Superannuation as a pillar of Australia's social insurance system

A report by

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Introduction

In Australia, superannuation, colloquially referred to as "super", is compulsory for all people who have worked and reside in Australia. Employers are required to pay superannuation contributions for employees under the "superannuation guarantee" legislation (the Federal *Superannuation Guarantee Act 1992*). The balance of a person's superannuation account, or accounts, is then used to provide an income stream to the worker or his or her dependants on retirement, death or disability. The *Superannuation Guarantee Act* dictates minimum amounts that employers must contribute to the "super" accounts of their employees, on top of standard wages or salaries. The Act prescribes a set percentage of an employee's income which must be paid into a superannuation account with a complying superannuation fund. Since July 2002, this rate has increased from 9 per cent to 9.5 per cent in July 2020 and increased to 10% on 1 July 2021. The superannuation guarantee rate will stop increasing at 12 per cent in July 2027. Employees are also encouraged to supplement compulsory superannuation contributions with their own voluntary contributions, including diverting their wages or salary income into superannuation contributions under so-called salary sacrifice arrangements. In addition to employer and employer contributions, the Federal Government may make co-contributions to supplement the superannuation of low-income earners.

Unlike some countries, there is no central government fund for all superannuation or national insurance contributions, although the Federal Government has a "Future Fund" intended to meet its own future currently unfunded civil service pension liabilities. Because the system has evolved within Constitutional limitations on Federal heads of power, the legislative framework is diffuse and complex but the outcome is an extensive system of nationally mandated and regulated superannuation for almost all Australian workers, with many self-employed persons also participating.

The system is decentralised and there are many superannuation funds ranging from the very large Federal and State civil service schemes, through very large multi-employer/employee industry funds (with industry and trade union nominated trustees) and large company funds down to small self-managed superannuation funds of one or two people.

Because Australia's superannuation arrangements historically started on a voluntary basis (even civil servants were sometimes not compelled to join State Government schemes), most superannuation funds paid benefits as lump sums on retirement. Pension schemes were confined to public sector schemes and large company schemes and they often paid benefits partly as lump sums as well as pensions. Smaller employers could not afford the risk of defined benefit pension schemes and employees preferred lump sums so that they could take their superannuation benefits on leaving their jobs and possibly put the money in the new employer's scheme. For reasons of actuarial risk, administrative simplicity, and ease of transferring benefits, most superannuation funds are now "defined contribution" schemes with lump sum benefits rather than "defined benefit" schemes which often had fixed employee contributions with employers required to make top up contributions to cover actuarial shortfalls in reserves. In addition, regulatory and tax legislation dealing with contributions to superannuation is drafted on the basis that contributions must be attributed to individual employees. This has also favoured the shift to defined contribution schemes.

All superannuation schemes and funds, large or small, public sector or private sector, are subject to the same regulatory legislation and standards. Because of limits on Commonwealth power to compel standards to be imposed upon superannuation funds, which are governed under State laws dealing with trust funds, the Commonwealth Parliament has used the carrot of tax concessions and the stick of tax penalties under the

Income Tax Assessment Act 1997 to penalise "non-complying" superannuation funds (which therefore never intentionally exist). The regulatory framework for all complying superannuation funds (the *Superannuation Industry (Supervision) Act 1993* – colloquially known as the *SIS Act)* embraces all civil service (Federal and State) pension schemes as well as all private sector schemes, whether set up by employers, financial institutions, trade unions or by statute or set up as self-managed superannuation funds (SMSFs). All superannuation funds must have trustees (or trustee directors) who manage the superannuation fund as a trust fund and the trustees/trustee directors are subject as individuals to civil and criminal penalties for breaches of statutory standards such as allowing unauthorised withdrawals or making unauthorised investments. Funds may also lose tax emption and be subject to penalty taxes if superannuation standards are breached. The *SIS Act* is exhaustive and extends for over 700 pages (without taking into account the *SIS Regulations* made under it).

Functionally, the system is a form of social insurance for employees and their dependants with benefits being claimed upon reaching retirement age, or upon death or disability. Since most superannuation schemes are now "defined contribution" schemes, not "defined benefit" schemes, the risk of investment under-performance rests with employees, not employers or governments. Any such serious risk is ameliorated by the fact that under the *Social Security Act* (originally the *Social Services Act 1947*), the Federal Government also pays assets and income tested old age, disability and sole parent pensions by way of poverty relief (such welfare pensions are reduced as private or superannuation income increases and are not intended to provide more than a minimum income). Social welfare pensions are not an earnings-related income replacement mechanism, which is the function of compulsory superannuation.

History

Superannuation before Federation

Before Federation in 1901, friendly societies and mutual and non-mutual life assurance companies were the main vehicle through which ordinary people provided for their and their families' economic security in case of death or old age. Thus, the Australian Mutual Provident Society was founded in 1849 as a non-profit life insurance mutual society with the motto *Amicus certus in re incerta* "A certain friend in a thing uncertain".

However, some larger employers such as the large banks and State public services gradually provided superannuation as a condition of employment, as did some major companies. In the case of public servants, superannuation can be seen as a development of the British system of putting officers on half pay on retirement.

Towards the end of the 19th century, the question of social insurance started to be widely agitated. The question of making provision for workers in old age or for those affected by industrial accidents was exercising the minds of European political leaders.

The system adopted by the German Empire for providing social insurance to workers was noted and seen as a model for legislation elsewhere. For example, Winston Churchill's advocacy of compulsory workers compensation insurance around 1910 reflected his interest in Bismarck's German social insurance legislation.

Likewise, in Australia, when the Commonwealth Constitution was being framed, the question of invalid and old-age pensions came up for discussion and the Constitution provided in section 51 that –

"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: –

…

(xxii.) Invalid and old-age pensions"

In the *Annotated Constitution of the Australian Commonwealth* (1901) by Sir John Quick and Robert Garran, two prominent members of the Federal movement who were instrumental in the drafting of the Constitution, the learned authors make the following observations,

> *In considering Mr. J. H. Howe's proposal to place this sub-section in the Constitution, the question debated was not the policy or practicability of giving governmental pensions to poor and aged persons, but whether such a power ought to be left to the States or added to the functions of a Federal Parliament. Those who doubted the wisdom of the proposal argued that it was a matter which stood in the same category as State Banking and State Insurance; that it was a branch of the charitable systems which existed in the States; that it could be best dealt with by each State apart from the Federal authority; that it might involve embarrassing financial issues; that it would tend to load the Constitution with a social problem of complexity and magnitude, which had better be reserved for the States. In reply to these arguments it was said that the Federal authority would occupy a superior vantage-ground which would enable it to deal effectively and comprehensively with the subject, which could not be done by the disunited efforts of the States. Such a law should be uniform so as to reach and regulate the rights and obligations of those who were migratory in their habits. "The people who would benefit most by this provision," said Mr. Howe, "are a moving population. They are engaged in seeking work all over Australia, and are constantly going to those places which, for the time being, are more prosperous than other places. Our labouring classes will be a nomadic race for a considerable time to come. If the State took this matter in hand, and made payments compulsory, it could not follow a contributor to the fund from one State to another. The duty is one which can only be performed by the Federal authority. (Conv. Deb., Syd., 1897, p. 1086.)*
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> *"In these Colonies," said the same hon. gentleman, "men are born in one State, spend their manhood and best days in another, and then return, broken down and unfortunate, to the land of their birth, which owes them nothing. Is it to be contended that under such circumstances the State of the unfortunate man's birth should be compelled to support him? Surely the support of the aged poor could be better accomplished by a Federated Australia. Wherever a man may roam within the boundaries of Federated Australia, he should know that in his old age he need never fear the pauper's lot. <u>I would compel every able-bodied man, in the heyday of youth, when he has the means, to make a compulsory contribution towards a fund, out of which provision would be made for his old age.</u>* (emphasis added) *That is another reason why the Federal authority should take it instead of the State, because within the bounds of Federated Australia a law can be enacted compelling that individual, who is to receive the benefit, to contribute to the fund in which he is to participate in old age." (Conv. Deb., Melb., 1898, p. 1992.)*
>
> *If a precedent were required it could be found in the German Empire, which has adopted the system of providing invalid and old age pensions. "In Germany it is compulsory for those in fixed employment, and for employers, to contribute to a fund which is subsidized by the Government. Then when a man comes on the fund he does not come upon it as with us a man comes upon the*

charitable institutions of the country. He can hold up his head among his fellow men. This law prevents a man who has fulfilled all the obligations of citizen, husband, and father, from becoming a pauper in his declining days. . . . At the present time there are no fewer than 12,000,000 of people in Germany subject to this law, and Germany takes the pride of place in having been the first nation in Europe to adopt the system. . . . In Australia we have a country far removed by a vast expanse of water from every other part of the world. Our labourers will be Australian labourers. Labourers from other lands will not intermingle with them. We should try to prevent these men from becoming destitute in their declining years through no fault of their own. Every member of the Convention knows of cases where men, who, perhaps, once held high positions, have through force of circumstances had to become inmates of charitable institutions. The poor have to be kept by the State in any case, and I want the Commonwealth to say to those of its citizens who have attained a certain age, or who have been maimed for life by some accident, that they shall not want, and need not be a burden upon friends, who, perhaps, are not able to keep them, but that the Commonwealth shall provide the means from this fund to which they have contributed whereby \they can live. I hope the Convention will agree to these words being inserted. I am sure that if they do so, the Federal Parliament will be able to formulate a scheme whereby my object can be achieved, and thereby crown itself with glory." (Hon. J. H. Howe. Conv. Deb., Syd., 1897, p. 1086.)

The Convention after several unsuccessful appeals at last yielded to Mr. Howe's advocacy of the cause and granted the power to Parliament, making it a concurrent authority, which could be exercised by the States until it was acted upon by the Parliament.

This speech is remarkable in that, over 90 years after it was made, the compulsory funds it envisaged for workers' old age were exactly what was legislated for in Australia as compulsory superannuation, in effect nationalising all previously existing superannuation schemes.

Superannuation from Federation to the 1980s

Following Federation, the States, and later the Federal government, introduced age pensions. New South Wales had the first (in 1900), which equated to around £26 per year. Queensland and Victoria followed suit closely afterward. Almost a decade later, the Federal *Invalid and Old Age Pensions Act 1908* was passed, which officially commenced a year later. This introduced £26 annually across the whole country. (**Annexure A** contains a more detailed chronology of superannuation history since 1901.)

Later, in World War I, the first Federal *Income Tax Assessment Act 1915* was introduced. The Act exempted superannuation funds and also recognised employer contributions as tax-deductible, as well as allowing for tax-deductible voluntary contributions for life assurance premiums and superannuation, reflecting the original British income tax law introduced by Pitt the Younger in 1798 which had recognised labour as a resource requiring maintenance and replacement. Before the Age Pension, non-employees would need to self-fund their retirement, assuming that they were not entitled to a reversionary pension or benefit from an employed spouse's superannuation. Self-employed persons could contribute to superannuation funds set up (typically by life assurance companies) under section 23(ja) of the *Income Tax Assessment Act 1936*.

Attempts to pass social insurance or national superannuation bills – in the form of the National Insurance (1928) and National Health and Pensions (1938) Bills – both failed, the former due to the fall of the Bruce government and the onset of the Depression, the latter being abandoned by the Menzies government due to

World War II. Interestingly, from 1950 to 1965, the *Income Tax Assessment Act 1936* was re-labelled by the second Menzies government as the *Income Tax and Social Services Contribution Assessment Act 1936*. The re-labelling followed a Constitutional amendment post-War which expanded the Commonwealth's power to provide social welfare benefits. Section 51(xxiiiA) was inserted by the *Constitution Alteration (Social Services) 1946* referendum and expanded Commonwealth powers beyond old age and invalid pensions to "the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances".

However, there was never a separate fund established for separate social services contributions of any kind, so the cosmetic relabelling of adding "Social Services Contribution" was later dropped from the title of the *Income Tax Assessment Act*, since all revenue was raised as income tax revenue and paid as such into the Consolidated Revenue Fund, without any hypothecation or earmarking.

The years between 1950 and 1985 saw a number of changes to the Age Pension, but no introduction of guaranteed superannuation. At one stage the Age Pension was not means tested but that was reversed in the 1980s. Superannuation was left alone as a matter for employers and employees, or self-employed savings. Australia did not follow examples such as New Zealand's national superannuation scheme (wisely, as it turned out, since Australia has, to that extent, limited unfunded future liabilities.)

The Australian Bureau of Statistics in 1974 revealed only 32 per cent of the workforce were covered by superannuation at this point, mostly males in full time career employment. This reflected the workforces of the public services and the large employers such as the banks, as well as the private choices of employees. Often, younger employees were not sure of remaining with the same employer and would therefore choose not to join an employer superannuation fund, because there could be a lack of vesting of employer provided contributions if the employee left that employer. In addition, many employees changing jobs preferred to collect their accrued superannuation and long service leave as a lump sum to put forward as the deposit on a home. This was especially true of young women leaving the paid workforce to get married and raise families.

Trade union involvement through to the 1980s

For many years, most superannuation arrangements which existed for blue-collar workers were set up under industrial awards negotiated by the union movement or individual unions. In some cases, unions took a very close interest in superannuation and compensation arrangements for their members. A notable example was the industry scheme for mineworkers, an industry in which it was not unknown for a young man of 19 to go down a mine shaft on his first shift and be brought up dead, leaving a widow and an orphan.

Outside the public sector and some larger employers such as the banks and major manufacturers, pensions tended to be uncommon in superannuation arrangements. Further, because lump sums paid on termination of employment, including superannuation lump sums, were treated as 95% tax-free (being capital sums in commutation of income rights), Treasury tended to view superannuation as a tax shelter. Therefore in 1983 Treasury proposed the taxation of lump sums on termination of employment, whether paid *ex gratia* by the employer or paid from a superannuation scheme and whether or not paid to a survivor on death of an employee spouse. Naturally, there was a very strong reaction from the trade unions, among others (the death of a spouse is not usually considered to be an income producing activity undertaken by the widow).

At the time there was a newly elected Labour government, the Hawke Government, and the unions made their strong views felt. Thus, a change to superannuation arrangements came about in 1983 through an agreement between the government and the trade unions. The then Labour Treasurer, Paul Keating, took a very active interest in superannuation policy.

A broad range of unions were increasingly active in campaigning for superannuation in awards in the run-up to the National Wage Case to be heard by the Australian Conciliation and Arbitration Commission (the Commission). Led by (then) ACTU Secretary, Bill Kelty, the Australian Council of Trade Unions gained critical support from the Labour Government in seeking a universal 3% superannuation contribution by employers to be paid into an industry fund, in lieu of a wage rise. This was reflected in the renegotiated Accord, known as the Accord Mark II agreement between the ACTU and the Federal Labour government. The agreement further boosted the push for industry and occupational superannuation, stipulating that compensation to employees should rise 6% (to keep pace with inflation). That included 3% employer super contribution, a 2% wage rise and tax cuts. The National Wage Case commenced in late 1985, with the Commission (later the Australian Industrial Relations Commission and now the Fair Work Commission) considering the unions' submission for 3% employer superannuation to be paid into industry funds in lieu of a productivity-based wage rise.

Thus, under the Prices and Incomes Accord between the Government and the trade unions, the trade unions agreed to forgo a national 3% pay increase which would be put into the new superannuation system for all employees in Australia. This was to be matched by employer contributions and gradually increased. At the same time, unions were very interested in strengthening vesting requirements, since there was little point in giving up a wage increase for an employer superannuation contribution if the worker could not be sure that he would ever receive the benefit from that employer contribution. At the time of the introduction of compulsory superannuation by employers through the industrial arbitration system, it was met with strong resistance by small business groups who were fearful of the burden associated with its implementation and its ongoing costs.

Thus, the Prices and Incomes Accord suited both the government and the unions. The Hawke Labour government wanted to "restrain inflation", but still give employees the rise they wanted. The compromise was that the 3% pay rise would occur, but it would be contributed by employers to superannuation, and the employee could not spend it. The money was contributed to newly established "industry funds", which were funds controlled by trustee boards comprising equal numbers of employer and employee or union representatives.

The requirement that superannuation be preserved and not spent also reflected Treasury's concern that superannuation was not fulfilling its purpose of providing retirement income if employees could get access to superannuation during their working careers. Treasury's concern was that superannuation be used as retirement savings to reduce government spending on age, invalidity and widow's pensions.

The move to enshrine compulsory superannuation in industrial awards was strongly opposed by employer groups who mounted a High Court challenge to the Commission's jurisdiction on the basis that superannuation was not an industrial matter, drawing on the previous 1952 *Hamilton Knight* decision.

In two historic decisions, the High Court determined unanimously that superannuation was indeed an industrial matter and the Arbitration Commission was therefore able to decide to approve agreements up to 3% superannuation contribution as well as a wage increase. It was left to unions and employers to negotiate

into which funds the employers were to make the awarded superannuation contributions on behalf of their employees. These two decisions firmly located superannuation in the industrial award system. Superannuation coverage rapidly increased. By 1988, 51.3% of employees were covered by superannaution and by 1990, this had risen to 64% coverage.

Following the spread of superannuation through awards, the Hawke Labour Government introduced the *Occupational Superannuation Standards Act 1987* (OSSA) that created a Federal regulatory regime for superannuation funds. The Act made it no longer possible for the trustees of an employer fund to change the rules of the fund without the members' consent or use the assets of the scheme to help finance the running of an employer's company. The regulations which accompanied OSSA required that equal numbers of member and employer representatives appear on the boards of any new company (and union/industry) schemes with over 20 members.

In particular, section 7 of the Act provided that –

(1) The regulations may prescribe standards applicable to the operation of superannuation funds.

(2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:

(a) the persons who may contribute to superannuation funds;

(b) the vesting in members of superannuation funds of benefits arising directly or indirectly from amounts contributed to superannuation funds;

(c) the preservation of benefits arising directly or indirectly from amounts contributed to superannuation funds;

(d) the payment by superannuation funds of benefits arising directly or indirectly from amounts contributed to superannuation funds;

(e) the portability of benefits arising directly or indirectly from amounts contributed to superannuation funds;

(f) the levels of benefits which may be provided by superannuation funds and the levels of assets which may be held by superannuation funds;

(g) the application by superannuation funds of money no longer required to meet payments of benefits to members because the members have ceased to be entitled to receive those benefits;

(h) the investment of assets of superannuation funds;

(i) the number of trustees, and the composition of boards or committees of trustees, of superannuation funds;

(j) the financial and actuarial reports to be prepared in relation to superannuation funds;

(k) the disclosure of information to members of superannuation funds;

(l) the matters required, permitted or not permitted to be included, from time to time, in the trust deeds of superannuation funds.

Effectively, the Act meant that all formerly purely private superannuation arrangements were now subject to national regulation. What had once been voluntary superannuation arrangements for old age, survivors or disability were now compulsory and regulated under Federal legislation.

Superannuation Guarantee Act 1992

Following an unsuccessful attempt by the Australian Council of Trade Unions (the ACTU) and other unions – supported by the Labour Government – to seek an increase in award superannuation to 6% in the 1991 National Wage Case, attention shifted to legislating an increase in superannuation. The then Labour Government announced the Superannuation Guarantee (SG) in its 1991-92 Budget, setting out a 9 per cent target for the superannuation guarantee charge, with a full 12 percent to be considered. Legislation for the superannuation guarantee was introduced by the Keating Labour Government (Paul Keating having replaced Bob Hawke as Prime Minister in December 1991) in April 1992, taking effect from 1 July 1992 at 3%, with phased-in increases to 9% by 2002. The Prime Minister declared in May 1992, replying in Parliament to the Opposition -

"It has never been done before; it has never been achieved before. The importance of that acceptance by the trade unions' membership will be a significant factor in Australia's investment future in terms of savings and, in terms of living standards, a better standard of living in retirement."

Thus, whereas compulsory superannuation for blue-collar workers had come about previously largely through the activities of the trade unions negotiating through Australia's centralised industrial arbitration award system, the 1991 Budget, through the Superannuation Guarantee, created a compulsory system of directly legislated superannuation support for virtually all Australian employees, paid for by employers, which came into full effect a year later. The Australian Taxation Office states that the first year of this new Act boosted superannuation coverage to 80%.

Over the next decade, coverage rose to 91%, and the superannuation guarantee rate increased from 3% to 9.5%.

In 1993, the Labour Government overhauled regulation of superannuation with the introduction of the *Superannuation Industry (Supervision) Act 1993* (the *SIS Act*). The OSSA continued in force but many of its provisions were repealed and transferred to the *SIS Act*. The *SIS Act* which introduced a range of prudential requirements for trustees of superannuation funds remains the centrepiece of superannuation regulation.

In 1998, on the recommendation of the 1997 Wallis Financial System Inquiry, the Australian Prudential Regulation Authority (APRA) was established as the prudential regulator of 'authorised deposit-taking institutions' (ADIs), insurers and superannuation licensees.

In 1999, also following the Wallis Inquiry, self-managed super funds (SMSFs) were legislatively established to allow small businesses and the self-employed to establish and manage their own superannuation funds on

a similar basis to larger funds with necessary modifications (a major one being the Australian Taxation Office was the Regulator in lieu of APRA).

In 2005, two other changes were put in place:

- the ability to choose one's own retirement fund and

- the ability to 'transition to retirement', whereby a person can contribute a larger portion of his or her salary to superannuation and replace salary income with a drawdown as a superannuation pension in transitioning to retirement.

The Keating Labour Government had also intended for there to be a compulsory employee contribution beginning in 1997-98, with employee contributions beginning at 1%, then rising to 2% in 1998-99 and reaching 3% in 1999-2000. However, this planned compulsory 3% employee contribution was cancelled by the Howard Liberal Government when it took office in 1996. The employer superannuation guarantee contribution was allowed to continue to rise to 9%, which it did in 2002-03. The Howard Government also limited employer superannuation guarantee contributions from 1 July 2002 to an employee's ordinary time earnings (which includes wages and salaries, as well as bonuses, commissions, shift loading and casual loadings, but does not include overtime paid).

The superannuation guarantee rate was 9% from 2002-03 to 30 June 2013, then 9.25% to 30 June 2014, 9.5% to 30 June 2021, is now 10% and planned to rise by 0.5% each year until it reaches 12% in 2025.[1]

Superannuation benefits are thus no longer an exclusively a matter of employers rewarding long serving employees but a legislated obligation subject to expansive legislated fund standards. With enforced vesting of accrued benefits and the general move to "defined contribution", not "defined benefit" funds, accrued superannuation is now largely portable through a system of rollovers between funds (all within the regulated system) and preservation of benefits until a condition of release occurs (typically retirement). A member may move from fund to fund and can consolidate accounts. A superannuation account continues to benefit from concessional tax on earnings as retired members draw down income from their accounts.

The compulsory superannuation system today

Australia's three-pillar retirement system

Compulsory superannuation in Australia is seen as part of a "three pillar" retirement income system comprising the age pension, compulsory saving through the superannuation guarantee and voluntary superannuation saving. Over the past 100 years, the retirement income system has evolved from one where superannuation, private saving and life assurance covered a mainly middle-class minority while the Age Pension primarily fulfilled a poverty alleviation function, to one where compulsory superannuation is ensuring more workers meet the need for income replacement in case of old age, disability or survivorship with less need to resort to public charity in the form of the age pension.

It had been demonstrated that Australia, along with many other Western nations, would experience a major demographic shift in the coming decades, of the aging of the population, and it was claimed that this would result in increased age pension payments that would place an unaffordable strain on the Australian economy.

The proposed solution was a "three pillars" approach to retirement income.

- compulsory employer superannuation contributions,
- voluntary employee superannuation contributions and other private savings, and
- if insufficient, a safety net consisting of a means-tested government-funded age pension.

In 1993, the World Bank endorsed Australia's 'three pillar' system: compulsory superannuation, the age pension, and voluntary retirement savings, as world's best practice for the provision of retirement income.[2]

By 2019, the pooled value of funds under management had soared to $2.9 trillion, one of the largest in the world, and 1.5 times Australia's GDP. Australia's proportion of the population with superannuation reaches 78% – one of the highest levels of coverage in the world.

The difference between Australia's system for funding retirement and the method common in Western Europe is that Australia also maintains a means-tested age pension paid for out of general revenue for the relief of poverty (not all persons can work or save). European pension systems are somewhat similar to Australia's superannuation system. In the continental European systems, employers pay a contribution which is part of wages, but most are paid to a central fund or funds, not to regulated schemes or funds. In many of those systems the employees must also pay. The European systems also provide rates of retirement pension payment that are 60 per cent, 70 per cent, 80 per cent of previous earnings. In Australia, the rate of replacement income is determined by the accumulated benefits in defined contribution schemes.

The three–pillar structure of the Australian retirement income system - the Age Pension, compulsory saving through the superannuation guarantee and voluntary superannuation saving — is unusual among developed countries, but it has the strength of avoiding the imposition upon younger taxpayers of obligations to pay for unfunded and uncapped future defined benefit pensions to older taxpayers.

In particular, it provides a system intended to satisfy the minimum needs of all Australians, provides the capacity for individuals to enhance their retirement income, and spreads risks between the public and private sectors in a fiscally responsible way.

Although the three pillars are described as one system, distinctions between the three pillars exist and are reflected in the form of the retirement benefit, the coverage of the three pillars, an individual's exposure to risk and whether a residual payment is made to a person's estate on his or her death.

The Age Pension today

The means tested Age Pension exists to ensure that all Australians have access to a safety net level of income throughout their retirement that is adequate to provide a reasonable minimum standard of living. It still substantially underpins the retirement incomes of low-income earners. It supports people who live longer than expected and who exhaust their private savings, and it supports those who have less than average full-time employment due to periods of unemployment, caring responsibilities, working part-time or spending part of their working life overseas. Being taxpayer-funded, the Age Pension provides protection against investment, inflation and longevity risk.

The superannuation guarantee

The superannuation guarantee was motivated to address a particular consequence of life-cycle 'myopia' — specifically, people not saving adequately for retirement because it is too far in the future for them to

adequately 'see', and so make adequate provision for their needs. It enables workers to achieve a level of retirement income above that provided by the Age Pension. However, the individual bears some or all of the investment risk and there is no requirement that accumulated funds be applied to provide a retirement annuity or pension.

Even when mature (toward the end of the 2030s), the current rate of compulsory contribution by employers of 10 per cent (going to 12%) may not be sufficient on its own to meet everyone's retirement income aspirations. However, together with the Age Pension, the superannuation guarantee is expected to provide the opportunity for people on low to average wages with an average working life of 35 years to have a substantial replacement of their incomes.

Voluntary saving for retirement

A major pillar of the retirement income system generally has been seen as the tax-assisted voluntary part of the superannuation system. Tax concessions encourage those with saving capacity (including those not subject to the second pillar) to provide for their retirement.

Types of superannuation funds

There are different types of complying superannuation funds. All types of funds, large or small, must comply with the standards laid down in the *Superannuation (Industry) Supervision Act 1993* (the *SIS Act*).

- **Industry Funds** are multi-employer funds run by employer associations and/or unions. Unlike Retail/Wholesale funds they are run solely for the benefit of members, as there are no shareholders owning a trustee charging for managing the fund.
- **Wholesale Master Trusts** are multi-employer funds run by financial institutions for groups of employees.
- **Retail Master Trusts/Wrap platforms** are funds run by financial institutions for individuals.
- **Employer Funds** are funds established by employers for their employees. Each fund has its own trust structure that is not necessarily shared by other employers
- **Public Sector Schemes** are largely funds establish by Governments. Some schemes are largely or completely unfunded and the Federal Government Future Fund was specifically established to set aside savings to meet this future liability. Many, but not all public sector schemes, are defined benefit funds which give a life pension rather than a balance that is paid down as a pension. Newer employees in Public Sector jobs are typically members of a newer defined contributions accumulation scheme rather than a defined benefit scheme, as governments have moved to shut down open ended liability schemes.
- **Self-Managed Superannuation Funds (SMSFs)** are funds established under a specific portion of the same laws that govern larger funds. An SMSF has a small number of individuals (limited to 6) and is regulated by the Australian Taxation Office, not the Australian Prudential Regulation Authority (APRA). Generally, the Trustees (or Trustee Directors) of the fund are the fund members and the members are all trustees (or Trustee Directors) since where there is a corporate trustee, the members must all be directors of that company. SMSFs are the most numerous funds in the

Australian superannuation industry. SMSFs may be specially structured so that they are an accepted QROPS fund capable of receiving a transfer of a UK pension benefit.

- **Small APRA Funds (SAFs)** are funds established for a small number of individuals (fewer than 5) but unlike SMSFs the Trustee is an Approved Trustee, not the member/s, and the funds are regulated by APRA. This structure is often used for members who want control of their superannuation investments but are unable or unwilling to meet the requirements of trusteeship of an SMSF.
- **Public Sector Employees Funds** are funds established by governments for their employees.

Industry, Retail and Wholesale Master Trusts are the largest sectors of the Australian Superannuation Market by net asset with 217 funds. SMSFs are the largest number of funds with 596,225 funds (2019) representing 32.8% of the $2.7 trillion market. [3]

Choice of superannuation fund

From 1 July 2005, many Australian employees have been able to choose the fund into which their employer's future superannuation guarantee contributions are paid. An employee may change his or her designated superannuation fund. Among reasons for so doing are,

- the current fund is not available with a new employer,
- wishing to consolidate superannuation accounts to cut costs and paperwork,
- choosing a lower-fee and/or better service superannuation fund,
- choosing a better performing superannuation fund, or
- staying with an existing self-managed superannuation fund (SMSF).

Where an employee has not elected to choose his own fund, employers must since 1 January 2014 make "default contributions" only into an authorised MySuper product, which is designed to be a simple, low-cost superannuation fund with few, standardised fees and a single balanced investment option.

MySuper

Adopting a key recommendation of the Cooper Review to simplify super, the Gillard Government in 2011 announced new rules and criteria for the default options offered by superannuation funds to make it easier for consumers to compare super funds. These options are named MySuper accounts which have the goal of creating an easily comparable default funds system. This key recommendation of the Cooper Review was a response to the lack of transparency noted in many retail funds as it was often not clear to members how different product options offered by different funds could be properly compared.

From 1 January 2014, employers must only pay default superannuation contributions to an authorised MySuper product. Superannuation funds had until July 2017 to transfer accrued default balances to MySuper.

A MySuper default is one which complies to a regulated set of features, including:

- a single investment option (although lifecycle strategies are permitted),

- a minimum level of insurance cover,
- an easily comparable fee structure, with a short prescribed list of allowable fee types,
- restrictions on how advice is provided and paid for, and
- rules governing fund governance and transparency.[4]

The Financial Services Reform Act 2002 (FSR)

The *Financial Services Reform Act 2002* covers a very broad area of finance and was designed to provide standardisation within the financial services industry. Under the Act, to operate a superannuation fund, the trustee must have a licence to run a fund and the individuals within the funds require a licence to perform their jobs.

Regulatory bodies

Four main regulatory bodies keep watch over superannuation funds to ensure they comply with the legislation:

- **The Australian Prudential Regulation Authority (APRA)** is responsible for ensuring that superannuation funds behave in a prudent manner. APRA also reviews a fund's annual accounts to assess their compliance with the *SIS Act*.
- The **Australian Securities and Investments Commission (ASIC)** ensures that trustees of superannuation funds comply with their obligations regarding the provision of information to fund members during their membership. ASIC is also responsible for consumer protection in the financial services area (including superannuation). It also monitors funds' compliance with the *Financial Services Reform Act 2002*.
- The **Australian Taxation Office (ATO)** supervises that self-managed superannuation funds (SMSFs) to ensure they adhere to the *SIS Act* and regulations. Importantly, SMSFs are required to have auditors independent from an SMSF's normal accountants and auditors are required to report breaches of legislation to the ATO.
- The **Superannuation Complaints Tribunal (SCT)** and since 2018, the **Australian Financial Complaints Authority (AFCA)** administer the *Superannuation (Resolution of Complaints) Act*. This Act provides the formal process for the resolution of complaints.

Legislation

For constitutional reasons, Commonwealth regulation of superannuation funds has relied heavily upon the taxation power to grant tax concessions or impose tax penalties. The Commonwealth has no constitutional power as such over superannuation funds and could not prohibit any person or persons setting up a superannuation fund. Therefore, through taxation legislation, it has made it financially ruinous to set up a superannuation fund which is not a complying regulated superannuation fund. If a superannuation fund becomes a non-complying fund, its taxable income including contributions will be taxed at the rate of 45% instead of 15% and its assessable income will be taken to include the total market value of its assets less

undeducted contributions under section 295–325 of the *Income Tax Assessment Act 1997* – a clearly ruinous outcome. An SMSF becomes a regulated superannuation fund by complying with the requirements of section 19 of the *SIS Act*. Once a fund elects to become a regulated fund it must also ensure that it meets all the requirements of the prudential standards of the *SIS Act*, that is, it must be a *complying* superannuation fund under section 42A of the *SIS Act*. Only complying superannuation funds are eligible for tax concessions or can receive compulsory superannuation contributions made by employers under the superannuation guarantee legislation.

Complying superannuation funds are principally regulated under the following Federal Acts

- *Superannuation Industry (Supervision) Act 1993* (the *SIS Act*)
- *Superannuation Industry (Supervision) Regulations 1994*
- *Income Tax Assessment Act 1997*
- *Financial Services Reform Act 2002*.

State trust law, both case law and the State *Trustee Acts* also apply.

Complying superannuation funds

Because there was no statutory definition of a superannuation fund, Parliament created the concept of a "complying superannuation fund" as the regulatory linchpin. As noted above, a fund which is not a complying fund is effectively taxed out of existence. Since non-complying funds are effectively taxed out of existence, the terms "superannuation fund" and "complying superannuation fund" may be used interchangeably. Compulsory employer contributions are regulated via the *Superannuation Guarantee (Administration) Act 1992*.

A complying superannuation fund is defined under sections 42 and 42A of the *SIS Act* as a regulated superannuation fund (including an SMSF) which has not breached the Act or where the relevant Regulator has excused the breach.

Trustee structure

Complying superannuation funds operate as trusts with trustees being responsible for the prudential operation of their funds and in formulating and implementing an investment strategy. Some specific duties and obligations are codified in the *Superannuation Industry (Supervision) Act 1993* - other obligations are the subject of general trust law. Trustees are liable under law for breaches of obligations. Superannuation trustees have, *inter alia*, an obligation to ensure that superannuation monies are invested prudently with consideration given to diversification and liquidity.

Other than a few very specific provisions in the *Superannuation Industry (Supervision) Act 1993* (largely related to investments in assets related to the employer or affecting related party dealings with a self-managed superannuation fund) superannuation funds are not subject to specific asset requirements or investment rules. A superannuation fund must maintain an investment strategy and comply with specific covenants contained in law at all times. A fund must not lend to a related party and must not acquire investments from a related party unless permitted. There are no minimum rate of return requirements, nor a government guarantee of benefits. There are some restrictions on borrowing and the use of derivatives and investments in the shares and property of employer sponsors of funds.

Superannuation Industry (Supervision) Act 1993 (“SIS Act”)

The *Superannuation Industry (Supervision) Act 1993* sets out all the rules with which a superannuation fund must comply. The rules cover general areas relating to the trustee, investments, management, fund accounts and administration, enquiries and complaints.

The *SIS Act* also -

- regulates the operation of superannuation funds; and
- sets penalties for trustees when the rules of operation are not met.

Mandatory covenants

A fundamental provision that all superannuation funds must comply with is s 52 of the *SIS Act* which specifies as follows –

“52 Covenants to be included in governing rules—registrable superannuation entities

Governing rules taken to contain covenants

(1) If the governing rules of a registrable superannuation entity do not contain covenants to the effect of the covenants set out in this section, those governing rules are taken to contain covenants to that effect.

General covenants

(2) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to act honestly in all matters concerning the entity;

(b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;

(c) to perform the trustee’s duties and exercise the trustee’s powers in the best interests of the beneficiaries;

(d) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee:

(i) to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and

(ii) to ensure that the duties to the beneficiaries are met despite the conflict; and

(iii) to ensure that the interests of the beneficiaries are not adversely affected by the conflict; and

(iv) to comply with the prudential standards in relation to conflicts;

(e) to act fairly in dealing with classes of beneficiaries within the entity;

(f) to act fairly in dealing with beneficiaries within a class;

(g) to keep the money and other assets of the entity separate from any money and assets, respectively:

(i) that are held by the trustee personally; or

(ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;

(h) not to enter into any contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee’s functions and powers;

(i) if there are any reserves of the entity—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the entity's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;

(j) to allow a beneficiary of the entity access to any prescribed information or any prescribed documents.

Superannuation trustee

(3) In paragraph (2)(b), a ***superannuation trustee*** is a person whose profession, business or employment is or includes acting as a trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

Obligations to beneficiaries override obligations under certain other Acts

(4) The obligations of the trustee under paragraph (2)(d) override any conflicting obligations an executive officer or employee of the trustee has under:

(a) Part 2D.1 of the *Corporations Act 2001*; or

(b) Subdivision A of Division 3 of Part 2-2 of the *Public Governance, Performance and Accountability Act 2013* (which deals with general duties of officials) or any rules made for the purposes of that Subdivision.

Trustee not prevented from engaging or authorising persons to act on trustee's behalf

(5) A covenant referred to in paragraph (2)(h) does not prevent the trustee from engaging or authorising persons to do acts or things on behalf of the trustee.

Investment covenants

(6) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to formulate, review regularly and give effect to an investment strategy for the whole of the entity, and for each investment option offered by the trustee in the entity, having regard to:

(i) the risk involved in making, holding and realising, and the likely return from, the investments covered by the strategy, having regard to the trustee's objectives in relation to the strategy and to the expected cash flow requirements in relation to the entity; and

(ii) the composition of the investments covered by the strategy, including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification; and

(iii) the liquidity of the investments covered by the strategy, having regard to the expected cash flow requirements in relation to the entity; and

(iv) whether reliable valuation information is available in relation to the investments covered by the strategy; and

(v) the ability of the entity to discharge its existing and prospective liabilities; and

(vi) the expected tax consequences for the entity in relation to the investments covered by the strategy; and

(vii) the costs that might be incurred by the entity in relation to the investments covered by the strategy; and

(viii) any other relevant matters;

(b) to exercise due diligence in developing, offering and reviewing regularly each investment option;

(c) to ensure the investment options offered to each beneficiary allow adequate diversification.

Insurance covenants

(7) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing each of the following matters:

(i) the kinds of insurance that are to be offered to, or acquired for the benefit of, beneficiaries;

(ii) the level, or levels, of insurance cover to be offered to, or acquired for the benefit of, beneficiaries;

(iii) the basis for the decision to offer or acquire insurance of those kinds, with cover at that level or levels, having regard to the demographic composition of the beneficiaries of the entity;

(iv) the method by which the insurer is, or the insurers are, to be determined;

(b) to consider the cost to all beneficiaries of offering or acquiring insurance of a particular kind, or at a particular level;

(c) to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries;

(d) to do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success.

Covenants relating to risk

(8) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to formulate, review regularly and give effect to a risk management strategy that relates to:

(i) the activities, or proposed activities, of the trustee, to the extent that they are relevant to the exercise of the trustee's powers, or the performance of the trustee's duties and functions, as trustee of the entity; and

(ii) the risks that arise in operating the entity;

(b) to maintain and manage in accordance with the prudential standards financial resources (whether capital of the trustee, a reserve of the entity or both) to cover the operational risk that relates to the entity.

Covenants relating to regulated superannuation funds—annual outcomes assessments

(9) If the entity is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members), the covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to determine, in writing, on an annual basis, for each MySuper product and choice product offered by the entity, whether the financial interests of the beneficiaries of the entity who hold the product are being promoted by the trustee, having regard to:

(i) if the product is a MySuper product—a comparison of the MySuper product with other MySuper products offered by other regulated superannuation funds, based on the factors mentioned in subsection (10), and a comparison of the MySuper product with any other benchmarks specified in regulations made for the purposes of this subparagraph; and

(ii) if the product is a choice product—a comparison of the choice product with the comparable choice products in relation to the choice product, based on factors mentioned in subsection (10A), and a comparison of the choice product with any other benchmarks specified in regulations made for the purposes of this subparagraph; and

(iii) the factors mentioned in subsection (11); and

(iv) the latest determination (if any) made by APRA under subsection 60C(2) for the product;

(aa) to determine, in writing, on an annual basis, whether each trustee of the entity is promoting the financial interests of the beneficiaries of the fund, as assessed against benchmarks specified in regulations made for the purposes of this paragraph;

(b) to make the determination referred to in paragraph (a), and a summary of the assessments and comparisons on which the determination is based, publicly available on the website of the entity;

(c) to do so within 28 days after the determination is made;

(d) to keep the determination, and the summary of the assessments and comparisons on which the determination is based, on the website until a new determination is made as referred to in paragraph (a).

(10) In comparing a MySuper product with other MySuper products, the trustees must compare each of the following:

(a) the fees and costs that affect the return to the beneficiaries holding the MySuper products;

(b) the return for the MySuper products (after the deduction of fees, costs and taxes);

(c) the level of investment risk for the MySuper products;

(d) any other matter set out in the prudential standards.

(10A) In comparing a choice product with the comparable choice products in relation to the choice product, the trustees must compare each of the following:

(a) the fees and costs that affect the return to the beneficiaries holding the choice products;

(b) the return for the choice products;

(c) the level of investment risk for the choice products;

(d) any other matter specified in the prudential standards.

(11) In determining whether the financial interests of the beneficiaries of the entity who hold a MySuper product or choice product are being promoted by the trustee, the trustee must assess each of the following:

(a) whether the options, benefits and facilities offered under the product are appropriate to those beneficiaries;

(b) whether the investment strategy for the product, including the level of investment risk and the return target, is appropriate to those beneficiaries;

(c) whether the insurance strategy for the product is appropriate to those beneficiaries;

(d) whether any insurance fees charged in relation to the product inappropriately erode the retirement income of those beneficiaries;

(e) any other relevant matters, including any matters set out in the prudential standards.

Covenants relating to regulated superannuation funds—promoting financial interests of beneficiaries

(12) If the entity is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members), the covenants referred to in subsection (1) include a covenant by each trustee of the entity to promote the financial interests of the beneficiaries of the entity who hold a MySuper product or a choice product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes).

Covenants relating to regulated superannuation funds—MySuper products

(13) If the entity is a regulated superannuation fund that offers a MySuper product, the covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to include in the investment strategy for the MySuper product the details of the trustee's determination of the matters mentioned in paragraph (9)(a);

(b) to include in the investment strategy for the MySuper product, and update each year:

(i) the investment return target over a period of 10 years for the assets of the entity that are attributed to the MySuper product; and

(ii) the level of risk appropriate to the investment of those assets.

Covenants relating to regulated superannuation funds—failing annual performance assessments

(14) If the entity is a regulated superannuation fund (other than a regulated superannuation fund with fewer than 5 members), the covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to comply with subsection 60E(2) (notifying beneficiaries);

(b) to comply with subsection 60F(2) (consequences of 2 consecutive fail assessments)."

In June 2004 the *SIS Act* and Regulations were amended to require all superannuation trustees to apply to become a Registrable Superannuation Entity Licensee (RSE Licensee) in addition each of the superannuation funds the trustee operates is also required to be registered. The transition period ended on 30 June 2006. The licensing regime requires trustees of superannuation funds to demonstrate to APRA that they have adequate resources (human, technology and financial), risk management systems and appropriate skills and expertise to manage the superannuation fund. The licensing regime has lifted the bar for superannuation trustees with a significant number of small to medium size superannuation funds exiting the industry due to the increasing risk and compliance demands.

Superannuation Guarantee (Administration) Act 1992

The superannuation guarantee legislation enforces compulsory contributions from employers or employee superannuation by imposing a shortfall tax on any failure to contribute. The Australian Taxation Office then collects any shortfall tax for crediting to employee accounts,

Complying SMSFs (like any other superannuation fund) can be nominated by employees to receive employer superannuation contributions. This is provided by section 32D of the *Superannuation Guarantee (Administration) Act 1992* which states that -

> "A fund is an eligible choice fund for an employer at a particular time if:
>
> (a) it is a *complying superannuation fund* at that time.."

Self-managed superannuation funds

The basic conditions to qualify as a self-managed superannuation fund (SMSF) are set out in sections 17A and 17B of the *SIS Act* which define a self-managed superannuation fund.

Broadly, an SMSF is a superannuation fund with no more than six members where-

- each trustee (or if the trustee is a company, each director) is a member of the fund
- each member of the fund is a trustee or a director of a corporate trustee of the fund
- no member of the fund is an employee of another member unless those members are related
- no trustee receives any remuneration from the fund or from any services performed as trustee unless the trustee is acting in a normal business or professional capacity and not performing any services as a trustee.

A member may include a person who is not working but is a pensioner of the fund or still have benefits in the fund but if the total number of members, working or not, exceeds six, then the fund cannot be a self - managed superannuation fund.

To become a complying superannuation fund, an SMSF must first become a regulated superannuation fund under the *SIS Act* by complying with section 19 of the Act. The trustees must give a notice in writing to the Australian Taxation Office (ATO) within 60 days of the fund come into existence, section 42A. To be a complying fund, an SMSF must also be a "resident regulated superannuation fund" within the meaning of section 295-95 of the *Income Tax Assessment Act 1997*. This means that the fund –

- must be established in Australia or any asset of the fund is situated in Australia

- the central management and control of the find is ordinarily in Australia (which implies the trustees must normally be resident)
- the accumulated entitlements of resident active members must amount to at least 50% of the total entitlements of all active members

If an SMSF is made a non-complying superannuation fund it loses concessional tax treatment and its taxable income will be taxed at the rate of 45% instead of 15%. The consequences are extremely severe because the fund's assessable income will include the total market value of its assets (less undeducted contributions) pursuant to section 295-325 of the *Income Tax Assessment Act 1997*.

An SMSF, like any other superannuation fund, must comply with the requirements of the *SIS Act*.

Section 10 of the *SIS Act* defines the Regulator as variously meaning the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investment Commission (ASIC), or the Commissioner of Taxation (generally referred to as the Australian Taxation Office or ATO).

SMSFs, like any other superannuation fund, may have employer sponsors who are defined in section 16 of the Act as contributors to the fund for the benefit of members. Thus, SMSFs can receive employer contributions under the superannuation guarantee legislation like any other complying regulated superannuation fund. Contributions are made for the benefit of the employee, or his dependents in the event of death.

All SMSFs have to be audited and sections 128A, 128B, 128E, 128J, 128H, 128F and 128K, and 130F and 131F, deal with the registration and disqualification of SMSF auditors. The Regulator has power to enter the premises of a registered auditor and investigate an auditor's records and make copies, section 268.

The independent auditors of superannuation funds (including SMSFs) must be approved by the Regulator and the Regulator may disqualify auditors. Independent auditors have a duty under section 129 of the *SIS Act* to inform the Regulator of any breaches of the *SIS Act*. It is a criminal offence to fail to do so. The seriousness of an independent auditor's duties to the Regulator are illustrated in an example of an auditor compliance checklist set out in **Annexure B**.

All superannuation funds are levied by the government to recover the costs of their regulation on a "user pays" rationale (an interesting concept where a "customer service" is imposed by statute). For SMSFs, the supervisory levy is imposed by the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*.

All superannuation funds, including self-managed superannuation funds, must comply with the operating standards set out in section 31 of the Act. The standards deal with matters such as vesting of contributions, amounts of contributions fund may accept, the charging of fees, preservation of benefits, payment of benefits, keeping of records, disclosure to members etc. Each trustee is responsible for compliance with the prescribed standards, sections 34 and 166. It is an offence to intentionally or recklessly breach a standard.

Complying superannuation fund status is dealt with in Part 5 of the Act comprising sections 37 to 49 of the Act. Part 6 of the *SIS Act* comprising sections 51 to 60A deals with the governing rules of superannuation funds and the covenants required to be included in the governing rules. In particular, section 52B deems the governing rules to contain the required covenants.

Under section 62 of the *SIS Act* each trustee of a superannuation fund must ensure that the fund is maintained solely for at least one of the legislated approved core purposes which can be in connection with an approved ancillary purpose. Broadly the sole purpose test seeks to ensure that superannuation money set aside only applied to fund members benefits in retirement. Furthermore, there are other requirements in the *SIS Regulations* dealing with various matters. For example, under SIS regulation 4.09(2)(e) the trustees are required to formulate regularly review and give effect to the fund's investment strategy. As part of such a strategy, trustees are required to consider whether to hold a contract of insurance which provides insurance cover for one or more of the members.

Section 65 of the *SIS Act* prohibits an SMSF trustee from lending money or giving any other financial assistance to a member's relative.

Section 67 of the *SIS Act* prohibits trustees from borrowing for the fund other than for short-term borrowings up to 90 days to enable benefit payments, provided the borrowing does not exceed 10% of the fund's total assets. Likewise, a trustee of a self-managed super fund is prohibited from placing a charge over, or in relation to, an asset of the fund SIS Regulation 13.14

The accounting. auditing and reporting requirements for SMSFs and other superannuation entities are set out in Part 4 of the *SIS Act* including sections 35AE, 35B, 35C and 35D of the SIS Act and SIS Regulations 8.01 to 8.03.

Part 7 of the *SIS Act* deals with regulated superannuation funds (in practice, all funds are regulated) and includes restrictions on types of assets which may or may not be held by funds, borrowing against assets of funds and insurance. Part 8 of the *SIS Act* comprising sections 69 to 85 restricts in-house assets such as investments in an employer sponsor or acquisition of assets from members for making loans to members and includes in section 85 a general prohibition on avoidance schemes

Part 17 of the *SIS Act* deals with the powers of the Regulator to suspend or remove trustees of superannuation funds. Part 21 deals with civil and criminal consequences of contravening civil penalty provisions. Part 24B deals with powers of APRA and the Commissioner of Taxation in relation to the regulation of self-managed superannuation funds.

Auditors must be approved SMSF auditors and must notify the Australian Taxation Office of breaches even if the trustees terminate the audit engagement after the auditor raises issues or concerns about the SMSF. **Annexure B** sets out a compliance checklist normally undertaken by an SMSF auditor. The Tax Office maintains a list for approved SMSF auditors of reportable sections and regulations in respect of which breaches should be reported.

Contributions

Contributions to superannuation funds (including SMSFs) come from three sources.

- Compulsory employer contributions under the superannuation guarantee legislation
- Voluntary additional employer and employer contributions
- Government co-contributions for lower income earners

In addition, accumulation account benefits can be rolled over from one superannuation fund to another.

Contributions made to superannuation, either by an individual or on behalf of an individual by an employer or government, are taxed differently depending on whether that contribution was made from "pre-tax" or "post-tax" money. "Pre-tax" contributions are contributions on which no income tax has been paid at time of contribution, and are also known as "before-tax" contributions or as "concessional" contributions. They comprise mainly compulsory employer Superannuation Guarantee contributions and additional salary sacrifice contributions. These contributions are taxed by the superannuation fund at a "contributions tax" rate of 15%, which is regarded as "concessional" rate. For individuals who earn more than $250,000, the contributions tax is levied at 30% under Division 293 of the *Income Tax Assessment Act 1997*.

"Post-tax" contributions are also referred to as "after-tax" contributions, "non-concessional" contributions or as "undeducted" contributions. These contributions are made from money on which income tax or contributions tax has already been paid, and typically no further tax is required to be withheld from that contribution when it is made to a fund.

Both contribution types are subject to annual caps. Where the annual cap is exceeded, additional tax is payable.

Over time various measures have allowed other forms of contribution to encourage saving for retirement. These include small business CGT (capital gains tax) contributions (to encourage small business owners to use proceeds of sale of a business for superannuation retirement savings), rollovers and Downsizer super contributions (for older people selling family homes to downsize). Each contribution type has specific rules and limits.

Government co-contribution scheme

From 1 July 2003, the Howard Liberal Government made available incentives of a Government co-contribution with a maximum value of $1,000 under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, section 10. From the 2012-2013 financial year to the 2016-2017 financial year, government superannuation contributions were available for individuals with income not in excess of $37,000.[5]

On 1 July 2017, the Low Income Superannuation Contribution (LISC) scheme was replaced with the renamed Low Income Superannuation Tax Offset. The minimum amount of Government contributions for low-income earners with income not in excess of $37,000 was lowered to $10 the co-contribution was subject to a $500 maximum.[6]

Employer superannuation contributions

Employer superannuation contributions are generally tax deductible if paid to a "complying superannuation fund". This includes compulsory employer contributions as well as "salary sacrifice" contributions made by the employer as part of a remuneration package. An employee may request that his employer make all or part of future payments of earnings into superannuation in lieu of making payment to the employee. Such an arrangement is known as "salary sacrifice", and for income tax purposes the payments are treated as employer superannuation contributions, which are generally tax deductible to the employer. The arrangement offers a benefit to the employee because the amount so sacrificed does not form part of the taxable income of the employee (but are included in the employee's total concessional contribution limits).

Superannuation guarantee contributions

At a minimum, employers are required to pay the mandated superannuation guarantee" (SG) contributions to approved superannuation funds. The SG contribution percentage is currently 10 per cent of the employees' ordinary time earnings, which generally consists of salaries/wages, commissions, allowances, but not overtime. Superannuation guarantee contributions are only mandated for employees that generally make more than $450 in a calendar month, or when working more than 30 hours a week for minors and domestic workers. Superannuation guarantee contributions are not required for non-Australians working for an Australian business overseas, for some foreign executives, for members of the Australian Defence Force working in that role, or for employees covered under bilateral Social Security agreements with another country.

Superannuation guarantee contributions are paid on top of an employee's pay packet, meaning that they do not form part of taxable wage or salaries. Contributions must be paid at least once every quarter, and can only be paid into complying superannuation funds.

Employer "Defined benefit" superannuation schemes

Special rules apply in relation to employers operating "defined benefit" superannuation schemes, which are less common traditional employer funds where benefits are determined by a formula usually based on an employee's final average salary and length of service. Essentially, instead of minimum contributions, employers need to make contributions to provide a minimum level of benefit.

Personal contributions

All people working can make additional voluntary contributions to their superannuation and receive tax benefits for doing so, subject to limits. The annual concessional contribution cap is $27,500 from 1 July 2021. For later financial years, the cap is worked out by indexing annually this amount. Amounts above those limits are called "excess concessional contributions".

Unused concessional contributions cap space can be carried forward from 1 July 2018, if the total superannuation balance is less than $500,000 at the end of 30 June in the previous year. Unused amounts are available for a maximum of five years.

Exceeding the concessional contributions cap

Excess concessional contributions are included back in a taxpayer's assessable income for the corresponding income year and, because concessional contributions are taxable to the superannuation fund, the taxpayer is entitled to a tax offset for that income year equal to 15% of the excess concessional contributions (section 291-15 of the *Income Tax Assessment Act 1997*). This offset cannot be refunded, transferred, or carried forward.

Non-concessional contributions

Non-concessional contributions include excess concessional contributions for the financial year. Non-concessional contributions are amounts contributed for which an employer or taxpayer has not claimed a tax deduction. Non-concessional contributions are made into the super fund from after-tax income. These

contributions are not taxed in the super fund. The annual non-concessional contributions cap is $110,000 for members 65 or over but under 75. A member under 65 years of age may contribute up to $330,000 over a three-year period depending on his total superannuation balance.

Taxation of superannuation fund contributions and benefits

In contrast to most countries, employer and concessional contributions received by a superannuation fund and income earned in the fund are taxed, albeit at the lower rate of 15% (more for higher income earners). Because concessional superannuation contributions and earnings are taxed in the fund, benefits paid after age 60 are usually tax-free.

Like tax-deductible concessional contributions, investment earnings of superannuation funds (i.e. dividends, rental income etc.) are taxed at a flat rate of 15%. In addition, where an investment is sold, capital gains tax is payable by the superannuation fund at 15%.

Where an investment has been held for at least 12 months, a superannuation fund can claim a capital gains tax discount to exclude one third of the gain, reducing the effective capital gains tax from 15% to 10%.

A fund which is paying a pension to a member aged 60 or over has exempt pension income and pays no tax on that portion of the earnings of the fund supporting the pension. An actuarial certificate may be required to support the proportion of exempt pension income based on member balances and numbers of days paid during the income year. Earnings on accumulation (i.e. non pension) balances remain proportionately subject to 15% tax. A fund with only pension member accounts which pay the minimum complying pension for the whole year has a tax rate of 0% on fund earnings.

Superannuation is a tax-advantaged method of saving as the 15% tax rate on contributions is lower than the rate most employees would pay if they received the money as income.

Restrictions on access to superannuation

As superannuation is money invested for a person's retirement and regarded by Treasury as supported by tax concessions (being listed as one of the Budget's major "tax expenditures"), strict government rules prevent early access to preserved benefits except in very limited and restricted circumstances. In general, people can seek early release superannuation for severe financial hardship or on compassionate grounds, such as for medical treatment not available through Australia's universal Medicare scheme.

Conditions of release

To access a superannuation benefit, a member must also meet one of the following "conditions of release". Before age 60, workers must be retired — i.e., have ceased employment — and sign off that they intend never to work again (not work more than 40 hours in a 30-day period). Those aged 60 to 65 can gain access to their superannuation if they cease employment regardless of their future employment intentions, so long as they are not working at the time. Members over 65 years of age can gain access to their superannuation regardless of employment status. An employed individuals who has reached his preservation age but is under age 65 may access up to 10% of his superannuation annually under the Transition to Retirement (TRIS) pension rules.

The conditions of release, such as retirement, terminal medical condition, or permanent incapacity, are contained in Schedule 1 of the *Superannuation Industry (Supervision) Regulations 1994*. As of July 1, 2018, members have also been able to withdraw voluntary contributions made as part of the First Home Super Saver Scheme (FHSS).

Generally, superannuation benefits fall into three categories:

- Preserved benefits;
- Restricted non-preserved benefits; and
- Unrestricted non-preserved benefits.

Preserved benefits are benefits that must be retained in a superannuation fund until the employee's "preservation age". Preserved benefits include all contributions made by a person (or on his behalf, such as the Superannuation Guarantee payments made by an employer) since 30 June 1999, as well as all earnings on the superannuation account since that date.

These preserved benefits cannot be accessed until a person meets a condition of release. In other words, they must be preserved, usually until preservation age. A person's preservation age will be between the ages of 55 and 60, depending on date of birth.

Currently, all workers must wait until they are at least 55 before they may access these funds. The actual preservation age varies depending on the date of birth of the employee. Until 1999, any Australian could access his preserved benefits once he reached 55 years of age. In 1997, the Howard Liberal Government changed the preservation rules to induce Australians to stay in the workforce for a longer period of time, delaying the effect of population ageing. The new rules progressively increased the preservation age based on a member's date of birth, and came into effect in 1999. The result is that by 2025 all Australian workers will need to be at least 60 years of age to access their superannuation.

Benefit payments may be a lump sum or an income stream (pension) or a combination of both, provided the payment is allowed under superannuation law and the fund's trust deed. Withholding tax applies to payments to members who are under 60, or over 60 if the benefit is from an untaxed source (e.g. an unfunded government pension). In either case, eligibility for access to preserved benefits depends on a member's preservation age and meeting one of the conditions of release. Below preservation age, benefits are kept withing the superannuation system and are only payable on death or permanent disability.

Restricted non-preserved benefits although not preserved, are still restricted since they cannot be accessed until an employee meets a condition of release, such as terminating employment and ceasing membership of an employer superannuation scheme. These benefits also sit entirely within the superannuation system. However, until 60 years of age, there is a substantial penalty tax on early withdrawal. However, in line with the object of superannuation providing retirement income streams, unrestricted non-preserved funds may be used to commence a pension after age.

Unrestricted non-preserved benefits

Unrestricted non-preserved benefits are the most common type of non-preserved benefits. They include any benefits that may be paid on demand by a superannuation fund because a member has already satisfied a condition of release, such as:

- Being aged over the preservation age and retiring
- Being aged over the preservation age and starting a transition-to-retirement income stream (TRIS)
- Being aged over 60 and ceasing an employment arrangement
- Being aged 65 or over, even if still working.

In short, if a person has met a condition of release and keeps money in his superannuation fund, he have unrestricted non-preserved benefits.

The clear policy behind preservation and restrictions on early access to superannuation and the policy preference for benefits paid as superannuation pensions is to ensure superannuation, not Treasury-funded age or welfare pensions, is the main source of income for workers and their dependants on retirement, death or disability.

International Social Security Agreements

Australia currently has 31 bilateral international social security agreements. The Australian official view is that -

"All these agreements are based on the concept of shared responsibility. Shared responsibility agreements are reciprocal. Partner countries under each agreement make concessions against their social security qualification rules so that people covered by the agreement may access payments for which they might otherwise fail to qualify. In this way, responsibility for social security is shared between the countries where a person has lived during their working years and the person is able to unlock potential entitlements. Generally, a pension from one country can be accessed in the second country, although the paying country maintains some discretion in the currency and delivery mechanisms used.

Under these agreements, Australia equates social insurance periods/residence in those countries with periods of Australian residence in order to meet the minimum qualifying periods for Australian pensions. The other countries generally count periods of Australian working life residence as periods of social insurance in order to meet their minimum qualifying periods for payment. Usually, each country will pay a part pension to a person who has lived in both countries."[7]

In most of these agreements, Article 2 specifies that Australian superannuation guarantee legislation shall be treated as part of Australia's social security laws. Thus wording covering the superannuation guarantee as a social security arrangement can be found in Article 2 of the following Australian international agreements on social security:-

Austria (2015), Belgium (2002), Chile (2003), Croatia (2003), Czech Republic (2009), Estonia (2015), Finland (2008), Greece (2007), Hungary (2011), India (2014). Ireland, (2015), Japan (2007), Korea (2006), Latvia (2019), North Macedonia (2009), Netherlands (2001), Norway (2005), Poland (2009), Portugal (2001), Slovak Republic (2010), Slovenia (2001), Spain (2002), Switzerland (2014).

Some older agreements or successors to older agreements do not include reference to the superannuation guarantee legislation. These are the social security agreements with Canada (2001), Cyprus (1992), Denmark (1999), Germany (2000), Italy (1993), Malta (2004) and New Zealand (2016).

However, for present purposes it is sufficient to note that Article 2 of the 2001 *Social Security Agreement between Australia and the United States of America* follows the usual pattern and does treat Australian superannuation as the equivalent to US Social Security as follows:

Article 2 of US Social Security Agreement - Scope

1. For the purpose of this Agreement, the applicable laws are:
    a. *As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:*
        - *Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections*,
        - Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
    b. As regards Australia,
        - *the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:*
            A. *age pension;*
            B. *disability support pension for the severely disabled;*
            C. *pensions payable to widowed persons; and*
            D. *carer payment.*
        - *the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations).*

The United States Social Security Administration states[8]

> "For Australia, the Agreement applies to the laws on the Social Security benefits listed in Article 2.1(b)(i) and to the laws on Superannuation Guarantee (SG) in Article 2.1(b)(ii). The 'age pension' referred to in Article 2.1(b)(i)(A) is payable at age 65 to men and age 61 ½ (as of 2001) to women and is referred to in these annotations as an 'old-age pension'.
>
> *In accordance with Article 1.1(e), the provisions of Part II of the Agreement, which eliminate dual Social Security coverage and taxation, do not apply to the Australian benefit programs listed in Article 2.1(b)(i) since these benefits are financed entirely from general revenues and not from earmarked payroll taxes. Instead, Part II applies to the Superannuation Guarantee, which is the Government-regulated program requiring employers either to pay contributions to employee*

> *retirement plans at specified minimum rates or pay a special SG charge. As a result, when a worker is subject to U.S. laws and exempt from Australian laws in accordance with Part II, the worker's employer will be exempt from the SG requirements*.
>
> The benefit provisions in Part III of the Agreement establish rules for determining eligibility for the Australian Social Security benefits listed in Article 2.1(b)(i) in the case of people who have divided their careers between Australia and the United States. Since the SG program requires that Superannuation benefits be immediately vested, the provisions of Part III do not affect SG benefits."

Other annotations also assume the like nature of Australian superannuation guarantee contributions with US Social Security taxes.

Conclusion

Since the 1980s and through the 1990s and beyond, Australia's originally private and voluntary superannuation arrangements have been transformed by industrial awards made under legislation and by the Superannuation Guarantee legislation into a national system of compulsory workers' social insurance for old-age, survivors and disability.

Australia has learned from the difficulties of unfunded "pay-as-you-go" European social security systems which offer defined benefits yet have to be financed by contributions levied upon a relatively shrinking pool of workers. The major contrast between Australia and European social insurance system is that Australia abandoned attempts to impose specific Social Security taxes to cover things such as an industrial accidents, old age, disability or survivors' pensions and has chosen to mandate that income replacement for such contingencies be dealt with by compulsory workers' compensation insurance levies on employers under State law and compulsory superannuation contributions imposed on employers under Federal law, while also encouraging employees and the self-employed to contribute voluntarily.

Given the perceived difficulty experienced by European pay-as-you-go schemes with unfunded defined benefits, the Australian system has emphasised "defined contribution" not "defined benefit" schemes. This has also facilitated portability and transfer of superannuation benefits from one fund to another so as not to impede labour mobility. The Australian system generally mandates preservation of benefits to age 60 but does not dictate the form of the retirement benefit as a pension or lump sum. However, concessional tax treatment on earnings supporting superannuation pensions is leading to an increasing number of superannuation beneficiaries choosing to take benefits as allocated pensions.

Compulsory superannuation has thus, in less than thirty-five years, become an integral and dominant part of Australia's overall social security arrangements and is internationally recognised as such, for example by the World Bank, and other governments, including the United States government, through bilateral Social Security Agreements. What is remarkable is how the structure of Australia's superannuation system resembles so closely what was envisaged by way of social insurance in the Constitutional Convention debates before Federation in 1901.

Annexures

ANNEXURE A - Chronology of superannuation and retirement income in Australia

ANNEXURE B – Independent Auditor Compliance Checklist

ANNEXURE C - 2001 Social Security Agreement between Australia and the United States of America

Legislation

Superannuation Industry (Supervision) Act 1993
at https://www.legislation.gov.au/Details/C2017C00052

Superannuation Industry (Supervision) Regulations 1994
https://www.legislation.gov.au/Details/F2017C00511

Superannuation Guarantee Charge Act 1992
https://www.legislation.gov.au/Details/C2004C00841

Superannuation Guarantee (Administration) Act 1992
https://www.legislation.gov.au/Details/C2021C00251

Superannuation Guarantee (Administration) Regulations 2018
https://www.legislation.gov.au/Details/F2021C00891

Superannuation (Self Managed Superannuation Funds) Taxation Act 1987
https://www.legislation.gov.au/Details/C2016C00734

References

Australian Prudential Regulation Authority, *A Recent History of superannuation in Australia*, APRA Insight, Issue 2, 2007 http://www.apra.gov.au/Insight/upload/History-of-superannuation.pdf

A. Borowski, *The Revolution that faltered: two decades of reform of Australia s retirement income system* , International Social Security Review, v.58(no. 4), 2005, pp.45–65.

P. Gallagher, P and A. Preston, *Retirement Income Modelling and Policy Development in Australia, 1993* , Treasury Retirement Income Modelling Task Force, 1993.

The Hon. J.P. Keating MP, Treasurer, *Reform of the Taxation of Superannuation*, 25 May 1988

Commonwealth Government, Treasury, *Towards higher retirement incomes for Australians - A History of the Australian retirement income system since Federation* , Economic Roundup, 1 January 2001.

Retirement Incomes Review www.treasury.gov.au/review/retirement-income-review

ANNEXURE A

Chronology of superannuation and retirement income in Australia

Updated 1 June 2010

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Introduction

Retirement income and superannuation have been significant themes for the Commonwealth Government since Federation. In common with other countries Australia s retirement income system has three component parts or pillars as they are known. The social security Age Pension is its foundation. The compulsory superannuation contributions under the Superannuation Guarantee regime is its second pillar. The third pillar is additional savings, often made through additional superannuation contributions. The following chronology notes some of the significant dates in the development of the current retirement income system.

Year/Date	Measure	Comment or Reference
1900	New South Wales introduced a means tested age pension of 26 a year, funded out of general revenue. Victoria and Queensland followed suit.	
1901	The Constitution gave the Commonwealth explicit power to legislate for provision of old age and invalid pensions.	S. 51(xxiii) *Commonwealth of Australia Constitution Act 1901*
10 June 1908	*Invalid and Old Age Pensions Act 1908* passed by the Deakin Government. Rate 26 per year (10/- a week). Eligibility limited according to character, race, age, residency and means. Paid to eligible men and women at 65. Commenced 15 April 1909.	
1910	Pension age for eligible women reduced to 60.	
1912	1908 Act amended to completely remove the family home from the means test.	
1915	*Income Tax Assessment Act 1915* provided for tax deductibility of employer contributions made on behalf of employees, and for the exemption of superannuation fund earnings from taxation.	

1923	Bruce Government established a Royal Commission to examine the possibility of having a comprehensive national insurance scheme for retirement, sickness or disability.	*Royal Commission on National Insurance* (7 Sept 1923-5 Oct 1927).
1928	*National Insurance Bill* introduced. It lapsed in 1929 when the Government was defeated.	
1938	*National Health and Pensions Bill* passed, but its introduction was delayed, then abandoned because of World War 2.	
1945	Chifley Government introduced an additional levy on personal income tax which, along with a payroll tax from employers, was credited to the National Welfare Fund. There was, however, no direct link between contributions and benefits and the pension. The National Welfare Fund, whilst set up as a means of establishing a base from which a national superannuation fund could be operated, was in practice merely an accounting device until its abolition in 1985.	
1961	Superannuation funds exempt from tax if they held required amounts of Commonwealth Bonds. Commonwealth control of superannuation funds by use of taxation power firmly established.	*Income Tax and Social Services Contribution Assessment Act 1961*
1965	High Court upholds Commonwealth s ability to control superannuation fund investment by use of taxation power.	*Fairfax v Commissioner of Taxation 114 CLR 1*
By late 1960s	Means assessed on basis of income plus a proportion of countable assets except for the family home (which has always been assets-test-exempt.) About 70% of people qualifying on grounds of age received the pension.	
1972	Only 32% of workers covered by superannuation.	
1973	Whitlam Labor Government established the *National Superannuation Committee of Inquiry*. Chairman Keith Hancock.	

1973	Means test for pensioners 75 years of age and over abolished.	
1974	Australian Bureau of Statistics conducted the first national survey of superannuation coverage. 32% of the workforce was covered by superannuation 36% male; 15% females. 24% of people in the private sector had super cover compared with 58% in the public sector.	Year Book Australia 1974
1975	Means test removed for persons aged 70 to 74 inclusive.	*Social Services Act 1975, no. 34*
1975	Pensions linked to 25% of average weekly earnings, to be indexed annually.	*Social Services Act (no 3) 1975, no. 110*
1976	Pensions became subject to automatic increases twice yearly. Age pension assets test abolished.	*Social Services Amendment Act (No 3) 1976,no. 111*
1976	The Hancock Inquiry recommended a partially contributory, universal pension system with an earnings-related supplement. A minority recommendation suggested a non-contributory flat rate universal pension, a means tested supplement, and encouragement of voluntary savings through expanding occupational superannuation.	*National Superannuation Committee of Inquiry. Final Report. Parts 1 (1976) and 2 (1977)*
20 June 1977	Fraser government decides not to establish a contributory national superannuation scheme.	Cabinet Decision 3435 of 20 July 1977 in response to Cabinet Submission No. 1394 of 1977
1978	Pension increases to be adjusted only once a year (in November). Future increases in the *Age* Pension for those aged 70 or over made subject to an income test.	*Social Services Amendment Act 1978, no. 128*
1979	Fraser Government rejected the recommendations of the Hancock Inquiry. Pension increases subject to twice yearly increases, in May and November.	*Social Services Amendment Act 1979, no. 121*
May 1983	*Base* pension for those aged 70 and over	*Social Security and Repatriation Legislation*

	subject to an incomes test.	*Amendment Act 1983, no. 36*
1983	The *Statement of Accord* (*Prices and Incomes Accord*) between the ALP and the ACTU was endorsed in February, shortly before the federal election. Claims for wage increases were to be restricted to movements in the CPI.	
1983	Hawke Labor Government expressed support for the principles of employee superannuation. The May Economic Statement began the process of reform of the taxation of superannuation. For lump sums at age 55 or later, the first $50,000 would be taxed at 15%; the remainder at 30%. Lump sums taken below age 55 would be taxed at 30%. These thresholds indexed to AWOTE.	*Economy Ministerial statement , P. Keating, 19 May 1983..*
1984	CBUSS - Superannuation for the building industry created, from an idea shared by building union leaders and ACTU officials. Regarded as a world first. (funds owned and controlled by a board comprising equal numbers of employer and employee or union representatives.) A number of other similar funds established in the following years- These funds are called Industry Funds.	*ACTU website*
1984	Age pension assets test reintroduced. Family home excluded.	*Social Security and Repatriation (Budget Measures and Assets Test) Act 1984, no. 93*
1985	Renegotiation of the Accord identified superannuation as a key issue.	
1986	Labor joined with the ACTU in seeking a universal 3% superannuation contribution by employers to be paid into an industry fund, in lieu of a wage rise.	*National Wage Case June 1986*
1986	Accord Mk II between the Government and the unions stipulated that compensation to employees should be 6% (to keep pace with inflation). This was to be 3% employer superannuation contribution, a 2% wage rise,	

	and tax cuts. Agreement endorsed by the Conciliation and Arbitration Commission February 1986.	
1986	Employer groups, including the Confederation of Australian Industry, challenged the Commission s decision in the High Court, claiming that superannuation was not an industrial matter within s.51 (xxxv) of the Constitution.	
15 May 1986	High Court ruled in favour of the Conciliation and Arbitration Commission.	*160CLR 341 (15 May 1986)*
June 1986	National Wage Case established guidelines to require new industry superannuation schemes to conform to Commonwealth operational standards.	*National Wage Case 1986 Reason for Decision*
1987	Insurance and Superannuation Commission (ISC) was established as an industry regulator.	
1987	Superannuation funds total assets $41.1bn.[1]	ISC Annual Report 1988-89
21 December 1987	The Government introduced the *Occupational Superannuation Standards Act 1987* (OSSA). Operating standards were prescribed for the vesting of benefits from employer and employee contribution; preservation of benefits until age 55; more member involvement in the control of superannuation funds; security of members benefits.[2]	*Occupational Superannuation Standards Act 1987*
May 1988	Hawke Government statement *Reform of the Taxation of Superannuation* contained measures to bring forward payment of superannuation taxation liabilities by introducing a tax on contributions and reducing tax on benefits. Reasonable Benefits Limits introduced.	*The Reform of the Taxation of Superannuation*, Office of the Treasurer, 1988
June 1988	51.3% employed persons covered by Superannuation	Australian Social Trends 1995 ABS Cat 4102.8
1989	The Government’s 1989 retirement income policy statement established a policy in	*Better Incomes: Retirement Income Policy*

	Australia based on the "twin pillars" of the age pension and private superannuation, specifically rejecting the option of a National Superannuation Scheme.	*into the Next Century* (Howe,1989)
December 1989	Superannuation funds total assets $119bn	ISC Annual Report 1989 90
December 1990	Superannuation fund assets $123bn, 64% of all employees had superannuation coverage.	ISC Annual Report 1990 91
1991	In the Budget, Treasurer John Kerin announced that from 1 July 1992 , under a new system to be known as the Superannuation Guarantee (SG), employers would be required to make superannuation contributions on behalf of their employees.	*Budget speech, 20 August 1991*
March 1992	Superannuation Assets estimated to be $148bn.	ISC Annual Report 1991 1992.
June 1992	Senate Select Committee on Superannuation presents its first report. This Senate Committee, in various forms, reviewed and issued reports on various superannuation issues up to the end of the 40th Parliament (2004). Many of these reports led to significant changes in the superannuation system.	*Safeguarding Super The Regulation of Superannuation*
1992	Labor Government implemented the Superannuation Guarantee (SG), which extended retirement savings to 72 % of workers. Employers were required to make prescribed contributions on behalf of their employees to a complying superannuation fund. Super contributions were to be progressively increased between 1992-2002, from 3% to 9%.	*Superannuation Guarantee (Administration) Act 1992, no. 111*
1993	Labor Government overhauls regulation of superannuation with introduction of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). The OSSA continues in force but many of its provisions are repealed and transferred to the SIS Act.	*Superannuation Industry (Supervision) Act 1993, no.78.*

1993	World Bank endorses Australia s three pillar system for the provision of retirement income as world's best practice.	*Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth*
June 1993	Superannuation assets reaches $169bn	ISC Annual Report 1992 93.
June 1993	FitzGerald report advocates increasing household savings via superannuation, but recommends that national savings be increased by increasing public sector savings. Superannuation s role in increasing national savings no longer seen as important. This is a significant change in the policy rational for superannuation system.	Dr Vince FitzGerald - *National Savings: A Report to the Treasurer*
November 1993	80% of employed persons either made superannuation contributions or had them made on their behalf.	*Superannuation Australia, ABS Cat 6319.0,* November 1995
1994	Pension age for eligible women to be raised to 65, in a phased process.	*Social Security Legislation Amendment Act (no.2) 1994, No. 109*
June 1994	Superannuation assets $183bn	ISC Annual Report 1993 94
1995	In the 1995 budget speech Treasurer Ralph Willis outlined plans to pay previously announced tax cuts into employee s superannuation funds. Government to make matching contributions. The principal of matching government superannuation co-contributions established.	*Budget Speech 9 May 1995* and accompanying statement *Saving For Our Future*
1995	Shadow Treasurer Peter Costello called for employee choice and for funds to compete for business	Address to ASFA (Australian Superannuation Funds Association), 2 Nov 1995.
March 1995	Superannuation Assets $187bn.	ISC Annual Report 1994 95
June 1995	80.5 % employed persons covered by superannuation	*Australian Social Trends 1995 ABS Cat 4102.8*
June 1996	Superannuation assets $245.3bn, 37.9% of GDP	APRA Insight 2007
20 August 1996	Superannuation Surcharge introduced by Treasurer Peter Costello in the Howard Government s first budget.	*Budget speech 20 August 1996*

1997	Wallis Financial System Inquiry, established by Treasurer Costello in May 1996, advocated superannuation choice and other changes to the superannuation system.	*Wallis Financial System Inquiry*
1997	Age pension to be formally maintained at 25% AWOTE. Retirement savings accounts (RSA) established. Superannuation surcharge implemented. Maximum age for SG contributions increased from 65 to 70.	*Social Security and Veterans Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997, no.175.* *Retirement Savings Accounts Act 1997, no. 61* *Taxation Laws Amendment Act (No. 3)1997, No. 147*
1997	Limited access to superannuation possible on compassionate grounds.	SIS Reg 19A
June 1997	Superannuation assets $321.0bn, 47.7% of GDP, 81% were covered by superannuation.	APRA Insight 2007, ABS Cat 6319.0
9 December 1997	Limited access to superannuation possible if member is in severe financial hardship. This is defined as being in receipt of commonwealth income support for a continuous period of 26 weeks or a cumulative period of 39 weeks.	SIS Reg 6.01
1998	Age pension means test for retirement income streams revised. Pension Bonus scheme introduced. A person could accrue a pension bonus payment by deferring claiming the pension while still working.	*Social Security and Veterans Affairs Legislation Amendment (Pension Bonus Scheme) Act 1998, No. 67*
1998	Reforms to business taxation, including proposals to reduce the CGT rate for super funds to 10%	
1998	Australian Prudential Regulation Authority established on 1 July 1998 . APRA is the lead superannuation regulator. The Australian Securities and Investments Commission also took a significant role in the regulation of superannuation. The Australian Taxation Office continued to carry out some regulatory functions and administer the superannuation	*Australian Prudential Regulation Authority Act 1998, no 50.*

	taxation legislation. The Insurance and Superannuation Commission ceases to operate on the same date. These changes were in response to the recommendations of the Wallis Inquiry.	
June 1998	Superannuation assets $360.3bn, 51.2% of GDP	APRA Insight 2007
1999	In 1999, the SIS Act was amended to establish a new category of small superannuation fund, the Self Managed Superannuation Fund to be regulated by the Australian Taxation Office.	*Superannuation Legislation Amendment Act (No. 3) 1999, no. 38 (SLAA3)*
June 1999	Superannuation assets $411.4bn, 55.6% of GDP	APRA Insight 2007
8 October 1999	Australian Taxation Office took administrative responsibility for Self Managed Superannuation Funds (SMSF).	
June 2000	Superannuation assets $484.2bn, 63.0% of GDP, 87% of employed persons (both part and full time workers) covered by superannuation.	APRA Insight 2007, Superannuation Coverage and financial characteristics ABS Cat 6360.0
2001	Financial Services Reform Act is designed to be a single licensing and disclosure approach for all financial services, including superannuation. Commenced in March 2002.	*Financial Services Reform Act 2001, no. 146*
June 2001	Superannuation assets $519.0bn, 66.2% of GDP	APRA Insight 2007
2002	Maximum age for superannuation contributions increased from 70 to 75 (for people working at least 10 hours a week).	
June 2002	Superannuation assets $518.1bn, 63.7% of GDP	APRA Insight 2007
1 July 2002	Temporary residents permanently departing Australia may withdraw their accumulated superannuation benefits before their preservation age. This does not apply to New Zealand residents.	SIS Regs 6.20A, 6.20B & 6.24A
28 December	Superannuation assets able to be divided	Part VIIIB *Family Law Act 1975*

2002	between the parties in a marriage breakdown	
2003	Superannuation surcharge reduced from 15% to 12.5%. Government co-contribution for low/middle income earners introduced.	
June 2003	Superannuation assets $546.8bn, 65.2% of GDP, 90% of employed persons have employer provided superannuation.	APRA Insight 2007, ABS Cat 6310
1 July 2003	Superannuation co-contributions policy takes effect in respect of personal (or undeducted) contributions made after this date.	*Superannuation (Government co-contribution for Low Income Earners) Act 2003, no. 110*
25 February 2004	On 25 February 2004, the Treasurer released *A more flexible and adaptable retirement income system* as part of Australia s Demographic Challenges announcement. Amongst other things this report proposed to allow access to a person s superannuation, in the form of an income stream, before they had left the work force (i.e. transition to retirement pensions) and to scrap the work test for those under age 65.	*A more flexible and adaptable retirement income system*
2004	*Superannuation Safety Amendment Act 2004* enacted changes to regulation of superannuation. All superannuation trustees of large eligible funds have to be licensed from 1 July 2004. Trustees of SMSFs do not have to be licensed.	*Superannuation Safety Amendment Act 2004, no. 53*
2004	Superannuation regulations changed to allow the portability of money between different superannuation accounts.	SIS Regs 6.28 and 6.29
2004	Employee choice of fund passed Senate in June, to come into operation from 1 July 2005. Superannuation surcharge reduced from 12.5% to 10%.	*Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004, no. 102*
2004	Tax free payment of superannuation benefits can be made to the surviving partner on an interdependent relationship. An interdependent relationship can encompass same sex couples,	SIS Reg 10(1) and 10A

	or a relationship where one person is financial dependent on another person. For example, were a son or daughter is financially supporting a parent.	
June 2004	Superannuation assets $643.0bn, 73.6% of GDP	APRA Insight 2007
1 July 2004	Work test governing contributions made under age 65 ceased to operate. Work test remains for contributions made above age 65.	
10 May 2005	Treasurer Costello announced in the Budget the abolition of the Superannuation Surcharge. Changes take effect from 1 July 2005	Treasurer's Budget speech 2005
June 2005	Superannuation assets $762.9bn, 85.1% of GDP, 90% of employed persons have employer provided superannuation.	APRA Insight 2007, ABS Cat 6310.
1 July 2005	Transition to Retirement Pensions available. A member may commence to receive a transition to retirement pension without having to leave the workforce or retire. Choice of Superannuation Fund takes effect.	SIS Reg 6.01.
1 Jan 2006	Contributions Splitting took effect. A Member s SG and other contributions may be split with their spouse.	SIS Regs 6.40 6.46
9 May 2006	In the Budget, Treasurer Costello announced plans to simplify superannuation. Simpler Super includes: - exemption from tax on end benefits for Australians aged 60 or over from I July 2007; - no tax on a lump sum; - no tax on a superannuation pension; - reasonable benefit limits to be abolished; and - transferring super between funds made easier. Implementation date is 1 July 2007.	Treasurer's Budget speech 2006
June 2006	Superannuation assets $912.0bn, 98.8% of GDP, 90% of all employed persons covered by	APRA Insight 2007, ABS Cat 6310.0

	superannuation.	
June 2007	Superannuation assets $1153.3bn (i.e. 1 trillion), 119% of GDP.	APRA Quarterly Superannuation Performance June 2007, ABS Cat 5206.0.
1 July 2007	Most Simplified Superannuation amendments take effect. Bulk of operating superannuation tax law now in the *Income Tax Assessment Act 1997*. Prudential and operational aspects now largely in the SIS Act. Residual parts of superannuation law remain in *Income Tax Assessment Act 1936*.	*Tax Laws Amendment (Simplified Superannuation) Act 2007, no. 112.*
11 September 2007 Measure applies to lump sums paid on or after 1 July 2007	Tax free benefits able to be paid to those with a terminal illness.	Minister for Finance and Assistant Treasurer Press Release, Australians with a terminal illness now able to draw their super tax free Schedule 2 Tax Laws Amendment (2008 Measures No. 1) Bill 2008 also s 303-10 ITAA 97.
20 September 2007	Social Security assets test threshold raised from $531,000 to $839,500 (couple); from $343,750 to $529,250 (single); it is estimated that more than 300,000 extra people will be eligible for the age pension.	
31 December 2007	Employee s ability to recover unpaid superannuation amounts from employers that have ceased operating enhanced.	Sub paragraph 556(1)(e) *Corporations Act 2001*.
3 March 2008	Minister for Superannuation and Corporate Law Sherry announced the establishment of a Superannuation Advisory Group to advise on matters relevant to current or prospective superannuation legislation and on Government policy proposals which have significant impact for the superannuation industry.	Press Release Peak superannuation advisory group established.
5 May 2008	Minister Sherry announces consultation on a measure introduced by the Coalition Government which required future superannuation contributions and existing balances for temoporary residents to be transferred to the ATO. If these were unclaimed	Temporary residents and superannuation Treasury Press Release Minister Sherry

	after 5 years, the amounts would be confiscated. Extra revenue of up to $1 billion a year is predicted.	
13 May 2008	Labor s first Budget contains details of a review of taxation Australia s future tax system , to be chaired by Dr Ken Henry. Terms of reference include the government s commitment to preserve tax-free superannuation payments for the over 60s.	Australia s future tax system & Terms of reference
19 May 2008	Minister Sherry announced that universal forecasting of superannuation end-benefits could be introduced to enable better understanding of retirement savings.	Speech The Government s priorities in superannuation
28 May 2008	Attorney-General Robert McClelland introduced the first of a range of amendments to remove same-sex discrimination from Acts governing Commonwealth superannuation schemes. This ensures that same-sex couples are not denied the payment of death benefits from superannuation schemes or the tax concessions on death benefits currently made available to opposite-sex couples.	*Same-Sex Relationships (Equal Treatment in Commonwealth Laws Superannuation) Bill 2008*
June 2008	ASIC begins to provides advice on long term superannuation returns	Press Release ASIC Website – Long Term Performance figures for Typical Super Fund Investment Options
17 Jun 2008	The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws Superannuation) Bill 2008* is sent to a committee inquiry without an end date	
25 June 2008	Legislation providing further relief for employers who make a late superannuation guarantee contribution receives Royal Assent	Press Release Tax Laws Amendment (2008 Measures No.2) Bill 2008
26 June 2008	Minister Sherry announced a review of pension indexation arrangements for Australian Government superannuation schemes (civilian and military). The review commences in July and is expected to conclude by the end of 2008.	Press Release

December 2008	Review of Australian government pension indexation (Mathews Review) completed. Report not released to the public.	Pension Indexation Review Website
18 December 2008	Act requiring temporary resident's superannuation benefits to be paid to the ATO, if not claimed within 6 months of departing Australia, commences operation.	Press Release *Temporary Residents' Superannuation Legislation Amendment Act 2008*
4 December 2008	Royal Assent to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008* (No. 107 of 2008) passes through Parliament.	
1 April 2009	Act raising tax rates of Temporary Residents superannuation benefits when paid takes effect.	Press Release *Superannuation (Departing Australia Superannuation Payments Tax) Amendment Act 2008*
28 April 2009	Minister Sherry announces Review into the governance, efficiency, structure and operation of Australia's superannuation system.	Press Release
4 May 2009	Release of the Report on Strategic issues for the Retirement Income System – as part of the Australia's future tax system inquiry (Henry Review). Amongst other things recommends that superannuation guarantee contribution rate remain at 9 per cent of ordinary time earnings and retains the $450 per month minimum wage threshold for superannuation guarantee purposes.	The retirement income system: Report on strategic issues
29 May 2009	Minister Sherry announces the terms of reference and makeup of Review into the governance, efficiency, structure and operation of Australia's superannuation system.	Press Release
1 July 2009	Rate at which government superannuation co-contribution is paid reduced temporarily between 1 July 2009 and 30 June 2014. Rate returns to $1.50 for every $1 contribution (subject to income test threshold) on 1 July 2014.	Schedule 2 Tax Laws Amendment (2009 Budget Measures No 1) Act 2009

1 July 2009	Limit on concessional contributions (formally known as tax deductible contributions) reduced from $50 000 p.a. to $25 000 p.a. for 2009–10 and later years. This limit is indexed to changes in AWOTE (if those changes are sufficiently large enough). Transitional measures remain in place for those over 50 years of age to 2011–2012. Annual limits on non-concessional contributions (i.e. after tax contributions) are now 6 times the limit on concessional contributions for those under 50 years of age (i.e. 6 times $25 000 or $150 000 p.a. for the 2009–10 year).	Schedule 3 Tax Laws Amendment (2009 Budget Measures No 1) Act 2009
1 July 2009	Income for government superannuation co-contribution purposes now includes a person's reportable employer superannuation contributions. That is the amount that the employer puts into superannuation on the employee's behalf that exceeds the superannuation guarantee requirements.	Item 88, Part 3, Schedule 3 Tax Laws Amendment (2009 Measures No 1) Act 2009
1 July 2009	Expanded definition of 'ordinary time earnings' for superannuation guarantee purposes takes effect. 'Ordinary time earnings now include over award payments, shift loadings, allowances and piece rates paid in relation to a person's ordinary hours of work. It does not include overtime payments.	ATO SGR 2009/2 Later regulation specifically exempted parenting payments from definition of 'ordinary time earnings' for superannuation guarantee purposes.
9 July 2009	Superannuation funds now able to offer limited financial advice to their members.	Press Release
21 August 2009	Release of the Mathews Report recommends that government superannuation pensions continue to be adjusted by increases in the Consumer Price Index (CPI). Government fully supports this recommendation.	Mathews Report
20 September 2009	The rate of the age pension was raised by $30 per week for single people. Existing pension supplements were consolidated into one pension supplement and increased by $2.49 per week for single people and $10.14 per week for couples.	Social Security And Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009

	The 25% of MTAWE adequacy benchmark was adjusted to 27.7% for single people and 41.76% for couples. A new prices measure called the Pensioner and Beneficiary Living Cost Index (PBLCI) was added to the pension indexation process. Where the increase in the PBLCI is greater than that for the CPI it will be used instead of the CPI in the indexation process. The pension income test taper rate was increased from 40% to 50%. A work bonus was introduced that exempted half of any income from employment up to $500 per fortnight from consideration under the income test. The Pension Bonus Scheme was abolished	
14 December 2009	Release of phase one preliminary report of the Review into the governance, efficiency, structure and operation of Australia's superannuation system (i.e. the Cooper Review) on superannuation fund governance	Cooper Review phase one preliminary report
January 2010	Formal inclusion of specific superannuation funds (usually industry funds) in industrial awards. This change does not restrict an employee's right to have contributions made to a superannuation fund of their choice	Paragraph 139(1)(i) of the *Fair Work Act 2009*
20 April 2010	Release of Cooper Review Phase two preliminary report – 'Mysuper, optimising Australian superannuation'.	Cooper Review phase two preliminary report
29 April 2010	Release of Cooper Review Phase three preliminary report – 'Self managed super solutions'.	Cooper Review phase three preliminary report
2 May 2010	Government response to Australia's future tax system review (i.e. the Henry Review) released. Superannuation Guarantee rate proposed to be raised to 12% between 2013–14 and 2019–20, Superannuation Guarantee age limit to be increased to 75 in from 1 July 2013, an annual superannuation contribution of up to $500 provided for those receiving and adjusted taxable income of up to $37 000 p.a. and the	Press Release

	concessional contribution cap for those over age 50, with less than $500 000 in total superannuation benefits to be permanently raised from $25 000 to $50 000 p.a. Proposed measures repeated in budget papers released on 11 May 2010 (see below).	
11 May 2010	Government proposed changes to Co-contributions scheme. Income thresholds applying for 2009–10 to continue for a further two years, Government co-contribution rate to be set permanently at $1 for every $1 of personal contributions made by those receiving an adjusted annual income less than $31 920 p.a.	Budget Paper No 2 2010–2011
July 2017	The qualifying age for the age pension will increase by six months every two years until it reaches 67 years of age on 1 January 2024	Social Security And Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Act 2009

[1] ISC Annual Survey 1986-87. This figure appears to be a partial figure as it is not clear that it includes superannuation monies managed solely as insurance policies.

[2] OSSA has gone through several name changes and is now entitled *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*'No 97. (Its substantive provisions have been moved into the *SIS Act).*

ANNEXURE B

Independent Auditor Compliance Checklist

Below is a representative list of compliance checks to be done by independent auditors of SMSFs.

Section or Regulation	Explanation
S17A	The fund must meet the definition of an SMSF
S35AE	The trustees must keep and maintain accounting records for a minimum of five years
S35B	The trustees must prepare, sign and retain accounts and statements
S35C(2)	The trustees must provide the auditor with the necessary documents to complete the audit in a timely and professional manner; and within 14 days of a written request from the auditor
S62	The fund must be maintained for the sole purpose of providing benefits to any or all of the following: • fund members upon their retirement • fund members upon reaching a prescribed age • the dependants of a fund member in the case of the member's death before retirement
S65	The trustees must not loan monies or provide financial assistance to any member or relative at any time during the financial year
S66	The trustees must not acquire any assets (not listed as an exception) from any member or related party of the fund
S67	The trustees of the fund must not borrow any money or maintain an existing borrowing (not listed as an exception)
S67A & 67B	The fund must comply with the limited recourse borrowing arrangement rules when borrowing to purchase single acquirable asset or replacement assets (not listed as an exception to the borrowing rules)
S82-85	The trustees must comply with the in-house asset rules
S103	The trustees must keep minutes of all meetings and retain the minutes for a minimum of 10 years
S104	The trustees must keep up to date records of all trustee or director of corporate trustee changes and trustee consents for a minimum of 10 years
S104A	Trustees who became a trustee on or after 1 July 2007 must sign and retain a trustee declaration

S105	The trustees must ensure that copies of all member or beneficiary reports are kept for a minimum of 10 years
S109	All investment transactions must be made and maintained at arms-length — that is, purchase, sale price and income from an asset reflects a true market value/rate of return
S126K	A disqualified person cannot be a trustee, investment manager or custodian of a superannuation fund
Sub Reg 1.06 (9A)	Pension payments must be made at least annually, and must be at least the amount calculated under Schedule 7
Reg 4.09	Trustees must formulate, regularly review and give effect to an investment strategy for the fund
Reg 4.09A	The assets of the SMSF must be held separately from any assets held by the trustee personally or by a standard employer sponsor or an associate of the standard employer sponsor
Reg 5.03	Investment returns must be allocated to members in a manner that is fair and reasonable
Reg 5.08	Member minimum benefits must be maintained in the fund until transferred, rolled over, allotted (to the member's spouse) or cashed out in a permitted fashion
Reg 6.17	Payments of member benefits must be made in accordance with Part 6 or Part 7A of the regulations and be permitted by the trust deed
Reg 7.04	Contributions can only be accepted in accordance with the applicable rules for the year being audited
Reg 8.02B	When preparing accounts and statements required by subsection 35B(1) of SISA, an asset must be valued at its market value
Reg 13.12	Trustees must not recognise an assignment of a super interest of a member or beneficiary
Reg 13.13	Trustees must not recognise a charge over or in relation to a member's benefits
Reg 13.14	Trustees must not give a charge over, or in relation to, an asset of the fund
Reg 13.18AA	Investments in collectables and personal use assets must be maintained in accordance with prescribed rules

ANNEXURE C

2001 Social Security Agreement between Australia and the United States of America

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The Government of Australia and the Government of the United States of America (hereinafter "the Parties"),

Being desirous of regulating the relationship between their two countries with respect to social security benefits and coverage, have agreed as follows:

PART I - General Provisions

Article 1

Definitions

1. For the purpose of this Agreement:
    a. **"Agency"** means,
    as regards the United States, the Social Security Administration, and
    as regards Australia, the institution or agency responsible for the administration of the laws;
    b. **"benefit"** means in relation to a Party, a benefit, pension or allowance for which provision is made in the laws of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
    c. **"carer payment"** means, in relation to Australia, a carer payment payable to the partner of a person in receipt of an Australian benefit;
    d. **"Competent Authority"** means,
    as regards the United States, the Commissioner of Social Security, and
    as regards Australia, the Secretary of the Commonwealth Department responsible for the laws specified in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;
    e. **"laws"** means,
    as regards the United States, the laws and regulations specified in subparagraph 1(a) of Article 2, and
    as regards Australia, the laws specified in subparagraph 1(b)(i) of Article 2 except in

relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(b)(ii) of Article 2;

f. **"national"** means,
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and
as regards Australia, a citizen of Australia;

g. **"period of Australian working life residence"**, in relation to a person, means, unless otherwise provided in this Agreement, a period:

    i. defined as such in the laws of Australia; and

    ii. during which the person was employed or self-employed or the person's employer was subject to the laws specified in subparagraph 1(b)(ii) of Article 2;

but does not include any United States period of coverage deemed pursuant to Article 9 to be a period in which that person was an Australian resident.

h. **"social security laws"** means, in relation to Australia, all the Acts forming the social security law without any limitation, including the limitation imposed by Article 2.

i. **"United States period of coverage"** means a period credited as a quarter of coverage under the laws of the United States, or any equivalent period that may be used to establish the right to a benefit under the laws of the United States;

j. **"widowed person"** means, in relation to Australia, a person who stops being a partnered person because of the death of the person's partner, but does not include a person who has a new partner.

2. Any term used in this Agreement and not defined in this Article shall have the meaning assigned to it in the applicable laws.

Article 2

Scope

2. For the purpose of this Agreement, the applicable laws are:

    a. As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:

    - *Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,*

- Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;

b. As regards Australia,

- *the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:*
    - *A. age pension;*
    - *B. disability support pension for the severely disabled;*
    - *C. pensions payable to widowed persons; and*
    - *D. carer payment.*
- *the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations).*

3. Notwithstanding the provisions of paragraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
    a. persons receiving age pension; or
    b. persons receiving disability support pension for the severely disabled.
4. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Parties and a third State, or laws or regulations promulgated for their specific implementation.
5. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

Article 3

Personal Scope

This Agreement shall apply to any person who:

a. is or has been an Australian resident; or
b. is or has been subject to the laws of Australia; or
c. is or has been subject to the laws of the United States

and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4

Equality of Treatment

Persons designated in Article 3 who reside in the territory of a Party shall receive equal treatment with nationals of that Party in the application of its laws regarding eligibility for and the payment of benefits.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, any provision of the laws of a Party which restricts entitlement to or payment of benefits solely because the person resides outside or is absent from the territory of that Party shall not be applicable to the persons who reside in the territory of the other Party.
2. Where the laws of a Party provide or allow that a benefit be payable in a third country, then that benefit, when payable by virtue of Part III, is also payable in that third country.
3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the United States when that benefit is payable by virtue of this Agreement.
4. A benefit payable by a Party by virtue of this Agreement or under its laws shall be paid by that Party without the deduction of administrative fees and charges by the government or the corresponding Competent Authority for processing and paying that benefit, when the person qualifying for the benefit is in the territory of the other Party.
5. Any provisions of Australian laws which prohibit the payment of an Australian benefit to a former Australian resident who:
    a. returns to Australia to again become an Australian resident;
    b. claims an Australian benefit; and
    c. departs Australia within a period specified in that law,

    shall not apply to a person who receives that benefit by virtue of the Agreement.

6. Section 202(t)(11) (E) of the Social Security Act of the United States shall not apply to an Australian national unless he or she is a resident of the United States, Australia or a third country with which the United States has a Social Security agreement in force concluded pursuant to section 233 of the Social Security Act.

Article 6

Coverage Provisions

This Part only applies, with respect to an employee, or the employer of that employee, where either or both of the following circumstances occur:

a. without the application of this Part an employee or the employer of that employee would otherwise be covered by both the laws of Australia and the United States;

b. the employee has been sent from the territory of the United States to the territory of Australia in accordance with paragraph 3 and, based upon documentation issued by the Agency of the United States, the employee and employer are subject to United States laws.

2. Except as otherwise provided in this Article, a person employed within the territory of one of the Parties and the person's employer shall, with respect to that employment, be subject to the laws of only that Party.

3. *Where a person who is normally employed in the territory of one Party by an employer in that territory is sent by that employer to the territory of the other Party for a temporary period, the person and the person's employer shall be subject to the laws of only the first Party as if the employee were employed in the territory of the first Party provided that the period of employment in the territory of the other Party is not expected to and does not exceed 5 years. After 5 years, any further period of employment shall be subject to the laws of the other Party.*

4. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Australia, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws in the absence of this Agreement.

5. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of the United States, that employer and a related entity of the employer shall be considered one and the same. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

6. Paragraph 3 shall apply where a person who has been sent by his or her employer from the territory of a Party to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Party.

7. Where a person who is a resident of the United States works in the capacity of a self-employed person, the person shall be subject to the laws of only the United States.

8. Where a national of the United States who is a resident of Australia works in the capacity of a self-employed person, the person shall not be subject to the laws of the United States.
9. Where the same activity is considered to be self-employment under the laws of one Party and employment under the laws of the other Party, that activity shall be treated according to the provisions of this Article concerning self-employment.
10. A person, or that person's employer, who would otherwise be covered under the laws of both Parties with respect to employment of that person as an officer or member of a crew on a ship or aircraft shall, with respect to that employment, be subject only to the laws of the Party of which that person is a resident.
11. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.
12. If an employee:
    a. is subject to the laws of one Party ("the first Party")
    b. was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Party to work in the territory of the other Party ("the second Party");
    c. is working in the territory of the second Party in the employment of the Government of the first Party;
    d. is not working permanently in the territory of the second Party; and
    e. is not exempt from the laws of the second Party by virtue of the conventions mentioned in paragraph 11;

    the Government of the first Party and the employee shall be subject only to the laws of the first Party, and, if the spouse of the employee also meets the conditions specified in subparagraphs (iii)-(v), the spouse and the Government of the first Party shall be subject only to the laws of the first Party for that employment. For the purposes of this paragraph, "Government" includes, in relation to the United States, an instrumentality of the United States and, in relation to Australia, a political subdivision or local authority of Australia.

13. The Competent Authorities of the two Parties may for the purposes of this Article by agreement in writing:
    a. extend the period of 5 years referred to in paragraph 3 for any employee; or
    b. provide that an employee is deemed to work in the territory of a particular Party or on a ship or aircraft in international traffic under the laws of a particular Party and is subject only to the laws of that Party.
14. Any agreement made under paragraph 13 may apply to either or both of the following:

a. a class of employees;
b. particular work or a particular type of work (including work that has not occurred at the time such agreement is made).

Article 7

United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence which do not coincide with periods of coverage already credited under United States laws.
2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of Australian working life residence certified by the Agency of Australia; however, no period of Australian working life residence shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.
3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.
4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

Article 8

Residence or Presence in the United States or a Third State for Australian Benefits

1. Where a person would be qualified under the laws of Australia or by virtue of this Agreement for a benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:
    a. is an Australian resident or residing in the United States or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the assessment and determination of claims for benefits; and
    b. is in Australia, or the United States or that third State,

    that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

2. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in the United States shall be regarded as being in Australia.

Article 9

Totalisation in Relation to Australian Benefits

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
    a. a period as an Australian resident that is less than the period required to qualify that person, on that ground, for that benefit under the laws of Australia;
    b. a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
    c. a United States period of coverage,

    then for the purposes of a claim for that Australian benefit, that United States period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the laws of Australia, to be a period as an Australian resident.

2. For the purposes of paragraph 1, where a person:
    a. has been an Australian resident for a continuous period which is less than the minimum continuous period required by the laws of Australia for entitlement of that person to a benefit; and

b. has accumulated United States periods of coverage in two or more separate periods that equal or exceed in total the period referred to in subparagraph (a),

the total of the United States periods of coverage shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period as an Australian resident and a United States period of coverage coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident but when it is not possible for the United States Agency to determine the time when specific periods of coverage were completed in any one calendar year, it shall be assumed that those periods of coverage do not coincide with periods in that year as an Australian resident but in no case shall the total of all those periods exceed one calendar year.
4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be:
    a. for the purposes of an Australian benefit that is payable to a person who is outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
    b. for the purpose of an Australian benefit that is payable to a person who is in Australia, there shall be no minimum period.

Article 10

Calculation of Australian Pro Rata Benefits

1. Subject to paragraphs 2, 3 and 4, where an Australian benefit is payable by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the laws of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any United States benefit paid to that person under the laws specified in Article 2(1)(a) shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of working life residence in Australia (not exceeding 300) by the amount of that United States benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person's Australian benefit is proportionalised under the laws of Australia.
3. When an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, benefits payable under the Supplemental Security Income program of the United States and other benefits of a similar character payable under the laws of the United States

or any political subdivision thereof shall not be counted as income for the purposes of calculating the rate of an Australian benefit.

4. The provisions in paragraphs 1 and 3 shall continue to apply for 26 weeks where a person returns temporarily to Australia.
5. Subject to the provisions of paragraphs 6 and 7, where an Australian benefit is payable by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
    a. calculating that person's income according to the laws of Australia but disregarding in that calculation any United States benefit received by that person and by the partner of that person;
    b. educting the amount of the United States benefit received by that person from the maximum rate of that Australian benefit; and
    c. applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the laws of Australia, using as the person's income the amount calculated under subparagraph (a).
6. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
7. Where the rate of a benefit calculated in accordance with paragraph 5 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
8. Where a member of a couple is, or both that person and his or her partner are, entitled to a United States benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 5 and for the laws of Australia, to be entitled to half of either the amount of that benefit or total of both of those benefits, as the case may be.

Article 11

Australian Working Life Residence

For the purposes of Articles 9 and 10, a period of Australian working life residence in relation to a person means a period defined as such in the laws of Australia.

Article 12

Administrative Arrangements

The Competent Authorities of the two Parties shall:

a. make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
b. communicate to each other information concerning the measures taken for the application of this Agreement; and
c. communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 13

Exchange of Information and Mutual Assistance

1. The Competent Authorities and the Agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.
2. Unless otherwise required by the national statutes of a Party, information about an individual which is transmitted in accordance with the Agreement to that Party by the other Party shall be used exclusively for purposes of implementing the Agreement. Such information received by a Party shall be governed by the national statutes of that Party for the protection of privacy and confidentiality of personal data.
3. In no case shall paragraphs 1 or 2 be construed so as to impose on the Competent Authority or an Agency of a Party the obligation:
    a. to carry out administrative measures at variance with the statutes or the administrative practice of that or of the other Party; or
    b. to furnish information which is not obtainable under the statutes or in the normal course of the administrative practice of that or of the other Party.

Article 14

Documents

1. Where the laws of a Party provide that any document which is submitted to the Competent Authority or Agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Agency of the other Party in the application of this Agreement.
2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by the Agency of one Party shall be accepted as true and exact copies by the Agency of the other Party, without further certification. The Agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 15

Correspondence

The Competent Authorities and Agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement.

Article 16

Applications for Benefits

1. A written application for benefits filed with the Agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant requests that it be considered an application under the laws of the other Party.
2. If an applicant has filed a written application for benefits with the Agency of one Party and has not explicitly requested that the application be restricted to benefits under the laws of that Party, the application shall also protect the rights of the claimants under the laws of the other Party if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods under the laws of the other Party, as defined in subparagraphs 1(g)(i) or 1(i) of Article 1.
3. The provisions of Part III shall apply to benefits under United States laws only if an application is filed on or after the date this Agreement enters into force.

Article 17

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
    a. a period as an Australian resident and a United States period of coverage; and
    b. any event which is relevant to that eligibility or entitlement,

    shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred

before, on or after the date on which this Agreement enters into force. However, neither Party shall take into account such periods of coverage or residence that occurred prior to the earliest date for which periods of coverage or residence may be credited under its laws.

2. Where:
   a. a benefit is paid by the United States to a person in respect of a past period whether by virtue of this Agreement or otherwise; and
   b. for all or part of that period, Australia has paid to that person a pension, benefit or allowance under its social security laws; and
   c. the amount of the pension, benefit or allowance paid by Australia would have been reduced had the benefit paid by the United States been paid during that period;
   then
   d. the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to Australia and may be recovered by Australia; and
   e. Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia.
3. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of the Agreement, or to a lump-sum death benefit under United States laws if the person died before the date of entry into force of the Agreement.

Article 18

Prescribed Time Limits and Appeals

1. Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the Agency of that Party, but which is instead filed within the same period with the Agency of the other Party, shall be considered to have been filed on time.
2. A written appeal against a decision made by the Agency of one Party may be validly filed with the Agency of either Party. The appeal shall be dealt with according to the procedure and laws of the Party whose decision is being appealed.
3. In relation to a decision made by the Agency of Australia, the reference in paragraph 2 to a written appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 19

Currency

1. Payments under this Agreement may be made in the currency of the Party making the payments.
2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Party, the Governments of both Parties shall immediately take measures necessary to ensure the transfer of sums owed by either Party under this Agreement.

Article 20

Resolution of Disputes

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 21

Supplementary Agreements

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

Article 22

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the country to which that request was made.

Article 23

Transitional Provisions

1. In applying paragraph 3 of Article 6, in the case of persons who were sent to the territory of a Party prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.

2. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

Article 24

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.
2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party received from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to the benefit entitlements of all persons who:
    a. at the date of termination, are in receipt of benefits; or
    b. prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.
DONE in duplicate at Canberra this twenty seventh day of September 2001

FOR THE GOVERNMENT OF AUSTRALIA:
Amanda Vanstone

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
J. Thomas Schieffer

ENDNOTES

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[1] https://www.ato.gov.au/Rates/key-superannuation-rates-and-thresholds/?anchor=Superguaranteepercentage

[2] *Averting the Old Age Crisis -A World Bank Policy Research Report* 1994
https://documents1.worldbank.org/curated/en/973571468174557899/pdf/multi-page.pdf
The Report conclusion echoes Australia's multi-pillar approach of poverty relief welfare pensions, plus compulsory provisions plus voluntary savings.

[3] https://home.kpmg/content/dam/kpmg/au/pdf/2019/super-insights-2019.pdf

[4] APRA (12 January 2013). "Superannuation reforms 2011-2013". Retrieved 21 February 2013

[5] *Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012*, section 12E.

[6] *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* section 12E(c)

[7] https://www.dss.gov.au/about-the-department/international/international-social-security-agreements/current-international-social-security-agreements#ind

[8] https://www.ssa.gov/international/Agreement_Texts/Australia.html Annotation Article 1 b ii