

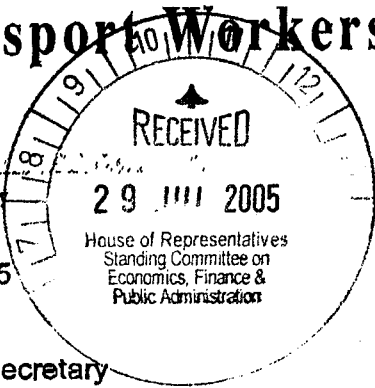
Transport Workers'



Union of Australia

John Allan Federal Secretary

29 July 2005



House of representatives Standing Committee on
Economics, Finance and Public Administration

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Secretary: [Signature]

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Committee Secretary
Standing Committee on Economics, Finance and Public Administration
House of Representatives
Parliament House
CANBERRA ACT 2600

By facsimile: 02 6277 4774

Dear Secretary,

INQUIRY INTO SUPERANNUATION SAVINGS FOR PEOPLE UNDER 40

Please find enclosed submission of the Transport Workers' Union of Australia.

If you have any questions regarding this please do not hesitate to contact me.

Yours faithfully,

[Signature]
LINTON DUFFIN
FEDERAL LEGAL OFFICER
cc.

lab

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House of Representatives Standing Committee on Economics, Finance and Public Administration

Inquiry into Improving the superannuation savings of young people

1. The Transport Workers' Union of Australia ("the TWU") welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Economics, Finance and Public Administration ("the Committee") into the issues of superannuation savings of young people.
2. It is sometimes forgotten, particularly by those on the conservative side of politics, that superannuation was largely, until the 1980s, the preserve of managers and employees in the public sector.
3. It was not until unions in Australia, in the face of opposition from the same employer groups and the same conservative politicians who now talk about the importance of superannuation for national savings and retirement incomes, pursued superannuation claims that average workers in this country were able to access retirement incomes in any form other than the age pension.
4. It was unions which sought to ensure that occupational superannuation was an entitlement of workers in this country. It was not employers in their "freedom of contract" mentality which sought to extend superannuation to working people in this country. The current Federal Government ought, every night, give thanks to the union movement for seeing this as an industrial issue and an issue which could be to the benefit of the Australian economy.

Barriers and/or disincentives to superannuation

5. The TWU does not make extensive submissions in relation to these matters, but will concentrate on some specific issues of Government policy. There are, of course, numerous issues associated with taxation policy, the interaction between social welfare payments and work, the interaction between the cost and administration of health policy, and the rates of pay for persons at work which impinge upon superannuation payments. Most of the issues will impact on superannuation benefits for working persons in years to come.

6. The TWU has significant concerns with much of the Government's policy directions in these issues. Although we hold these concerns we do not intend to make extensive submissions, although the absence of submissions should not be taken to mean that the union does not hold concerns. Rather the TWU is concentrating its submissions upon the matters most directly before the Committee.
7. It is relatively clear that the existing superannuation regime will not provide adequate retirement savings. For example the accounting group CPA Australia released research in 2004 which noted that living standards will drop in retirement by as much as 69 per cent for those relying solely on the 9 per cent superannuation contribution.¹ Likewise research released by the BT Financial Group noted that for many women who are marginally attached to the workforce will have grossly inadequate superannuation benefits.²
8. The TWU is further concerned that the Government's industrial relations policies will act as a barrier to the proper provision of superannuation benefits. Accepting at face value that the Government's policies are aimed at reducing wages for those who are relatively lowly skilled in the economy with a view to increasing their employment prospects, it seems relatively clear that this will have the effect of compressing the incomes or the growth of incomes of such persons. If current income is the earnings base for superannuation a reduction in wages will substantially reduce superannuation entitlements.
9. The compression of wages for lower income earners will require that the Government intervene to ensure that employees receive proper superannuation benefits. This would require the Government pursue the initiatives of the former Government in seeking to make superannuation contributions of at least 15%.
10. Alternatively it will require a much more substantive intervention in the form of the superannuation co-contribution scheme. This scheme will need to be more widely accessible and more beneficial to ensure proper retirement incomes for the working poor in this country. One possibility would be to make co-contribution available on a weekly rather than an annual basis.

¹ CPA Australia, *Superannuation: the right balance* 2004.

² BT Financial Group March 2005

11. Of course the practical ramifications of this policy are not merely the payment of a co-contribution scheme as such a scheme relies upon the low-income individual making contributions, but for Governments to meet, directly, the superannuation contributions of low-income workers.
12. The Government's refusal to follow the policy of the previous Government has meant that superannuation benefits for workers in Australia will simply be inadequate to reduce, in any meaningful way, the needs of older persons to receive payments from the State in the form of pensions.
13. In addition, the TWU also notes that some Government policies are operating in a countervailing manner to the intention of ensuring adequate superannuation savings in the economy.
14. In this respect the TWU notes the Government's policy in relation to independent contractors and the so-called "enterprise worker" has the capacity to reduce superannuation savings in the economy.³
15. The Government's policy prior to the 2004 Federal election was allegedly to protect and enhance the position of independent contractors. Regardless of whether this is a sensible policy or not, it will have major ramifications on superannuation policy.
16. It is important to note that the TWU represents nearly 25,000 independent contractors in Australia. We represent independent contractors who are involved in the following areas:
- a) courier services (typically owning one-tonne vans or smaller vehicles and contracting to one single company – for example DX couriers, Ipec etc);
 - b) concrete tippers (typically contracting to one single entity – for example Boral concrete, Readymix etc);
 - c) car carrying services running line haul (contractors typically engaged to provide services on a daily basis to companies such as Patrick, TNT);
 - d) refrigerated transport;
 - e) furniture removal;
 - f) tow trucks;
 - g) waste disposal;

³ Prime Minister's speech to Sydney Institute

- h) general freight whether express or otherwise;
- i) oil and petroleum;
- j) building and construction.

17. In truth we represent more small business people directly than most, if not all, organisations which claim to do so. The TWU would have more small business members than ACCI. We negotiate their contracts, represent them in disputes with who they contract with, and provide advice when necessary.

18. In most of the cases we deal with an independent contractor is a "dependent contractor".⁴ Although there are some critics of this concept (mostly associated with the Institute of Public Affairs) it is an obvious distinction to draw. The distinction is simple. Dependent contractors work for the same entity for a significant portion of their time (in the transport industry it is often 100%). Independent contractors offer themselves to the world at large.

19. The recognition of the class of dependent contractors does not require the existence of such a concept at law. The de facto relationship was recognised in substance for many years before it was recognised at law.

20. Although it is a requirement in some circumstances for independent contractors to receive superannuation contributions, those that do receive such contributions are dependent contractors. However not all dependent contractors are entitled to receive employer funded superannuation contributions. In some of the contracts the union has negotiated on behalf of its owner-driver members, there is a requirement placed on the head contractor to make superannuation contributions. However, in the main, no such contributions are made.

21. The difficulty with this is that there is of course no requirement that a person develop a superannuation fund, make contributions to a superannuation fund or indeed have superannuation whatsoever. It is true that there are some taxation benefits associated

⁴ See for example the Bureau of Transport and Regional Economics, *An Overview of the Australian Road Freight Transport Industry*, Working Paper 60 and Waite, M. and Will, L. 2001, *Self-employed contractors in Australia: incidence and characteristics*, Productivity Commission Staff Research Paper, AusInfo, Canberra for examples of Government publications which recognise the phenomenon of the dependent contractor.

with superannuation, but in the main, if an independent contractor does not make superannuation contributions at an appropriate rate they will not be made.

22. Recently released research suggests that small business people have substantially lesser amounts of superannuation than do employees. The TWU is concerned that the impact of the current system will, for its small business members, perpetuate a system where the form of the relationship outweighs the substance of the relationship.

23. Further, the income of many such persons is frequently less than what an employee would otherwise receive.⁵ Superannuation contributions would often be grossly inadequate to ensure a properly funded retirement.

24. It would be grossly unfair to employees, and bad public policy, for there to be a cross-subsidisation of the use of independent contractors through a failure to make proper provision for retirement incomes whilst working. In effect "enterprise workers" are given the opportunity to maximise their current income and rely upon the State for their future income in a way that employees can not. Employers can use independent contractors and pay lower levels of compensation for the work performed by excluding labour on-costs such as superannuation. This creates a substantial incentive to use contractors rather than employees in the transport industry. The result will be even lower levels of superannuation benefits.

25. It is appropriate for the principal contractor of a dependent contractor to make superannuation contributions in the same manner that employees have superannuation contributions made. This would ensure that there is no financial benefit to using dependent contractors over employees, and would ensure that retirement savings policies are not undermined through Government policies designed to favour one type of worker over another.

26. Accordingly the Committee should recommend that dependent contractors have contractor funded superannuation contributions made at the same rate as employer funded superannuation contributions in the economy.

⁵ See BRTE working paper cited above at p60 which indicated that owner-operators receive \$70,000 gross on average (1999/2000) but that 70% of this was needed to pay for non-wage costs.

27. A further problem associated with Government policy is in relation to the Government's position on removing superannuation from being an allowable award matter. The effect of the removal is the capacity to reduce the earnings base as determined by the Superannuation Guarantee Act. The Government's policy in this area, like so much associated with the Government's policy on superannuation and industrial relations is about ideology and not public policy. An example of this is the definition of ordinary time earnings which is found in the current SGA.
28. Currently the SGA system defines ordinary time earnings by reference to an award rate of pay or agreement rate of pay. Nine per cent of a worker's ordinary time earnings is the amount provided to a worker's superannuation fund pursuant to compulsory superannuation contribution. Unfortunately this system works to the disadvantage of many casual workers.
29. As the Committee members would be aware, nearly 1/3 of all workers in Australia are casual employees. Government policy has served to promote casualisation in the workforce. Indeed, policies designed to provide employees with choice (rather than exclusively the employer) as to whether they will be permanent or casual after an extensive qualifying period are threatened by Government policy.
30. Nonetheless the main area of concern for the TWU in relation to the removal of superannuation as an allowable award matter concerns the issue of the earnings base for casual employees.
31. The recent High Court decision in *Australian Communication Exchange v Deputy Commissioner for Taxation* illustrates this point. In that decision the High Court concluded that where a casual worker worked outside the ordinary hours of work as specified in an award, the casual worker was not entitled to superannuation contributions.
32. The effect would be to prevent casual employees, other than those working Monday-Friday between 6am and 6pm, from having superannuation contributions made on their behalf. Given the Government's strong support for casual employment it would be a curious result if casual employees were to be excluded from superannuation. Indeed

the effect of this decision would be to make all such casual employees reliant upon the State for their retirement incomes.

33. The TWU was concerned with the possible impact of this decision and sought to vary the terms of the *Transport Workers' (Superannuation) Award*. The purpose of the variation was to ensure that the first 38 hours of a casuals working week, wherever that 38 hours was worked would be ordinary hours for superannuation purposes.
34. After a contested hearing the TWU was successful in having the Commission make the variation to the award sought.⁶ The effect of the variation is to ensure that casual employees receive their superannuation entitlements based on their first 38 hours of work, regardless of when the hours are worked. The Government appears not to have recognised that the abolition of superannuation from the Commission's award-making jurisdiction will, in all likelihood, have the effect of entrenching superannuation for casual employees only to those employees whose hours are all within the span of "ordinary" hours.
35. The Committee should be recommending that superannuation be retained as an allowable matter under the Workplace Relations Act.
36. A further barrier to superannuation is the Government's failure to properly educate workers in relation to choice of funds for superannuation. It is clear that the Government embarked on choice of funds without properly educating employers or employees about the importance of entry and exit fees, management fees and fees payable to trustees and directors.
37. Putting to one side the Government's historical antipathy towards industry superannuation funds, had the Government properly ensured that choice of funds involved proper education and discussion of superannuation, the operation of retirement incomes policy and savings policy would be substantially better.
38. Indeed this may have spared the community the wasted expenditure on advertising and marketing associated with private bodies performing the tasks that properly ought to have been conducted by Government.

⁶ PR 956269

39. Instead there was another example of Government advertising which was a thinly veiled attempt to support Liberal Party policy. Where the process might have been educative it was pursued as a marketing strategy. Instead it was left to the private sector to expend resources to ensure that education was provided to employees and employers as to what issues determine superannuation benefits at the time of retirement.

40. There is little doubt that one of the most significant barriers to superannuation benefits remains the refusal of the Government to properly educate the public that industry funds provide lower fees, and higher benefits than retail funds. It is mischievous for the Government to have failed to provide such education.

Improving their awareness of the importance of saving early for retirement

41. The TWU believes that education is the key to this issue. Clearly better education about life expectancy, retirement ages and incomes in retirement will have a beneficial impact upon people recognising the importance of early savings. However, in truth, it is difficult to see young employees seeing the benefit of superannuation from the time they first enter the workforce.

42. In economic theory the discount rate for young persons is such that the benefits would need to be so significant that they properly be factored into remuneration. When one considers that the life cycle of most young people has altered by comparison to what it was 40 years ago for example through staying in school longer, to having children later and purchasing property later (particularly with the increase in prices in the property market), most young people's perception of superannuation as income which is to be received so far into the future as to be discounted heavily, must be factored into account.

43. This has significant ramifications for retirement incomes knowing, as we do, that a 9% superannuation contribution will not adequately fund retirement (see above for CPA study). Education may alter perceptions to a limited extent. Government action will alter it more profoundly and with longer lasting effects. Governments must pursue the policy pursued by the Keating Government to ensure that superannuation contributions reach at least 15%.

44. The Government should, as a matter of urgency, require that employer contributions be increased in accordance with the former Government's policies.