</sup> SW Sub No 66

<sup>14</sup> Smith G, Evidence, p 600

## Incentive proposals for lower income earners

5.29 The proposed use of rebates was a common theme. For example, Mr David Vernon of Jacques Martin Pty Ltd, advocated a tax rebate for the first \$500 a person contributes to a superannuation fund on their own behalf when they commence employment.<sup>15</sup> The Institute of Actuaries of Australia also favoured the use of a rebate on contributions and indicated a complex of features that such a rebate could have.<sup>16</sup>

5.30 The Association of Superannuation Funds of Australia (ASFA) listed a number of options relating to tax incentives which have been 'put forward by various organisations and individuals in the community as a means of increasing superannuation coverage of the population or of improving equity in the tax system'.<sup>17</sup> Among these options were:

- a universal rebate for everyone (employed or not) on all personal contributions up to the RBL limit;
- removal of the 15 per cent tax on member balances up to \$500; and
- the issue of tax credits to people out of work, who have a nil marginal tax rate, which could be credited to their superannuation fund.

5.31 The Committee is aware that in many, and probably most, cases people on low incomes would prefer cash in hand rather than see their superannuation grow.<sup>18</sup> Also, in relation to tax incentives, the Women's Legal Resources Centre said:

More thought needs to be put into what is a good incentive for women who tend not to have tax problems.<sup>19</sup>

5.32 ACOSS suggested reform of the tax concessions by:

- taxing both employer contributions and fund earnings at the individual member's marginal rate;

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<sup>15</sup> Evidence, p 55

<sup>16</sup> SW Sub No 61

<sup>17</sup> SW Sub No 43

<sup>18</sup> Australian Women in Agriculture, SW Sub No 44

<sup>19</sup> SW Sub No 58

- partly offsetting these taxes with a rebate to members, calculated on an annual or lifetime basis and paid annually into the fund; and
- removing taxes on benefits, except for large lump sums and pre-retirement payments.

Finally, as a package option, ACOSS proposed 'at the least':

replacing the 15 per cent tax on employer contributions and present concessions for employee contributions by a flat tax rebate, substantially reducing the present reasonable benefit limits, and increasing the tax applied on large lump sums.<sup>20</sup>

5.33 The proposals for rebate arrangements were varied and sometimes complicated in concept, quite apart from the administrative detail. ACOSS did not accept it was reasonable to apply a rebate system that included individual marginal tax rates. It was a matter which had been 'looked at very thoroughly a few years ago' and 'to run a system that requires taking into account individual members' marginal tax rates is generally regarded as not workable'.<sup>21</sup> Also, Treasury commented specifically on employer based schemes:

[w]e have noted that with an employer based scheme and with a scheme that includes promised benefits in the design, it is technically quite difficult, if not impossible, to design a rebate structure that would be equitable, effective and administratively workable.<sup>22</sup>

5.34 Ms Anna Adams, of Olsberg Adams and Associates, offered some positive anecdotal support for current arrangements. Ms Adams advised she was a registered nurse, working as a palliative care nurse in the community and in contact with carers of the terminally ill. As a home educator too, she encountered many women opting to take longer periods out of the workforce.

5.35 Ms Adams had conducted interviews in research with 'women and focus groups about their working patterns'. That was probably her 'main area of interest'.<sup>23</sup> In response to questioning about positive incentives she said:

A lot of the women that I interviewed, even with their very small incomes, are very appreciative of having superannuation. They say,

<sup>20</sup> SW Sub No 62

<sup>21</sup> Maroney T, Evidence, p 198

<sup>22</sup> Smith G, Evidence, p 600

<sup>23</sup> Evidence, p 217

and I have heard it repeatedly, that it is good that somebody actually saves money for them ... When they have extra I think that giving them an incentive means that they do put in money. That would encourage them a lot to think that it was possible to make it. Their own perception is that they waste money.<sup>24</sup>

### *Other forms of tax assisted savings*

5.36 During the course of the Committee's inquiry, and generally from time to time, various alternatives to superannuation sponsorship have been proposed as appropriate action for the Government.

5.37 A suggestion from Ms Eva Cox, Co-Convener of the Women's Economic Think Tank, was for a 'drawing account' which could be drawn upon for certain costs such as those relating to disability or child rearing, with what is left over going to superannuation. Ms Cox said such an arrangement:

would at least prove a reasonable savings option for a lot of people because it had flexibility.<sup>25</sup>

5.38 Ms Cox did not think the current arrangements for taxation concessions for superannuation helped women. She said:

Having something which is entirely based on retirement, given actuarial details, given women's work pattern problems and so on, it is neither going to provide them with a decent retirement income nor is it going to deal with a whole lot of other issues that need to be dealt with - financial demand points - at other points in their lives. Because we are the child bearers and withdraw from the workforce to take care of ageing parents.<sup>26</sup>

5.39 An option considered by the Committee was a tax assisted, long-term, savings vehicle as an alternative to superannuation. This would be available to individuals only (not partnerships or trusts), with easy access along the lines of the account proposed by Ms Cox. Such vehicles would be less concessionally taxed than the current superannuation arrangements in recognition of the preserved status of superannuation monies. There would be no tax payable for low income earners. The Committee commends this concept for further consideration.

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<sup>24</sup> Evidence, p 227

<sup>25</sup> Evidence, p 305

<sup>26</sup> *ibid*

*Conclusion*

5.40 The Committee is not persuaded that major reform of the system of taxation incentives is warranted, but considers some form of additional taxation incentive for those on low incomes to save is justified, both within and outside the superannuation arena.

## CHAPTER 6:

### CHOICE OF FUND

*Freedom of choice in superannuation is very much a two-edged sword.<sup>1</sup>*

#### **The call for choice**

6.1 The question of choice of fund was raised by a number of individuals as a solution to the difficulties they had experienced in maintaining the integrity of their own superannuation. These individuals had a history of broken workforce participation and small superannuation accounts.<sup>2</sup> Others had significant personal superannuation and small amounts of employer sponsored superannuation split between two accounts.<sup>3</sup>

6.2 Ms Andrea Malone submitted that her ability to accumulate superannuation savings has been hindered by account keeping fees, cashing out of small amounts, and intra and interstate moves. The result was that she had membership of some four different superannuation schemes. As part of her submission she proposed:

that any compulsory schemes should be established on a national basis and the worker should have the choice of joining a scheme and remaining with it as she moves from job to job. It is quite inappropriate to place the onus on individual workers to keep track of all the sundry schemes to which they are forced to belong.<sup>4</sup>

6.3 The Committee accepts that the circumstances described by Ms Malone, which have been called the 'small amounts problem', could have been alleviated by her being able to choose one fund and have all contributions paid to it.

6.4 The 'small amounts problems' of Ms Malone and others<sup>5</sup> could also have been alleviated if mechanisms were in place that would have prevented the erosion of those amounts and enabled the accounts to be consolidated easily.

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<sup>1</sup> Stevens R, Evidence, p 168

<sup>2</sup> For example, see SW Sub Nos 8, 12, 22, 51

<sup>3</sup> For example, Hunter R, SW Sub No 34

<sup>4</sup> SW Sub No 12

<sup>5</sup> For example Shellham E, SW Sub No 84

This problem has been largely overcome by the approach that has been adopted with the member protection rules for amounts under \$1 000 and the transfer protocol. The Committee has recommended in Chapter 7 that all accumulation funds be required to participate in the transfer protocol if they accept compulsory contributions.

6.5 Notwithstanding the mechanisms that have been put in place to address the 'small amounts problem', choice of fund remains a highly sensitive issue within the superannuation industry<sup>6</sup> and between the major political parties.

6.6 The Committee looked briefly at the issue of member choice of fund in Chapter 2 of its Fourteenth Report, *Super Regs II*.

6.7 The entitlement to choose a superannuation fund depends on the individual's circumstances of employment. For example, a self-employed person may establish their own fund or choose from a variety of public offer funds. They are free to change superannuation funds at will, subject of course to entry and exit fees, which can be quite an inhibiting factor.

6.8 The Superannuation Guarantee scheme does not provide such opportunities for employees. It requires the employer to make superannuation contributions on behalf of employees to complying regulated superannuation funds. It may be the employer who chooses the particular fund into which the contributions are paid. Otherwise, limits on which fund can be selected are often imposed by awards.

6.9 In *Super Regs II* the Committee reported that most States have enacted legislation affecting State awards to allow employee choice of fund, provided the employer agrees. The Committee did not receive evidence in this inquiry on how such provisions have been utilised.

6.10 The question of fund choice elicited some vigorous responses in this inquiry. A wide range of issues were identified as relevant to a proper exposition of the question.

6.11 The issues identified in the inquiry as relevant in any consideration of the choice of fund issue are:

- the ability of consumers to make a informed choice, particularly the consequences of different vesting rules;
  - the actual power of an employee to exercise choice;
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<sup>6</sup> Alexander Consulting, SW Sub No 69



- effective portability;
- effective protection of small balances;
- the impact on employers;
- a sense of ownership on the part of superannuation account holders;
- competition;
- the extent to which a fund meets the needs of the individual's circumstances; and
- the appropriateness of the investment strategy of the nominated fund to the individual.

### *Informed choice*

6.12 The Industry Funds Forum (IFF) and the Sex Discrimination Commissioner both expressed concern that employees might make decisions that adversely affect their retirement income. For example, Ms Walpole said of women who have broken work histories and choose a defined benefit fund:

Unless women are aware of the impact of discriminatory vesting rules, this could be a very costly "choice" for them.<sup>7</sup>

6.13 Ms Malone highlighted the problem when she advised the Committee:

I am neither uneducated, nor uninterested in my superannuation but I am at a loss to know how to get the information I need to make informed decisions, what to do about the small amounts of money presently floating around in various unknown funds, how to "roll over" the separate amounts (or even what "roll over" means!) or how I should plan for, and incorporate, this compulsory system into a future which will inevitably involve constantly changing employment.<sup>8</sup>

6.14 The Committee concurs with the IFF submission that any moves toward member choice of fund need to be on the basis that the choice is:

- informed - through consistent disclosure of all costs and features of funds in accessible language, and

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<sup>7</sup> SW Sub No 89, Vesting provisions are examined in Chapter 7

<sup>8</sup> SW Sub No 12

- universal - the choice option needs to be offered to all employees.

6.15 Some members of the Committee supported choice on the basis that it would be collective so as to avoid the prospect of each employee in a workplace having a different nominated fund. Some Senators also expressed concern for those workers who cannot access membership to an industry fund and the portability that accompanies that membership. This is particularly important for casual and part-time workers. In that context, the Opposition Senators would like to see a far greater degree of choice so as to accommodate such workers.<sup>9</sup>

#### *Appropriate investment strategies*

6.16 The investment strategy of a particular industry fund may not be appropriate for a particular employee and current legislation does not provide for mandatory investment choice. The SIS legislation prescribes the circumstances where a trustee may be given directions relating to investment strategy, but such choices, known as member or beneficiary investment choice (BIC), are only possible at the discretion of the trustee.<sup>10</sup>

6.17 At different stages in an individual employee's life, different aspects of superannuation will be more important. For example, benefit levels in relation to family protection may be the highest priority in early years, while in the later years there will be more interest in retirement planning. Mr Robert Musgrave of LUPAC was concerned that not only was there no choice of fund, but there was no freedom of choice in the structure of benefits.<sup>11</sup>

6.18 It is therefore important that all funds ensure that their members have access to an investment strategy that is appropriate for them. The Committee recommended in a previous report that all standard employer-sponsored funds with fifty or more members be required to offer member investment choice.<sup>12</sup> The Committee is of the view that in an environment of limited choice of fund, access to appropriate investment strategies is imperative.

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<sup>9</sup> SW Sub No 77C

<sup>10</sup> *Super Regs II*, p 8

<sup>11</sup> Evidence, p 372

<sup>12</sup> *Super Regs II*, 1994, p 31

*Administrative complexity*

6.19 The issue of administrative complexity was put to the Committee.<sup>13</sup> It was argued that the cost of choice of fund could be 'quite significant for a lot of small businesses'<sup>14</sup> and that it would increase the administration required by employers to meet their superannuation requirements. However, evidence of systems that would facilitate the payment of superannuation contributions under a regime of employee choice for both small and large employers was presented.<sup>15</sup> These systems include:

For large employers:

- deskbank - a service through which a company electronically pays contributions to multiple funds, and
- diskette - a computer disk and single cheque is provided to bank for processing through banking system to superannuation accounts.

For small employers:

- list pay - list of employees, funds bank account and member account numbers and single cheque provided to bank for processing through banking system to superannuation accounts, and
- direct deposit - deposit book for each employee's fund. Employer pays by cheque to bank.<sup>16</sup>

6.20 The Committee also heard from Australia Post who submitted that they are equipped with the necessary technology to process banking and other financial transactions on-line. This technology could also provide for the collection, processing and disbursement of payments to superannuation funds. Such a service would be especially valuable to those small businesses without computer technology. These businesses would be able to simply provide Australia Post with one cheque and payment details.<sup>17</sup>

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<sup>13</sup> Women in Horticulture, SW Sub No 5

<sup>14</sup> Evidence, p 583

<sup>15</sup> Jemi L, SW Sub No 91

<sup>16</sup> SW Sub No 77 (A number of ARISA members withdrew from the ARISA submission: see SW Sub Nos 77A-7711)

<sup>17</sup> SW Sub No 67

## Access to the Australian Taxation Office and other national schemes

6.21 The concept of a government scheme into which any employee could choose to have their superannuation contributions paid was suggested in a number of submissions.<sup>18</sup>

6.22 The Committee first considered the new ATO arrangements with regard to small balances and whether some extension of this scheme was warranted. It was submitted that 'there should be a mechanism for automatic transfer of small amounts and contributions to the Australian Taxation Office (ATO), rather than leaving it to the discretion of employers'. It was further suggested that the ATO should pay interest of at least four per cent on small balances.<sup>19</sup>

6.23 Ms Allison McClelland, of the Australian Council of Social Service (ACOSS), said her organisation believed employees should be able to transfer their 'small contributions' to the ATO if they wished and not be dependent on the employer deciding on their behalf. She believed this was a denial of freedom of choice which would not be regarded as fair in other markets. A minimal rate of return of four per cent was suggested, given the use of that figure by the Department of Social Security as a 'deeming rate'.<sup>20</sup>

6.24 In one of the proposals that employees should be able to choose a public administered national superannuation fund (NSF), it was said of member choice:

At present if any choice is available it is only among funds in the private sector. We suggest that for superannuation members to have real choice, that is, a choice that emphasises security, that choice should be between a publicly or privately managed superannuation fund.<sup>21</sup>

6.25 It was suggested that a NSF would have other advantages. Being broadly based it would be a 'repository and accumulation fund' for those funds that cannot be managed economically by the private sector. There would be no need for involvement of the ATO in member protection and small amounts. Services such as housing finance could be made available to a wider section of the community through an NSF than would be the case in the private sector. Investment strategies of an NSF could incorporate broader social objectives

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<sup>18</sup> Examples see SW Sub Nos 18, 24, 64

<sup>19</sup> ACOSS, SW Sub No 62

<sup>20</sup> Evidence, p 81

<sup>21</sup> Gallery N & G, SW Sub No 771

such as funding infrastructure and venture capital. An NSF could be a benchmark for measuring the performance of private funds and provide model operating and disclosure standards.<sup>22</sup>

6.26 The Cabinet Office of NSW identified the ‘development of a central superannuation fund available to all, but targeting low income earners and having a small administration fee’ as an initiative that would take account of the differences between male and female earnings and savings patterns.<sup>23</sup>

6.27 It was argued by Natalie and Gerry Gallery that ‘by establishing an NSF, the Government will demonstrate that it is effectively discharging its responsibility to provide Australians with an efficient long-term retirement income system that is secure, accessible and equitable’.<sup>24</sup>

### *SHAR and choice*

6.28 The Committee notes that a person with amounts in the SHAR system effectively has some choice. Such individuals may nominate where the money in their SHAR account is to be paid.<sup>25</sup>

6.29 The Committee supports the choice provided to these small account holders. It considers that small account holders whose employers do not facilitate this avenue of choice may feel disadvantaged.

## **Conclusions**

6.30 The concepts of freedom and choice are important in a democratic society. They attract costs as well as benefits however, and in order to strike the proper balances a creative tension is often present from which solutions may emerge. In markets such as superannuation which are always imperfect, it is often necessary to offer protection to individuals, as well as maintaining their freedom to choose within those same markets.

6.31 Members of the Committee hold strongly different views on the issue of employee choice of fund. These reflect the different philosophies of the political parties.

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<sup>22</sup> *ibid*

<sup>23</sup> SW Sub No 41

<sup>24</sup> SW Sub No 771

<sup>25</sup> Australian Taxation Office, SW Sub No 65



## CHAPTER 7:

# DISCRIMINATION, THE SEX DISCRIMINATION ACT AND SUPERANNUATION

*Even after July 1 1994, ... the requirement for superannuation to be non-discriminatory will still be limited .... It is reminiscent of St Augustine's plea to God to make him holy ... but not yet.<sup>1</sup>*

7.1 Currently, superannuation is explicitly excluded from anti-discrimination laws across the country, for reasons discussed in paragraph 6.18.

7.2 The questions of if, and how, discrimination in the superannuation system should be addressed go to the heart of many of the concerns associated with the adequacy of the retirement incomes policy and its impact on those whose retirement will not follow on from a traditional male employment pattern.

7.3 The idea of fair reward for effort is widely accepted in Australia and unjustified and unreasonable deviations from that guiding principle often attract community dissent.

7.4 The evidence presented to the Committee suggests that while superannuation has improved significantly in the last decade, concern remains about the equity and adequacy of occupational superannuation, particularly for those people whose workforce participation falls outside the traditional 30 to 40 year working life pattern.

7.5 Prior to any discussion of discrimination in the superannuation system, it is important to understand the context within which superannuation functions in relation to this issue. However, it should be noted that superannuation is explicitly excluded from anti-discrimination laws across the country.

### **The Sex Discrimination Act 1984 and superannuation**

7.6 While sex discrimination laws have been enacted, or are in the process of being enacted, in all States and Territories, the purview of this Committee has dictated that attention be focussed on the operation, impact and, if appropriate, remedy of sex discrimination at the Commonwealth level.

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<sup>1</sup> Sex Discrimination Commissioner, SW Sub No 89

7.7 The *Sex Discrimination Act 1984* (Cth) (the Act) aims to provide redress for injustices or disadvantages experienced by people because of their sex, marital status or pregnancy and, in relation to dismissal, because of their family responsibilities. It also aims to redress injustice and disadvantages (particularly for women) in access to goods and services, such as superannuation.<sup>2</sup>

7.8 The operation of superannuation or provident fund schemes was initially exempted from the Act for a two year period. This was extended until, in 1991, a more limited exemption replaced it. After further administrative exemptions, the new sections of the Act relating to superannuation - sections 41A and 41B - came into effect on 1 July 1994. The following areas remain immune:

- reasonably based actuarial or statistical data;
- the provision of dependant superannuation where there is no spouse or children;
- indirect discrimination in relation to vesting, preservation or portability of benefits; and
- discrimination in the terms and conditions of superannuation funds which were in existence prior to implementation of the amendments, provided they have offered their members an option to obtain benefits which do not discriminate in any other way than those granted under the other three exemptions.<sup>3</sup>

7.9 Guidelines providing more detailed information for the superannuation industry in relation to a number of complex and difficult areas in the provision of superannuation benefits have been produced by the Human Rights and Equal Opportunity Commission (HREOC) in conjunction with a Superannuation Industry Taskforce. These complement earlier Guidelines, released in 1993, which provided general guidance for industry in complying with the provisions of the Act relating to superannuation.<sup>4</sup>

7.10 The *Sex Discrimination Act 1984* defines discrimination as either direct or indirect.

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<sup>2</sup> ibid

<sup>3</sup> ibid

<sup>4</sup> ibid



### *Direct discrimination*

7.11 Direct discrimination occurs when a person receives less favourable treatment than another person because of their sex or marital status. Ms Walpole, the Sex Discrimination Commissioner, provided an example of direct discrimination as a woman being refused superannuation because she is a woman, or if a married woman was treated differently in the terms and benefits of a superannuation scheme than was a married man.<sup>5</sup>

7.12 Other examples of direct discrimination in superannuation cited were:

- lower death and disability coverage for women;
- different retirement provisions for women;
- no payment of benefit to a woman's surviving spouse, or on proving dependency;
- marriage/dowry benefits; and
- differential provisions regarding desertion and imprisonment.<sup>6</sup>

### *Indirect discrimination*

7.13 Indirect discrimination occurs when there is an unreasonable application of a requirement or condition which has a disproportionate effect on people of a particular sex or marital status. In ascertaining whether indirect discrimination has occurred, the impact of a requirement or conditions is the important factor, not the intention of the discriminator.<sup>7</sup>

7.14 According to the Sex Discrimination Commissioner, indirect discrimination is more subtle, in that it recognises that whilst active prejudice may not exist, the effect of a practice may unfairly exclude certain groups from benefits available to other groups.<sup>8</sup>

7.15 The Sex Discrimination Commissioner cited the example of indirect discrimination of a superannuation scheme that denied membership to part-time

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<sup>5</sup> ibid

<sup>6</sup> Human Rights and Equal Opportunity Commission, *Superannuation and the Sex Discrimination Act 1984: Current Status and Future Directions*, 1994, pp 3-4

<sup>7</sup> Human Rights and Equal Opportunity Commission, *Background paper: the Sex Discrimination Act and superannuation*, 1995, p 2

<sup>8</sup> ibid, pp 1-2

workers. Those workers were mainly female, and this action was judged to be unreasonable in the circumstances by the Human Rights and Equal Opportunity Commission.<sup>9</sup>

7.16 Other examples of indirect discrimination cited include:

- no or little entitlement to benefits if employees leave before retirement;
- requirements for very long periods of employment for vesting;
- a reduced benefit to a surviving non-contributing spouse;
- the inability to continue superannuation contributions during maternity leave and periods of workforce absence for child rearing;
- there being 8 per cent of workers earning below the Superannuation Guarantee commencement level, of which most are women; and
- the regressive nature of the tax concessions in the superannuation system, which are of little benefit to low income earners.<sup>10</sup>

7.17 The Human Rights and Equal Opportunity Commission also notes that other factors indirectly discriminate against women in relation to the accumulation of superannuation assets:

- women's work patterns typically involve less time in the paid workforce than men's. Women are penalised for non-contributory periods and sometimes are additionally disadvantaged by losing eligibility for membership through breaks in paid employment or by having small contributions from various jobs in various funds eroded by multiple administrative charges. Greater incidence of early retirement (for family reasons) also limits superannuation contributions;
- women's lower earnings mean lower benefits in an occupationally based scheme; and
- women are less likely to have their own superannuation, though they will have contributed to a household's capacity to pay for men's contributions.<sup>11</sup>

<sup>9</sup> SW Sub No 89

<sup>10</sup> Human Rights and Equal Opportunity Commission, *Superannuation and the Sex Discrimination Act 1984: Current Status and Future Directions*, 1994, p 3

<sup>11</sup> *ibid*, p 4

## **Why the Sex Discrimination Act exempts certain aspects of superannuation**

7.18 According to the Sex Discrimination Commissioner, the exemption from the Commonwealth Sex Discrimination Act was originally intended to apply for two years only.<sup>12</sup> The reasons given for the exemption generally, and its intended removal, are found in the Second Reading Speech on the Sex Discrimination Bill in October 1983:

the Government will not make any regulations until an inquiry into the problems raised by the life insurance and superannuation industry association has been held and the industry's major concerns have been examined and met where appropriate. At the same time, the Government is signalling its intention in principle that the Sex Discrimination Act should - and in due course, will - cover superannuation schemes.<sup>13</sup>

7.19 Review of the operation of the Act is continuing. The Australian Association of Superfunds (ASFA) is a working party participant in the current review of the Act.<sup>14</sup>

7.20 Nevertheless, more than ten years after the enactment of the Act, the Committee considers it a proper question to ask the following questions:

Does eliminating discrimination in superannuation mean making retirement incomes equal?

To what extent should the superannuation system be beholden to the existing discrimination?

Are there other areas of discrimination inherent in superannuation that need to be addressed?

### **Does eliminating discrimination mean making retirement incomes equal?**

7.21 Evidence provided to the Committee highlighted an ongoing conundrum as to how discrimination should be assessed. Should it be on the basis of whether formal equality or substantive equality is sought between those people whose workforce participation falls outside the traditional 30 to 40 year pattern and those who do not.

<sup>12</sup> SW Sub No 89

<sup>13</sup> Second reading speech *Sex Discrimination Bill* October 1983.

<sup>14</sup> SW Sub No 43

7.22 The Queensland Office of the Cabinet illustrated this distinction, saying:

While the Sex Discrimination Amendment Act prevents some forms of discrimination it does not address issues such as the fact that women retire earlier, sustain longer term disabilities and live longer, and that these factors are the basis for calculating lump sums and retirement benefits.<sup>15</sup>

7.23 The elimination of discrimination for the purposes of achieving *formal equality* would result in treating people equally without regard to the unequal retirement income outcomes that might be produced.

7.24 In contrast, a goal of achieving *substantive equality* would probably focus on the outcomes, that is, an individual's actual ability to provide for retirement. It would result in removing discrimination so that given people's unequal opportunities, talents and fortunes, the outcome would be substantively equal.

7.25 The evidence submitted to the Committee clearly indicated that neither of these approaches was universally accepted, and that addressing discrimination as a solution to the superannuation problems for people with broken work patterns would require a path to be negotiated which lay somewhere between the two.

7.26 It is the Committee's view that there should be no pretence that all Australians will receive an identical amount of superannuation upon retirement. As superannuation is occupationally based, and the amount of income earned typically varies between individuals, the amount of superannuation one person receives upon their retirement will invariably be different from the next person.

**To what extent should the superannuation system be beholden to the existing discrimination?**

7.27 Evidence presented to the Committee reflected a broad range of opinions as to the extent that the superannuation system could, and should, be beholden to existing discrimination.

7.28 Dr Olsberg, from the University of New South Wales, argued that while compulsory universal superannuation has appeared to eliminate direct discriminatory practices, indirect discrimination remained.<sup>16</sup> She argued that 'making retirement income dependent upon occupational income ... is a masculine concept that has been given virility through legislation' and that occupational superannuation would remain 'gender biased so long as unpaid

<sup>15</sup> SW Sub No 48

<sup>16</sup> SW Sub No 9

caring roles, which are enormously valuable to society and absolutely necessary, received no recognition whatsoever in terms of retirement income'.<sup>17</sup>

7.29 Dr Olsberg concluded that 'any retirement income savings scheme that is [dependent on paid employment] contains an inbuilt structural bias against women'.<sup>18</sup>

7.30 The Queensland Office of Cabinet supported this view, submitting that 'inherent discrimination is evident in the foundation blocks of superannuation in Australia ... the original design of superannuation was that the end result of participation was a comfortable lifestyle when the worker was of retirement age, which is based on men's continuous work patterns and men's average earnings'.<sup>19</sup> Many others who appeared before the Committee or presented submissions also supported this position.<sup>20</sup>

7.31 On the other hand, the majority of superannuation providers and administrators saw the problems of discrimination largely attributable to factors beyond the boundaries of superannuation administration. Some providers did agree with the need and appropriateness of reform, particularly in areas concerning the different rates of payment for male and female annuities. This is discussed in Chapter 8.

7.32 The Insurance and Superannuation Commission (ISC) identified lower gains from occupational superannuation for women as not stemming from 'discriminatory superannuation rules as such, but from traditional patterns and practices in the family, society and the workplace that result in lower lifetime earnings for many women' and argued that 'major changes in patterns of work and social life ... are likely to substantially reduce the differences between male and female participation rates in the full-time workforce and between their lifetime earnings'.<sup>21</sup>

7.33 In evidence before the Committee, the ISC argued that, because 'discrimination emerging in superannuation is primarily a consequence of differences elsewhere, ... a logical consequence of what is occurring elsewhere ... addressing issues in the superannuation context is not addressing the root cause'.<sup>22</sup> The ISC was of the view that 'the changes [to the superannuation

<sup>17</sup> Evidence, pp 218- 219

<sup>18</sup> SW Sub No 9

<sup>19</sup> SW Sub No 48

<sup>20</sup> SW Sub Nos 33, Alexander E; 47, BPW Australia; 57, Sinha T; 58, The Women's Legal Resource Centre

<sup>21</sup> SW Sub No 37

<sup>22</sup> Evidence, pp 627-628

system to date] have minimised the discrimination that is involved in an occupationally based superannuation system'.<sup>23</sup>

7.34 The Committee supports the position that the superannuation must not be beholden to the indirect discrimination. It is strongly of the belief that where discrimination is found to be unjustified, it should be remedied as soon as practicable. It is on this basis that the Committee supports withdrawal of the exclusion of the issues of vesting, portability and preservation from the *Sex Discrimination Act 1984*.

*Vesting, portability and preservation*

7.35 Three areas of superannuation which remain immune from the *Sex Discrimination Act 1984* are those of vesting, preservation and portability.<sup>24</sup> Ms Walpole recommended the removal of these exemptions.<sup>25</sup>

- *Vesting*

7.36 Many women have fragmented working lives, and vesting and portability are considered 'critical issues' in addressing these problems. Ms Walpole submitted:

Vesting is the key area in discriminating between the final benefits received by men and women. While the SGC and industry funds generally provide for immediate 100% vesting of employer contributions, there remain large numbers of women with additional super through their membership of employment sponsored funds in the public and corporate sectors, where long vesting periods persist.<sup>26</sup>

7.37 In the Commonwealth Public Service schemes, the vesting and preservation of benefits are important features. The Commonwealth Superannuation Scheme (CSS) provides for full vesting and preservation of the employer financed portion of the benefit after 5 years on the election of the exiting member. (Most CSS members will have fully vested benefits as from 1 July 1995.) The Public Sector Superannuation scheme (PSS) has provided full vesting of all benefits since 1 July 1992.<sup>27</sup>

<sup>23</sup> Evidence, p 630

<sup>24</sup> *Sex Discrimination Act 1984*, Section 41A (1) (b) (iii)

<sup>25</sup> SW Sub No 89

<sup>26</sup> *ibid*

<sup>27</sup> SW Sub No 40

7.38 In the industry overall, ASFA submitted that the move to vesting was inhibited prior to 1983 by the lack of rollover facilities and preservation requirements, but 'since the introduction of rollover facilities the pace of improvements to vesting has been faster'. It believed that 'any mandatory vesting requirements would be difficult to design' and would encourage employers to not make any contributions above the minimum required under the SG.<sup>28</sup> Rather it felt that 'employers should be encouraged to continue to move to a higher level of vesting for voluntary employer superannuation', although exactly how this encouragement could be given was not examined.

7.39 There was also the views from consumer groups. For example, the Shell Superannuation Rights Committee recommended compulsory full vesting after a qualification period of 4 to 5 years<sup>29</sup>, while the Australian Education Union advocated full vesting of employer contributions for every individual to apply on resignation, invalidity, retrenchment, dismissal, death and retirement.<sup>30</sup>

7.40 Ms Walpole was strong in her attitude of vesting as a matter of discrimination:

Vesting, it seems to me, is really quite crucial. All the ABS data indicates to us that not only do women spend a shorter period of time in the workforce but they spend shorter periods in time in each particular job. The longer the vesting time, of course, the less likely they are ever to receive the employer contributions. We have argued in different contexts that this is clearly a situation where issues of indirect discrimination became quite important.<sup>31</sup>

She was quite clear that there was indirect sex discrimination with regards to vesting.<sup>32</sup>

7.41 Ms Walpole discussed her proposal to have the superannuation exemptions removed from the Act, with vesting and portability being the first priority. She said she wished to 'collect some more information, and have some more discussions with industry', and indicated that 12 months was an appropriate time within which the remaining exemptions for superannuation should be removed from the Act.<sup>33</sup>

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<sup>28</sup> SW Sub No 43

<sup>29</sup> Collins C, SW Sub No 80

<sup>30</sup> SW Sub No 93

<sup>31</sup> Evidence, p 643

<sup>32</sup> Evidence, p 653

<sup>33</sup> Evidence, pp 652, 653

- *What about portability*

7.42 The significance of the link of portability with vesting in the priorities of the Sex Discrimination Commissioner were expressed in Ms Walpole's submission:

While ever funds allow for no vesting of the employer's contribution, until [a] certain length of service...women with family or carer responsibilities will pay a high price. Sex equality in pensions becomes even less likely if such funds limit portability, thus effectively hitting women with a double whammy. They can't get up the years required for vesting and their employment continuity is constantly underestimated because they can't take what they have accumulated to their next employer.<sup>34</sup>

7.43 Other evidence was also strongly supportive of portability.<sup>35</sup> Essentially, portability is helpful with the small accounts problem and in assisting contributors to 'own' their superannuation. Where contributors are able to roll their benefits into a new employer's scheme there is clearly an incentive for women with intermittent work patterns to participate in superannuation, as well as it being more appropriate to their needs.<sup>36</sup>

7.44 From the industry's point of view, ASFA contended that portability is sometimes misunderstood and confused with vesting.<sup>37</sup> Examples of this may be where the lower vesting of amounts above the SG are seen as a portability issue, or where funds provide deferred retirement benefits as an alternative to paying out the vested benefit when the member leaves (such as in many public sector plans). ASFA considered that:

The problem of portability or 'consolidation' of superannuation amounts in one fund is small compared to the likely gains from deferring a benefit.<sup>38</sup>

7.45 It was said there was good economic sense in encouraging deferred benefits, in that portability of benefits 'may create liquidity and short term solvency constraints on funds investment policies'.<sup>39</sup>

<sup>34</sup> SW Sub No 89

<sup>35</sup> Examples see SW Sub Nos 12, Malone A, 24, Australian Education Union (Tasmanian Branch), and 30, Marcus J

<sup>36</sup> SW Sub No 24

<sup>37</sup> SW Sub No 43

<sup>38</sup> *ibid*

<sup>39</sup> *ibid*



7.46 The Committee considers that the issue of so-called deferred benefits is distinct from portability. Whether vested contributions remain with the same fund or are withdrawn and transferred to another fund, they are still required at law to be preserved for retirement, unless under the \$500 limit.

7.47 It is important in the context of portability that easy and inexpensive transfer of accumulated contributions between funds be facilitated. The Committee examined the question of transfer protocols in its Fifteenth Report *Super Guarantee - Its Track Record*, and recommended the Government ensure that appropriate transfer protocols are adopted by all participating funds, and added:

Once the transfer protocol is implemented, fees should be set at a level which reflect minimum cost to the member. *The cost should not be punitive and should not hinder portability.*<sup>40</sup>

7.48 The evidence of this inquiry has confirmed the Committee's view that all superannuation members should have access to cost effective portability.

7.49 The Committee reiterates its recommendation on transfer protocols and believes that accumulation schemes should move to full portability.

**Recommendation 7.1:**

**The Committee recommends that the Government ensure that appropriate transfer protocols are adopted by all accumulation funds accepting compulsory contributions.**

• *And preservation*

7.50 The *Superannuation Industry (Supervision) Act 1993* (SIS) essentially provides that members of a fund cannot access the money in their superannuation account.

7.51 However, if a person has a benefit of less than \$500 when they leave an employer, access to that amount is permitted. This is a deficiency in current policy which facilitates against those with broken work patterns being encouraged to build up their superannuation entitlement on retirement.

<sup>40</sup> Fifteenth Report, p 69

7.52 The Committee confirms its recommendation in its Fifteenth Report, that, subject to the small accounts problem being properly rectified, access to preserved amounts of less than \$500 should be removed.<sup>41</sup>

**Recommendation 7.2:**

**The Committee recommends that the exemptions relating to vesting, portability and preservation, together with all other exemptions relating to superannuation in the *Sex Discrimination Act 1984*, be removed before the end of March 1997.**

**Recommendation 7.3:**

**The Committee recommends that the superannuation legislation be amended to require immediate vesting of all employer contributions.**

### Reversionary Pensions

7.53 These are pensions which are provided by some funds to the surviving spouses of those superannuants who die while in receipt of a pension. Normally the reversionary amount is less than that of the original pension and it was alleged during the inquiry that this is both inequitable and discriminatory because it is usually a women who is the surviving spouse.<sup>42</sup> It was pointed out however, that such arrangements are not directly discriminatory since a surviving male spouse would also receive the same reduced benefit.<sup>43</sup>

7.54 Mr Jack Bromley said this practice mitigated against the policy of encouraging pension schemes rather than taking lump sum benefits, since a surviving spouse would have access to the full lump sum. Mr Bromley considered:

<sup>41</sup> Fifteenth Report p 79

<sup>42</sup> Bromley J, SW Sub No 78

<sup>43</sup> ASFA, SW Sub No 78

[t]hat the lifetime of contributions to a fund is a joint effort by husband and wife or partner and these contributions should be applied equally on the death of either party.<sup>44</sup>

7.55 It was said to be unfair that should the superannuant die the surviving spouse received only a percentage of the pension, whereas should the other party die the pension was not affected. One suggested solution was to pay separate pensions to the superannuant and spouse.<sup>45</sup> When one partner dies the other's pension could continue. The Committee considers the structure of reversionary pensions as a matter for individual funds.

**Are there other areas of discrimination inherent in superannuation that need to be addressed?**

7.56 The Committee heard evidence that heterosexual married and de facto couples are often treated more generously by superannuation funds when compared to single people or same sex couples. It was put to the Committee that this practice was particularly evident in the administration of death benefits. Given the complexity of this issue, it has been dealt with in more detail elsewhere in the report.

7.57 The Committee also heard evidence on the failure of employers of outworkers in the clothing industry to pay superannuation.<sup>46</sup> The Committee is aware of the ongoing concern surrounding the employment conditions of some outworkers and notes the 1995-96 Budget announcement of \$33 million to disseminate information on outworker entitlement in the textile, clothing and footwear industries.<sup>47</sup> The Senate Standing Committee on Economics is currently conducting an inquiry into garment industry outworking.

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<sup>44</sup> SW Sub No 78

<sup>45</sup> Eyles R, SW Sub No 71

<sup>46</sup> Textile Clothing and Footwear Union of Australia, SW Sub No 95

<sup>47</sup> Assistant Minister for Industrial Relations, SW Sub No 88



## CHAPTER 8:

# ANNUITIES FOR WOMEN

*Because women are expected to live longer than men they are required to pay more for the same level of lifetime annuity.*

### **Annuities**

8.1 An annuity is a series or stream of payments made at regular intervals, usually purchased by paying a lump sum in advance to an insurance company. The most common use of annuities is to provide retirement income.<sup>1</sup>

8.2 Annuities provide a way of using current assets to buy a future income stream. From July 1 1994, retirement income streams became a way of increasing the amount of superannuation on which favourable taxation treatment is available.<sup>2</sup> They can also be used in the arrangement of assets and income to qualify for a part social security pension and be eligible for the associated fringe benefits.

8.3 The cost of providing a particular annuity depends on the income required and how long the person is expected to live. The annuity provides an income while the annuitant lives, but is rather an inflexible investment and cannot be left to anyone.<sup>3</sup>

### **Life expectancy and annuity rates**

8.4 Annuities are generally calculated with regard to actuarial data and selected characteristics of the individual purchasing the annuity. Currently, different rates of income are provided by life insurers for males and females for a given capital sum. The rationale for this difference is that females have a longer life expectancy than males, and therefore a longer payment period to be funded by the lump sum is anticipated. Jacques Martin indicated that this effect impacted most severely on those with smaller capital amounts who, as a result of their career patterns, are very often women.<sup>4</sup>

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<sup>1</sup> Quinlivan, B 1994, *The Dictionary of Superannuation*, p 8

<sup>2</sup> Section 140ZD of the *Income Tax Assessment Act 1936* provides for more generous Reasonable Benefit Limits for pension benefits than for lump sum benefits.

<sup>3</sup> SW Sub No 70

<sup>4</sup> SW Sub No 17

8.5 In Table B of Appendix 4 of their submission, LIFA set out *Annuities - Expectations of Life in Years*. The Table demonstrates the difference in life expectancies between men and women. Women at all ages have a greater life expectancy than men. The commentary by the Institute of Actuaries of Australia (IAA) suggests that the price for annuities may be much closer for males and females than the ratios between male and female life expectancies. IAA explained that this is due to factors such as the length of any minimum guarantee period, the provision of a return of premium on death and presence of a second life.<sup>5</sup>

### **What are the going rates?**

8.6 In a supplementary submission, Jacques Martin Hewitt provided an example of present annuity rates for males and females aged 65, with a purchase price of \$100 000 and with the annuity indexed annually at 5 per cent.

- Male: \$9 230 per annum;
- Female: \$7 840 per annum.<sup>6</sup>

8.7 They also gave the example of a joint life and last survivor annuity, with a purchase price of \$100 000, indexed at 5 per cent and, on the death of the annuitant, continuing at 2/3 of the annuity to the surviving spouse. Indicative annuity amounts were very similar:

- Male age 65 with female age 63: \$7 420 per annum;
- Female age 65 with male age 67: \$7 310 per annum.<sup>7</sup>

8.8 LIFA also presented data that demonstrates the similar rate of instalments for males and females for a joint life annuity.

### **Is there discrimination?**

8.9 Clearly women and men are treated differently when purchasing annuities.

8.10 Gender-based actuarial tables provide the statistical proof of the longer life expectancy of females. Section 41A(1) of the *Sex Discrimination Act 1984*

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<sup>5</sup> SW Sub No 70

<sup>6</sup> SW Sub No 17 (Supp)

<sup>7</sup> *ibid*

specifically provides for exemptions 'based on actuarial or statistical data from a source on which it is reasonable for the discriminator to rely'. The Treasury submitted that 'in actuarial terms, there is no discrimination'.<sup>8</sup>

8.11 However, the Sex Discrimination Commissioner, Ms Sue Walpole, in a 1994 Seminar paper pointed out that 'statistical generalisations do not predict how long any individual man or woman might live'.<sup>9</sup> She cited an industry authority for the example of a female investing \$50 000 and retiring at age 59, getting \$500 less in the first year than a man investing the same amount, \$6 000 less over ten years, and \$16 000 less over 20 years.<sup>10</sup>

8.12 It could be argued that, due to the longer average life expectancy for women, a female with the same value annuity can expect to receive the same return on her annuity investment as a male, but over a longer period. That is, a female who invests the same amount as a male would receive a lesser amount annually than a male, but for a greater number of years. However, there are contrary arguments of opportunity costs foregone, and lack of option, which the Committee believes outweigh the proposition of equal returns.

8.13 In relation to the use of actuarial data to justify lower annuity amounts for women Ms Walpole stated:

The question ... should be why do we use sex-based actuarial data at all? It has never been considered reasonable to use data based on the links between race and longevity, or data based on the links between economic class and longevity. If this were so, upper class whites would have to pay more into annuity-based pensions, and poor blacks would pay less. Yet it seems to [be] accepted as part of the natural order of things that the links between sex and longevity should provide a basis for actuarial data.<sup>11</sup>

8.14 In her 1994 Paper, Ms Walpole said that American cases have held that actuarial tables based on sex were not found to be valid for setting contributions or payments for occupational pensions. A case she cites as the *Manhart case* is quoted:

[W]hen insurance risks are grouped, the better risks always subsidise the poorer risks. Healthy persons subsidise medical benefits for the less healthy; unmarried workers subsidise the

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<sup>8</sup> SW Sub No 90

<sup>9</sup> *Women and Superannuation*, EPAC Background Paper No 41, August 1994, p124

<sup>10</sup> Legal and General, *Annuity Presentation*, 28 January 1994, cited in *Women and Superannuation* op cit

<sup>11</sup> SW Sub No 89

pensions of married workers; persons who eat, drink or smoke to excess may subsidise pension benefits for persons whose habits are more temperate.

Treating different classes of risks as though they were the same for purposes of group insurance is a common practice that has never been considered inherently unfair. To insure the flabby and the fit as though they were equivalent risks may be more common than treating men and women alike; but nothing more than habit makes one 'subsidy' seem less fair than the other.

The size of the subsidy involved in this case is open to doubt, because the Department's plan provides for survivor's benefits. Since female spouses of male employees are likely to have greater life expectancies than the male spouses of female employees, whatever benefits men lose in the 'primary' coverage for themselves, they may regain in 'secondary' coverage for their wives.<sup>12</sup>

8.15 The above commentary provides some support for the proposition that the differential treatment that is afforded to women in annuity pricing should be replaced by unisex schemes, possibly having the effect then of a subsidy paid by men. Jacques Martin cited the analogy of a 'discrimination' or 'subsidy' in life insurance premiums where females are often charged less than males for the same level of cover.<sup>13</sup>

### **A commercial decision**

8.16 Mr Donald Duval, of the Insurance and Superannuation Commission (ISC), said the Commission considered the price of annuities should be a commercial decision by the providers. Imposition of unisex annuities would impose a cross-subsidisation and would result in women purchasing more and men less, so that over time the price of annuities would rise. He added:

Generally speaking, it is our view that underwriting decisions are best left to the commercial judgment of the marketplace and interfering with these decisions by introducing a measure such as community rating can have quite profound consequences on the operation of the market.<sup>14</sup>

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<sup>12</sup> *Women and Superannuation*, op cit

<sup>13</sup> SW Sub No 17

<sup>14</sup> Evidence, p 626



8.17 The Life Insurance Federation of Australia (LIFA) in its submission agreed, saying the insurer would be left with women clients whose 'underlying cost exceed the premiums charged', and eventually the premiums would increase.<sup>15</sup> Treasury said the removal of the differential would be likely to cause more men to opt out of annuities and so drive the price back to the level presently paid by women.<sup>16</sup>

8.18 The Committee considers these comments reflect the narrow view of the economics of the annuity problem since the annuity system is full of cross-subsidies. It may be that the industry itself could and should do more to make the purchase of annuities more attractive to men and women, and to remove the imposition of gender differentials may well assist in that process.

### **Costs of Living**

8.19 The Committee considered community expectations of retirement incomes in providing recipients with the means to meet costs of living. In that respect the costs for women are not less than for men and, as Mr David Vernon of Jacques Martin pointed out, there is no differential in the age pension amount paid between men and women.<sup>17</sup>

### **A unisex solution**

8.20 Jacques Martin submitted that that it was appropriate that the distinction between male and female annuity rates be removed, given the need to maximise the benefits to those with interrupted career patterns. They argued that males, with their generally higher levels of accrued benefits, were in a position to afford the reduced benefits as a result of equalisation.<sup>18</sup>

8.21 Jacques Martin Hewitt in a later submission indicated that:

If 'unisex' rates were adopted, insurers could do one of three things:

(a) adopt the male rates, thus making annuities cheaper for females, which would be unlikely to be viable for insurers as females live longer.

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<sup>15</sup> SW Sub No 70

<sup>16</sup> SW Sub No 90

<sup>17</sup> Evidence, p 61

<sup>18</sup> SW Sub No 17

(b) adopt the female rates, thus making annuities more expensive for males, which would disadvantage males who have a shorter life expectancy.

(c) adopt something in between, which would be regarded as an artificial solution, with some of the problems of both (a) and (b).<sup>19</sup>

8.22 The Committee considers that insurers could do something rather different. Instead of relying on gender-based actuarial or other discriminatory data, insurers could establish annuities geared toward particular needs of individuals in the same way as they market any other financial service. Mr Ray Connolly gave his personal view that:

If one provider of annuities was, for their own marketing purposes, to average out costs [of] providing annuities to males and females, then that is their choice to offer that product and to see how the market responds to that. I do not know what the argument could be to force the industry to come up with an average.<sup>20</sup>

### Research on the use of actuarial data

8.23 Ms Walpole pointed to the lack of research undertaken on the sex-based nature of actuarial or morbidity tables. However, she noted that the Association of Superannuation Funds of Australia (ASFA) and the Institute of Actuaries are now 'starting to take an active interest in this issue through their research programs' and she recommended that the Committee 'support and encourage such work'.<sup>21</sup>

8.24 ASFA told the Committee that they had been asked by the Human Rights and Equal Opportunities Commission to sponsor research into the gender bias in actuarial tables.<sup>22</sup> ASFA has funded a project titled 'The use of gender-related differences in mortality in Australian superannuation funds,' to be undertaken by Susan Clarke, Shauna Ferris and Leonie Tickle, lecturers in actuarial studies in the School of Economic and Financial Studies at Macquarie University.<sup>23</sup>

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<sup>19</sup> SW Sub No 17 (Supp)

<sup>20</sup> Evidence, p 504

<sup>21</sup> SW Sub No 89

<sup>22</sup> Evidence p 204

<sup>23</sup> *Superfunds*, October 1995, p 4

## Reversionary Options

8.25 Ms Kerry Flanagan, of the Department of Social Security, advised that the Department had canvassed the events following the death of a partner and found that annuities which contain reversionary benefits are either 'much more expensive than single annuities or that they provide a lower income stream'. The Department is involved in an interdepartmental committee on the interaction of superannuation and the age pension. In looking at income streams they will be:

perhaps trying to advantage income streams that have particular features that we might want to foster...we think that this might particularly advantage women...<sup>24</sup>

8.26 Ms Flanagan said one of the reasons the option of a reversionary pension is not taken up is that it reduces the amount of the annuity, and that it may be necessary to provide an incentive, through the tax or social security system, 'if that is the way we want people to go'.<sup>25</sup>

## Conclusions

8.27 The Committee notes that despite a number of lifestyle factors such as race, health, smoking, and socio-economic background having the potential to impinge upon an individual's life expectancy, gender appears to be given greater prominence as a criterion for paying different annuities.

8.28 The Committee considers that there is gender based discrimination in the annuities available to women and encourages the providers of annuities to look beyond this discrimination in their marketing. The Committee remains unconvinced that the gender and morbidity actuarial tables justify different annuity rates.

8.29 The main justification for this discrimination is the gender and morbidity actuarial tables used by life companies. Research into the value or otherwise, and the structure, of these actuarial tables should be encouraged, and the Committee supports the initiatives of ASFA and the Institute of Actuaries in this area.

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<sup>24</sup> Evidence, p 613

<sup>25</sup> Evidence, p 616

**Recommendation 8.1:**

**The Committee recommends that the Government encourage and monitor research on the use of gender and morbidity actuarial tables in respect of the provision of annuities with a view to either:**

- **amending the *Sex Discrimination Act 1984* to exclude the exemption for actuarial or statistical data, or**
- **declaring the gender based actuarial tables to be not covered by the exemption,**

**if it is discovered that reliance on these tables cannot reasonably justify the resulting discrimination.**

## CHAPTER 9:

### IT'S TIME TO GET A SUPER EDUCATION!

*Education about schemes is vitally important for families ... one woman we have seen had access to State super and the minimum employer contribution was made. Her husband had been contributing longer to his super scheme and so they put as much of his salary into his scheme as they could afford (thinking it would yield the most) and lived on her salary. Subsequently she finds if she could have contributed something like one per cent more her super at State super would have been worth twice her husband's.<sup>1</sup>*

9.1 A consistent theme through many submissions presented to the Committee was that women be educated and informed, not just on the issue of superannuation but, on financial issues generally. Ms Keenan of the Australian Federation of Business and Professional Women's Association summed up the position when she argued that 'women have to start learning about [superannuation] and trained to look after their own future'.<sup>2</sup>

9.2 There was also concern expressed that women should achieve at least a minimum degree of financial independence.

#### **Why the fuss?**

9.3 Reasons underpinning the need for financial understanding and independence include:

- female longevity compared to that of men, requiring women to plan for a potentially longer period in retirement;
- possibility of marriage breakdown, and the subsequent need for many women to seek alternative sources of support from that which was previously provided by their spouse ;
- possibility of unequal participation in decision-making and the benefits accrued from family income which may disadvantage women; and
- lack of knowledge about entitlements which may result in financial disadvantage and potential hardship.

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<sup>1</sup> SW Sub No 58

<sup>2</sup> Evidence, p 549

*Female longevity*

9.4 In 1993, Australian women had a life expectancy of 80.9 years compared to 75.0 years for Australian men.<sup>3</sup> Yet, because of societal expectations, women tend to marry men who are older than themselves. Women are, therefore, likely to have an extended period of widowhood during which they will have to manage financially.

9.5 Currently nearly 70 per cent of women aged over 70 are single primarily because of widowhood and 41 per cent of older women live alone. The figures of age pension uptake by widowed women suggest that this is often without a pension or annuity left by a spouse.<sup>4</sup>

*Marriage breakdown*

9.6 As has been outlined in Chapters 2 and 13, many women have expectations that they will be supported in retirement by income accruing to their spouse. However, the reality is that women can no longer assume that their partners will provide for them.

9.7 Whilst property settlements resulting from the splitting of family assets in the event of marriage breakdown may provide some support, they cannot guarantee a level of income or support in retirement equivalent to that achieved during the period of co-habitation.

*Unequal participation in benefits accrued and decision-making*

9.8 It is clear that single women, whether or not they may expect to retire as a member of a couple, need some form of independent provision. However, it is less obvious that women with partners have a similar need to make plans to maintain and manage their finances to ensure a dignified standard of living.<sup>5</sup>

9.9 Research undertaken in Australia and overseas challenges assumptions that resources are pooled and shared equitably, and indicates that there is considerable variety in couples' financial arrangements.<sup>6</sup>

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<sup>3</sup> Australian Bureau of Statistics, *Australian Women's Year Book 1994*, p 49

<sup>4</sup> Rosenman I., and Winocur S, *The Issue of Equity in Superannuation in The Super Rich and the Super Poor: New Directions in Retirement Incomes Policy*, Evatt Foundation Nov 1991, p 12

<sup>5</sup> SW Sub No 97

<sup>6</sup> *ibid*

9.10 Even when both members of the partnership work, and receive income, access is not always equitable. Ms Betty Johnson, Convenor of the Older Women's Network, related to the Committee the following:

One of my past workmates ... she had been working in a job - she was superannuated, so was her husband - but, because of the way in which their salaries are pooled, superannuation will be the first time she has actually got ... an income that she will be able to pinpoint as her own.<sup>7</sup>

9.11 As Rosenman and Winocur, of the University of Queensland, point out in their paper *The Issue of Equity in Superannuation*, despite the convenient assumption that family income and superannuation entitlements are shared equally, there is no requirement upon a married couple to share superannuation entitlements nor to make any provision for the surviving spouse.<sup>8</sup>

9.12 There are no indications whether the lack of equity in the financial decision-making of a couple is directly attributed to lack of understanding about the financial system. However, the Committee believes that knowledge of financial matters will improve women's confidence, as well as ability, to participate actively in financial decision-making and planning where this does not already occur.

#### *Lack of knowledge resulting in disadvantage*

9.13 It is also possible that a lack of awareness of the retirement income support system generally, and financial entitlements specifically, can result in substantial disadvantage and financial hardship.

9.14 The Committee's attention was drawn to the circumstances of a group of women whose existence was described as 'genteel poverty'. They are asset rich but living in poverty. As explained by Ms Johnson, Convenor of Older Women's Network:

They live in genteel poverty because their husbands who provided for them have died and the women kept on drawing on what was the income that the husband left. They do not know they can get a supplement to the pension .... there are quite a lot of people living like this. They have big homes quite often, but they are living very poorly.<sup>9</sup>

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<sup>7</sup> Evidence, p 184

<sup>8</sup> Rosenman L, and Winocur S, *op cit.*, p 9

<sup>9</sup> Evidence, p 188

9.15 Alternatively, some women are unnecessarily losing access to a spouse's superannuation contribution as a result of marriage breakdown. Lack of knowledge about the appropriate processes or their entitlements can lead to a situation where an equitable share of assets are not realised.<sup>10</sup>

9.16 And yet another example drawn to the attention of the Committee was that many carers are not aware of either the fact that the carer pension exists or of any of the other benefits that are available to them.<sup>11</sup> They may suffer unnecessary financial hardship as a result.

### **General financial education**

9.17 A number of contributors to the inquiry expressed concern about women's appreciation of matters financial and argued for efforts to be made to remedy the situation.<sup>12</sup>

9.18 This concern is supported by figures compiled by MLC Investments from two of their investment products - a diversified unit trust and a rollover fund. The MLC advised in 1992 that, compared with their male counterparts, women (even those earning substantial salaries) were lacking in awareness, confidence and long-term vision in relation to arranging financial plans for themselves. The findings indicated that women tended to place a high priority on securing a debt-free home and meeting short-term expenses, particularly where children were involved.<sup>13</sup>

9.19 In response to a request from the Committee, the MLC provided additional and updated information. In 1992, women accounted for only 33 per cent of the trust investors and 23 per cent of the approved deposit fund client base. As at October 1995, these figures had increased respectively to 40 percent and 36 percent. However, it was pointed out that, in 1992, the average dollar amount of investments was likely to be significantly less for females compared to their male counterparts. This was particularly so in the rollover funds.<sup>14</sup> This has remained the case in recent times.<sup>15</sup>

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<sup>10</sup> Brown K, Evidence, p 324

<sup>11</sup> *ibid*, p 326

<sup>12</sup> For example, Young Labor Women's Committee, SW Sub No 46; CS Superannuation, SW Sub No 68

<sup>13</sup> Lampe A, *Changing the Way Women Save* in *Sydney Morning Herald*, 9 December, 1992

<sup>14</sup> SW Sub No 100

<sup>15</sup> SW Sub No 100 (Supp)



9.20 Earlier, in 1989, Georgina Carnegie, General Manager, Development Capita Financial Group, had argued at the Australian Association of Gerontology Conference that the tendency for women to live for short-term needs and leave their futures to chance, coupled with their poor knowledge of investment and financial matters, needed to be addressed if society was to avoid a major increase in the number of older women living in poverty.<sup>16</sup>

9.21 The issue still has great currency. Business and Professional Women's Association Australia argued in its submission that skills in financial management were necessary for women who were getting ready to retire, and for those who entered the workforce or re-entered it later, for example after child raising activities or further education. Although there is a great deal of information available there still seemed to be a need for specific training in this area.<sup>17</sup>

9.22 In response to the more specific concern that there were many women who did not have an adequate understanding of the implications of reaching retirement age and of not having a financial plan in place, the submission from the Queensland Council of Carers argued for:

- education at an early stage (preferably high school followed up at tertiary level) with on going media awareness raising;
- an education package to offer a framework of a plan with choices/options as to how financial independence could be achieved at retirement; and
- the plan to address the issue of financial self sufficiency and how to make the best of what is available.<sup>18</sup>

9.23 At the public hearing in Brisbane, Ms Brown of the Queensland Council of Carers also stressed the importance of liaising with people in communities and the use of word of mouth to spread information. She argued that people were more inclined to use a service which they knew had actually been of assistance to someone else.<sup>19</sup>

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<sup>16</sup> Carnegie G, *Women, Money and Ageing: Strategies for a Secure Retirement in Rights, Respite and Resources in the '90s: Proceedings of the 24th Annual Conference of the Australian Association of Gerontology*, 1989, pp 49-50

<sup>17</sup> SW Sub No 47

<sup>18</sup> SW Sub No 51

<sup>19</sup> Evidence, p 326

9.24 The Committee notes that the Victorian Government, through the Victoria Women's Council, is proposing to develop an information package which will provide information for women on economic security issues at differing points in their lives.<sup>20</sup> The Committee commends this action.

9.25 However, it is important to distinguish between the complementary concepts of education and information. Information is a significant resource for use in the education process; it provides content. An example of information is the computerised Superannuation Ready Reckoner which enables Australian Public Service staff to work out their own projected benefits.<sup>21</sup> Education is a targeted, interactive process which focuses on providing people with the skills to assess the merits of the information provided and the ability to translate this knowledge into action.

9.26 It may be that other programs specifically targeted at improving women's understanding of the importance of financial independence and security have been developed elsewhere but these have not been drawn to the Committee's attention. None of the government departments that appeared before the Committee, including the Office of the Status of Women, identified government programs that address the issues of women's financial education and independence.

9.27 The Committee notes that this theme has been taken on board as part of the current 'Super: It grows on you' campaign being run by the federal government. However, given that many women do not contribute to superannuation schemes or may not consider it of relevance to them, the Committee believes that it is insufficient to rely on the 'Super: It grows on you' campaign to address this issue.

**Recommendation 9.1:**

**The Committee recommends that the Office of the Status of Women develop a comprehensive educational strategy to raise understanding and awareness amongst women of the components of, and the imperative to engage in, financial planning.**

<sup>20</sup> Reynolds J, Evidence, p 123

<sup>21</sup> Department of Defence, SW Sub No 14

## Getting a super education

9.28 An issue of concern during the inquiry was the need for women to understand the importance of superannuation as a component of retirement planning.

9.29 As the Association of Superannuation Funds of Australia (ASFA) pointed out, until the introduction of the Superannuation Guarantee Charge many workers were denied access to superannuation and therefore women did not consider it an issue with which they should be concerned. However, as access to superannuation has been significantly improved, it is appropriate to ensure that women are aware of recent changes in access to superannuation and to address any misconceptions that women may still hold that superannuation is not important to them.<sup>22</sup>

9.30 Research undertaken by Professor Linda Rosenman and Dr Sharon Winocur at the University of Queensland, and detailed in their paper *The Issue of Equity in Superannuation*, indicated that the large number and complexity of choices that have to be made in relation to superannuation were not well understood, and were in fact resented by many workers. They suggested that this was particularly likely for women whose discontinuous employment meant that they were confronted with frequent decisions about joining, rolling over and claiming or preserving entitlements.<sup>23</sup>

9.31 Ms Johnson of the Older Women's Network presented the view to the Committee that argued that 'so many people talk about superannuation in terms of money and figures and so on that it basically means nothing' and that the messages had to be relayed in more user-friendly terms.<sup>24</sup>

9.32 The University of Queensland findings are supported by research being undertaken by AMP in relation to superannuation and retirement income policy issues. Whilst the research is only in its early stages, and hence the findings so far cannot be taken as conclusive, the following are some of the points which have emerged from focus groups:

- there was widespread ignorance amongst women workers in relation to the operation of the superannuation system;

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<sup>22</sup> SW Sub No 43

<sup>23</sup> Rosenman L, and Winocur S, op cit, p 7

<sup>24</sup> Evidence, p 181

- many participants believed that superannuation was so heavily taxed that it was not worth making additional contributions; and
- many participants believed that the system was unstable.<sup>25</sup>

9.33 Just one example of an issue which might not be widely known, but would be particularly significant for many women, is that SIS permits an individual to remain a contributing member for up to two years after leaving the workforce and for up to seven years if the leave is for parental duties and there is a right to return to your job.

9.34 Ms Freeman of the Business and Professional Women's Association also pointed out that there are many misconceptions about superannuation that might be resolved by improved education. One was that people were unaware of the different types of superannuation in the market and perceived that the returns were poor. Education was required to alter these perceptions.<sup>26</sup>

9.35 The Department of Immigration and Ethnic Affairs submitted that it is likely that the level of confusion and ignorance is even greater amongst those who are not proficient in the English language. As a consequence, women of non-English speaking background are likely to have significant deficits in their knowledge of superannuation provisions.<sup>27</sup>

9.36 This view was supported by comments from the Muslim Women's National Network of Australia that some Muslim women were concerned that superannuation might be *haram*, that is, religiously forbidden. In Islam, gambling and investments of a speculative nature are forbidden and, if superannuation is considered analogous to life insurance, it would be forbidden. The Network submitted that, 'while there does not seem to be any basis for this belief, if it is widespread it may require some educational program to dispel it'.<sup>28</sup>

9.37 The need to be very specific about target groups was highlighted by Ms Pamela Brown of the Social Justice Co-ordination Section of the Department of Immigration and Ethnic Affairs. She drew to the Committee's attention the difficulties of getting information to women of the non-English speaking background community.

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<sup>25</sup> SW Sub No 55

<sup>26</sup> Evidence, p 553

<sup>27</sup> SW Sub No 54

<sup>28</sup> SW Sub No 27

9.38 Ms Brown informed the Committee that the Department had been 'looking for creative ways' to provide information because migrant women 'will never come to a big government department or booth, but almost everybody goes to baby health and health care centres. It is a matter of trying to find out where they come into contact with other sectors of society for other reasons'.<sup>29</sup>

9.39 The Committee is aware that the recently launched Superannuation Community Education Campaign 'Super: It grows on you' has specifically targeted groups including women and people from non-English speaking backgrounds. The Committee commends these efforts.

9.40 A number of submissions suggested the need for education and information programs with a specific focus. For example, the New South Wales Cabinet Office submission supported the development of an information and education strategy which included measures to promote understanding of the purpose of superannuation, the available options and obligations.<sup>30</sup> Mrs Keenan of the Australian Federation of Business and Professional Women's Association submitted that financial management education should be provided to women as part of the curriculum in the last years of schooling, years 10 through to 12.<sup>31</sup> Mr Kevin Hudson argued that there should be easier access for members to information which would disclose errors made by employer sponsors.<sup>32</sup>

9.41 ASFA argued for education and information packages which focused on the partnership between superannuation savings and the age pension which together should deliver a worthwhile retirement income.<sup>33</sup>

9.42 The need for educational programs has also been raised in a number of other fora. Rosenman and Winocur, in their paper to the 1989 Conference of the Australian Association of Gerontology titled *Financial Security and Independence for Women*, argued for a public education program which:

- encouraged women to exercise their option to participate in superannuation;

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<sup>29</sup> Evidence, p 427

<sup>30</sup> SW Sub No 41

<sup>31</sup> Evidence, p 552

<sup>32</sup> SW Sub No 102

<sup>33</sup> SW Sub No 43

- encouraged women to preserve such benefits upon leaving an employer or upon workforce withdrawal for family or other reasons; and
- highlighted the necessity of being aware of a husband's entitlements, and their rights to a share in the event of marriage dissolution.<sup>34</sup>

9.43 Based on research undertaken in 1993, which amongst other things identified that lack of information was a major concern, the Australian Consumers' Council (ACC) recommended that the Federal Government provide funding for a far reaching national superannuation education strategy which aimed to help consumers:

- determine their retirement income needs;
- determine how those needs might best be met;
- calculate the value of their existing retirement benefits;
- assess the degree, if any, to which they will continue to rely on the age pension; and
- assist consumers, and particularly those who have not been in full-time work or who have limited savings capacity, to perceive superannuation as involving a potential to improve the quality of later life rather than as a mechanism to remove the safety net of the age pension.<sup>35</sup>

9.44 The ACC also recommended that the education strategy needed to specifically cater for the needs of women with a view to increasing their opportunities for independent retirement planning. Issues covered should include access to income, managing superannuation during periods of part-time or intermittent labour force participation and the advantages of independent rather than shared superannuation investments.

9.45 When discussing the role of women as trustees, the Sex Discrimination Commissioner drew to the Committee's attention the concern that most women have other (more immediate) demands on their time. Encouraging women to be active as trustees required information to be made available to them in a way

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<sup>34</sup> Rosenman L. and Winocur S. *Financial Security and Independence for Women in Rights, Respite and Resources in the '90s: Proceedings of the 24th Annual Conference of the Australian Association of Gerontology*, 1989, p 48

<sup>35</sup> Australian Consumers' Council *Super Day, Super Say: The Results of the Consumer Superannuation Phone-In 23 November 1993*. AGPS 1994, p7

that is more acceptable.<sup>36</sup> This is equally relevant to attempts to inform women about superannuation generally.

### **The need for a strategy**

9.46 The Committee has some concerns that efforts to date to inform the community about superannuation have focussed only on the provision of information, with little attention to the development of broader education strategies.

9.47 The Committee believes that awareness of superannuation could be enhanced through:

- working closely with community members to identify their understanding and awareness of superannuation and their specific needs;
- the development of suitable programs and delivery mechanisms to meet these identified needs (the 'Super: It grows on you' campaign would be one such mechanism); and
- building on programs already provided in the formal education sector or by community, business or industry groups.

9.48 The Committee believes that a diverse and comprehensive range of educational approaches is required to achieve improved awareness and understanding of superannuation and, in turn, increase willingness to contribute. Without this increased willingness to contribute, the substantial self-funding of retirement incomes will never be realised.

9.49 The Committee notes that the federal government has recently commenced a two year mass media campaign titled 'Super: It grows on you!' The Committee understands that extensive consultation with industry groups, government agencies and the community took place in the development of the campaign and it commends the campaign organisers for this.

9.50 However, the Committee is concerned that this broad 'scatter gun' approach will continue to miss the many members of the community who either have many years until they reach retirement (and therefore consider such planning irrelevant and thus ignore it); do not understand financial planning generally (and therefore have no context in which to assess the information); or

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<sup>36</sup> Evidence, p 651-652

are constrained by lack of time, skills or other difficulties which prevent them fully considering the information presented.

**Recommendation 9.2:**

The Committee recommends that the government, in conjunction with the superannuation industry, develop an education strategy to promote understanding and awareness of superannuation which goes beyond the provision of information only and which involves active participation of the community. In particular, the strategy should address the needs of women, both in terms of the type of information they receive and the mechanisms by which this information is delivered.

**Recommendation 9.3:**

The Committee recommends that, simultaneously with the development of an education strategy, the effectiveness of the 'Super: It grows on you campaign' be closely monitored, especially in relation to its impact on women.



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## CHAPTER 10:

### FEMALE TRUSTEES

*In an ideal fund, affirmative action and equal employment opportunity principles would apply to the trustee board membership, ensuring appropriate representation of women on boards.<sup>1</sup>*

10.1 It has been put to the Committee that the failure of superannuation to adequately provide for the retirement needs of the majority of women compared to the majority of men results from the concerns of women being defined as outside the analysis of mainstream economics.<sup>2</sup>

10.2 Ms Rhonda Sharp, in her paper *The Power of a Feminist Economics*, argued that women's concerns are relegated to the arena of social values/preference/tastes which are treated as 'givens' in economic analysis. She argued that the neo-classical, also known as rational, economic view that economics is conceptual, that the individual is gender-neutral and that decision making is not influenced by gender, race or class results in issues of concern to women being defined as outside the analysis of economics. If women's concerns are not the subject of economic policy, this effectively serves as a statement that further improvements cannot be achieved by working within the paradigm.<sup>3</sup>

10.3 According to Ms Sharp, the introduction of an occupational superannuation retirement income system in Australia provides a good case study of how feminist economic perspectives, working within a given policy framework, have successfully achieved policy changes and modifications to better fit the needs of women. However, significant inequities remain.<sup>4</sup>

10.4 It has been presented to the Committee that one of the ways of overcoming some of the deficiencies in the superannuation system, as it relates to women, would be to increase the currently very limited number of female trustees.

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<sup>1</sup> NSW Women's Advisory Council, *Superannuation and Women: Issues of Access and Equity*, June 1993, p 32

<sup>2</sup> SW Sub No 4

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

10.5 Trustees are responsible for making decisions about a fund's management and investment. From 1 July 1995, all funds with more than 5 members had to have equal numbers of employer and employee trustees, although funds with between 5 and 50 members can opt for an independent trustee.

10.6 As Mr Peter Cox stated at the public hearing in Sydney 'women constitute half the population. They have to contain half the talent, so you would expect that a reasonable number of women would be almost on boards by default'.<sup>5</sup>

10.7 However, this is not the case. As commented by the Sex Discrimination Commissioner at the Canberra public hearing:

It is pretty scandalous if you take something like the retail superannuation fund where you have got such huge numbers of women working and there is not a single woman sitting on the board of trustees.<sup>6</sup>

10.8 That women are under-represented as employer and employee trustees in corporate, public sector and industry funds is clearly indicated by figures presented in the March 1995 edition of *Superfunds*. In conducting the survey, information was sought on the number of fund members, the female/male percentage, the number of fund trustees and how many of these trustees were women. Findings, outlined in Table 10.1, indicated that less than 15 per cent of superannuation trustees were women.

10.9 In addition to the significant percentage of working women covered by superannuation not being reflected in the composition of decision-making bodies of the funds, Dr Olsberg, University of New South Wales, pointed out that the small number of female trustees on boards of superannuation funds resulted in their influence being limited.<sup>7</sup> From her own experience, she had found that 'it is not easy being the first and only woman in a boardroom culture which is not used to having women on the board'.<sup>8</sup>

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<sup>5</sup> Evidence, p 232

<sup>6</sup> Evidence, p 651

<sup>7</sup> SW Sub No 9

<sup>8</sup> Evidence, pp 215-216

**SUPERFUNDS SURVEY: WOMEN ON TRUSTEE BOARDS**

NAME OF FUND	NO. OF MEMBERS	GENDER BREAKDOWN OF MEMBERSHIP (IN ROUGH % TERMS)		NO. OF PERSONS ON BOARD OF TRUSTEES	NO. OF WOMEN ON BOARD OF TRUSTEES
		F	M		
Accountants Superannuation Fund	13,000	65	35	8	2
Ancor 1970 Superannuation Fund	887	24	76	6	0
Australian Retirement Fund	375,000	48	52	12	2
BHP Superannuation Fund	32,000	12	88	12	1
Brisbane City Council Superannuation Plan	8,000	50	50	4	0
Cadbury Schweppes Superannuation Fund	4,500	40	60	10	0
Coalsuper Retirement Fund	17,500	2	98	6	1
Coles Myer Employees Benefit Fund	16,000	60	40	9	3
Coles Myer Superannuation Fund	17,500	25	75	8	0
Commonwealth Superannuation Scheme	111,180	33	67	7	1
CSR Employees' Retirement Fund	10,600	7	93	10	1
CSR Staff Superannuation Fund	4,500	28	72	8	1
CUE Super Plan	3,500	73	27	6	0
CUE Super Plan	9,847	22	78	6	0
Email Group Superannuation Fund	16,986 <sup>4</sup>	n/a	n/a	6	1
Emergency Services Superannuation Scheme	27,500	85	15	14	4
Health Employees Superannuation Trust Australia	147,000	70	30	6	2
Hospitals Superannuation Fund	11,545	84	16	6	0
Law Industry Superannuation Trust	4,075	47	53	14 <sup>7</sup>	5
Lend Lease Superannuation Fund	72,000	50	50	5	1
Local Authorities Superannuation Board (NSW)	9,343 <sup>6</sup>	31	69	6	0
Local Government Superannuation Scheme (SA)	35,000	17	83	5	0
Military Superannuation and Benefits Scheme (Cth)	165,000	n/a	n/a	4	0
MTAA Industry Superannuation Fund	10,000 <sup>5</sup>	45	55	8	1
News Ltd Group Superannuation Fund	5,000	23	77	10	0
Newsplan Group Retirement and Assurance Plan	25,000 <sup>3</sup>	75	25	8	3
Non-Government Schools Superannuation Fund	99,000	56	44	5	0
Public Sector Superannuation Scheme (Cth)	17,391	30	70	11	1
Qantas Airways Staff Superannuation Plan					

**SUPERFUNDS SURVEY: WOMEN ON TRUSTEE BOARDS (cont)**

NAME OF FUND	NO. OF MEMBERS	GENDER BREAKDOWN OF MEMBERSHIP (IN ROUGH % TERMS)		NO. OF PERSONS ON BOARD OF TRUSTEES	NO. OF WOMEN ON BOARD OF TRUSTEES
		F	M		
		Old Coal and Oil Shale Mining Industry Superannuation Fund	14,500		
Qld Electricity Supply Industry Employees' Super. Scheme	6,719	10	90	7	1
REIA Superannuation Fund	20,000	55	45	8	2
Retail Employees Superannuation Trust <sup>1</sup>	650,000	72	28	8	0
State Authorities Superannuation Board (NSW)	588,000	55	45	9	2
State Public Sector Superannuation Scheme (Q)	103,000	55	45	8	4
Superannuation Scheme of Australian Universities	40,000	53	47	10	1
Superannuation Trust of Australia	280,000	21	79	12	0
Victorian Superannuation Board <sup>2</sup>	200,000	55	45	8	2

- 1 Information obtained from REST Annual Report, 1993
- 2 The Victorian Superannuation Board is comprised of 5 separate funds governed by one trustee board - Victorian Superannuation Fund, Transport Superannuation Fund, State Superannuation Fund, State Employees Retirement Benefits Fund, State Casual Employees Superannuation Fund
- 3 Active members only
- 4 3,000 of the current members are pensioners
- 5 1,500 of these members are inactive
- 6 Active members only
- 7 The Lend Lease Superannuation Fund has a corporate trustee comprising of 14 directors

Source: Jennifer Fletcher, SUPERFUNDS, *Who's that knocking at the boardroom door?*, March 1995

10.10 She argued that given the growth of superannuation, with coverage at more than 80 per cent, women must play a role in both the development of government policy and in the superannuation funds. Increasing the number of female trustees was seen as being crucial.<sup>9</sup>

10.11 However, before considering how to increase the representation of women on superannuation boards, it is important to identify why such a move is regarded as positive and what barriers currently exist.

### **Why is equal participation important?**

10.12 The passing of anti-discrimination and affirmative action legislation and the establishment of the Affirmative Action Agency and the Office of the Status of Women are just some infrastructural changes which demonstrate the community's support for women participating on an equal footing in society and its decision-making processes. That women should have equal input to the management and direction of superannuation funds is entirely consistent with this position.

10.13 The question to be asked, however, is what is it that women have to contribute which is so substantially different from their male colleagues that their concerns cannot be addressed by male trustees?

10.14 Clearly, men and women have different life experiences and expectations. We have seen for example that women continue to have employment patterns which, in aggregate, are significantly different from those of most men, with a lower overall rate of participation in the workforce, with a greater proportion undertaking part-time or casual work and earning significantly less. Women undertake a significantly greater proportion of caring duties in the community.

10.15 However, it should not simply be a woman's ability to bring caring and sharing attitudes that is the reason to give her a position on a board of trustees. As the Sex Discrimination Commissioner argued:

what ... they would bring to any trustee board is a different life experience and what that might mean in terms of a broader view about possible courses of investment, or possible approaches to policy issues.<sup>10</sup>

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<sup>9</sup> SW Sub No 9

<sup>10</sup> Evidence, p 651

10.16 The validity of, and imperative for, this differing perspective has been recognised in Australia with the establishment of women's policy units within the state itself which have engaged in a range of economic policy issues and debates. Ms Sharp highlighted the influence that the feminist perspective has had to date on such policy areas as wages and working conditions, social wage expenditure on health, education, child care and welfare, retirement income support, taxation, foreign aid programs, industry policy and so on.<sup>11</sup>

10.17 The benefits of involving women was highlighted in the recently released report *Enterprising Nation: Renewing Australia's managers to meet the challenges of the Asia-Pacific Century* (also known as the Karpin Report). The Report argued that 'greater numbers of women on boards of directors is a very important objective. The appointment of women to boards will improve management quality and breadth.'<sup>12</sup>

10.18 The Karpin Report recommended that 'private sector and government give higher priority to strategies to improve utilisation and management of Australia's diverse population in Australian business and industry' with women being identified as a particular target group.<sup>13</sup>

10.19 How the differences in approach impact in the area of superannuation has been the subject of research by Dr Olsberg. She drew the Committee's attention to research which revealed that significant gender-linked attitudinal differences existed in superannuation board decision-making regarding investment and management policies. She argued that these differences were positive attributes and called for more 'women's skills' in corporate governance of superannuation funds.<sup>14</sup>

10.20 In general, according to Dr Olsberg, female trustees demonstrated a greater awareness of social issues and the desirability of balancing economic considerations with more normative social considerations than male trustees. Her research indicated that:

- 70 per cent of female trustees took account of ecological and environment considerations when making investments (compared to 42 per cent of male trustees);

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<sup>11</sup> SW Sub No 4

<sup>12</sup> Industry Task Force on Leadership and Management Skills *Enterprising Nation: Renewing Australia's managers to meet the challenges of the Asia-Pacific Century* April 1995 p.xxxiii

<sup>13</sup> *ibid*, p.xxxiv

<sup>14</sup> SW Sub No 9

- 85 per cent of female trustees wanted to improve benefits for casual and part-time workers (compared with 70 per cent of male trustees);
- 90 per cent of female trustees saw socially responsible investment as important (compared with 60 per cent of male trustees); and
- 75 per cent wanted a portion of fund assets invested in Australia (compared to 57 per cent of male trustees).<sup>15</sup>

10.21 Dr Olsberg recounted the comments of one female trustee who saw her role as 'trying to get more emphasis on human interests in the fund ... taking a very much more long term view and thinking about what will happen for future fund members'.<sup>16</sup>

10.22 Research by the NSW Women's Advisory Council also found that women trustees were more likely to be concerned with the needs and interests of part-time and casual employees given that most of these employees are women.<sup>17</sup>

10.23 Ms Jennifer Giles, of the Women's Legal Resources Centre, presented the view that having female trustees was 'a nice back door method of getting around those things that are not being addressed now' [because] 'if you have ... women trustees of superannuation funds, there are a whole lot of things that you do not have to address because they are just there in women's minds'.<sup>18</sup>

10.24 The imperative of ensuring the female perspective in the management of superannuation funds becomes even greater when the increasing importance of superannuation in the economy generally is considered. Ms Jennie George, Assistant Secretary of the ACTU, presented the view at the Women Managing Money Conference in Melbourne in July 1995 that it is inappropriate to exclude women, and in turn women's interests, from superannuation management just as superannuation is becoming an important base for social and economic progress in Australia.<sup>19</sup>

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<sup>15</sup> ibid

<sup>16</sup> ibid

<sup>17</sup> NSW Women's Advisory Council, *Superannuation and Women: Issues of Access and Equity*, June 1993 p 16

<sup>18</sup> Evidence, p 283

<sup>19</sup> Hely S, *Women Managing Money Conference*, in *Superfunds* Sept 1995, p 14

## Barriers to female representation as trustees

10.25 The barriers that limit female participation as trustees in many cases are the same as those which prevent women from moving to higher levels of management generally. These can be divided into structural and attitudinal barriers.<sup>20</sup>

10.26 Ms Laura Wright described the main structural barriers as:

- women's work and life patterns (for many women being a trustee would be a third job after paid work and family responsibilities);
- superannuation being made out to be more complicated than it is;
- ignorance of appointment and election procedures;
- inappropriate meeting times/frequency/location; and
- lack of suitable female role models.<sup>21</sup>

10.27 Dr Olsberg also identified that the tendency to recruit trustees from the ranks of the board of directors or from senior management, which are predominantly male, was yet another major hurdle.<sup>22</sup>

### *The women in management hurdle*

10.28 According to Dr Burton and Ms Ryall, in their contribution to the Karpin report, Australia had the lowest percentage of women managers in the industrialised world and it had a relatively slow percentage increase compared with these countries. In 1993 women constituted 42 per cent of the Australian workforce but only 26 per cent of managers.<sup>23</sup>

10.29 The paper argued that the direct barriers to the achievement of more women in management ranks were:

- the lack of women in senior management was not universally seen as a problem;

<sup>20</sup> SW Sub No 99

<sup>21</sup> *ibid*

<sup>22</sup> SW Sub No 9

<sup>23</sup> Burton C, Ryall C, *Managing for Diversity in Enterprising Nation: Renewing Australia's Managers to Meet the Challenges of the Asia-Pacific Century*, Industry Task Force on Leadership and Management Skills, April 1995, p 773



- there was strong attachment to traditional ways therefore family friendly policies, though increasing, were not strongly developed and their implementation was resisted;
- prevailing cultural values governed the application of the merit principle therefore the linear, continuous model of a career operated not only as the norm but as a measuring device for assessing people's work commitment;
- men's shared experiences led to levels of comfort among them that were not easy to forge with women as professional colleagues. Social certainty was preferred to the strains of dealing with people who are different; and
- existing culture and lack of commitment from Chief Executive Officers (CEOs) to diversity in management generated conformity in younger managers.<sup>24</sup>

10.30 The paper argued that companies' practices needed to change to increase the number of women in management if they were to avoid the imposition of quotas at a later date.<sup>25</sup>

10.31 In relation to the limited number of women's presence on boards, Burton and Ryall argued that, in addition to the culture/comfort factors that have already been identified, the lack of recognition of women as a stakeholder group with interests, needs and demands continued to go unrecognised. Membership of boards, it was argued, in part reflected men's networks and status exchanges and that this process needed to be extended to include women.<sup>26</sup>

### **Attitudinal barriers**

10.32 Attitudinal barriers to female participation as trustees are held by both male and female members of the community.

10.33 The following attitudinal barriers have been identified:

- perceptions about women's place and abilities:

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<sup>24</sup> *ibid.*, pp 775-777

<sup>25</sup> *ibid.*, p 777

<sup>26</sup> *ibid.*, p 781

- superannuation as a man's world in which women do not have a rightful place;
- finance is not an area in which women are strong;
- women lack the confidence to make hard decisions;<sup>27</sup> and
- the perception of women trustees as only being interested in women's issues.<sup>28</sup>

### Strategies for Action

10.34 Having identified the benefits of women acting as trustees and the barriers which exist, it is important to identify strategies that can be developed and implemented.

10.35 Dr Olsberg called on individual women to take an active interest in their role as superannuation fund members and for women to seek out the opportunity to become trustees of superannuation funds. She argued that, as trustees, women will be given the opportunity 'to play a leading role in this country's economic decision-making'.<sup>29</sup>

10.36 Information campaigns were seen as a key mechanism to encourage women to participate as trustees. Mr Donald Duval, Acting Deputy Commissioner of the Insurance and Superannuation Commission (ISC), informed the Committee that 'there has been significant encouragement to women through public education campaigns and the like to become member representative trustees of employer funds ... strongly promoted in the ISC's trustee guide book'.<sup>30</sup>

10.37 The ISC Guidebook states:

The Government encourages, and expects trustee boards to encourage, women to nominate as trustees and to participate in the running of superannuation funds. Greater participation by women in management and on Boards is part of wider moves to better corporate governance and greater diversity in decision-making. As women's superannuation coverage increases, it is only appropriate

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<sup>27</sup> SW Sub No 99

<sup>28</sup> SW Sub No 9

<sup>29</sup> *ibid*

<sup>30</sup> Evidence, p 625

that women be represented on bodies that decide what happens to their money.<sup>31</sup>

10.38 Whilst the Committee commends the ISC for this inclusion, it believes many of the attitudinal barriers in particular will limit the influence of such statements.

10.39 The Sex Discrimination Commissioner drew the Committee's attention to the valuable work done by the Office of the Status of Women, ASFA and various other industry bodies to encourage women to learn more about what it means to be a trustee. But, as Ms Walpole points out, most women have other demands on their time, particularly their unpaid work in the home, and that if women are to be encouraged to be active as trustees, we not only need to make additional training and information available to them, but it has got to be done in a way that is acceptable and accessible to them.<sup>32</sup>

10.40 Burton and Ryall argue, in relation to the appointment of women to boards but equally applicable for trustees, for:

- training on board operations;
- provision of support for those appointed;
- industry to set targets for the percentage of women accompanied by educative and public relations activities; and for
- nomination and selection criteria to be reviewed to tap more adequately the range of qualities and experiences which contribute to better decision making and problem solving.<sup>33</sup>

10.41 Ms Laura Wright, in her paper *Strategies to Increase Representation of Women Trustees*, outlined the following broader strategies to deal with structural barriers:

- where women were predominantly part-time and casual, specific encouragement needs to be given for these women to see themselves as trustees;
- the superannuation industry needed to be demystified for all its participants, including trustees;

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<sup>31</sup> Insurance and Superannuation Commission, *The Trustee Guidebook to Superannuation*, 1994, p 10

<sup>32</sup> Evidence, pp 651-652

<sup>33</sup> Burton C, and Ryall C, *op cit*, p 805

- funds needed to ensure that member election procedures are easy to understand, well-publicised and organised with sufficient time;
- employers and unions needed to be more conscious of encouraging women to put themselves forward for election or appointment; and
- funds needed to consider the structure, timing, location and frequency of meetings to ensure that they do not deter the participation of women.<sup>34</sup>

10.42 Strategies to deal with attitudinal barriers suggested by Ms Wright included:

- industry groups should establish education support programs and a mentoring scheme to support women;
- the profile of women at managerial level should be raised and they should be well represented in public fora (that is, role models should be encouraged);
- the current affirmative action reporting process be used to highlight the position of women as trustees and as an awareness raising exercise;
- action should be taken to remove 'fear' through perceptions about the decision-making process of funds;
- funds could use the position of alternate director to have women in training for a trustee position;
- women who already hold positions of influence should speak to key decision-makers on this matter; and
- women's groups needed to continue to make representations to appropriate employer bodies seeking support for women as trustees.<sup>35</sup>

10.43 The Committee supports the general approach presented above as it is convinced that educational campaigns alone are insufficient to achieve the desired results.

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<sup>34</sup> SW Sub No 99

<sup>35</sup> *ibid*

**Recommendation 10.1:**

**The Committee recommends that strategies be developed which provide avenues through which women can gain the necessary confidence and expertise to participate as trustees.**

**Other options for investigation**

10.44 A number of strategies presented during the course of the inquiry which appeared particularly promising and which the Committee believes should be developed. These are the proposals to use the Affirmative Action reporting mechanism, the introduction of targets and the appointment of women as alternate directors.

*The Affirmative Action reporting mechanism*

10.45 Affirmative action is an umbrella term for a wide range of programs conducted by organisations to achieve equal employment opportunities for women. Programs can range from reviewing all employment practices ensuring they do not directly or indirectly discriminate against women, or to special programs encouraging women to apply for a wider range of jobs within an organisation.

10.46 Organisations covered by the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (that is, all private sector employers, community organisations, non-government schools, unions and group training schemes with 100 or more employees and all institutions of higher education) are required to implement an affirmative action program and report to the Director of Affirmative Action on the program's development annually.

10.47 Organisations which fail to comply with the legislation, or which report unsatisfactorily, are named in Parliament and are ineligible for government contracts and other specified forms of government assistance.

10.48 The annual report must provide details of, amongst others, activities undertaken in:

- establishing an employment profile through the collection and analysis of statistics and related information about the organisation's workforce;

- analysing policies and practices in relation to employment matters;
- setting objectives and forward estimates which the organisation reasonably expects can be met within a specified time; and
- monitoring and evaluating the program.<sup>36</sup>

10.49 The Committee is strongly of the view that superannuation funds be required to undertake similar policy development and reporting activities in relation to female trustees.

10.50 This concept was put to the Committee by a number of witnesses including Dr Olsberg who submitted:

as a first step affirmative action programs could be instituted by superannuation fund boards. In the same way that corporations report annually on initiatives implemented to promote women's participation and to foster women's competence, the funds could also run campaigns to encourage women to become more active participants in the funds. It is about allowing women to become knowledgeable about issues which are relevant to superannuation and to encourage them to participate in the funds.<sup>37</sup>

10.51 A number of witnesses argued before the Committee that action was being taken to encourage women to participate as fund trustees. These actions are insufficient and not universally applied. Feedback on the effectiveness of the measures was absent from these witnesses' submissions as was any material suggesting that the level of effectiveness of such measures had been considered in their development. The Committee is concerned that a poorly formulated 'token education campaign' has been the spacefiller for this hole.

10.52 A determination on the part of the industry that would cause the Committee to be satisfied that an entirely voluntary system would result in equal opportunities for women to participate as trustees has not been demonstrated. The Committee was told 'the only progressive changes to date have been those forced upon the industry by legislation' and that 'institutions are highly unlikely to respond voluntarily to calls for affirmative action'.<sup>38</sup> AMP's Ms Gallagher agreed with these comments as a reflection of the past, adding that that institution is now addressing such issues. Whilst the *mea culpa* approach has its appeal, the Committee remains firmly of the view that only a

<sup>36</sup> Affirmative Action Agency Information Kit

<sup>37</sup> Evidence, p 221

<sup>38</sup> SW Sub 9, Ms.....ing Out, p 30

requirement to report would ensure equal opportunity practices become the norm.

10.53 The Sex Discrimination Commissioner agreed that a requirement to report 'would be a good part of the reporting regime'.<sup>39</sup>

10.54 Using the Affirmative Action Agency as a vehicle to promote the number of female trustees is consistent with its broader task of promoting the proportion of women in management. Its importance in this area was highlighted by the recommendation of the Karpin Report on Management Skills that the Agency's 'education and support role should be upgraded, appropriate resources put into disseminating information and tools to assist enterprises, and monitoring of progress for women in management carried out through adaptation of existing Agency statistical systems'.<sup>40</sup>

**Recommendation 10.2:**

**The Committee recommends that the Affirmative Action Agency develop reporting requirements for superannuation funds of programs that will enhance equal opportunities for women to act as fund trustees. It is recommended that these reporting requirements be ready for implementation by the 1996/97 financial year.**

**Recommendation 10.3:**

**The Committee recommends that regulated, non-excluded superannuation funds be required to comply with affirmative action program development and annual reporting in relation to developing equal opportunities for women to act as fund trustees in order to maintain their complying status.**

<sup>39</sup> Evidence, p 653

<sup>40</sup> Industry Task Force on Leadership and Management Skills *Enterprising Nation: Renewing Australia's managers to meet the challenges of the Asia-Pacific Century*, April 1995, p xxxvii

### *Quotas for female trustees*

10.55 The Committee has given consideration to mandating quotas of female trustees for regulated, non-excluded superannuation funds. Whilst this might improve the number of women who act as trustees, the Committee is of the view that it is more appropriate to improve the environment from which trustees are appointed and to encourage industry to set targets for the level of female participation. The process would be staged over a number of years, with targets set for say 5, 10 and 20 years.

10.56 The targets can be most successfully achieved by, first, raising the community's awareness of the imbalance and then creating means by which the environment allows females to participate at the same rate as males. The Committee believes that the introduction of targets, coupled with affirmative action reporting, would achieve these goals more constructively than mandatory quotas. Women will then be in a better position to have the choice of participating as trustees.

### *Appointment of alternate directors*

10.57 The appointment of an alternate trustee is a mechanism used to enable another person to act in an existing office of trustee while the incumbent trustee is unavailable to do so.

10.58 Whilst this option was not covered in any detail during the public hearings, it is a measure which the Committee believes would provide a useful stepping-stone for women who are interested in undertaking the task of trustee, but are reticent due to a lack of confidence or familiarity with the process. Being an alternate trustee is considered to have significant potential to provide an opportunity to learn first hand about the processes and operations of the board, and to gain confidence about one's ability to deal with the issues raised, whilst still being able (and to some extent required) to seek direction and support from a more experienced individual.

### **Recommendation 10.4:**

**The Committee recommends that the appointment of female alternates be a matter upon which superannuation funds must report to the Affirmative Action Agency and the Insurance and Superannuation Commission.**



## CHAPTER 11:

# SPOUSE CONTRIBUTIONS - PUTTING SUPER EGGS IN TWO BASKETS

*It is very much recognising ... that they are both contributing in a marriage ... even though one may be in the unpaid workforce. Now her contribution to that marriage is very real.<sup>1</sup>*

11.1 Throughout the inquiry, the proposition was put to the Committee that spouse contributions would assist women in attaining an adequate level of retirement income. It was argued that allowing a working spouse to split their superannuation contributions with their non-working and/or intermittent working spouse would be one way in which those who fall outside the 30-40 year worklife could have their retirement income needs more adequately met in a superannuation system currently limited by an occupational nexus. Any such proposal requires care to ensure that tax inequities between higher and lower income earners are not exacerbated.

### **The extension of current arrangements**

11.2 The Committee heard evidence on certain business arrangements of the self-employed that allow provision of superannuation for a non-working spouse, and of the proposed use of salary sacrifice arrangements for employee spouse contributions.

#### *Self-employed - business arrangements*

11.3 It is possible for a self-employed person operating as a partnership to make superannuation contributions on behalf of a dependant. Dependant includes the spouse and any child of the person.

11.4 Under the *Income Tax Assessment Act 1936* the following persons are eligible for a deduction for contributions made by them to a superannuation fund for the benefit of an employee:

- the employer;
- if the employer is a partnership - any partner in that partnership;

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<sup>1</sup> Adamson J, Evidence, p 41

- if the employer is a company:
  1. any person having a controlling interest in the employer;
  2. any person owning shares in the employer, provided the Commissioner of Taxation is satisfied that there is an arm's length business relationship between that person and the employee;
  3. a company which owns a controlling interest in (or in which a controlling interest is owned by) the employer, such as a parent company contributing for the employee of a subsidiary, or vice versa;
  4. a company in which a controlling interest is owned by an individual or company which also owns a controlling interest in the employer, such as a subsidiary contributing for an employee of another subsidiary in the same group.<sup>2</sup>

11.5 The Australian Society of Certified Practising Accountants (ASCPA) submitted that these provisions, which allow self-employed persons to include their spouse in the superannuation arrangements of the business, are inequitable because the same arrangements cannot be made by the spouse of an employee.<sup>3</sup>

11.6 Chapter 3 presents an overview of the retirement income status of males and females currently of age pension age. It is clear that women generally have lower retirement incomes. The Committee recognised that the legal ownership of retirement income by the male in a couple may misrepresent the retirement income available to women in couples where income is pooled. However, the Committee has received evidence from women submitting that the ownership of the retirement income by one partner can create inequities during the marriage<sup>4</sup> and where a marriage is dissolved.<sup>5</sup>

11.7 Therefore, concepts of spouse contributions, broader than those currently available, were put to the Committee as a means of improving access to superannuation for women not engaged in the workforce.

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<sup>2</sup> Section 82AAA(1), (4)

<sup>3</sup> Evidence, pp 16, 17

<sup>4</sup> SW Sub No 71

<sup>5</sup> See Chapter 13 on Divorce

### *Salary sacrifice*

*Salary sacrifice* is a process whereby contributions to a employee's superannuation account are made by the employer on a pre-tax basis. This reduces the gross salary subject to tax. For example, an employee receiving a \$60 000 salary package could request the employer to contribute \$10 000 to a superannuation fund by way of salary sacrifice. The employee would receive a gross salary of \$50 000 on which PAYE tax would be payable.

11.8 The ASCPA suggested that these arrangements should be extended to non-working spouses, submitting that 'the employee should be free to negotiate with his or her spouse to breakdown [salary sacrifice for superannuation] into two parts, one going for the benefit of the employed person and one for the benefit of the non-employed person'.<sup>6</sup> The Society envisaged that the contributions would be vested in separate accounts for each spouse.<sup>7</sup>

11.9 The ASCPA disagreed with the suggestion that such arrangements are only of assistance to high salary earners and submitted that these types of arrangements become a possibility for couples at the stage in life when they no longer have family commitments. The Society recognised however, that the bottom one third of wage and salary earners would be unlikely to be able to access these types of arrangements.<sup>8</sup>

11.10 CBA Financial Services considered salary sacrifice as a means of improving the retirement income savings potential of women with broken workforce patterns, though a number of problems were identified. These included that salary sacrifice:

- may not be attractive to lower income earners;
- may conflict with award provisions;
- may be attractive where the non-working spouse is older than the working spouse and has exceeded the minimum preservation age; and
- attracts payroll tax in some States. This may impact on the costs to the employer, as the contributions to the working spouse may not currently

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<sup>6</sup> Burke F, Evidence, p 18

<sup>7</sup> Pagnon C, Evidence, p 30

<sup>8</sup> Burke F, Evidence, pp 18, 19

be taxed, but the contributions to the non-working spouse may take the employer over the payroll tax threshold.<sup>9</sup>

11.11 A further concern on the use of salary sacrifice was identified by the Insurance and Superannuation Commission (ISC). The ISC suggested that salary sacrifice contributions by a working spouse on behalf of a non-working spouse would constitute a form of income splitting. This would reduce the working spouse's taxable income by moving part of their pre-tax income into a concessional tax environment. The ISC believes that while such an arrangement might be attractive on retirement income grounds, the revenue and equity implications need to be examined.<sup>10</sup>

### **Spouse contributions - a bandaid solution or a positive step forward**

11.12 Olsberg and Adams argue that 'the superannuation system, the government and society assume that [women engaged in the unpaid caring of dependants] will be provided for by their spouses' superannuation savings'. As a consequence, 'these women are the invisible members of Australia's superannuation funds'. Super-splitting is recommended to enable these 'invisible and silent members to become active participants in the superannuation system'.<sup>11</sup>

11.13 The benefits of such arrangements identified by Olsberg and Adams include:

- an increased sense of ownership of superannuation savings for the women;
- an increase in privately provided income for women in old age;
- the tangible recognition of the intrinsic economic value of women's caring roles;
- resolving the current problems with divorce and superannuation;
- an increase in women's knowledge of superannuation;
- providing an incentive for the working spouse and the non-working spouse to make voluntary contributions; and

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<sup>9</sup> SW Sub No 42

<sup>10</sup> SW Sub No 37

<sup>11</sup> SW Sub No 9

- the government would be demonstrating its commitment to greater access and equity for women in superannuation.<sup>12</sup>

11.14 The Women's Action Alliance (WAA) also identified benefits for women resulting from the implementation of spouse contributions. WAA argued that women at home should not be denied access to vehicles such as superannuation through which they can save for their retirement. Access to superannuation via spouse contributions would reduce the dependence these women have on their spouses and on the age pension.<sup>13</sup>

11.15 The need for reduced dependence of women on their spouses and the age pension was also recognised by the Australian Lifewriters Association. By allowing a fund member to nominate joint accounts, contributions could be split 50/50 with the non-working spouse. This would provide superannuation savings for non-working spouses who otherwise do not gain recognition for their role in the home.<sup>14</sup>

11.16 In exploring the concept of spouse contributions before the Committee, the ASCPA presented a position that would require the occupational nexus to be diluted. The Society submitted that not only should 'a non-working party be allowed to contribute, or continue to contribute, to a superannuation fund' but that 'where a woman or one spouse is outside the workforce for a considerable period the spouses should be allowed to share their contributions'.<sup>15</sup> The Society also argued that, as there was a need for all Australians to have some superannuation savings upon retirement, 'it may be beneficial to allow every person who is not employed to contribute', including those living off investment income.<sup>16</sup>

11.17 In the longer term, the Society identified spouse contributions as reducing the likelihood of lump sum payments being paid to the surviving spouse in the event of the death of the working spouse. If additional contributions were allowed to be paid to the non-working spouse's account, the accrued benefit may provide a pension on retirement that would alleviate the

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<sup>12</sup> SW Sub No 9

<sup>13</sup> SW Sub No 15

<sup>14</sup> SW Sub No 20

<sup>15</sup> Burke F, Evidence, p 15

<sup>16</sup> *ibid*, pp 16, 25

pressure on the government and social security, whereby 'the amount of the cake can be divided amongst the needy more easily'.<sup>17</sup>

11.18 However, spouse contributions are not seen by all as having significant benefit for the majority of women. The Australian Council of Social Service does not endorse spouse contributions as it believes the availability of tax concessions for superannuation contributions on behalf of a lower or no-income spouse (usually female) would only assist higher income families. It would also constitute a substantial cost to revenue.<sup>18</sup>

11.19 This question of tax disadvantages for low income earners was also identified by Ms Eva Cox. Ms Cox could not see sufficient justification on equity grounds for implementing a spouse contributions proposal. In summary, Ms Cox informed the Committee that she could 'see no reason why further regressive measures, such as tax splitting at that high income level, should be allowed at the expense of public revenue'.<sup>19</sup>

### **How spouse contributions could work**

11.20 The Committee received detailed submissions on spouse contributions from CBA Financial Services and the Life Insurance Federation of Australia (LIFA).<sup>20</sup> The Sex Discrimination Commissioner also made some detailed submissions in her oral evidence before the Committee.<sup>21</sup> These are set out below.

#### *CBA Financial Services (CBA)*

11.21 CBA propose that:

- contributions be made to either private or employer-sponsored arrangements;
- such contributions would be tax deductible to the working spouse in the same way they are deductible for a self-employed person. Currently that those deductions amount to \$3 000 plus 75 per cent of any amount in excess of \$3 000 but no more than the Maximum Deductible

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<sup>17</sup> Wyatt M, Evidence, p 21

<sup>18</sup> SW Sub No 62

<sup>19</sup> Evidence, p 302

<sup>20</sup> SW Sub Nos 42, 70

<sup>21</sup> Evidence, pp 639-643

Contributions (MDC). CBA stated that the MDC for this purpose could be 67 per cent of maximum employer contributions. This figure was arrived at using the ratio of 167 per cent of the standard married pension to the single pension paid by DSS. The working spouse already has access to 100 per cent of MDC through employer contributions. In addition, the working spouse would now access a further 67 per cent of MDC for the non-working spouse. The age of the non-working spouse at the time the contributions were made would also influence the MDC;

- contributions will be taxable as income for the fund and investment earnings will be taxed in accordance with current arrangements;
- any benefits accruing from these contributions to the non-working spouse must be preserved until 55; and
- any benefits paid from these contributions to the non-working spouse would be taxed in the same way as Eligible Termination Payments. This gives the working and non-working spouse access to the tax-free threshold.<sup>22</sup>

11.22 Another question addressed by CBA was whether or not Reasonable Benefit Limits (RBLs) should be adjusted for the non-working spouse taking into account periods when they are in or out of the workforce. CBA thought that the current RBL limits should remain the same, given that such arrangements would be administratively complex and on the basis that the MDC proposed would limit the amount of the benefit accruing during periods of non-employment.<sup>23</sup>

11.23 CBA supported its proposal by comparing the net benefits between the superannuation savings as outlined above with the alternative of saving via a bank account. Three scenarios were used with relevant assumptions. The end results showed that the net benefits of the spouse contributions proposal exceeded the net benefits of using a savings bank.<sup>24</sup>

#### *Life Insurance Federation of Australia (LIFA)*

11.24 While some commentators have been critical of the spouse contribution proposal on the basis that it would only be of benefit to high income earners

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<sup>22</sup> SW Sub No 42

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

wanting to take advantage of the tax arrangements, LIFA argued that there were two more important considerations that necessitated consideration. They were the:

- significant increase to the total pool of superannuation contributions with minimal costs to government revenue, and
- ability of women to achieve superannuation savings in their own name.<sup>25</sup>

11.25 LIFA commissioned National Mutual to calculate the degree of superannuation savings as a result of spouse contributions. A number of specifications were provided, including the deductibility and taxing of contributions, as well as assumptions, including that such contributions are only made by couples with income above Average Weekly Earnings (AWE) and contributions are treated for deductibility purposes as being from the employer.<sup>26</sup>

11.26 The results from the modelling indicate that around 60 000 couples would make contributions. Such contributions would increase fund balances by \$323 million in 1995 and \$12 631 million by 2020. Over the same period, it is forecast that cost to Government revenue would decrease from \$91 million to \$48 million.<sup>27</sup>

11.27 While this would boost national saving, it should be noted that government age pension costs would be minimal as most of the selected couples are not entitled to the age pension. Any tax concessions are offset by tax receipts (although such receipts are delayed until the beneficiary retires or resigns).<sup>28</sup>

11.28 In discussing their proposal with the Committee, Mr Cole stated that 'most women will at some stage work and be members of a superannuation scheme in their own right'. It was recommended that any pre-existing accounts be utilised for spouse contributions on behalf of the now non-working spouse before any new accounts were opened. A requirement for new accounts to be opened would only exacerbate the already existing small amounts problem.<sup>29</sup>

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<sup>25</sup> SW Sub No 70

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> SW Sub No 70

<sup>29</sup> Evidence, p 258



*The Sex Discrimination Commissioner*

11.29 The Commissioner recommended that when a person left the workforce temporarily to have and/or to look after children or other dependants, any existing superannuation savings could be rolled over into the working spouse's fund with the following stipulations:

- a separate account for the non-working spouse be maintained;
- fifty per cent of the working spouse's contributions be paid to the account; and
- insurance cover be maintained.<sup>30</sup>

11.30 The advantages of such an arrangement included:

- the continuation of insurance cover for both partners;
- a continued accumulation at an equal, if reduced, rate;
- no additional cost to the employer as only a single payment would be remitted to the fund;
- no negative affect on the national savings strategy;
- a flow-on effect in terms of superannuation and divorce;
- the ability for the individual upon recommencing work to make full payments to their account or rollover the savings to a new employment-related fund.<sup>31</sup>

11.31 The Commissioner informed the Committee that this proposal should be introduced in the year 2002. 'I am not of the view that this would be a useful thing to do until the level of contributions has reached an adequate level'.<sup>32</sup> By the year 2002, Superannuation Guarantee contributions will be 15 per cent.

11.32 The Commissioner was also strongly of the view that the proposal be limited strictly to the compulsory contributions. She explained that:

[her] reason for that view is that one of the great criticisms in relation to superannuation is that there are too many additional benefits for people who

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<sup>30</sup> SW Sub No 89

<sup>31</sup> *ibid*

<sup>32</sup> Evidence, p 639

are on higher incomes in terms of tax breaks ... what I am proposing is a mechanism that would avoid turning superannuation into an income splitting mechanism for tax purposes.<sup>33</sup>

11.33 This position was supported by Mr Vernon of Jacques Martin Pty Ltd (JMI) who argued that 'if you have open slather with that arrangement, you are going to have a skewing of the tax concessions in the community to those who are higher paid'.<sup>34</sup> JMI said that restrictions may need to be imposed,<sup>35</sup> and suggested that the spouse contribution provision should be restricted as a way of keeping tax concession costs under control, and that the Superannuation Guarantee might be an appropriate mechanism.<sup>36</sup>

### Would it work?

11.34 JMI informed the Committee the actual split of the contribution between two accounts would be a simple process for the administrators. On receipt of a cheque for payment, details of what amounts should be paid, and to whom, needed to be attached. Mr Vernon told the Committee that administration costs would not increase significantly as a result of running two separate accounts for the working and non-working spouse. 'Certainly the costs would be no higher than if a credit union, bank or building society were running a similar account. They would be at least as low, if not lower'.<sup>37</sup>

11.35 Mr Vernon indicated that if an individual account existed then other superannuation related benefits, such as death insurance for the non-working spouse, would apply. 'It is important that these people have access to ... the attached insurance if they want it. Without it, the death of the spouse will cause enormous hardship, not only emotionally but also in raising a family'.<sup>38</sup>

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<sup>33</sup> Evidence, pp 639, 640

<sup>34</sup> Evidence, p 63

<sup>35</sup> SW Sub No 17

<sup>36</sup> *ibid*

<sup>37</sup> Evidence, p 57

<sup>38</sup> Evidence, pp 58, 59

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**CHAPTER 12:**

**BUYING BACK SUPERANNUATION  
ENTITLEMENTS:**

**THE MARRIAGE BAR AND OTHER DISCRIMINATORY  
PRACTICES**

*What happened to their employer contributions?<sup>1</sup>*

12.1 Past discriminatory employment practices have resulted in a disentitlement to superannuation benefits that would have been available but for those practices. Those whose superannuation has been affected by these practices are now seeking to buy back the entitlements that were lost.

12.2 This chapter examines the steps that are being taken in a number of jurisdictions to address the impact of past discriminatory practices. Two particular examples of past employment practices that lead to superannuation disentitlement brought to the Committee's attention are:

- (i) the marriage bar; and
- (ii) the absence of working arrangements such as casual or part-time employment which would accommodate women caring for children.

12.3 The Committee concludes that where current public sector employees, who lost employer contributions as a result of past discriminatory employment practices, should be given the opportunity to buy back their superannuation entitlements at a rate less than the total cost of employer and employee contributions. That is, the rate should be somewhat concessional as well as being actuarially sustainable for the fund.

**Discrimination principles**

12.4 An important principle of discrimination law is to compensate for injustices or disadvantages experienced by particular groups in society. Anti-discrimination laws are not retrospective, but where past discrimination

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<sup>1</sup> Tracey A, Evidence, p 402

continues to have ongoing effects then anti-discrimination laws may be used to address those continuing effects.

12.5 Without prejudice to actions which individual women may take, the Committee was concerned whether there was a need for Commonwealth legislative or other action in relation to any perpetuating injustice in women's superannuation resulting from the former marriage bar. The Sex Discrimination Commissioner said, 'My view is that it would be an act of good faith for the Federal Government to compensate these women in some form.'<sup>2</sup>

### *Indirect discrimination*

12.6 Indirect sex discrimination occurs when apparently neutral policies and practices adversely affect a higher proportion of people of one sex or marital status. It is assessed on the basis of outcomes not intentions.<sup>3</sup>

12.7 For example, it was suggested that it may be possible for women who suffered discrimination as the result of the marriage bar to successfully bring a case of indirect discrimination on the grounds of sex or marital status:

The argument could be made that a woman forced out of her superannuation scheme when she married and who then returned to the same employer, faced the perpetuation of the previous discrimination, because her years of service prior to her marriage are not recognised for superannuation purposes, whereas men who had served the same or less years of service, did have their period of service prior to their marriage recognised.<sup>4</sup>

### **The marriage bar**

*A woman who was an employee of the Commonwealth Government between 1961 and 1965, was forced to leave when she married in 1965. She was repaid her superannuation payments made over that period, but without interest. She subsequently rejoined the Commonwealth Public Service after the marriage bar had been removed, and wish to 'buy back' her earlier years of service.<sup>5</sup>*

<sup>2</sup> SW Sub No 89

<sup>3</sup> Sex Discrimination Commissioner, *Further Guidance for Employers and Trustees with regard to the 1993 Superannuation Amendments*, Human Rights and Equal Opportunity Commission, 1995, p 10

<sup>4</sup> *ibid*, p 37

<sup>5</sup> Sex Discrimination Commissioner, *Buyback and Retrospectivity Guidelines*

## *Background*

12.8 The 'marriage bar' describes the practice that prevented women in certain sectors of the workforce from continuing in employment after they married. The Committee heard evidence from people who had been either State government or Commonwealth employees and who were affected by the marriage bar as it operated in Queensland, Tasmania, and the Australian Capital Territory.

12.9 While the specific impact of marriage bar varied between individual witnesses according to their employment and residence, it was noted that one form of its expression was under the *Public Service Act 1992* (Commonwealth), which prohibited married women from working as permanent employees in the Commonwealth public service.

### *The number affected in the Commonwealth*

12.10 According to the 1966-67 Annual Report of the Public Service Board, just under 5 000 women left the Commonwealth public service in the three years 1964 to 1966 under the separation category 'marriage retirement'. In each year this represented between one quarter and one third of all female permanent staff leaving the service in those years. The majority of these women worked in the 'Fourth Division', which included telephonists, typists, stenographers, clerical assistants etc.<sup>6</sup>

12.11 At June 1967, 2 027 married women were employed as permanent officers in the service, representing 7.5 per cent of female officers. This more than doubled in the following year, with 4 832 married women (representing 15.4 per cent of female officers) being employed as permanent officers at June 1968.<sup>7</sup>

### *The impact on superannuation*

12.12 Although such discriminatory provisions are no longer in effect under State or Commonwealth law, it was argued that the deferred nature of superannuation benefits meant that the consequences of past discrimination affect the superannuation entitlements of a number of women.

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<sup>6</sup> Public Service Board *Forty Third Annual Report 1966-67*, p 93

<sup>7</sup> Public Service Board *Annual Report 1969*, p 125

12.13 This form of discrimination has resulted in other disadvantages and loss of entitlements, such as accrual of leave and long service leave. The Commonwealth Government has since corrected for lost entitlements in certain areas such as sick leave, which have been recredited.<sup>8</sup> 'There has also been some recognition of prior service on retrenchment'.<sup>9</sup>

12.14 The marriage bar for Commonwealth employees was lifted in 1966. (Some parts of the private sector did not eliminate the marriage bar until after 1971.)<sup>10</sup> A number of women who were affected and who rejoined the public service after a break of some years are naturally eager to maximise their superannuation.

12.15 The Committee examined the case of Ms Kaye Jenner as an example of a woman with a broken employment history with the Australian Public Service. Ms Jenner's first period of employment was terminated by the marriage bar; and the second before the birth of a child, was prior to the introduction of maternity leave provisions. She was now in her third period of employment. Ms Jenner argued that:

the number of years that I am able to participate in the paid workforce was restricted by the marriage bar ... and the lack of maternity leave entitlements before 1971. By comparison, on these points the male workforce was not affected.<sup>11</sup>

12.16 The general proposal put before the Committee was that such women be given the opportunity to buy back their past superannuation entitlements.

12.17 It was put to the Committee that the matter of recognition of marriage bar service is not as clear-cut as first appears. Mr Lindsay gave a hypothetical situation of a person affected by the marriage bar who may be better off than a person who actually stayed in the CSS for the whole period. This is because the CSS system was front loaded, with earlier years attracting a much higher benefit; the first 20 years at two per cent accrual of final salary (if retirement is taken at 65), the next 10 years at one per cent, and the next 10 at one quarter per cent. For people 'who were members before 1 July 1976, 20 years counts as 30'.<sup>12</sup>

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<sup>8</sup> Jenner K, Evidence, p 434

<sup>9</sup> Sex Discrimination Commissioner, SW Sub No 89

<sup>10</sup> Lindsay D, Evidence, p 677

<sup>11</sup> SW Sub No 72

<sup>12</sup> Evidence, p 678

12.18 Providing the member rejoined before 1 July 1976 and could reach a 20 year threshold, they could still pick up a 50 per cent pension, and they would have had access to the early contributions to pay off other commitments. However, Mr Lindsay added:

That said, I can well imagine there would be others who are still inside their 20-year period who would suffer very greatly by not having the marriage bar recognised.<sup>13</sup>

12.19 If the marriage bar service was recognised for those now back in Australian Public Service employment, the following points were raised in regard to other relevant groups:

[W]hat about those who have rejoined and subsequently retired? What about those people who actually joined Commonwealth employment as temporaries, because married women were not allowed to be permanents, but had the married bar not existed would have been permanents and could have picked up perhaps five or 10 years service? How do you restore the equity of those?<sup>14</sup>

12.20 The Committee recognised that there were problems of equity in buy backs per se, as well as difficult actuarial questions relating to the level of contribution required to finance any buy back arrangements. It is necessary to draw a distinction between discrimination relating to employment and that relating to superannuation.

(Note: There was substantial evidence relating to cases of people allegedly misled or uninformed about their preservation options after 1971, and subsequently wishing to buy back. The Committee did not regard this evidence as relevant to this chapter.)

### *Experience from state schemes*

12.21 The Queensland Teacher's Union (QTU) estimated that nearly 1 000 of their female members have been the 'victims of past discrimination as a result of the policies, practices and legislation of the 1960s and 1970s'. Ms Mertens of QTU told the Committee that the former section 32 of the Public Sector Superannuation Act stated:

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<sup>13</sup> Evidence, p 678

<sup>14</sup> Lindsay D, Evidence, p 678

A married women who becomes an officer is not entitled to contribute to the fund. A female officer who marries is deemed to have resigned on the date of her marriage.<sup>15</sup>

12.22 Discrimination experienced by teachers took the form of female teachers being required to resign on marriage, married women teachers not being granted permanency, and teachers being 'required to resign to take time to raise a family'.<sup>16</sup> According to the QTU, until 1987 the Queensland public sector superannuation scheme paid those teachers who resigned a refund of personal contributions plus a very small amount of interest. The QTU submitted that no vesting arrangements existed.<sup>17</sup>

12.23 The (QTU) supported buy back arrangements and:

has sought provisions to allow teachers who were forced to resign on marriage ... to repay refunded contributions to the superannuation office and have all previous crown service recognised for superannuation purposes. These 'buy-back' provisions have been refused.<sup>18</sup>

12.24 One of the issues raised in the Queensland experience was the effect on other members of a fund should buy back options be permitted. In a funded scheme the employer contributions and accrued earnings of those who resigned, and received only their own contributions with or without interest, remain with the fund to help provide the benefits enjoyed by others. The fund could argue that 'it could not afford to pay out the benefits it had promised to those with unbroken service' if it was required to fund benefits for those who bought back on the basis (say) of paying back the refunded employee contributions. The QTU recognised that any actuarial surplus would be insufficient to fund buy backs without substantial injection of money from the State Government.<sup>19</sup>

### **The absence of flexible working arrangements**

12.25 Evidence was presented to the Committee relating to the experiences of women forced to resign from permanent teaching positions to accommodate their family responsibilities in the absence of provisions such as leave without

<sup>15</sup> Evidence, p 396

<sup>16</sup> SW Sub No 11

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

<sup>19</sup> Evidence, p 398



pay. The ACT Branch of the Australian Education Union was supporting some 25 members, mainly female, in their proposals to buy back into the CSS:

via the late preservation benefits option that was available during the late 1970s/early 1980s ... At this stage ComSuper has refused late election of preservation to most applicants thus the activation of AAT appeals mechanisms.<sup>20</sup>

These ACT cases relate to people in the late 1970s and early 1980s who left the teaching service mainly for family reasons.<sup>21</sup>

12.26 It was not until 1971 that people resigning from Commonwealth employment had the option of preserving their benefits in the Commonwealth Superannuation Scheme (CSS). 'Prior to 1971 that option was not available'.<sup>22</sup> This creates real difficulties when buy back is being proposed, as it was not just married women who have been penalised in the past. An example given by Mr David Lindsay, of the Department of Finance, was that of public servants (male and female) who enlisted in the armed services, who were not permitted to contribute during their war service and were never offered a buy back option.<sup>23</sup> Mr Lindsay said:

One issue is how far a government goes to redress employment or other practices that were acceptable at the time - or tolerated ... might be a better way of phrasing it - but are now considered to be unacceptable.<sup>24</sup>

12.27 The Tasmanian experience was also examined by the Committee. The Australian Education Union (AEU), Tasmanian Branch, advised of a campaign to persuade the State Government to correct a perceived injustice prior to 1968, when 'women teachers who became pregnant were forced to resign from their employment'.<sup>25</sup> This was because there was no maternity leave until late 1968 and no provision for leave without pay. When they resigned, superannuation contributions were refunded without interest and with an administration fee deducted.

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<sup>20</sup> SW Sub No 25

<sup>21</sup> Haggart C, Evidence, p 515

<sup>22</sup> Searson K, Evidence, p 676

<sup>23</sup> Evidence, p 677

<sup>24</sup> *ibid*

<sup>25</sup> SW Sub No 24

12.28 The introduction of a new Tasmanian public sector superannuation scheme in 1994 made it possible to purchase periods of pre-resignation service. The objection raised by the AEU was that the full actuarial cost had to be paid 'despite the fact that the employee was forced to resign'.<sup>26</sup> Accordingly, the AEU was asking the State Government, as the employer, to bear most of the cost of allowing the pre-resignation benefit to be included for retirement benefit purposes. A proposed alternative was for the Commonwealth Government to bear the employer cost (15 per cent of current annual salary for each year of service) in a one-off grant.<sup>27</sup>

### **Can buy backs be a solution to past discrimination**

12.29 As described in the above paragraph, the new Tasmanian scheme allows for the buy back of pre-resignation service at full actuarial cost. While an obvious improvement on the pre-1994 scheme, the AEU argued that an employee accepting such an arrangement should only be required to pay the employee cost of the contributions that were made during the period of service.<sup>28</sup>

12.30 The Committee agrees with the Federal Secretary of the AEU, Mr Robert Durbridge, who considered that although direct discriminatory practices have now been removed, there is still an impact on many women teachers in relation to superannuation and retirement benefits. Mr Durbridge recommended that:

Where possible, all previously ineligible employees have the option of purchasing foregone contribution entitlements.<sup>29</sup>

### **Conclusion**

**12.31 The Committee considers that, where possible, those women who were forced to resign from their public sector employment by the marriage bar, and who have subsequently returned to the public sector, be given the option of purchasing greater superannuation entitlements at an indexed employee contribution cost which is actuarially sustainable to the fund.**

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<sup>26</sup> ibid

<sup>27</sup> ibid

<sup>28</sup> ibid

<sup>29</sup> SW Sub No 93

## CHAPTER 13:

# SUPER AND DIVORCE

*Superannuation is frequently the major asset or financial resource of the parties to a marriage, and one party may have forgone superannuation coverage for a number of reasons, including what was considered to be adequate coverage on the part of the other party to the marriage to provide for both parties in the future.<sup>1</sup>*

### Marriage breakdown

13.1 The problems of low levels of superannuation for women are exacerbated where marriage breakdown occurs and the female partner, who may have had a lengthy absence from the workforce, finds herself with no superannuation in her own right and limited employment prospects.<sup>2</sup> Case Study 2 presented by Boranup Community states:

By 31 she was divorced, a single parent and employed by the State government. She did not contribute to the super scheme as her limited income as a clerk was spent on day care and accommodation. The divorce settlement did not entitle her to her spouse's superannuation.<sup>3</sup>

13.2 As has been outlined in Chapter 2, women's earnings, and hence their superannuation accumulations, are such that few retired women have superannuation as their main source of income. For 36 per cent of women the main source of income at the start of their retirement was 'someone else's income'.<sup>4</sup> For many women, it is their male partner's superannuation scheme which is the one on which their future income relies.<sup>5</sup> They have foregone superannuation coverage for a number of reasons, including assuming a carers role in the family, typically based on the belief that their partner's superannuation provided adequate coverage for both parties in the future.<sup>6</sup>

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<sup>1</sup> The Hon Peter Duncan, MP, Parliamentary Secretary to the Attorney General, SW Sub No 79

<sup>2</sup> AMP, SW Sub No 55

<sup>3</sup> SW Sub No 26

<sup>4</sup> Australian Bureau of Statistics, *Australian Woman's Year Book* 1994, Catalogue No. 41240, p 105

<sup>5</sup> Minister for Women's Affairs, Victoria, SW Sub No 66

<sup>6</sup> Duncan, op cit

13.3 However, as pointed out by the Women's Action Alliance, increasing rates of divorce mean that women can no longer assume that they will be supported by their husbands in retirement.<sup>7</sup>

13.4 In 1993, there were 48 324 divorces in Australia, accounting for between 11 and 12 per 1 000 married women.<sup>8</sup> Financial dependency associated with non-paid work during marriage generally means a decline in the standard of living after divorce - two thirds of women have a decline in standard of living after divorce.<sup>9</sup>

13.5 The ease with which each party can be given rights to superannuation assets, and the time at which this should be done, are at the heart of whether the entitlements ultimately awarded in the case of divorce are just and equitable. The question of whether superannuation assets received from a divorce settlement should be subject to the same preservation rules as all other superannuation was raised.<sup>10</sup>

### **The division of property**

13.6 Until the late 1970s the Family Court took the view that equality should be the starting point in dividing property. However, in *Mallet v Mallet*<sup>11</sup> the High Court held that there was no legislative basis for presumption of equal shares, and stressed the discretionary basis of the *Family Law Act 1975* (the Act).<sup>12</sup>

13.7 The Act requires the Court, in considering what order should be made with respect to property, to have regard to the contributions made by each party to the acquisition of property. The Act also recognises that a party may contribute indirectly, or make a non-financial contribution, to the acquisition of property. This may include the contribution made by a party as a home maker or as a parent of children of the marriage.<sup>13</sup>

<sup>7</sup> SW Sub No 15

<sup>8</sup> Australian Bureau of Statistics *Australian Women's Year Book 1994* p10

<sup>9</sup> Weston R, quoted in Walpole S, *Indirect Discrimination and Superannuation in Women and Superannuation: Selected Seminar Papers*, EPAC Background paper No 41, August 1994, p 121

<sup>10</sup> Capstick D, SW Sub No 60

<sup>11</sup> (1984) 156 CLR 605

<sup>12</sup> Walpole, op cit, p 122

<sup>13</sup> Duncan, op cit

13.8 The Sex Discrimination Commissioner submitted that women fare badly in a discretionary system where judges undervalue work in the home compared to earning a living, suggesting that the going rate in the Family Court for work in the home has been 20-30 per cent of financial contribution.<sup>14</sup>

### **The inclusion of superannuation assets in property settlements**

13.9 Although the Court usually regards accumulated superannuation funds as joint assets, there is no requirement to take retirement benefits into account in any property settlement.<sup>15</sup> A review undertaken by the Australian Institute of Family Studies found that, in the mid-1980s, superannuation was not taken into account in the settlement in 60 per cent of divorce cases and in three quarters of those cases, people were not advised about its relevance.<sup>16</sup>

13.10 Ms Jane Reynolds, Victorian Department of Justice, accepted that superannuation was increasingly being acknowledged in the settlement of assets on divorce in the Family Court, but put the view that it ought to always be factored into the settlement of assets on the point of divorce, as it has been found that women have been disadvantaged by that not happening.<sup>17</sup>

13.11 The AMP presented a strong argument in its submission to the Committee in support of inclusion. The AMP argued that:

Currently, when marriage breakdown occurs, the court can choose to take into consideration any accrued superannuation held by the partners... Clearly, it is in both parties interests if there is an option for the superannuation asset at the time of marriage breakdown [to be] equitably divided between the parties.<sup>18</sup>

13.12 The Committee supports this position, but acknowledges that no one formula will be appropriate for every instance.

13.13 The Committee understands that legislation to be introduced this year will maintain the status quo, that is, it will continue not to include superannuation as property of the marriage.

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<sup>14</sup> Walpole, *op cit* p 122

<sup>15</sup> Women's Action Alliance of Australia, SW Sub No 15

<sup>16</sup> Walpole *op cit*

<sup>17</sup> Evidence, pp 128, 129

<sup>18</sup> SW Sub No 55

## The treatment of superannuation entitlements on marriage breakdown

13.14 The difficulties for the courts in dealing with superannuation result from the question of whether superannuation falls within the definition of 'property' under the Act and how superannuation assets are valued.<sup>19</sup>

13.15 The following issues are pertinent in any discussion on the treatment of superannuation in family law:

- whether or not superannuation can be considered property under the Act;
- the characteristics of superannuation funds themselves and the implications these may have for proceedings in the Family Court;
- the valuation of superannuation entitlements; and
- the method of affecting a final settlement which includes the consideration of the superannuation.<sup>20</sup>

13.16 The Court has indicated that, wherever possible, superannuation entitlements will be treated as divisible property of the marriage. Decisions are made in relation to superannuation in the context of individual cases before it with the approach adopted depending upon the facts in each case.<sup>21</sup>

13.17 The following approaches have been used:

- hearings adjourned or orders deferred until superannuation becomes payable; or
- consideration of superannuation as a financial resource.

13.18 Each approach has advantages and disadvantages.

### *Deferral of hearings or orders*

13.19 Deferring orders until the superannuation becomes payable could create problems if the contributing spouse dies or other significant changes occur in the circumstances of the parties during the period of deferral of the operation of the order. Such an approach does not accord with the 'clean break' principle by

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<sup>19</sup> Joint Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975: Aspects of its Operation and Interpretation*, Nov 1992, p 237

<sup>20</sup> *ibid*

<sup>21</sup> Duncan, *op cit*

which the Family Law Act operates to ensure an end to the financial relationship of the parties.<sup>22</sup>

### *Considering superannuation as a financial resource*

13.20 Superannuation is not considered as property until it is vested in the individual member's name. If superannuation entitlements are not characterised as property, under the Family Court's discretion they may be apportioned as a financial resource.<sup>23</sup>

13.21 This may allow the Court to take into account those financial resources to the extent that the other party may gain a greater percentage of the other property available for distribution. This has meant that wives have often been compensated for the loss of an interest in their husband's funds by receiving increased amounts of other assets.<sup>24</sup>

13.22 *Matrimonial Property*, prepared for the Australian Law Reform Commission in 1987 (also known as the Hamblly Report), outlined three major approaches judges may use to value superannuation if the benefits are treated as a financial resource:

- the 'notional realisable value' which assesses the amount of benefit that would be payable if the member resigned at the date of separation or at the date of the hearing;
- the 'discounted prospective benefit', which apportions the amount of benefit that would be payable on retirement in the same proportion that the period of co-habitation during which the member was a member of the scheme bears to the total period of membership of the scheme, and then discounts the figure to give its present value; and
- the 'take it into account' method, where the prospective benefit may be taken into account without detailed inquiry into its value.<sup>25</sup>

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<sup>22</sup> Office of the Cabinet. Queensland. SW Sub No 48

<sup>23</sup> *Noel v Noel* (1981) FLC 90-035 in Joint Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act *The Family Law Act 1975: Aspects of its Operation and Interpretation* Nov. 1992 p240

<sup>24</sup> SW Sub No 48

<sup>25</sup> Australia Law Reform Commission *Matrimonial Property* referred to in *Joint Committee on Certain Aspects of the Operation and Interpretation of the Family Law*, op cit, p 241

13.23 Consideration of superannuation in this way has not been universally endorsed due to a number of considerations. There is a fair degree of dissatisfaction with cash settlements as, in most instances, no real savings are available to be retained for the future once expenditure to finalise the home mortgage or extra living expenses are taken out. The other side of the coin is that the partner who has to make the cash payment may not have the funds to make such a payment and he or she may have to borrow at fairly substantial rates.<sup>26</sup>

#### *Super or housing*

13.24 Another option is trading off superannuation for housing. Housing and poverty are closely related issues and property settlements that trade off superannuation for housing may be desirable. Ms Roz Lambert argued that there are many separated and divorced women who do not own housing and who will therefore find themselves in poverty in retirement in 15 years time.<sup>27</sup>

13.25 However, the Office of the Status of Women submitted that the fact that women tend to have custody of children should not preclude them from either adequate housing or retirement income.<sup>28</sup> However, the reality of marriage breakdown is that the same resources are required to finance two households and two separate retirement incomes.

### **Solutions to the super and divorce question**

13.26 Dealing with superannuation assets in the event of divorce has been, and continues to be, the focus of discussions in a number of official fora.

13.27 Past reports include:

- *Family Law in Australia* (the first report of Joint Select Committee on the Family Law Act, 1980);
- *Matrimonial Property* (also known as the Hambly Report, for the Australian Law Reform Commission, 1987);
- *Superannuation and Family Law* (Family Law Council, 1987);

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<sup>26</sup> Morgan R, Evidence, p 535

<sup>27</sup> SW Sub No 56

<sup>28</sup> SW Sub No 97



- *Collective Investment Schemes - Superannuation* (Australian Law Reform Commission, 1992); and
- *The Treatment of Superannuation in Family Law* (Attorney-General's Department, 1992)

13.28 The Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act was established in response to community dissatisfaction with matters ancillary to divorce and the cost of justice.

13.29 That Committee recommended that superannuation be considered as property and that the Family Court be given a discretionary power to split a superannuation entitlement between spouses in proportion equal to the length of marriage or cohabitation by reference to the total period of contribution to the fund.

13.30 The recommendation of the Joint Select Committee was not accepted by the Government. Instead, a Governmental Working Group (Working Group to Develop a Scheme for Splitting Entitlement to Superannuation Under the Family Law Act) was formed to develop a scheme within the following parameters:

- (i) superannuation will be dealt with as a separate and discrete asset;
- (ii) the asset will be distributed between the parties, upon breakdown of marriage, equitably by operation of law;
- (iii) apportionment of the entitlement will be effected by reference to the period of cohabitation and the period of contribution to the fund; and
- (iv) the proposal is to be consistent with the retirement incomes policy.<sup>29</sup>

13.31 The Working Group consists of representatives of the Attorney-General's Department, the Department of Prime Minister and Cabinet, including the Office of the Status of Women, the Treasury, the Department of Finance, the Australian Taxation Office, the Insurance and Superannuation Commission, the Department of Social Security, and consultants from the Family Court of Australia and the Association of Superannuation Funds of Australia. The Family Law Section of the Law Council of Australia has been added as a consultant.

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<sup>29</sup> Government response to the report by the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act 1975, *Family Law Act 1975 Directions for Amendment*, December 1993, p 42

13.32 Mr Morgan, Senior Government Counsel in the Family and Administrative Law Branch of Attorney-General's Department, informed the Committee that under the proposal being developed by the Working Group:

... superannuation would not be treated as property but as an asset or as a financial resource for the future. It would still retain its identity as a retirement benefit and it would be a retirement benefit for both parties...what we were seeking to do was to arrange for [the contributor's] entitlement to be split at the time of dissolution, or at the timing of the hearing of the matter, into two separate components - one in [one] name and one in [the] ex-spouse's name. That would continue to run in [the spouse's] case until such time as the normal vesting time came, in which case [the spouse] would then be entitled to pensions.<sup>30</sup>

13.33 The Committee is extremely concerned, however, that this Working Group does not appear to have come any closer to a solution to the issue. It is two years since the Government responded to the Joint Select Committee's Report and established the Working Party, yet options for reform have not been published. Whilst this Committee fully appreciates the difficulty of the problem, it was concerned to hear Ms Susan Ryan, Executive Director, Association of Superannuation Funds of Australia, comment that:

as yet, that aim [to develop an equitable formula for division of the superannuation benefits on divorce] has not been achieved. It is extremely complex and we have found the longer we are working on it the harder it is to solve it in an equitable way.<sup>31</sup>

13.34 The Committee finds it unacceptable that the Attorney-General's Department does not see a solution being developed that can be submitted to Government until at least 1996 and agrees with Mr Morgan that 'that is a fairly unsatisfactory state because it really leaves one major asset of the whole relationship to the current rules'.<sup>32</sup>

### **Spouse contributions**

13.35 During the course of the inquiry a number of witnesses argued that the establishment of separate superannuation accounts during the marriage, particularly during the time that the female partner is not engaged in the labour force for childrearing or other caring responsibilities, would go some way to

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<sup>30</sup> Evidence, p 534

<sup>31</sup> Evidence, pp 191, 192

<sup>32</sup> Evidence, pp 534, 535

overcoming the difficulties posed by superannuation entitlements as a result of divorce.<sup>33</sup> This issue is dealt elsewhere in the report (See Chapter 10: Spouse Contributions)

## Conclusion

13.36 There is little doubt that the treatment of superannuation entitlements in the event of marriage breakdown has the potential to impact significantly on the financial security of divorced women, particularly those women who have not accumulated benefits due to other demands being placed on them which have limited their participation in the paid workforce.

13.37 There is also little doubt that it is a complex issue, the solution to which will not be easy to find.

13.38 On the evidence presented, the Committee is convinced that failure to include superannuation assets as part of the marriage property is likely to significantly disadvantage a substantial proportion of women. Such assets should be considered in the settlement of assets at the point of divorce.

13.39 The Committee has been presented with a number of options which appear to have merit. However, given that other fora are addressing this issue, the Committee does not believe it is appropriate to make recommendations at this stage.

13.40 It does, however, call on the Government to allocate priority to the resolution of this very difficult area of superannuation.

### **Recommendation 13.1:**

**The Committee is greatly concerned with the serious delay that has occurred in the resolution of the treatment of superannuation assets in the event of marriage breakdown and recommends that the rectification of this matter be given priority.**

13.41 The Committee strongly encourages the Attorney-General to have appropriate legislation in place for consideration by the Parliament at the earliest possible time.

<sup>33</sup> Evidence, Smit P, p 41; Olsberg D, pp 222, 223; Evatt K, p 475



## CHAPTER 14:

# MARITAL STATUS AND OTHER RELATIONSHIPS

*It is the differential treatment that is of concern<sup>1</sup>*

### The environment

14.1 Persons in formal or de facto marriage relationships currently enjoy benefits from superannuation funds often not available to single people.<sup>2</sup> Early in its inquiry, the Committee was made aware of allegations of discrimination against people in a relationship with someone of the same sex, because of an inability to benefit from their partners' superannuation entitlements in the same way as a heterosexual couple. Under current superannuation and tax law, somebody in a same sex relationship is treated as a single person,<sup>3</sup> which means that when they die, lower benefits are paid to those left behind.<sup>4</sup>

14.2 A member of the Victorian State Government (Revised) Superannuation Scheme appeared before the Committee. He had nominated his same sex partner of 18 years as his dependant for superannuation purposes. However, the fund 'refused to acknowledge that nomination on the grounds that its definition of "dependant" has to be of the opposite sex'.<sup>5</sup> Two issues arise:

the nomination issue is one issue, the benefits payable to single people is another issue. In a lot of superannuation funds there is a benefit payable, whether or not there is any dependants or spouse. The benefit passes to the estate. If, for example, a superannuation fund member dies and they belong to an accumulation scheme, there is a refund of contributions and interest and there is an insured death benefit that is payable. The trustees look for a spouse and dependants and if they can find none, they pay them to the estate. Where the estate misses out is that they are subject to the tax regime, whereas if there is a spouse they are not.

The other way they do miss out is in a lot of defined benefit funds, government schemes like the Commonwealth super scheme, where there is an additional benefit payable only if there is a spouse or children. You are right. If that discrimination was removed, then I do not think you would have much of an

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<sup>1</sup> Berrill J, Evidence, p 665

<sup>2</sup> Noble Park Special Development School, SW Sub No 94

<sup>3</sup> Scahill A, Evidence, p 661

<sup>4</sup> Tasmanian Gay and Lesbian Rights Group, SW Sub No 96

<sup>5</sup> Shaw D, Evidence, p 3, and see SW Sub No 2

argument from the gay and lesbian community about it. It is the differential treatment that is of concern.

One other point there is that superannuation arose out of the charitable trusts that occurred centuries ago and all the schemes were about providing for those who were left behind. So you are overturning centuries of charitable trusts, equity law, in doing that. I am not saying that that is impossible to do but it is a problem.<sup>6</sup>

14.3 Therefore, despite making identical contributions to superannuation during their working lives, the superannuation benefit of one member can be different from another simply on the grounds of marital status. The payment of disability and death payments may be of substantial value to a potential beneficiary and was of obvious concern to Mr Davydd Shaw who made the submission referred to above.

14.4 Mr Shaw agreed that the provision of death benefits can discriminate against single people, as well as sex same couples. Mr Shaw pointed out that:

discrimination is faced not just by same sex couples but by single people who have paid the same contribution rates all their working lives. At present, if someone who is unmarried dies just prior to retirement or within retirement ... their estate only gets back their contributions plus a small amount of interest payable on it ... but if they are married the spouse gets their benefits as of right. There is no qualification about being a dependant.<sup>7</sup>

14.5 Evidence received by the Committee covered the issue of whether discrimination occurred, and where it had, whether it was justified.

#### *The SIS Act*

14.6 The payment of a pension or benefit by a superannuation fund to a member's spouse or dependant is determined according to the provisions of the trust deed, or in the case of Commonwealth and State funds established for public servants, and acts of the relevant Parliaments. However, trustees must also comply with the *Superannuation Industry (Supervision) Act 1993* (the SIS Act), and other law relating to taxation and trusts.

14.7 The SIS Act provides for supervision of those superannuation funds which attract concessional taxation treatment as a result of compliance with its

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<sup>6</sup> Berrill J, Evidence, pp 664, 665

<sup>7</sup> Evidence, p 4

provisions. Section 62 is significant in that it requires the trustees to maintain the fund solely for one or more of a number of listed core or ancillary purposes.

14.8 These purposes include:

The provision of benefits in respect of each member of the fund on or after the member's death, if: ...

(A) ...

(B) the benefits are provided to the member's legal personal representative, to any or all of the member's **dependants**, or to both.<sup>8</sup>

14.9 **Dependant** is defined in section 10 of the Act as:

"dependant", in relation to a person, includes the **spouse** and child of the person.

14.10 **Spouse** is defined in section 10 as:

"spouse", in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.

14.11 The Gay and Lesbian Rights Lobby (GLRL) said most fund trustees interpret sections 10 and 62 to exclude the payment of death benefits to a same sex partner, even if that partner had been named as the nominated beneficiary by the deceased.<sup>9</sup> The consequences of this with respect to same sex partners and single people are discussed below.

14.12 From the evidence received, it appears that current regulations place trustees of a superannuation fund in the invidious position of risking their fund's complying status should they pay a death benefit to a same sex partner. Treasury agreed that there does seem to be a discrimination in the sense that the fund itself loses complying status if it makes such a payment.<sup>10</sup>

14.13 This serious dilemma was well covered by the Sex Discrimination Commissioner when she said:

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<sup>8</sup> Section 62(1)(a)(iv), Emphasis added

<sup>9</sup> SW Sub No 85 (Supp)

<sup>10</sup> Edsor L, Evidence, p 605

what a trustee is required to do under SIS may not necessarily fit comfortably with some of the resolutions to discriminatory problems in funds that we have been looking at.<sup>11</sup>

14.14 The GLRL stated what is the fundamental area of concern:

The partners of lesbian and gay men are commonly denied payment of death and disability benefits upon the death or disablement of their contributor partner by the trustees of their superannuation fund. The consistent offenders in this respect are the compulsory superannuation plans for Commonwealth and State employees.<sup>12</sup>

14.15 This submission went on to point out the commitments and legislation undertaken by the Commonwealth which 'promise' non-discriminatory treatment for workers on grounds of sexual preference. It cited the *Public Service Act 1922* (Section 33); *Human Rights and Equal Opportunity Commission Act 1986* (Regulation 4(a)(ix)); and *Industrial Relations Reform Act 1993* (Section 3(g)). The submission argued that 'current superannuation practice in relation to same sex couples, especially in the schemes for Commonwealth employees, contradicts the spirit of this legislation'.<sup>13</sup>

### **The uncertainty problem**

14.16 The availability of death benefits to same sex partners appears uncertain.

14.17 Within the bounds set by the trust deed administering a fund, section 62 of the SIS Act permits a fund trustee to pay death benefits to a deceased member's personal legal representative or to one or more of that member's dependants.

14.18 A death benefit is a payment accrued by one person in consequence of the death of a superannuation fund member. Characterisation of the benefit as a payment directly to a dependant can be critical, as it may determine whether any benefit is paid at all, the amount paid by the fund, and whether the amount is paid direct or received as part of the deceased's estate.

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<sup>11</sup> Evidence, p 652

<sup>12</sup> SW Sub No 85 (Supp)

<sup>13</sup> *ibid*



14.19 Although section 10 of SIS defines a dependant as including any person including a spouse, the current interpretation of spouse as considered in Brown's case<sup>14</sup> appears to preclude a partner of the same sex.

14.20 The fact that the definition of dependant is taken to include a spouse suggests that a person who is not a spouse, but is nevertheless in a dependent relationship at the time of the member's death, may fall within the bounds prescribed by section 62. As the 1995 *NIB case*<sup>15</sup> affirmed, the word 'dependant' need not be limited to financial dependence, and furthermore, in determining whether a member falls within its ambit, trustees must be certain that they do not breach discrimination laws in coming to their conclusion.

14.21 In light of the *Brown* and *NIB cases*, the question of whether a partner of the same sex is considered a "dependant" appears to create a delicate boundary within which trustees may lawfully exercise their discretion. There are significant consequences in the way that discretion falls.

14.22 The Committee is of the opinion that this uncertainty places a difficult burden on trustees and may place same sex partners in a situation of significant uncertainty regards their respective entitlements. As such a situation is very likely to place those members at a disadvantage with respect to their capacity to make responsible financial plans for their future, failure to address this issue appears counter to the aim of providing greater certainty of retirement income.<sup>16</sup>

### **The alleged discrimination**

14.23 According to Mr John Berrill of Maurice, Blackburn & Co., the payment of death benefits available under superannuation schemes to people in same sex relationships are limited by discrimination in three ways:

- where death benefits are only payable to the spouse, de facto spouse or children;
- where there are competing claims for death benefits from a heterosexual spouse or family members; and

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<sup>14</sup> *Brown v Commissioner of Superannuation*, Administrative Appeals Tribunal, No V94/638, 15 May 1995

<sup>15</sup> *Hope & Anor v NIB Health Funds Ltd.*, Equal Opportunity Tribunal (NSW), 20 July 1995

<sup>16</sup> *HomoDefactos Assoc*, SW Sub No 87

- in the tax treatment of death benefits paid to persons who do not qualify as a spouse, children or dependants, and who get the death benefits via the estate.<sup>17</sup> (Note: Section 27AAA of the *Income Tax Assessment Act 1936* provides concessional treatment for death benefits that are paid in relation to dependants.)

14.24 Mr Berrill told the Committee that same sex partners may miss out in a lot of defined benefit schemes such as the Commonwealth superannuation schemes, where there is an additional benefit payable only if there is a spouse or children.<sup>18</sup> According to Ms Scahill of GLRL:

the gay and lesbian community are not enjoying the same benefits from superannuation as are their heterosexual workmates ... specifically because the death benefits that apply to the same contributions are not paid, generally speaking, to the partner of a gay man or lesbian.<sup>19</sup>

14.25 The Committee notes that single people similarly do not enjoy these same benefits.

14.26 The best illustration of this interaction is the traditional payment of a pension or lump sum to a surviving spouse, while denying an equivalent payment to a nominated beneficiary of a single person or to a person in a same sex relationship.

### **The problems illustrated**

14.27 Two recent cases heard before tribunals were brought to the Committee's attention and were found to highlight some of the issues in this area.

#### *Brown's Case*<sup>20</sup>

14.28 Mr Brown sought a review by the Administrative Appeals Tribunal of a decision by his superannuation fund to reject his claim for a spouse benefit under section 81(1) of the *Superannuation Act 1976* (the 1976 Act which relates to Commonwealth superannuation schemes). Mr Brown had lived in a permanent, homosexual, de facto relationship with Mr Corva from 1982 until Mr Corva's death in 1993.

<sup>17</sup> Evidence, p 656

<sup>18</sup> Evidence, p 665

<sup>19</sup> Evidence, p 659

<sup>20</sup> *Brown v Commissioner of Superannuation*, op cit

14.29 Mr Corva was a member of the Commonwealth Superannuation Scheme, which provided for a refund of contributions and interest and a separate death benefit payable if there was a spouse or child of the deceased. Mr Corva had made Mr Brown his nominee in the superannuation fund and had a will in which his estate was to be given to Mr Brown.

14.30 Mr Brown, as nominee, made a successful claim for the accumulated contributions and interest. However, his claim for the death benefit was rejected by the trustees on the basis that he could not qualify as a de facto spouse.<sup>21</sup> It was this decision that was the subject of the appeal.

14.31 In order for Mr Brown to obtain a benefit as a spouse, the phrase ‘marital relationship’ in the definition of spouse in section 8B of the 1976 Act, would need to include a homosexual relationship. This meant the terms “husband” and “wife” would have to include partners of the same sex.

14.32 Mr Brown was unsuccessful in his appeal. The Tribunal held that:

whatever other changes the words, ‘husband’ and ‘wife’, may have undergone over the years they retain ... their complementary gender connotations. A ‘wife’ is the female partner of a marital relationship and a ‘husband’ the male partner.

In so finding, the Tribunal queried in relation to same sex partners ‘which, then would be the “husband” and which the “wife”?’<sup>22</sup>

14.33 The Tribunal stated that it gave them no joy to deny Mr Brown the spouse benefit entitlement:

...we must affirm the decision under review. It gives us no joy to do so. There is no doubt that the applicant and Mr Corva had a close marriage-like relationship... Yet the 1992 amendments, which were designed to remove discrimination on the ground of marital status, provide no redress in relation to the form of discrimination which is illustrated by this case.<sup>23</sup>

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<sup>21</sup> Berrill J, Evidence, p 664

<sup>22</sup> Reported in *Australian Super News*, CCH Australia Limited, 8 September 1995, p 10

<sup>23</sup> SW Sub No 85 (Supp)

### *The NIB Case*<sup>24</sup>

14.34 In this case the Equal Opportunity Tribunal found that their had been discrimination on the grounds of homosexuality within the meaning of the *Anti-Discrimination Act 1977* (NSW).

14.35 The appeal, by Mr Hope and Mr Brown, who had a homosexual relationship that exhibited ‘the hallmarks of a permanent and bona fide domestic relationship’, was against NIB’s refusal to grant a concessional family membership rate to them.<sup>25</sup>

14.36 In reaching its decision the Tribunal considered that the ordinary meaning of the word “dependant” included:

connotations of reliance and need, trust, confidence, favour and aid in sickness and in health including social and financial support and its normal meaning is not limited to financial dependence...<sup>26</sup>

Then, in considering financial dependency as only one aspect of the ordinary meaning of dependency, the Tribunal stated:

with a joint tenancy, a joint mortgage, pooled resources and shared debts, Mr Hope and Mr Brown were financial dependants to a substantial degree, one on the other.<sup>27</sup>

14.37 The Committee notes the following implications for superannuation entities from these cases:

- Superannuation funds will need to consider the scope of benefits provided to spouses and dependants under their deeds to ensure discrimination laws are not breached.
- In exercising discretions, trustees will need to take care that decisions do not breach discrimination laws - as the *NIB case* evidenced.
- The words “husband” and “wife”, on the basis of both *Brown’s case* and the *NIB case*, refer to a relationship between people of the opposite sex.
- The ordinary meaning of the word “dependant” is not restricted to financial dependency.<sup>28</sup>

<sup>24</sup> *Hope & Anor v NIB Health Funds Ltd*, op cit

<sup>25</sup> Reported in *Australian Super News*, op cit

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*, p 11

## **Can positive discrimination in favour of heterosexual couples be justified?**

14.38 Firstly, the Committee notes that the fact that Commonwealth schemes do not recognise same sex partners appears to flow from:

a deliberate decision taken a couple of years ago, when the Sex Discrimination Act was amended and there was a working party chaired by Attorney-General's ... At that stage and currently, the government does not recognise same-sex partners.<sup>29</sup>

14.39 The Committee heard strong evidence that heterosexual married and de facto couples are often treated more generously by superannuation funds when compared to single people or same sex couples. This was particularly evident in the administration of death benefits as was outlined earlier in this chapter. It is clear to the Committee that, at least in part, the contributions of single people and members of a same sex relationship to defined benefit schemes are subsidising the benefits of other members of their superannuation funds purely on the basis of their marital status.

14.40 The benefits of superannuation include death and disability provisions applicable to individual funds and available to spouses and dependants of fund members. However, the rules governing the payment of such benefits are geared toward providing for traditional and de facto heterosexual family structures.

14.41 People in non-traditional relationships (such as same sex) and single people in no formal domestic relationship at all, are mostly excluded from death and related benefits available to this other group.

14.42 The Committee has concluded that it is clear that less advantageous treatment is applied to those who are classified as single. This can include those in same sex relationships. It is preferable that all contributors be treated equally.

### **Dependants and beneficiaries**

14.43 From the evidence presented to the Committee, it is clear that much of the differential treatment in the payment of death benefits stems from whether the potential recipient can be defined as being a "dependant" of the deceased member.

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<sup>28</sup> ibid

<sup>29</sup> Lindsay E, Evidence, p 669

14.44 The Committee proposed the following solution to this problem. In order to prevent discrimination between those members in a recognised relationship and those not, fund members without a spouse or dependant as presently defined should be able to nominate a beneficiary for their superannuation entitlements to whom the fund would pay those benefits currently available only to a spouse or dependant.

### Finally

14.45 Mr Peter Cox, on the basis of his involvement for over 20 years in superannuation policy and administration, noted that the recognition in New South Wales of gay couples as families will impact on superannuation rules, particularly with respect to many of the old closed schemes in which 'there are all sorts of discriminations that effectively hark back to the Dark Ages'.<sup>30</sup>

14.46 Mr Cox told the Committee that for the last 'two or three years' he has been an adviser to the NSW State Superannuation Investment and Management Corporation, which provides the investment and superannuation management services to the State's employees. While he could not comment on what the New South Wales Government policy might be in relation to discrimination in superannuation he did say:

The options, as I understand it, are for the schemes to change or for the members to be offered an alternative, non-discriminatory scheme.<sup>31</sup>

14.47 The Committee proposes that the Commonwealth take the lead by removing the discrimination in Commonwealth superannuation law and practice against single people, and against those in relationships unsupported by current arrangements.

### **Recommendation 14.1:**

**The Committee recommends that the superannuation regulations be amended so that those in bona fide domestic relationships and single people are treated in the same manner as married and de facto superannuants.**

<sup>30</sup> Evidence, p 236

<sup>31</sup> Evidence, p 237

## **Reversionary pensions**

14.48 Another area in which marital status, or the timing of a change in marital status, impacts upon superannuation entitlements is that of reversionary pensions. As noted in Chapter 7, reversionary pensions are provided by some funds to the surviving spouses of those superannuants who die while in receipt of a pension.

14.49 Perhaps the most significant difficulty with reversionary pensions schemes relates to the effect on the reversion of divorce by the superannuant. In the simplest case, should a superannuant divorce then die, the former spouse would be denied a reversionary pension, whereas there would of course be no change to the benefits of the superannuant on divorce, or on the death of the spouse.<sup>32</sup>

14.50 In a situation where a superannuant marries after retirement then dies, the situation with the surviving spouse is difficult. Generally, the spouse would not be entitled to a reversionary pension. Mr Bob Day, President of the Retired Police Association of New South Wales, gave evidence relating to the situation of his members' experience with their State fund. He described special circumstances in which a serving member may be retired and marry and be out of the police force for 3 years before the member is 60. In those circumstances, should the member die 'the surviving spouse is then considered to be in the same position as if he [the member] had a wife at the time he retired'.<sup>33</sup>

14.51 However, these are special circumstances and relate only to police officers in this scheme. The general rule still applies that it is difficult for a 'new' spouse to claim reversionary pension rights.

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<sup>32</sup> SW Sub No 71

<sup>33</sup> Evidence, p 509





## CHAPTER 15:

# MOVING THE GOAL POSTS - INCREASING THE PENSION AGE FOR WOMEN

*Over half of all countries have the same pensionable age for women as for men: the remainder usually retire women 5 years earlier than men, despite women's longer life expectancy. In Western countries this disparity relates to the traditional pattern of men marrying women 3-5 years younger than themselves. However, in Eastern countries, the practice of early retirement for women is seen as a reward to women for carrying the double burden of two full-time jobs, those of employee and home maker.<sup>1</sup>*

### The new position

15.1 As at June 1994, the number of aged people (over 65) in Australia was 2 109 109, comprised of 1 195 695 females and 913 414 males.<sup>2</sup> The Economic Planning Advisory Council report *Australia's Ageing Society*, predicts that the number of aged people will rise to more than 5 million by the year 2051, when more than one person in five will be over the age of 65.<sup>3</sup>

15.2 In Australia, age pensions have been paid to women from the age of 60 years and to men from the age of 65 years since 1909. It is a non-contributory payment, subject to income and assets tests. As of June 1995, 1 578 698 people were receiving the age pension. Of those, 1 034 127 were women and 544 571 were men.<sup>4</sup>

15.3 However, a decision to raise the pension age for women to 65 years was announced in the Government's 1993-94 Budget Statement. The policy was given effect by amendment of the *Social Security Act 1991* by the *Social Security Legislation Amendment Act (No. 2) 1994*, which received Royal Assent on 12 July 1994.

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<sup>1</sup> Sheila Peace cited in Perry J, *The Social Security Review: Income Support for Older Women*. Discussion Paper No 27, 1988, p 11

<sup>2</sup> Australian Bureau of Statistics Catalogue No. 3103.00, *Australian Demographic Statistics September Quarter '94*

<sup>3</sup> Clare R, and Tulpule A, *Australia's Ageing Society*, EPAC Background Paper No 37, Jan 1994, p 18

<sup>4</sup> Department of Social Security, *DSS Quarterly Survey* yet to be published in *DSS Clients - A Statistical Overview 1995*

15.4 According to the Commonwealth Department of Social Security, the decision to raise the pension age for women was taken in the context of:

- significant increases in women's labour force participation over recent decades and changed community expectations about women's attachment to the labour market;
- women's increased superannuation coverage; and
- demographic projections which point to a significant ageing of the Australian population by the second decade of the next century, with subsequent impact on age pension outlays.<sup>5</sup>

15.5 Over a 20 year phase-in period, from 1 July 1995 until 1 January 2014, women's pension age will increase by six months every two years. By 1 January 2014, men and women will both be eligible for the age pension at age 65 years. Table 15.1 details the phase-in timetable and the number of women expected to be affected. Some examples of how the amended legislative arrangements will impact on women are set out below. For example, a woman born:

- between 1 July 1935 to 31 December 1936 will be eligible to apply for an age pension once she has reached the age of 60 years and 6 months, that is, a woman born on 3 August 1935 reaches pension age on 3 February 1996;
- between 1 January 1946 to 30 June 1947 will be eligible to apply for an age pension once she has reached the age of 64 years, that is, a woman born on 3 February 1946 reaches pension age on 3 February 2010;
- on or after 1 January 1949 will be entitled to apply for the age pension once she has turned 65 years of age, which will be on or after 1 January 2014.

15.6 In 1995/96, around 12 000 women are expected to be affected in the first two year period by the raising of the pension age for women from 60 years to 60 years and six months.<sup>6</sup> Table 15.2 indicates the expected reduction in annual average number of female age pensioners until 2014-15.

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<sup>5</sup> SW Sub No 92

<sup>6</sup> Department of Social Security, SW Sub No 92

**Table 15.1: Pension age for women**

Period within which woman was born	Pension age
Prior to 1 July 1935	60 yrs
1 July 1935 to 31 December 1936	60 yrs and 6 months
1 January 1937 to 30 June 1938	61 yrs
1 July 1938 to 31 December 1939	61 yrs and 6 months
1 January 1940 to 30 June 1941	62 yrs
1 July 1941 to 31 December 1942	62 yrs and 6 months
1 January 1943 to 30 June 1944	63 yrs
1 July 1944 to 31 December 1945	63 yrs and 6 months
1 January 1946 to 30 June 1947	64 years
1 July 1947 to 31 December 1948	64 yrs and 6 months
1 January 1949 onwards	65 yrs

Source: *SW Sub No 92 - Department of Social Security*

**Table 15.2: Expected reduction in annual average number of age pensioners ('000)<sup>7</sup>**

	Age 60	Age 61	Age 62	Age 63	Age 64	Total
1994-95	0.0	0.0	0.0	0.0	0.0	0.0
1995-96	12.0	0.0	0.0	0.0	0.0	12.0
1996-97	16.2	0.0	0.0	0.0	0.0	16.2
1997-98	29.2	0.0	0.0	0.0	0.0	29.2
1998-99	34.0	0.0	0.0	0.0	0.0	34.0
1999-00	34.4	14.5	0.0	0.0	0.0	48.9
2000-01	35.6	19.1	0.0	0.0	0.0	54.7
2001-02	37.0	35.0	0.0	0.0	0.0	72.0
2002-03	37.1	41.1	0.0	0.0	0.0	78.3
2003-04	39.5	41.2	16.9	0.0	0.0	97.6
2004-05	43.0	43.9	22.0	0.0	0.0	108.8
2014-15	56.3	61.6	64.3	65.7	64.9	312.8

Source: *SW Sub No 92 Supp. - Department of Social Security*

15.7 The transition to a common retirement age is expected to save the Commonwealth \$400 million.<sup>8</sup>

<sup>7</sup> Figures conform with those supplied

<sup>8</sup> Older Women's Network of Australia, SW Sub No 32

15.8 Evidence presented to the Committee's inquiry suggested a mixed response to the increase in the female pension age. In light of the past experiences of women in providing for their retirement, many viewed the change as either undesirable or too rapid in its implementation whilst others saw that it was in accordance with moves towards equality on other fronts.

15.9 The comments of Mrs Evatt, of the Foreign Service Families Association, presented at the public hearing in Canberra, strongly suggested that the position one took on this issue was influenced by one's expectations about his or her working life. She informed the Committee that she 'did not think it is at all realistic to expect that old age should be 65 for women ... [women] have not had an equal pattern of employment' and that she could not envisage seeing women in the workforce until 65. However, she continued that:

if my daughters, who are 20 and 18, were sitting here, and you asked them this question [about raising the pension age for women], I think they would probably answer you differently ... the next generation - my daughters - may well say 'Well, why can't I work until I am 65?' For me it does not seem a realistic thing, but it will be different for them and for all of this next generation.<sup>9</sup>

15.10 The arguments in support of the increase in the pension age for women include:

- it increases equality between the sexes;
- it enhances the potential for women to accrue additional savings and superannuation benefits from extended working lives; and that
- women's greater longevity justifies an increase in women's pension age.

### **Will the change increase equity between the sexes?**

15.11 A number of witnesses, such as the AMP and LIFA, argued that raising the pension age for women was appropriate on the grounds of achieving equity between the sexes.<sup>10</sup> This would be consistent with moves in other areas to eliminate discrimination.

15.12 This view was supported in a qualified manner by the Minister for Women's Affairs in Victoria. It was argued that:

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<sup>9</sup> Evidence, pp 479,480

<sup>10</sup> Evidence, pp 248, 246-7

a uniform pension for men and women is in line with equal opportunity principles and therefore desirable. **However**, there are certain cohorts of women who have either lacked the opportunity to acquire work experience and marketable skills or have chosen not to do so because they see their primary role as home makers and care givers. ... A raised pension age for women needs to be carefully phased in, and an acknowledgment made that some groups of women, particularly those who have for most of their lives been working as unpaid carers, will continue to need a benefit of some kind.<sup>11</sup>

15.13 The Minister acknowledged that the prevention of discrimination on the grounds of age was a necessary corollary to increasing the retirement age of women.<sup>12</sup> This position was strongly supported by the New South Wales Cabinet Office which stated that any raising of the pension age for women should be linked to improvements in work opportunities and outcomes for older women. They also suggested that the New South Wales policy of promoting the integration and protection of older workers should be recognised and applied on a national basis.<sup>13</sup>

15.14 The raising of the pension age for women on the grounds of equity was strongly disputed by a number of others who argued that the inequalities that women suffered in employment, savings and superannuation opportunities prior to retirement meant that equalising the pension age was far from creating a situation of equity.<sup>14</sup> Instead, treating the different life experiences of men and women in a like fashion, and hence increasing the pension age of women to that of men, was to entrench the disadvantages women had faced during their working lives.

15.15 Most forcefully, Ms Smit and Ms Adamson of the Women's Action Alliance submitted that to increase women's pension age would 'breed inequality', as the increased pension age does not acknowledge the role of many women as carers.<sup>15</sup> Mr Ottley of the Combined Pensioners Association argued that it was these caring responsibilities that had been the justification for the

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<sup>11</sup> SW Sub No 66 (emphasis added)

<sup>12</sup> SW Sub No 66

<sup>13</sup> SW Sub No 41

<sup>14</sup> For example, Hodgins R, SW Sub No 63

<sup>15</sup> Evidence, p 49

difference in pension age between men and women since the introduction of a Commonwealth age pension.<sup>16</sup>

15.16 Ms Margo Canavan presented herself as a case in point. While she accepted that 'the government has done a tremendous amount to remove inequality and discrimination from many avenues of life', she remained disadvantaged. Most males of her generation had spent at least 20 years continuously in the workforce and have advanced further in their careers and earnings. Despite joining the workforce in 1965, breaks in her work pattern caused by illness and the marriage bar meant that Ms Canavan would retire with 'super worth very little'.<sup>17</sup>

15.17 It was therefore argued that a lower retirement age for women compensated them for very real disadvantages faced during their working life, including the double burden of job and household tasks and generally lower pay and qualifications. To increase it would not enhance equity between the sexes.

15.18 The Catholic Women's League Australia (CWL) noted that the unequal accrual of superannuation between men and women meant many men were able to retire at age 60 or even 55 without recourse to an age pension, while for the majority of women, this option was not available. This therefore raised the question of whether treating men and women equally resulted in actual equality and challenged the role that equity played in the decision to phase-in a higher pension age for women.<sup>18</sup>

15.19 The Older Women's Network, noting that the Government expects to save \$400 million through the change, questioned whether there is an economic motive for the change. At the public hearing in Canberra, Senator Chamarette argued that there is a pretence that equality of retirement age is for equity reasons, when it is better characterised as an economic problem.<sup>19</sup>

15.20 The CWL was supported by Soroptimist International of the South West Pacific in the view that, if the main reason for the change was to achieve equity, then it might be more appropriate to decrease the retirement age for men.<sup>20</sup> Both the Women's Action Alliance and the CWL argued that this was

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<sup>16</sup> Evidence, p 266

<sup>17</sup> SW Sub No 3

<sup>18</sup> SW Sub No 6

<sup>19</sup> Evidence, p 460

<sup>20</sup> SW Sub Nos 6, 23

particularly appropriate in light of high unemployment.<sup>21</sup> The latter suggested that the Commonwealth should lead the way.<sup>22</sup>

**Does the increase provide an opportunity for women to accrue additional savings and superannuation benefits?**

15.21 AMP presented the view that raising the pension qualifying age would increase the workforce participation rates of females, because 60 years would no longer be considered as the 'normal' retirement age.<sup>23</sup> The Department of Social Security supported this position, arguing that raising the pension age sent a clear message to employers and the community at large that the Government did not endorse early retirement for men or women.<sup>24</sup>

15.22 This change, Ms Sylva of LIFA argued, would provide women with the opportunity to work longer if they so wished.<sup>25</sup> This was supported by Mr Cole of LIFA who stated that there had been a significant increase in the labour force participation rate of women over 50 years of age<sup>26</sup> and Ms Martin of the Institute of Actuaries who cited anecdotal evidence that a higher pension age removed an incentive for retiring earlier than an individual might otherwise do.<sup>27</sup>

15.23 Ms Pagnon of the Australian Society of Certified Practising Accountants and Dr Tapen Sinha of the Bond University School of Finance argued, in turn, that the additional time available to accrue occupational superannuation would assist working women to achieve higher benefits.<sup>28</sup>

15.24 However, both the ability to obtain employment and/or to accrue additional resources was disputed. Ms Johnson of the NSW Branch of the Older Women's Network pointed out that while the assumption is that working between 60 and 65 allows increased savings, her personal experience did not bear this out.<sup>29</sup>

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<sup>21</sup> SW Sub Nos 15, 6

<sup>22</sup> SW Sub No 6

<sup>23</sup> SW Sub No 55

<sup>24</sup> SW Sub No 92

<sup>25</sup> Evidence, pp 246-7

<sup>26</sup> Evidence, p 259

<sup>27</sup> Evidence, p 161

<sup>28</sup> SW Sub No 30, Evidence, p 344

<sup>29</sup> Evidence, pp 179-80

15.25 The Older Women's Network also questioned the capacity of women in the 60-65 age range to remain in or obtain employment and argued that there was an 'obvious and continuing disadvantage older women face in the labour market'.<sup>30</sup>

15.26 According to the Network, over a 27 year period there has been a 12 per cent increase in labour force participation for women aged between 55 and 59 years and is projected to rise from 36.8 per cent in 1992 to 42.3 per cent in the year 2005. It was noted that this was well below the current participation rate of males aged 55 to 59 which is 74.7 per cent. Participation rates for women 60 and over had declined slightly.<sup>31</sup>

15.27 The Network argued that the DSS projection that 78 per cent of those women otherwise eligible for the age pension would continue working in either a full-time or part-time capacity was an over-estimation and that, while labour force participation was increasing, it was hardly at a rate that warranted a staged adjustment to pension age eligibility.<sup>32</sup>

15.28 The submission of the Combined Pensioners and Superannuants Association of NSW echoes similar concerns, claiming the increased pension age totally ignores the realities of the labour market. The Association claims it is extremely hard for women over 40 to obtain appropriate employment, let alone when they are over 60 years of age.<sup>33</sup> Unqualified, separated and divorced women and widowers were likely to be most disadvantaged by the need to return to the workforce.<sup>34</sup>

15.29 This view was supported by the Country Women's Association of Australia and Ms Canavan, who asserted that older women pay the penalty of being unfairly assessed as 'past their prime' and so are far less likely to obtain employment than men.<sup>35</sup> This may also be the case for older men.

15.30 The position of carers was particularly noted by Ms Kathryn Brown of the Queensland Council of Carers who informed the Committee that 're-entry into the labour market [for carers] is simply not a reality'.<sup>36</sup>

<sup>30</sup> SW Sub No 32(b)

<sup>31</sup> *ibid*

<sup>32</sup> SW Sub No 32

<sup>33</sup> SW Sub No 36

<sup>34</sup> Cox E, Evidence, p 307

<sup>35</sup> SW Sub Nos 49, 6

<sup>36</sup> Evidence, p 315



15.31 Mrs Simpson of the Combined Pensioner Association also questioned comments such as those presented by LIFA about the increase in the workforce by women in the older age groups. She stated that the Australian Bureau of Statistics labour market figures consider someone who has worked for more than an hour or two each week as being employed.<sup>37</sup>

15.32 The Committee notes that there are trends within the community which are inconsistent with official attempts to encourage women to remain in the workforce. Economic restructuring and recession have led to increased levels of unemployment amongst older workers, many who would be best described as discouraged workers rather than as early retirees.<sup>38</sup>

15.33 In addition, as pointed out by Mr Blyth of the Trustee Corporations Association of Australia, the trend in industry is to encourage employees to retire younger:

the social environment seems to be saying to people 'you have worked 35 or 40 years. It is time for you to retire' ... a lot of our large institutions are not encouraging their people to work beyond 55.<sup>39</sup>

15.34 The conjunction of economic, social and retirement incomes developments have resulted in a trend towards gradual decline in the labour force participation by those aged between 55 and 64. This has been consistent throughout developed countries and Australia offers no exception.<sup>40</sup>

15.35 Two submissions pointed out recent changes to policy which recognised the difficulties for older members of the community to gain employment and therefore supported an argument against the increase in the pension age for women. The Women's Economic Think Tank drew attention to the policy outlined in *Working Nation* to exempt those over forty years of age with little workforce experience from having to look for work.<sup>41</sup>

15.36 The other change, identified by the Victorian Minister for Women's Affairs, was the introduction of a special allowance for those unemployed who are over 55, in recognition of the fact that there is very little likelihood of their

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<sup>37</sup> Evidence, p 275

<sup>38</sup> Clare R, and Tulpule A, *Australia's Ageing Society*, EPAC Background Paper No 37, Jan 1994, p 45

<sup>39</sup> Evidence, pp 97, 99

<sup>40</sup> Clare R, and Tulpule A, op cit

<sup>41</sup> SW Sub No 73

finding employment. The Minister noted that amongst this group will be women who will have little or no work experience.<sup>42</sup>

15.37 This is not to deny that there are those, both male and female, who may wish to extend their working lives.

*Robbing Peter to pay Paul - need for alternative financial support*

15.38 The Committee received evidence that, in light of the difficulties many older women are likely to experience in gaining/maintaining employment, the increase in pension age would create a need for income assistance in those years between the cessation of employment and pension eligibility if a reasonable standard of living was to be maintained.<sup>43</sup>

15.39 The Victorian Minister for Women's Affairs drew particular attention to those people who have spent much of their lives working as unpaid carers, suggesting a special benefit be available at pension age to women working as unpaid carers in recognition of their inability to provide for themselves.<sup>44</sup>

15.40 The Department of Social Security advised the Committee that a range of alternative income support payments exist to assist women affected by the increase in women's qualifying age for the age pension. These include non-activity tested payments such as Partner Allowance, Wife pension (for those already in receipt of this payment), Widow Allowance, Widow B pension, Mature Age Allowance, Carer pension, Disability Support pension and Sickness Allowance, as well as activity tested Job Search or Newstart Allowance. Those expected to look for work will have access to special provisions.<sup>45</sup>

15.41 The Department estimates that, in 1995-96, because many of the women affected by the change belong to an age cohort whose labour force participation rates and accumulated superannuation benefits are relatively low, the vast majority (83 per cent) will be granted (or continue to receive) alternative forms of income support. Around 17 per cent will be ineligible for income support

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<sup>42</sup> SW Sub No 66

<sup>43</sup> SW Sub Nos 23, Soroptimist International of the South West Pacific; 28, Trustee Corporations Association of Australia; 32, Older Women's Network; Ryan S, Evidence, p 192

<sup>44</sup> SW Sub No 66

<sup>45</sup> SW Sub No 92

because either their own or their partner's income is over the means test thresholds.<sup>46</sup>

15.42 The tables below indicate the number of women expected to transfer from the age pension to other payments and the percentage of affected women that this represents.

**Table 15.3: Expected transfers to other payments ('000)<sup>47</sup>**

	Age 60	Age 61	Age 62	Age 63	Age 64	Total
1994-95	0.0	0.0	0.0	0.0	0.0	0.0
1995-96	9.5	0.0	0.0	0.0	0.0	9.5
1996-97	12.8	0.0	0.0	0.0	0.0	12.8
1997-98	23.0	0.0	0.0	0.0	0.0	23.0
1998-99	26.5	0.0	0.0	0.0	0.0	26.5
1999-00	26.9	11.5	0.0	0.0	0.0	38.4
2000-01	27.8	15.2	0.0	0.0	0.0	43.0
2001-02	28.9	27.8	0.0	0.0	0.0	56.7
2002-03	29.0	32.7	0.0	0.0	0.0	61.7
2003-04	30.8	32.8	13.6	0.0	0.0	77.2
2004-05	33.5	34.8	17.7	0.0	0.0	86.0
2014-15	43.9	48.9	51.6	53.6	54.5	252.6

Source: *Submission No SW 92 Supp. - Department of Social Security*

**Table 15.4: Per cent expected to continue to receive Social Security payments**

	Age 60	Age 61	Age 62	Age 63	Age 64	Total
1994-95						
1995-96	79.5					79.5
1996-97	79.5					79.5
1997-98	78.8					78.8
1998-99	78.0					78.0
1999-00	78.0	79.5				78.5
2000-01	78.0	79.4				78.5
2001-02	78.0	79.5				78.7
2002-03	78.0	79.4				78.8
2003-04	78.0	79.4	80.2			79.0
2004-05	78.0	79.4	80.2			79.1
2014-15	78.0	79.4	80.2	81.6	84.0	80.7

Source: *Submission No SW-92 Supp. - Department of Social Security*

<sup>46</sup> *ibid*

<sup>47</sup> Figures conform with those supplied

15.43 It could be argued then that this is an exercise of 'robbing Peter to pay Paul' with little gain and which will result in a great deal of anxiety and worry for those affected. The Committee sees the availability of alternative maintenance benefits which protect those who are unable to obtain or maintain employment as vital. It is perhaps lack of awareness by many of those who will be affected of the availability of these payments, and their fears about whether or not they will be eligible, that is the cause of the anxiety.

15.44 After considering the evidence, the Committee believes that there is a major psychological change taking place among younger women. The change is in the perception of a women's right to maintain full employment if she wishes to and she is capable.

15.45 The Committee notes the position put forward by the Department of Social Security that age pension age is often used by employers as a proxy for retirement age.<sup>48</sup> If the pension age for women is less than that of men, and the pension age is, in fact, considered the retirement age, then there may be pressure for women to retire and 'make way for younger blood'. There is anecdotal evidence that many women, and men, feel that they are denied promotional and other opportunities within organisations because they are near pension/retirement age.

15.46 We must ask the question then, why women should be disadvantaged by this view so many years earlier than their male colleagues, particularly when increasing numbers of women do wish to continue in the workforce either because they gain satisfaction from their work or because the remuneration is greater than that which they would obtain through receipt of the age pension?

**Recommendation 15.1:**

**The Committee recommends that the Government undertake an information program specifically targeted at those women who are likely to be affected by the increase in the pension age which explains the change and outlines the alternative maintenance benefits available. This should be supported by an identified officer within the Department of Social Security to whom women concerned about the change can seek advice.**

15.47 The Committee notes the argument put forward by the Victorian Minister for Women's Affairs, the New South Wales Cabinet Office and others, that the prevention of age discrimination in employment as a necessary corollary to increasing the pension age.<sup>49</sup>

### **Does greater female longevity justify an increase in women's pension age?**

15.48 It was suggested to the Committee that because women had a greater life expectancy it was inappropriate that they should retire earlier than their male counterparts. In support of this proposition, Dr Tapen Sinha of the Bond University School of Finance, suggested the longer life expectancies of women meant 'it makes eminently more sense' to have the same retirement age. As we have noted above, Dr Sinha saw this as an opportunity which would allow women to accumulate more superannuation.<sup>50</sup> This position was supported by the Institute of Actuaries of Australia.<sup>51</sup>

15.49 Ms Eva Cox also acknowledged that men may feel aggrieved by the requirement to work longer without access to the pension, particularly in light of women's longer life expectancy.<sup>52</sup>

15.50 As a counterargument, Ms Rhonda Smith argued that as women tend to work longer hours, have less recreation time and much more family and emotional responsibility than men, they 'need to rest a little by the time they are 60'.<sup>53</sup>

15.51 Given the arguments presented above, in particular, that there are many alternative forms of support for those women who are unable to obtain or maintain employment, the Committee supports the view that women who wish to continue their working lives should be given every encouragement to do so, particularly since many of them will, in fact, live for many years after their male colleagues. This has been discussed in detail in Chapter 4.

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<sup>49</sup> SW Sub Nos 62, 43

<sup>50</sup> Evidence, p 344

<sup>51</sup> SW Sub No 61

<sup>52</sup> Evidence, p 307

<sup>53</sup> SW Sub No 19

### **Given the change, is the phase-in period appropriate?**

15.52 Given the reality of the increase in the pension age for women, a number of submissions and witnesses addressed the length of time for the phase-in of the change and whether this was appropriate.

15.53 The Institute of Actuaries supported a more rapid phase-in of the pension age increase.<sup>54</sup> On the other hand, the Catholic Women's League claimed that achieving 'any semblance of equality is going to take far longer than the 20 year phase in period.'<sup>55</sup>

15.54 Two particular groups were identified as being particularly affected by the current schedule of the phase-in. Ms Bedding identified that the phase-in of the higher pension age provides a particular burden for divorcees, as the laws governing settlement prior to 1975 did not allow women to receive any part of the superannuation.<sup>56</sup> Ms Morgan, of the Union of Australian Women, noted that the phase-in period meant that some women having faced the marriage bar will also be affected by the pension age increase.<sup>57</sup>

15.55 Ms Morgan argued that it was difficult to establish whether a delay or a longer phase-in would improve the situation.<sup>58</sup>

15.56 For others, such as Ms Canavan, Ms Evatt of the Foreign Service Families Association, and Ms Cox of the Women's Economic Think Tank, the increase in the pension age was considered an issue that would be regarded differently by younger people, for example those born from say 1965 onwards when opportunities for equality were greater and that therefore the phase-in period should be deferred.<sup>59</sup>

15.57 Given the concerns relating to the impact of the phase-in, ASFA, the Cabinet Office of New South Wales and the Older Women's Network argued for a process to be instigated to monitor the impact of the phase-in of the pension age increase.<sup>60</sup>

<sup>54</sup> SW Sub No 61

<sup>55</sup> SW Sub No 6

<sup>56</sup> SW Sub No 1

<sup>57</sup> Evidence, p 104

<sup>58</sup> Evidence, p 105

<sup>59</sup> Canavan M, Evidence, p 391; Cox E, Evidence, p 307; Evatt K, Evidence, p 480

<sup>60</sup> SW Sub No 43, 41, 32

15.58 For example, the Older Women's Network recommended that a Reference Group be established, alongside an overall review of employment, savings and superannuation opportunities for women over the age of 60. The Network proposed that the Reference Group include representatives from groups representing income-disadvantaged older women, such as the Older Women's Network and the Australian Pensioners and Superannuants Federation.<sup>61</sup>

15.59 The majority of the Committee believes that the phase-in for the increase in the pension age for women is appropriate, if the alternative benefits available to women are maintained.

15.60 While the Committee agrees with the need to conduct ongoing monitoring of the effect of the increase in pension age, it is also mindful of the need to provide certainty to prospective retirees.<sup>62</sup>

## **Conclusion**

15.61 The Committee notes that the two major parties have committed themselves to the increase. The Democrats remain of the view that the pension age for women should not be increased and that any inequality should be addressed by lowering the pension age for men.

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<sup>61</sup> SW Sub No 28

<sup>62</sup> Equal Opportunity Commission, Victoria, SW Sub No 21





## APPENDIX A:

### LIST OF WRITTEN SUBMISSIONS

No 1	Ms Myrna Bedding
No 2	Mr Davydd Shaw
No 3	Ms Margo J Canavan
No 4	Rhonda Sharp
No 5	Women in Horticulture
No 6	Catholic Women's League Australia Inc.
No 7	Office of the Status of Women, NZ
No 8	Chief Minister, A.C.T. Legislative Assembly
No 9	Dr Diana Olsberg
No 9A	National Tertiary Education Industry Union
No 10	Retired Police Association of N.S.W. Inc.
No 11	Queensland Teacher's Union
No 12	Ms Andrea Malone
No 13	Playgroup Council of Australia
No 14	Ms Lesley Wynack (Department of Defence)
No 15	Women's Action Alliance of Australia
No 16	Department of Human Services and Health
No 17	Jacques Martin Industry
No 18	J and K Moore
No 19	Ms Rhonda Smith
No 20	Australian Lifewriters Association
No 21	Equal Opportunity Commission, Victoria
No 22	Ms Jackie Ohlin
No 23	Soroptimist International of the South West Pacific
No 24	Australian Education Union (Tasmanian Branch)

No 25	Australian Education Union (ACT Branch)
No 26	Boranup Community (Ms Valerie Marsh)
No 27	Muslim Womens National Network of Australia
No 28	Trustee Corporations Association of Australia
No 29	Mr A R Timmins
No 30	Professor Julie Marcus
No 31	Australian Federal Police
No 32A	Older Women's Network, ACT
No 32B	Older Women's Network of Australia
No 33	Ms Erika Alexander
No 34	Ms R J Hunter
No 35	Mr Peter Cox
No 36	Senator Christabel Chamarette
No 36A	Senator Dee Margetts
No 37	Insurance and Superannuation Commission
No 38	Australian Society of CPAs
No 39	Combined Pensioners & Superannuants Association of NSW
No 40	Department of Finance
No 41	The Cabinet Office, NSW
No 42	CBA Financial Services
No 43	Association of Superfunds of Australia
No 44	Australian Women in Agriculture
No 45	Mr Philip Ho
No 46	Young Labor Women's Committee
No 47	BPW Australia
No 48	Office of the Cabinet, Queensland
No 49	The Country Women's Association of Australia
No 50	Mr J B Nairn
No 51	Queensland Council of Carers Inc

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No 52	Mr Michael Higgins
No 53	Foreign Service Families Association
No 54	Department of Immigration and Ethnic Affairs
No 55	AMP Superannuation
No 56	Mrs Roz Lambert
No 57	Tapen Sinha
No 58	The Women's Legal Resource Centre
No 59	Union of Australian Women
No 60	Mr D Capstick
No 61	The Institute of Actuaries of Australia
No 62	Australian Council of Social Service (ACOSS)
No 63	R Hodgins
No 64	Mr Gordon Ford
No 65	Australian Taxation Office
No 66	Victorian State Government
No 67	Australia Post
No 68	C.S. Superannuation Pty. Ltd.
No 69	The Alexander Consulting Group and the Accountants' Superannuation Fund
No 70	Life Insurance Federation of Australia Incorporated
No 71	Rosemary Eyles
No 72	Kaye F Jenner
No 73	Women's Economic Think Tank
No 74	Anonymous
No 75	Ray Stevens
No 76	K Delphin
No 77	Australian Retirement Income Streams Association Limited
No 77A	Bankers Trust Life Limited
No 77B	AMP Society

No 77C	Industry Funds Forum
No 77D	Legal & General
No 77E	GIO Australia
No 77F	M.L.C
No 77G	Rothschild Australia Asset Management Ltd
No 77H	Prudential
No 77I	Gerry and Natalie Gallery
No 78	Jack Bromley
No 79	The Hon. Peter Duncan MP, Parliamentary Secretary to the Attorney General
No 80	Mr C R Collins
No 81	The Hon. Carmen Lawrence MP, Minister for Human Services and Health
No 82	Unisuper
No 83	The Hon. Duncan Kerr MP, Minister for Justice
No 84	Mrs E Shellam
No 85	Gay and Lesbian Rights Lobby
No 86	John Berrill
No 87	HomoDefactos Assoc Inc
No 88	Assistant Minister for Industrial Relations
No 89	Sex Discrimination Commissioner
No 90	The Treasury
No 91	Luigi Jemi
No 92	Department of Social Security
No 93	Australian Education Union
No 94	Noble Park Special Development School
No 95	Textile Clothing and Footwear Union of Australia
No 96	Tasmanian Gay and Lesbian Rights Group
No 97	Office of the Status of Women

- No 98            Constructive Women Inc
- No 99            Laura Wright
- No 100           Wandjina
- No 101           Mr R B T Davison
- No 102           Mr Kevin Hudson
- No 103           Retirement Income Modelling Task Force



## **APPENDIX B:**

### **LIST OF WITNESSES AT PUBLIC HEARINGS**

#### **MELBOURNE, 15 MARCH 1995**

Mrs Joan Adamson, Member - Victorian Branch, Women's Action Alliance (Australia)

Mr Donald Blyth, National Director, Trustee Corporations Association of Australia

Mr Frank Burke, Senior Research Consultant, Australian Society of Certified Practising Accountants

Mr Graeme Glass, Director, Superannuation, Victorian State Government Department of Finance

Mr David Goodear, Account Manager/Adviser, Jacques Martin Pty Ltd

Mr Henry (Harry) Martin, Voluntary Adviser, Women's Action Alliance

Ms Alison McClelland, Economics and Tax Coordinator (Hon), Australian Council of Social Service

Ms Edith Morgan, Vice President, Member of Organising Committee, Union of Australian Women

Ms Carol Pagnon, Certified Practising Accountant, Australian Society of Certified Practising Accountants

Mr Ross Petersen, Assistant Secretary, Economic Policy and Reform Branch, Department of Premier and Cabinet

Ms Jane Reynolds, Assistant Director, Office of Women's Affairs, Department of Justice

Mr Davydd Shaw

Ms Pauline Smit, National Secretary, Women's Action Alliance (Australia) Inc

Mr David Vernon, Manager, Market Development and International, Jacques Martin Pty Ltd

Mr Murray Wyatt, Chairman, Centre of Excellence in Superannuation, Australian Society of Certified Practising Accountants.

**SYDNEY, 27 APRIL 1995**

Ms Anna Adams, Proprietor, Olsberg Adams and Associates

Ms Erika Alexander

Mr Peter Cox

Mr Colin Grenfell, Member, Retirement Incomes Policy Committee, Institute of Actuaries of Australia

Ms Muriel Hortin, Secretary, Older Women's Network (Australia)

Ms Betty Johnson, Convenor, Older Women's Network (Australia)

Mr John Maroney, Federal Councillor, Association of Superannuation Funds of Australia

Mrs Helen Martin, Member, Superannuation Practice Committee, Institute of Actuaries of Australia

Dr Diana Olsberg, Proprietor, Olsberg Adams and Associates

Ms Susan Ryan, Executive Director, Association of Superannuation Funds of Australia

Mr Raymond Stevens, Member, Retirement Incomes Policy Committee, Institute of Actuaries of Australia



Mr Gerard Thomas, Policy Officer, Australian Pensioners and Superannuants Federation

**SYDNEY, 28 APRIL 1995**

Mr Kevin Casey, Compliance and Legislation Manager, AMP Society

Mr Anthony Cole, Executive Director, LIFA

Ms Eva Cox, Co-Convenor, Women's Economic Think Tank

Mr Darren Davis, Assistant Manager, Operations, LIFA

Mr Kristian Fok, Superannuation Consulting Actuary, National Mutual Life

Ms Lynne Gallagher, Manager, Government Affairs, AMP Society

Ms Jennifer Giles, Solicitor, Women's Legal Resources Centre

Mrs Roz Lambert

Mr Bill Ottley, President, Combined Pensioners and Superannuants Association of New South Wales

Mrs Mardijah Simpson, Pensions Officer, Combined Pensioners and Superannuants Association of New South Wales

Ms Louise Sylva, Member, LIFA

**BRISBANE, 2 MAY 1995**

Ms Kathryn Brown, Principal Community Development Officer, Queensland Council of Carers Inc

Ms Margaret Canavan

Mrs Sylvia Laxton, National President, Country Women's Association of Australia

Ms Leah Mertens, Women's Co-ordinator/Services-Welfare Officer, Queensland Teachers Union

Mr Kenneth Moore

Mr Robert Musgrave, Chairman, LUPAC Committee

Mr Joe Nowak, Past National President, LUPAC Committee

Mr Robert Ross, Chairman, Superannuation Subcommittee, LUPAC Committee

Dr Tapen Sinha, Associate Professor of Finance, School of Business, Bond University

Ms Ann Tracey, Teacher/Union member, Queensland Teachers Union

### **CANBERRA, WEDNESDAY 31 MAY 1995**

Ms Pamela Brown, Acting Director, Social Justice Coordination Section, Department of Immigration and Ethnic Affairs

Ms Kaye Jenner

Ms Jacqueline Ohlin

### **CANBERRA, 6 JUNE 1995**

Senator Christabel Chamarette

Senator Dee Margetts

Mr Ray Connelly, Chairman, Australian Retirement Income Streams Association Ltd

Mrs Katherine Evatt, President, Foreign Service Families Association

Mrs Jennifer Luck, Secretary, Foreign Service Families Association

Mr Deane Russell, Executive Director, Australian Retirement Income Streams Association

**CANBERRA, 20 JUNE 1995**

Mr Ernest Day, President, Retired Police Association of New South Wales Inc

Mr Clive Haggart, Branch Secretary, Australian Education Union, ACT Branch

Mr Warren Lee, Branch Liaison Officer, Australian Education Union, ACT Branch

Mrs Fiona Langford, Administrator, Playgroup Council of Australia

**CANBERRA, 27 JUNE 1995**

Mr Peter Benson, Principal Counsel, Family Law Branch, Attorney-General's Department

Mr Warwick Bruen, Assistant Secretary, Community Care Branch, Department of Human Services and Health

Ms Margaret Carmody, Acting Assistant Secretary, Policy Analysis and Planning, Department of Human Services and Health

Mrs Ella Keenan, Australian Vice-President of External Affairs, Australian Federation of Business and Professional Women's Association

Mrs Sue Hamilton, Acting First Assistant Secretary, Corporate Services Division, Department of Human Services and Health

Mr Richard Morgan, Senior Government Counsel, Family and Administrative Law Branch, Civil Law Division, Attorney-General's Department

**CANBERRA, 1 AUGUST 1995**

Mr John Berril, Partner, Maurice Blackburn & Co

Ms Kaye Brown, Senior Officer, Retirement Incomes Section, Department of Social Security

Mr Robert Dal Santo, Director, Special Superannuation Arrangements Section, Department of Finance

Ms Shirley Douglas, Director, Retirement Incomes Section, Department of Social Security

Mr Donald Duval, Acting Deputy Commissioner, Superannuation, Insurance and Superannuation Commission

Ms Laurene Edsor, Acting Assistant Secretary, Financial Institutions Division, Treasury

Ms Kerry Flanagan, Assistant Secretary, Retirement Programs Branch, Department of Social Security

Ms Elizabeth Fletcher, Senior Policy Officer, Sex Discrimination Policy Unit, Human Rights and Equal Opportunity Commission

Mr George Hayes, Assistant Commissioner, Business Operations Branch, Comsuper

Mr Doug Kentwell, Director, Child Disability Allowance and Carer Payments, Department of Social Security

Mr John Larkin, Director, Policy, Policy Legal and Actuarial Group, Insurance and Superannuation Commission

Mr David Lindsay, Assistant Secretary, Commonwealth Employees Superannuation Branch, Department of Finance

Mr Michael Monaghan, First Assistant Commissioner, Australian Taxation Office

Dr Darryl Roberts, Assistant Commissioner, Policy, Insurance and Superannuation Commission

Ms Anne Scahill, Gay and Lesbian Rights Lobby NSW Inc

Mr Kenneth Searson, Commissioner and Chief Executive Officer, Comsuper

Mr Ian Silk, Industry Funds Forum

Mr Greg Smith, First Assistant Secretary, Financial Institutions Division, Treasury

Ms Susan Walpole, Sex Discrimination Commissioner, Human Rights and Equal Opportunity Commission



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## APPENDIX C:

### LIST OF COMMITTEE REPORTS

*Super System Survey - A Background Paper on Retirement Income Arrangements in Twenty-one Countries (December 1991)*

Papers relating to the Byrnwood Ltd, WA Superannuation Scheme (March 1992) Interim Report on Fees, Charges and Commissions in the Life Insurance Industry (June 1992)

First Report of the Senate Select Committee on Superannuation - *Safeguarding Super - the Regulation of Superannuation (June 1992)*

Second Report of the Senate Select Committee on Superannuation - *Super Guarantee Bills (June 1992)*

*Super Charges - An Issues Paper on Fees, Commissions, Charges and Disclosure in the Superannuation Industry (August 1992)*

Third Report of the Senate Select Committee on Superannuation - *Super and the Financial System (October 1992)*

*Proceedings of the Super Consumer Seminar, 4 November 1992 (4 November 1992)*

Fourth Report of the Senate Select Committee on Superannuation - *Super - Fiscal and Social Links (December 1992)*

Fifth Report of the Senate Select Committee on Superannuation - *Super Supervisory Levy (May 1993)*

Sixth Report of the Senate Select Committee on Superannuation - *Super - Fees, Charges and Commissions* (June 1993)

Seventh Report of the Senate Select Committee on Superannuation - *Super Inquiry Overview* (June 1993)

Eight Report of the Senate Select Committee on Superannuation - *Inquiry into the Queensland Professional Officers Association Superannuation Fund* (August 1993)

Ninth Report of the Senate Select Committee on Superannuation - *Super Supervision Bills* (October 1993)

Tenth Report of the Senate Select Committee on Superannuation - *Super Complaints Tribunal* (December 1993)

Eleventh Report of the Senate Select Committee on Superannuation - *Privilege Matter Involving Mr Kevin Lindeberg and Mr Des O'Neill* (December 1993)

A Preliminary Paper Prepared by the Senate Select Committee on Superannuation for the Minister for Social Security, *Options for Allocated Pensions Within the Retirement Incomes System* (March 1994)

Twelfth Report of the Senate Select Committee on Superannuation *Super for Housing* (May 1994)

Thirteenth Report of the Senate Select Committee on Superannuation - *Super Regs I* (August 1994)

Fourteenth Report of the Senate Select Committee on Superannuation - *Super Regs II* (November 1994)



Fifteenth Report of the Senate Select Committee on Superannuation -  
*Super Guarantee - Its Track Record* (February 1995)

Sixteenth Report of the Senate Select Committee on Superannuation -  
*Allocated Pensions* (June 1995)

Seventeenth Report of the Senate Select Committee on Superannuation -  
*Super and Broken Work Patterns* (November 1995)

