SUBMISSION TO THE TREASURY
AUSTRALIAN GOVERNMENT
IN RESPONSE TO POSITION PAPER ON A

Retirement Income Covenant

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National Secretary-Treasurer

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About the SDA

The Shop, Distributive and Allied Employees' Association (the SDA) is one of Australia's largest trade unions with over 210,000 members. Our members work in retail, fast food, warehousing, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%, approximately 131,000), under 35 years (57%, approximately 120,000 workers), and low-income. Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a long history of advocating on behalf of members. We do this through enterprise bargaining; making submissions regarding Awards and the NES to provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews.

The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix A.

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Executive Summary

1. The focus of the superannuation system and policy making is on high-balance, high-wealth individuals and their families. Discussions of superannuation not being intended for inheritance of bequest (including in the July 2021 Retirement Income Covenant Position Paper) are an example of this mismatch – passing on a few thousand dollars to help with the costs at the time when a loved one is lost is entirely consistent with saving for retirement and end of life. It is also reasonable for superannuation to help fund the continuation of a family after the main income earners pass away and unable to accumulate the wealth that would have matured their retirement. Yet, superannuation policy papers seem to consistently assume that inheritance would only transfer wealth between generations. It ludicrous that a fund cannot provide intra-fund advice about retirement solutions without risking breaching anti-hawking laws, and that instead governments propose new systems that are dependent on such advice. Policy drafters also make assumptions about the information held by funds, including family and social security status as well as the other assets held. This level of engagement is the norm for those who engage with an accountant more often than their annual tax return or have a private arrangement with an adviser, planner. The policy assumes behaviours reserved by those with high incomes.
2. The original proposal for a Retirement Income Covenant announced in 2018, that would require funds to offer Comprehensive Income Products for Retirement (CIPRs) and push Australians to get advice about annuities, is an exemplar of the absurdity of the focus of the superannuation policy discussions. It was so inequitable, that even the Productivity Commission – hardly the bastion of equity arguments – saw fault for groups with lower educational attainment, lower balances, and shorter life-expectancy. It risked turning the superannuation system back to domination by defined benefits arrangements and forgetting that accumulation occurs during and after a working life. It would have seen a rash expansion of annuities including for those who are unlikely to gain from them and a proliferation of unnecessary advice, extending the problems of excessive and hard to regulate choice products from the time of accumulation into the retirement phase.
3. Fortunately, the debate on a Retirement Income Covenant has developed and the July 2021 Retirement Income Covenant Position Paper outlines an approach of cohort-based strategy documents prepared by Trustees, which is significantly less controversial. This new approach reduces risk of forcing those who get no benefit from annuities to seek advice about them from emboldened and unscrupulous financial advisers. However, there remains significant risk of superannuation trustees being distracted into supporting high balance members over the needs of those saving for and continuing to save during retirement as well as those who are reducing their capital as they age. During their working lives, income for low-balance members is not always a regular stream, and nor is it during their retirement. This risk of distraction must be minimized with drafting that focusses on retirement and the flexibility of universal products that allow for personal circumstances. As the system matures, it's reasonable to begin to focus on retirement income, but it should not be a distraction from the need for retirement savings.
4. The SDA supports the submission of the ACTU.

Recommendations

A. Government should acknowledge that lump sums, account-based pensions and a combination of these are sensible offerings, that income does not have to be a stream and undertake full consultation for any so called "future reforms".

B. Any legislative drafting should retain the focus on the sole purpose (retirement) and the best financial interests (balance and income but allow for the flexibility of universal products which can be adjusted to meet personal circumstances).

C. Additional drafting could codify the sole purpose and the best financial interests' duty to clarify the objective of superannuation – being for saving for retirement and needing to be universal for simplicity at the same time as allowing for personal circumstances.

SDA Submission to The Treasury, Australian Government Regarding a Retirement Income Covenant

1. Superannuation is a right and entitlement of Australian workers and should be treated as deferred earnings designed for dignity in retirement.
2. Shop, Distributive and Allied Employees' Association (SDA) members have annual income levels of approximately $40,000 or less. This puts them well within the low-income cohort of $48,000 or less, for whom the report of the Retirement Income Review estimated a retirement replacement rate of above 100%, rather than the benchmark of 65-75%. Most SDA members are award reliant or subject to enterprise agreements, and these arrangements usually see them paid at the guaranteed rate of superannuation. Many members will be or are reliant on the aged pension and rent assistance in retirement to achieve an income stream in retirement and they undeniably benefit from any increase to the superannuation guarantee. They often take the funds as lumpsums upon retirement and/or throughout their retirement.
3. The superannuation fund for SDA members, retail and fast-food workers, is Rest Industry Super. Rest has around 1.7 million members (Dec 2020), trusting Rest with more than $55 billion of their retirement savings (June 2020). In its submission to the first position paper regarding a retirement income covenant, Rest noted that the average balance for initial Rest account base pension was above $240,000 (2018). In February 2020, REST described that is has more than 267,000 members aged 50 years and older nearing retirement, who had an average balance of $87,420. The balance recommended for a comfortable retirement for a single is $545,000, or $70,000 if the retirement is modest and supplemented with the aged pension (ASFA, 2018).
4. This means that superannuation policymakers can make their biggest difference to standards of living in retirement by meeting the needs of SDA members, REST members with low balances, and those whose circumstances are similar.
5. It is in this context, the SDA makes this submission and recommendations responding to the retirement income covenant position paper released on 19 July 2021 by the Treasury of the Australian Government.

The original proposal for a Retirement Income Covenant would have seen pursuit of annuities for those who would not gain from them and a proliferation of unnecessary advice.

6. When announced in May of 2018, the Retirement Income Covenant was described as being "added to the Superannuation Industry (Supervision) Act 1993, which will elevate the consideration of members' retirement income needs to sit alongside the other fundamental obligations of trustees, such as the investment, risk management and insurance needs of their members." The Minister of the day also said that there would be "regulations that oblige trustees to offer their members a comprehensive income product for retirement (CIPR) and to guide and support members to select the right retirement solution."[1]
7. The SDA supports the view outlined by the ACTU in its June 2018 submission responding to the first position paper. It saw the original proposal as "harmful to members as it deviates from the core principle of universal superannuation – to provide a universal outcome to workers through a universal mechanism". As described in Rest's submission at that time, the first principles were sound - 1) assist members to meet their retirement income objectives and 2) assist members to meet their retirement income objectives by providing guidance to help members understand and make choices about the retirement income products offered by the fund. For members, the problem was that the model required them to hear about a "Comprehensive Income Product for Retirement" which are unlikely to work for them and could be costly to get out of. It undermined the role of universal products for those, namely low-income workers,

[1] *The Hon Kelly O'Dwyer, 17 May 2018, "Helping make your super work harder in retirement" Access:* *https://ministers.treasury.gov.au/ministers/kelly-odwyer-2016/media-releases/helping-make-your-super-work-harder-retirement*

who want the simple benefits of lifelong savings gained through the introduction of a superannuation guarantee.

8. At present, the system is broadly that a member takes an account-based pension, a lump sum, or a combination of these. Members can get a calculator to look at the impact of their assets and savings, and potential impacts on the pension. If they wish, they can get advice. The original proposal removed this simplicity and required members to hear about a product that was unlikely to be relevant to them, and risked a proliferation of the products as well as advice and information. It would have seen the turning the current system of analysis-as-needed to paralysis-by-advice. It did nothing to deal with issues in the system such as permission to offer support to members considering their retirement solutions.
9. By the time of the Productivity Commission, in Jan 2019, the conversation had shifted markedly. The Productivity Commission report recommended that "Australian Government should reassess the benefits, costs and detailed design of the Retirement Income Covenant — including the roles of information, guidance and financial advice — and only introduce the Covenant if design imperfections (including equity impacts) can be sufficiently remediated."[2] It found that the covenant "may nudge many ... into products ill-suited to their long-term needs, may not achieve its desired goal of increasing retirement consumption, and fails to take sufficient account of the diversity in household preferences, incomes and other assets."[3] and suggested, in the context of the risk of advice failures and conflicts of interest, that the idea be "abandoned if the flaws cannot be sufficiently remediated".[4]
10. The Government delayed the introduction to July 2022 and has now released a revised position paper which is a welcome step towards addressing the flaws with the Retirement Income Covenant.

The revised position paper proposes trustees consider retirement income by cohort in their design of products which is less controversial.

11. The "Retirement income covenant: Position Paper" dated 19 July 2021, outlines that the covenant would codify the requirements and obligations for superannuation trustees to improve retirement outcomes for individuals, while enabling choice and competition in the retirement phase.
12. The obligations would be twofold:
    - firstly, requiring trustees to develop a retirement income strategy, and
    - future reforms, which will encourage the development of retirement income products.
13. The first proposal, a retirement income strategy, would require Trustees to outline their plan to assist their members to maximise their retirement income, manage risks to the sustainability and stability of their retirement income, and have some flexible access to savings during retirement. This schema broadly reflects the view that it is desirable to provide four options - an account-based pension, a lumpsum, an annuity, and combination of these (including the flexibility to take lumpsums throughout retirement).
14. The intent is achieving 'better products' which means not having a default an instead introducing 'default settings' alongside 'nudges' (soft default) and 'appropriate guidance' (offering a view that isn't considered financial advice).
15. With regard to products – no retirement product can be considered ideal in a world where tax, pensions, and personal preferences differ and change over time. In the absence of a universal product designed for the majority of funds and the majority of members (such as a MySuper for retirement), the permission for soft defaults is necessary and analysis

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[2] *Recommendation 10, "Superannuation: Assessing Efficiency and Competitiveness - Inquiry report" Access:* https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report
[3] *Finding 4.4, "Superannuation: Assessing Efficiency and Competitiveness - Inquiry report" Access:* https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report
[4] *p40, "Superannuation: Assessing Efficiency and Competitiveness - Inquiry report" Access:* https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report

by "cohorts of members" would assist with alignment with design and distribution obligations. There remains a risk that moving from three options for products to four (including annuities) will see increased complexity in the system and the simple objective of saving for the future lost in a mix of messages and further disengagement with superannuation.

16. With regards to appropriate guidance – the permission to use 'appropriate guidance' is a pragmatic policy response. However, given recent legal and policy changes regarding personal and general advice and the provision of information, it will be necessary for the regulatory guides to support Trustees in compliance.
17. While the position paper does not appear to acknowledge the need for accumulation phase products to be planned for retirement income, it is likely that some lip service will be paid to the needs of those who will retire in years to come. What is most likely, is that Trustees will focus on products offered at the time a person reaches preservation age.
18. Further, requiring a Trustee to indicate whether the intended assistance is likely to increase or decrease the retirement incomes of their members will require several assumptions (such as likely lifespan) and will be difficult to implement.
19. With regards to the so called "future reforms", there remains risks of nudging members inappropriately to annuities and creating significant equity issues. A full consultation process should be undertaken for those discussions. The Government should make clear that universal retirements products, including lump sums, are a satisfactory part of a retirement income strategy. This is consistent with the basic purpose of superannuation – to save for retirement.
20. Government should ensure that any 'future reforms' that encourage the development of retirement income products do not undermine the ability of members to access funds which offer them simple products suited to their needs, including the ability to access a lump sum, an account-based pension and a combination of these. The Government must acknowledge that lump sums, account-based pensions and a combination of these are sensible offerings.
21. Any retirement income covenant should be designed for those for whom it makes the largest difference. For those members, a broader choice framework might operate through funds asking retiring members to make a simple election as characterised by David Bell and Geoff Warren in Investment Magazine. They propose that after indicating the amount a member wishes to transfer, the member be given four options: A. Please assign me to a retirement solution, B. Recommend a retirement solution to me, C. I want to choose a retirement solution for myself, D. Please refer me to a financial planner. They indicate that, "The election of option A or B invokes fund-guided choice, which might be followed by an invitation to furnish additional information to assist the fund to select a suitable solution. The menu of options might be supported by the provision of general and product information and various decision tools. When members don't make a choice, option A might apply as a default.[5]
22. Whatever the legislative drafting, it needs to allow for this. And to permit a general answer to such questions as "What do people do with their super when they retire?" and "What should I do?" The current solution is an account-based pension, a lumpsum or a combination of both and the drafting should support a framework in that style of decision making. To propose for annuities as an alternative may be appropriate, but only if done for those who might gain and have the resources to navigate the systems to establish if it is right for them.

As the system matures, it's reasonable to begin to focus on retirement income, but it should not be a distraction from the need for retirement savings

23. There is much commentary that Australia's Superannuation system is maturing, and that there has been a lack of focus on the retirement income phase. The Retirement Income Review and this covenant paper occur in this context.
24. Those currently aged 40 and 50 have set aside savings during their working life. They can, and many do, make significant additional tax advantageous contributions. In the context of their increasing number and their higher balances, policy discussions of a maturing system should be focussed on understanding their needs. As they progress towards preservation age, there does need to be resolutions to issues that impact on tax and its transfers, age- and self-funded pensions, and the ability to afford housing and aged care. The proposal to ensure that retirees are considered –

[5]*" 'Pure choice' might not create the best outcome for retirees" Investment Magazine, July 30, 2021, Access:* *https://www.investmentmagazine.com.au/2021/07/pure-choice-might-not-create-the-best-outcome-for-retirees/*

through a retirement income covenant – is a reasonable one.

25. The risk is, however, that Trustees will focus on the marketability of pension products and not on the impact on lives. Done poorly, a retirement income covenant risks lack of focus on a simple truth – saving for retirement throughout life is a good thing. It risks assuming that the system is matured when it is merely maturing. Today's primary schoolers will be the first generation to have an entitlement to a guaranteed 12% superannuation throughout their working life. Today's teenagers and those in their 20s will be retiring with 40 to 50 years of savings, rather than 20.

Table 1: Superannuation Guarantee as scheduled by preservation age

Aged 18 in	Age in 2020	Super Preservation Age	Pension Age	Year turning 67	If work for 50 years… … years with super	… years earning super at:			
						12%	9-11%	3-8%	0%
1960	80	55	67	2009	19	0	9	10	31
1970	70	60	67	2019	29	0	19	10	21
1980	60	60	67	2029	50	5	24	10	11
1990	50	60	67	2039	50	15	24	10	1
2000	40	60	67	2049	50	25	24	1	0
2010	30	60	67	2059	50	35	15	0	0
2020	20	60	67	2069	50	45	5	0	0
2030	10	60	67	2079	50	50	0	0	0

Based on current policy settings for superannuation preservation and guarantee rates and that the pension age remain stable.

26. These Australians are subject to greater unemployment and underemployment as well less secure work such as contracting through the gig economy. The underutilisation for those under 25 is 28% compared to 13.5% for the general population. With fewer hours of work, and less super paid given the working conditions, there remains a systematic need to close loopholes and achieve universal coverage of superannuation.

27. The from 1 July 2022, eligible employees who earn less than $450 per month will be paid super guarantee by their employer if they satisfy the other eligibility requirements. This is not yet law. It is critical that the Government act quickly to legislate the closure of this loophole.

28. There are additional loopholes for avoiding payment of superannuation – the superannuation guarantee should be applicable to every dollar earned and hour worked. Most urgently, it should be paid on all earnings of those aged under 18 years and paid on paid and unpaid parental leave.

29. These are issues of equity for women and young workers who gain greatly from compounding interest over time, especially if they remain on a low income into adulthood. Universal provision of super does make a difference to standards of living in retirement for these Australians. For low-income workers, the MySuper model needs to work from the first dollar they earn and a focus on annuities for high balance members risks the discussion missing their needs.

30. It is also time for government to consider retirement income at the time of full maturity of the system – approximately 2080 (See above Table 1: Superannuation Guarantee as scheduled by preservation age).

31. Prior to the 1980s, retirement was shorter and superannuation was largely reserved for public servants and those working for multinational firms. Retired low-income workers lived shorter lives, had more affordable homes and were reliant on the pension. Planning for the retirement of young workers was largely ignored. Universal superannuation extended a great benefit that was reserved for the few to the many – both low- and middle-income Australians.

32. Now, savings for retirement of young worker is at risk of being ignored in place of a focus on retirement income for those for whom an annuity might suite. Instead of a misplaced focus on products that might be helpful for the wealthy, governments should focus on savings, housing and aged care. Home ownership, once touted as the third pillar of retirement income, is now at rates as low as it was in the 1950s and housing stress is increasing for low-income families paying high proportions of their salary and pension towards their housing.

33. The SDA agrees that requiring part of the retirement benefit to be an income stream would align the system to its purpose. Superannuation is for retirement, and it is reasonable to expect Australians with substantial funds in superannuation to gradually draw them down through retirement. However, the decision to do so is entirely dependent on your resources and your individual circumstances. How to effectively use housing and financial assets at retirement, should be determined by need. For example, some members have debt profiles that are changing (e.g. as

mortgages are taken out at later ages and health crises sometimes require personal debt). The information about such issues for superannuation fund members is held by them, not by their fund. Soft defaults in the context of a broader choice framework is appropriate, but Australia should retain the opportunity for low-income workers to pay off debt and live on the pension, on the basis that the pension should be high enough to provide a basic standard of living.

Drafting of a new covenant should focus on retirement and flexibility of universal products which can be adjusted to meet personal circumstances

34. The July 2021 Position Paper does not outline the methods through which the Government intends to "codify the requirements and obligations for superannuation trustees to improve retirement outcomes for individuals, while enabling choice and competition in the retirement phase." It is made plainly clear that the material in submissions "will feed into the development of legislation to give effect to the retirement income covenant." But it is not clear whether the new covenant will be treated similarly to other covenants.
35. While these other duties and obligations are referred to, it is not clear whether the retirement income requirements and obligations (covenant) would sit alongside other obligations related to investment, insurance and risk, and be supplementary to the general covenants which are - as described by the Hayne Royal Commission - honesty; care, skill and diligence; to perform the trustee's duties; and exercise the trustee's powers in the best [now, financial] interests of the beneficiaries.
36. Whether a covenant is to be legislative or enforceable through regulations should be clarified immediately. There should be no confusion that the purpose of superannuation is saving for retirement and that trustees should act in the best [now, financial] interests of members. The role of having an account, being able to investment, to take out insurance as a protection for work which enables continued savings and to get advice and information must be a priority for Trustees. Further, there remains a need to focus on effective implementation of the Best Financial Interests Duty – Trustees should be focussed on increasing balances and incomes and effectively balancing between the two to meet the needs of their members in general and personally.

Appendix A: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a broken industrial framework. We seek an economic system that supports, protects and advances the interests of working people in this country.

Our predecessors built the conciliation and arbitration system which provided the foundations to our nations prosperity over a century ago, it is now our responsibility to build a system for the next generation.

Since the introduction of the Fair Work Act 2009 and subsequent radical changes to the financial and digital context inequality has grown and economic and political power has concentrated in the hands of a few.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

1. Address Inequality & Enshrine Fairness
   Minimum expectations must be set and adhered to.

2. Equity & Empowerment
   All workers must be supported to progress so that no-one is left behind.

3. Mobility & Security
   A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.

4. Delivering Prosperity & Growth For All
   A foundation for prosperity and economic growth must be achieved.

5. Protection in Work & Beyond
   Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.

6. Workers Capital & Superannuation
   Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.

7. A Strong Independent Umpire
   A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.

8. Protection & Support for Our Future
   Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.

9. Work & Community
   Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.

10. Institutional Support for Collective Agents
    Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

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