

*Reference Group on the Charter of Superannuation Adequacy and
Sustainability and Council of Superannuation Custodians*

ACTU RESPONSE



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Introduction

The ACTU and its affiliates represent approximately 1.8 million working Australians and their families. Many more have their pay and conditions of employment (including their superannuation arrangements) shaped by the values and activities of trade unions.

Unions have a special relationship with our superannuation system. Unions campaigned successfully for compulsory workplace superannuation and built many of the largest and most successful not-for-profit funds in Australia. Today we help to govern dozens of funds and play a leading role in campaigning for a fairer retirement income system that will ensure all workers experience a minimum level of comfort and dignity when they retire.

We therefore welcome the opportunity to comment on the government's recent Discussion Paper proposing the establishment of a Charter of Superannuation Adequacy and Sustainability and a Council of Superannuation Custodians.

The ACTU participated in the Roundtable meeting on 5 June and provided feedback to the Reference Group on each of the discussion questions posed. This submission supplements that feedback. We are happy to comment further on these and other matters on request.

The original and principal purpose of the superannuation system was and remains to maximise the financial resources available to those millions of retirees who would otherwise rely heavily on the Age Pension, perhaps augmented by a small amount of private savings, to fund their retirement.

Consistent with this purpose, the ACTU supports in principle the establishment of Charter and a Council of Custodians. In summary our view is:

- That a suitable Charter, by providing a set of principles against which future changes can be measured, could play a valuable role ensuring future reforms are consistent with the purposes for which the superannuation system was established, in securing public confidence in the system and changes to it, and (it is to be hoped) in de-politicising debate over the system; and
- That the Charter should be made effective by establishing a Council of Custodians with appropriate powers and resources.

Charter of Superannuation Adequacy and Sustainability

The ACTU agrees that the suggested ‘core principles’ of certainty, adequacy, fairness and sustainability identified by the Discussion Paper provide a useful starting point for thinking about how our superannuation system should be organised and how proposed reforms should be evaluated.

However, we think the Charter should present the principles in an order that reflects their relative importance.

Adequacy & Fairness

The Charter should make clear that the principles of ‘Adequacy’ and ‘Fairness’ are paramount. It should therefore re-state the primary rationale for establishing and maintaining our system of compulsory contributions and related tax concessions: the maximisation of retirement incomes of those on low and middle incomes who would otherwise struggle to maintain a reasonable level of material comfort when they retire.

The concessional treatment of contributions and earnings is appropriate in a compulsory system where access to a deferred portion of wages is intended to help the majority of participants secure a better standard of living in retirement than they otherwise would if they had to rely on the Age Pension and perhaps a small quantity of private savings.

However, the system was not intended to serve as a means for those on relatively high incomes, who would be well able to provide for their retirement in the absence of any compulsion or concessions, to game their tax affairs for maximum personal benefit. A superannuation system that is skewed to the tax-planning arrangements of the wealthy is deeply unfair, and will not promote the adequacy objective.

While the present government has taken important and welcome steps to re-dress aspects of the regressive tax treatment of superannuation, it remains the case that total government support for those who participate in our superannuation system continues to strongly favour those on relatively high incomes.

Therefore, the Charter should make clear that future reforms to superannuation will be advocated or endorsed by the Council to the extent that they are likely to:

- Promote **adequate** retirement incomes by prioritising the maximisation of final retirement balances of those on low and middle incomes ;

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- Promote *fairness* by mandating that the incidence and quantum of public support (in the accumulation and retirement phases) should be focussed on low and middle income earners and away from those on higher earnings.

The issue of adequacy cannot be considered in abstraction from all those other aspects of public policy and provision that contribute to the quality of a person's life in retirement, such as the quality and affordability of appropriate housing and aged care support.

The Charter should therefore state that the Council will support reforms to superannuation to the extent that their interaction with other aspects of social policy are likely to provide a more comfortable and dignified retirement for those most at risk of poverty, insecurity and disability in old age.

While the ACTU does not have a fixed view on how the adequacy of the superannuation system should be measured, we believe that assessments of future adequacy used by policy makers should take into account likely future changes in how retirees house themselves.

Much recent modelling of retirement outcomes assumes full home ownership by the time workers retire. While many workers will continue to purchase their own homes, and public policy should provide reasonable assistance to help them do so, it is increasingly likely that a growing number of workers will rent their homes during their working lives and then into retirement.

This requires new thinking about what 'adequacy' will mean for a growing proportion of our future retired population, and what can be done to ensure that those who have little choice but to rent their homes during their working lives are protected from poverty and housing insecurity when they stop working. In the context of discussing superannuation adequacy the Charter provides a useful opportunity to highlight this issue and to initiate a public discussion on what role our retirement income system can play in assisting those most at risk.

Certainty & Sustainability

We regard the principles of certainty and sustainability as supplementary to those of adequacy and fairness. There is clearly a degree of overlap in that uncertainty may compromise adequacy, and unsustainable tax concessions may reflect and reinforce a lack of fairness.

We agree that certainty and stability should be important features of our superannuation system. Too much tinkering and tampering in the name of allegedly essential reform can undermine the legitimacy of the system, encouraging the view that superannuation can be readily exploited for

short-term political advantage. The resulting uncertainty risks bringing the system into disrepute, imposing costs on funds and members, and helping to further entrench member disengagement.

That said, the superannuation industry is large and newsworthy: the industry, like others, is prone to exaggerated public claims about the effects of mooted changes, a process that can undermine public confidence for no good reason. It is to be hoped that the Charter and Council process can provide a mechanism to ensure both policies (and counter-claims) are 'put to proof' in a manner which assists public debate and consumer confidence.

To minimise the future politicisation of superannuation, and protect it from unnecessary and partisan change, we believe it is important the Charter makes clear the Council will only endorse significant reform if and when there is a clear public interest in doing so. Proposed reform should judge against the criteria that they make the system better *for members of funds*.

This public interest test should be based on the accumulation and publication of a substantial body of evidence-based research and expert opinion. Particular attention should be given to the views of academic experts, the appropriate regulatory bodies, and peak superannuation industry organisations.

There is clearly a legitimate and sharp distinction to be made between those who advocate reform in pursuit of system-wide adequacy, fairness and sustainability, and those who wish only to agitate for their commercial interests. Sometimes, these factors pull in opposite directions. Put simply, a member should have certainty over their retirement incomes – funds are not entitled to certainty in relation to their business models if it is inconsistent with the purpose of superannuation, member interest and the public interest. This distinction should be recognised in the Charter. The Charter should explicitly recognise the primacy of the interests of fund members in the assessment of policies.

In relation to procedural fairness and transparency the Charter should distinguish between consulting on system-wide reforms that may change important aspects of how members understand, interact with and benefit from the superannuation system, and those reforms to parts of the system that are primarily technical in nature. The former should be subject to a consultation process open to all those who wish to participate. The latter should prioritise gathering input from relevant parties and experts.

Related to proving a case for reform, the Charter should differentiate between retrospective and prospective change. Retrospective change that may have a negative impact on significant numbers of fund members and beneficiaries because of decisions made in good faith in the context of

previous regulatory settings should require a much higher level of evidence-based justification than a prospective change.

As the system is designed to enable savings over decades, few changes (other than those to remedy, for example, a defect in drafting) should be considered “urgent” such that they require immediate implementation.

The Reference Group should consider recommending a formal timeline and process for consultation prior to final decisions being taken by Government, and a standard or minimum notice period for commencement of legislative change. In relation to matters other than taxation, it may be appropriate for there to be a single consolidated piece of amending legislation presented to the Parliament in each year or two year cycle. The contents of Bill would have already first been the subject of a consultation process and then be the subject of an effective parliamentary inquiry.

Finally, we believe the Charter would contribute to certainty and stability by being enshrined in legislation rather than having the status of a policy document.

Council of Superannuation Custodians

To have the authority needed to perform the role envisaged for it, and also resist opportunistic politicisation of our superannuation system, it is vital that the Council have appropriate powers and sufficient resources. To this end the ACTU believes the Council should be organised on the following basis.

- The Councils should be established by statute as independent of all other government departments and agencies and staffed by a dedicated secretariat of a size appropriate to its functions a budget consistent with its role.
- The Council should report annually to the responsible Minister on the operation of the system, with those reports being tabled to Parliament or be empowered and resourced to initiate inquiries as and when it sees fit.
- The Minister should be required to submit proposals to for changes to the superannuation system to the Council for consideration. There should be an avenue for the Minister to refer matters other than a specific proposal to the Council their consideration and report.
- The Council, in exercising its functions should judge proposals against the Charter and have a power to make policy recommendations.
- The Council should be empowered to access (on request) all relevant data, such as that held by the ATO and APRA, for the purposes of conducting inquiries.
- The members of the Council should be statutory appointments for a considerable term (eg 5 years). Council members should have extensive experience of superannuation from a mix of union, employer, academic, public policy and superannuation industry backgrounds.
- The appropriate size of the Council is around 5-7 members, including a chair. Appointment should require a commitment to the principles in the Charter. Recognising that the system starts as an incidence of the workplace, at least one Custodian should have experience at a senior level as an employer or employer representative, and one as a trade union official (in addition to their superannuation expertise). To ensure that the Council has relevant current expertise it would not be appropriate to exclude, as a matter of principle, persons with a current role in the industry from serving, however it should be clear that they do not serve in a “representative capacity” for their entity or section of the industry.

