



Western Australian Government Submission Retirement Income Review

Introduction

1. The Western Australian Government welcomes the opportunity to make a submission to the Retirement Income Review.
2. The Terms of Reference and issues canvassed in the Retirement Income Review Consultation Paper (Consultation Paper) are broad and varied, covering many facets of Australia's retirement incomes framework.
3. This Western Australian Government submission focuses on key issues concerning the impact on vulnerable workers of Australia's retirement income system and highlights the issues of non-payment of superannuation and processes for recovering unpaid superannuation, particularly in the context of the 2019 Inquiry into Wage Theft in Western Australia.

Vulnerable workers

4. The Western Australian Government believes Australian workers should enjoy a modern framework of wages and working conditions that protects and advances their interests and provides for economic security in retirement. While many people are able to attain reasonable standard of living in their post-working years, there remain vulnerable cohorts of workers who do not enjoy the benefits of Australia's retirement income system and for whom the ability to acquire a sufficient level of retirement savings remains a significant challenge.
5. The erosion of full time employment and the growth of casual, part-time, contract, labour hire and insecure forms of employment, including the on-demand or 'gig' economy, creates unique challenges for ensuring that vulnerable workers are able to achieve income security in retirement. People engaged in precarious work are less likely to benefit from Australia's compulsory superannuation framework, which largely benefits those with stable, ongoing employment.
6. The Western Australian Government is concerned that many low paid and vulnerable workers will find it difficult to accumulate sufficient retirement savings during their working life, particularly given an increasingly fragmented and unequal distribution of working hours across the labour market.

7. While the introduction of compulsory superannuation in the early 1990s has had a profound impact on the financial wellbeing of many Australian workers, it is important that we continue to build on the foundations that have been put in place to ensure the existing framework provides for those that need it most.
8. The Western Australian Government submission explores some of the more pertinent issues affecting low paid and vulnerable workers and their interaction with Australia's retirement income system. Issues affecting women and Indigenous workers are also discussed, as these groups face additional challenges when it comes to achieving financial security in retirement.

Entitlement to receive superannuation

9. The Federal Government's legislated increases to the superannuation guarantee will play a vital role in assisting many low paid workers to achieve greater financial security in retirement.
10. While the level of the superannuation guarantee is an important component of Australia's retirement income system, the Western Australian Government notes that a growing number of employees are ineligible to receive superannuation and these workers may face significantly lower living standards in retirement.
11. Under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) (SG Act) employers are not currently required to make superannuation contributions to employees earning less than \$450 in a calendar month.¹ This can act to disadvantage employees who are more likely to work sporadically or for only a few hours per week, including students, parents, carers and seniors.
12. In some sectors, such as aged and disability care, it is common for employees to work for a number of employers. Some of these employees would not earn the minimum threshold with any one employer to receive superannuation contributions, which can have a detrimental impact on their income in retirement.
13. The SG Act also exempts employers from paying superannuation to private or domestic workers if they are employed for less than 30 hours per week.²
14. With the roll out of the National Disability Insurance Scheme (NDIS), consumer directed care models are increasingly being used in the aged and disability sector. A disability service provider will often be engaged to carry out the administrative aspects of employment, but with the NDIS recipient remaining the legal employer. If a disability or aged care worker is employed directly by the NDIS recipient to perform domestic duties for less than 30 hours per week they are currently not entitled to superannuation from that employer, regardless of their income.

¹ Section 27(2).

² Section 11(2).

15. The Western Australian Government is concerned that a rising number of skilled workers in the aged and disability care sector are excluded from superannuation entitlements and submits this is an issue that requires urgent attention. The existing exclusions could act as a powerful disincentive for people to seek employment in this area, at a time when there is a growing demand for personal care workers.

Additional issues affecting women's retirement incomes

16. There are unique challenges affecting female workers, particularly those who may have intermittent work patterns due to domestic and caring responsibilities. As noted in the Consultation Paper, women are more likely to take career breaks, work part-time and have lower lifetime earnings and longer life expectancy. This impacts significantly on the capacity of women to accrue sufficient retirement savings.
17. A lack of flexible working options in many positions - particularly those at the senior and managerial level - also creates obstacles that can limit the opportunities for women to fully utilise their skills and qualifications in the workforce and maximise their lifetime earnings.
18. On average, Australian women accumulate less financial and non-financial assets than men, including superannuation. As of 2017-18, the average mean superannuation balance for people aged 55-64 was \$270,710 for men and \$157,050 for women.³
19. Superannuation is an important income stream for women in retirement and generally provides a higher standard of living than the aged pension. A higher proportion of women than men are in receipt of the age pension⁴ and a greater reliance of women on social security payments makes them more susceptible to poverty and homelessness in their senior years.
20. The 2019 Australian Human Rights Commission's *Older Women's Risk of Homelessness: Background paper – Exploring a growing problem*, summarises the compounding effect of this lack of financial security:

Older women in the private rental market with modest savings may be unable to achieve home ownership and will run down their savings paying cost of living expenses when they can no longer work. These women are extremely vulnerable to the financial impacts of critical life events, such as the loss of a job, a health issue, loss of tenancy, a relationship breakdown or the loss of a partner. If they become homeless, they find it difficult to regain economic independence. Unless there are significant changes these structural gender pay and workforce patterns are likely to be continuing drivers of economic insecurity for future generations of women.⁵

³ Association of Superannuation Funds Australia (ASFA), *Superannuation statistics – December 2019*, using figures obtained from the Australian Bureau of Statistics, available at: www.superannuation.asn.au/ArticleDocuments/269/SuperStats-Dec2019.pdf.aspx?Embed=Y

⁴ Workplace Gender Equality Agency (2017), *Women's economic security in retirement: insight paper*, p.4.

⁵ Australian Human Rights Commission, *Older Women's Risk of Homelessness: Background paper – Exploring a growing problem*, April 2019, pp.11-12.

21. Women's labour force participation across Australia has increased steadily in recent years, rising from 43 per cent in 1979 to 61 per cent in 2019.⁶ However, the rate of underemployment has increased noticeably, which has a disproportionate impact on female workers.⁷ Underemployment can lead to job insecurity and higher levels of financial stress in the short term and lower retirement savings in the long term.
22. Compounding the financial disadvantage that Australian women face when it comes to achieving financial security in retirement, female employees have lower average earnings across all industries and all age groups.
23. The existence of a gender pay gap reflects a range of complex, inter-related factors including the concentration of women in low paying roles and industries and men in the highest paying roles and industries, as well as the historic undervaluation of work in many female-dominated occupations.⁸
24. Western Australia has the highest gender pay gap in Australia, partly due to the high concentration of males in well-paying industries such as mining and resources.⁹ As at May 2019, the gender pay gap in Western Australia stood at 21.8 per cent. Nationally, the corresponding figure was 14.0 per cent.¹⁰
25. The Western Australian Government submits that measures which help to improve the earnings of female employees and reduce barriers to their participation in the labour market will have lasting benefits for their financial wellbeing in retirement. This may include consideration of whether superannuation should be paid on the Commonwealth Government Paid Parental Leave scheme, which would particularly benefit lower paid female employees.

Indigenous workers

26. The Western Australian Government notes that many Indigenous Australians are retiring with less superannuation than the average worker, with insecure employment, lower wages, poverty and financial illiteracy all contributing factors. The current earnings gap between Indigenous and non-Indigenous Australian workers translates into large differences in retirement outcomes.

⁶ Australian Bureau of Statistics (2020), *Labour Force, Australia, November 2019*, Catalogue 6202.0, Table 1 (Trend Data).

⁷ The current underemployment rate for women is 10.2 per cent, while for men it is 6.7 per cent. Refer to Australian Bureau of Statistics (2020), *Labour Force, Australia, November 2019*, Catalogue 6202.0, Table 22 (Trend Data).

⁸ Workplace Gender Equality Agency (2016), *Australia's Gender Equality Scorecard*, pp.4-11.

⁹ Western Australian Department of Communities (2019), *2019 Women's Report Card: an indicator report of Western Australian women's progress*, prepared by the Bankwest Curtin Economics Centre. A copy of the report is available at www.communities.wa.gov.au/projects/women/womens-report-card.

¹⁰ Australian Bureau of Statistics (2019), *Average Weekly Earnings, Australia*, Catalogue 6302.0, Tables 1 and 11E (Trend Data). Figures refer to full time average weekly ordinary time hours.

27. A 2016 study found that based on current employment and earnings patterns, non-indigenous workers will accumulate approximately 27 per cent more in superannuation savings across a 40-year working life, which equates to a gap of approximately \$165,000 by retirement.¹¹
28. The Western Australian Government submits that initiatives to improve the education, employment and income outcomes of Indigenous Australians are essential for ensuring Indigenous workers are able to maximise their superannuation and private savings at retirement.

The rise of the gig economy

29. A further issue affecting the ability of some Australian workers to acquire an adequate level of retirement income is the rise of the on-demand or 'gig' economy.
30. The term 'gig economy' generally refers to the practice of commissioning various forms of labour via a digital platform. Work is performed 'on demand' and compensated based on completion of a particular task. Workers often supply their own tools and equipment.¹²
31. The rapid growth in the number of people engaged in the gig economy reflects both consumer demand for the services available and evolving technologies that enable work to be organised in alternative ways. Issues arise because of the increasing legal distance between those who perform the work and those who facilitate it, with the traditional model of employee and employer no longer fit-for-purpose.
32. Lack of clarity about the status of gig economy workers means that many of the protections afforded by an employment relationship such as minimum wages, superannuation contributions, leave entitlements and access to workers' compensation are not applicable.
33. A number of studies have found that the demographics of workers in the gig economy tend to be from a cohort that are already considered vulnerable, as they are often young, unskilled, on visas and/or have poor English language skills and lack knowledge of workplace rights and entitlements. These already vulnerable workers are at risk of losing their often marginal incomes and have little confidence and ability to influence their future earnings.
34. While the gig economy can provide a level of flexibility that benefits some workers, there are concerns that people who rely on this type of work as their main source of income may find it difficult to acquire adequate savings for retirement, as many of them will fall outside the scope of the compulsory superannuation system. The Western Australian Government contends this is an area that requires close scrutiny, particularly as it affects many vulnerable workers.

¹¹ Bianchi, R., Drew, M., Walk, A. and Wiafe, O., *Retirement adequacy of indigenous Australians*, CSIRO–Monash Working Paper No. 2016-1, Griffith Business School, Griffith University, 8 March 2016.

¹² De Stefano, V. (2016) 'The rise of the "just-in-time workforce": on-demand work, crowdwork and labour protection in the "gig-economy"', International Labour Office, Conditions of work and employment series; No. 71.

Superannuation and wage theft

35. The non-payment of superannuation entitlements often co-exists with the non-payment of wages and other employment entitlements. When employees do not receive lawful wages and entitlements, they commonly do not receive the required superannuation contributions.¹³ Lack of payment of superannuation is also an element of wage theft in its own right.
36. In 2019 the Western Australian Government commissioned the Inquiry into Wage Theft in Western Australia (Inquiry into Wage Theft) to examine whether wage theft was occurring in Western Australia and to make recommendations for strategies to assist workers and address wage theft. The Inquiry into Wage Theft was conducted by Mr Tony Beech, former Chief Commissioner of the Western Australian Industrial Relations Commission.
37. The Inquiry into Wage Theft had nine Terms of Reference and covered both the State and national industrial relations systems. Western Australia has not referred industrial relations powers to the Commonwealth and consequently the State industrial relations system covers those businesses that operate as sole traders and unincorporated partnerships and trusts, as well as other employers that are not financial or trading corporations and the Western Australian public sector.
38. The Terms of Reference for the Inquiry into Wage Theft defined wage theft as the 'systematic and deliberate underpayment of wages and entitlements to a worker'.
39. The Inquiry into Wage Theft examined whether the current regulatory framework at the State and Federal level is effective in combating wage theft, whether new laws should be introduced in Western Australia to address wage theft and if so, whether wage theft should be a criminal offence. Other strategies that could be implemented by stakeholders were also considered.
40. On 6 December 2019, the Report of the Inquiry into Wage Theft (Inquiry Report) was released by the Western Australian Government and makes a total of 28 recommendations, which include strategies that aim to:
 - increase awareness of employment rights and obligations;
 - provide a pathway for employees who have been underpaid to obtain information and to seek redress; and
 - provide for greater detection of underpayments and enforcement of employment laws.
41. The Terms of Reference for the Inquiry into Wage Theft, the Inquiry Report and the proposed Government response to it are available online at www.dmirs.wa.gov.au/wagetheft.

¹³ This would be relevant for any ordinary time earnings (OTE) that remain unpaid. Superannuation contributions are generally not required for overtime payments.

42. The Inquiry into Wage Theft found that wage theft is occurring in Western Australia, including with regard to the non-payment of superannuation.¹⁴ The hospitality industry, particularly cafes and restaurants, contract cleaning, retail and horticulture were identified as areas where the likelihood of wage theft is higher.¹⁵

43. The Inquiry Report notes that some groups such as migrant workers, visa holders and those less fluent in English may be more vulnerable to wage theft¹⁶ and highlights that a lack of detection and enforcement is the key factor which facilitates wage theft:

I find that there is inadequate detection of non-compliance and enforcement of employment law, owing to too few resources given to regulators and this combined with the availability of vulnerable workers, creates an environment where employers in some sectors have chosen to establish and run their business on the basis that they will be able to underpay workers.¹⁷

44. The Inquiry Report specifically referred to the cost of unpaid superannuation contributions, noting:

The non-payment of the Superannuation Guarantee contribution will, over time, impose a greater cost to the taxpayer as those who have less in their superannuation at retirement are more likely to seek tax-payer funded pension payments.¹⁸

45. The Inquiry Report makes a number of recommendations to improve and expand the availability of information about employment obligations. The Western Australian Government recognises the importance of developing effective information and education resources and is taking action to combat wage theft through a range of strategies consistent with those recommendations.

46. Consistent with Recommendation 4 of the Inquiry Report, in December 2019 the Western Australian Government established a wage theft website at www.wagetheft.wa.gov.au. The website provides information for Western Australian workers in both the State and national industrial relations systems on:

- how to seek assistance with resolving an underpayment issue or unpaid leave;
- how to report wage theft anonymously to the relevant government department; and
- how to seek help with unpaid superannuation.

¹⁴ Report of the Inquiry into Wage Theft, p.7.

¹⁵ Ibid, p.7.

¹⁶ Ibid, p.72.

¹⁷ Ibid, p.75.

¹⁸ Ibid, p.81.

47. Workers who have not received superannuation contributions owed to them currently need to seek redress through the Australian Taxation Office (ATO). In a situation in which a worker has been underpaid wages, leave entitlements and superannuation they are required to go through at least two different regulators to seek to resolve the underpayment.¹⁹
48. Recommendation 26 of the Inquiry Report highlights a range of strategies the Western Australian Government could recommend to the Federal Government. Focused on improving the recovery process for unpaid superannuation, the Inquiry Report recommended the Western Australian Government recommend to the Commonwealth that it legislate to make superannuation a part of an employee's wages and entitlements, including for enforcement purposes. In response to this recommendation, the Western Australian Government has raised this matter with the Federal Government.

Superannuation and insolvency

49. A further issue concerning the recovery of unpaid superannuation is that when a company financially collapses, employees are unable to recover superannuation through the Fair Entitlements Guarantee (FEG) scheme. As such, the non-payment of superannuation in cases of insolvency may have long-term implications for the retirement savings of affected employees.
50. The Western Australian Government submits that further consideration should be given to whether the FEG scheme requires amendment to ensure that employees are able to recover unpaid superannuation in the case of insolvency.

Conclusion

51. The Western Australian Government supports workers being provided with fair wages and conditions of employment that foster improved financial wellbeing.
52. The three pillars of Australia's retirement system - superannuation, private savings and the age pension - have evolved over the years, enabling many Australian workers to enjoy a comfortable standard of living in their post-working years. However, there are vulnerable workers who do not enjoy the benefits of income security in retirement, and for whom the risk of poverty in retirement is very real.
53. Initiatives that enable low paid and vulnerable workers to increase their participation in the labour force and to maximise their savings will enable more Australians to achieve income security in retirement.
54. The Western Australian Government thanks the panel for the opportunity to make a submission to the Retirement Income Review on this important issue.

¹⁹ National system employees would seek assistance with recovery wages and unpaid annual leave through the Fair Work Ombudsman, and may be eligible to make a complaint through the Western Australian Department of Mines, Industry Regulation and Safety (DMIRS) for a long service leave entitlement. State system employees would be able to make an underpayment complaint to DMIRS for wages and leave entitlements.