Families Matter
9th Australian Institute of Family Studies Conference
Melbourne, 9-11 February 2005

Superannuation and contemporary families - issues of dependence, interdependence, and self reliance

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Abstract

Over the last 20 years or so there have been fundamental changes to occupational superannuation. Most traditional superannuation schemes were based on a model of a male employee, with subsidiary benefits for dependants, defined to be to an opposite sex spouse and infant children. Married women were often forced to leave employment and the superannuation scheme on marriage.

Legislative and labour force developments have fundamentally changed the nature of superannuation. Most superannuation entitlements are now fully vested, and individuals have much more control over where and how their superannuation is invested. Superannuation also now can be split after the breakdown of marriage. Arrangements for payment of death benefits have also substantially changed, with the introduction of binding death benefit nominations and the opening up payment to interdependants, including same sex partners. The paper documents the changes that have occurred in both the labour force and in families, and how legislative and other arrangements have responded to this.

However, challenges remain. In particular, many women will retire with only modest amounts of superannuation. The paper addresses a number of possible options for improving both the adequacy and equity of superannuation.

The design of early superannuation schemes in Australia was strongly based on notions of dependence – of dependence of worker on employer, of wife on husband, of infant children on their parents.

The early days

Occupational superannuation first emerged in Australia in the mid-nineteenth century. For its first century or so superannuation was largely restricted to providing a select group of salaried employees with an independent retirement income. Superannuation was an employment fringe benefit provided at the employer's discretion and on the employer's terms. Coverage was concentrated among professionals, managers and administrators, public sector employees, and the financial sector. There also were marked differences in coverage between men and women. In 1974 around 41% of male wage and salary earners and only 17% of females had superannuation, mostly in defined benefit schemes.

The benefit design and rules of these defined benefit schemes were strongly linked to the social values of the employers and the actuaries of the time who advised on their design. Basically, the schemes were based on a model of a married, male primary income earner with dependants. These dependants could include infant children, with a spouse (opposite sex) the primary dependant.

As well as providing financial assistance to employees in retirement, superannuation arrangements were used as a tool for retaining employees, or at the very least rewarding long serving employees. Vesting arrangements were such that short term employees received little or no superannuation benefits on resigning, with full entitlement to benefits typically taking 30 or 40 years.

Partly as a result of such scheme characteristics, there were some common provisions which seem odd by today's standards. Chief among these were dowry benefits.

The offering of dowries was not necessarily a pro-marriage incentive designed by employer sponsors or fund actuaries with a bent for encouraging traditional family values. Rather it was a product of attitudes and practices which penalised women by terminating their permanent employment and/or membership of a superannuation scheme on marriage. Such practices were relatively common up until the 1960s, including by employers as prominent as the Commonwealth Government which abolished the marriage bar as late as 1966.

Along with an employment bar for married women, such employers also typically had superannuation schemes with vesting scales that did little or nothing for employees with less than ten years (or more) of service. The conjunction of women marrying in their twenties, or leaving for purposes of child bearing even if they could stay employed after marriage, with such vesting rules led to obvious injustices. The dowry provisions were a partial and not altogether satisfactory response to that. The dowry of course was only offered to women, as there was no marriage bar for men and the notion of men leaving the work force to start bringing up a family would have been a very strange notion for the scheme sponsors at the time.

For a variety of reasons these dowry provisions have continued in some schemes long after employers removed their bar on the employment of married women. It is actually difficult due to assorted regulatory constraints to remove benefits from a superannuation scheme, even if they are no longer politically correct or much used. Most of the schemes with dowry benefits have been long closed to new members, and fund members no longer in their first flush of youth are unlikely to marry and resign. The dowry benefits usually are not flash either.

However, with the passage of the Sex Discrimination Act this different treatment of women and men became contrary to law unless a specific exemption is sought by a fund, as does the practice of some funds of offering an option of more generous early retirement benefits for women members. For instance, some closed funds offer early retirement for women at age 55 and similar benefits for men at age 60. There was a perception by the designers of such funds, most likely correct, that on average husbands were around 3 to 5 years older than their wives.

Allowing earlier retirement for women was in accord with perceptions of dependency of the time, as how else would these men of their time be able to have the kettle boiled for their tea, or the right amount of sugar inserted into their cup? This also most likely had something to do with the earlier eligibility age for women for the Age Pension (which was introduced in 1910 and is now progressively being eliminated). The official line was that women generally became incapacitated for the workforce at an earlier age despite their longer life expectancy, but there were most likely other factors driving the decision as well which reflected the social values of the time.

Some men, very deserving types generally living in the better suburbs of Sydney and Melbourne, have lobbied to have this form of discrimination in superannuation benefits fixed by requiring full retirement benefits to be paid at age 55 by such schemes for men as well. Such campaigns have not had success to date, as much would have to be unscrambled, including past member contributions which were consistent with a later retirement age. It also does not appear to have been a high priority issue for those charged with dealing with sex discrimination legislation.

More recent superannuation arrangements

Over the last 20 to 30 years there have been fundamental changes to the nature of superannuation entitlements. This has been because of changes in the nature of Australian society, including changes in the actual and perceived patterns of dependency and independence. It also has been the result of industrial campaigns by unions, and cost-cutting measures by employers. Superannuation arrangements as a result are both better and worse than they used to be.

While various proposals for a national superannuation scheme provided some policy background for universal contributory superannuation, those proposals came to nought and it was the industrial relations arena which was primarily responsible for change. More specifically, for the union movement occupational superannuation provided a vehicle through which members could obtain deferred wage increases in the form of retirement savings will still being consistent with the constraints of the then centralised wage system. As well, to be fair to the unions and other players involved, there was a

genuine commitment to improving the living standards in retirement of all Australian workers.

As new industrial awards were negotiated as a result of the 1986 National Productivity Wage Case, superannuation coverage grew from around 40% of employees in 1987 to 79% four years later. In the private sector coverage grew from 32% to 68% over the same period. This expansion of coverage generally involved the creation of superannuation accounts which were in essence the property of the employee, to be dealt with by the employee as the employee rather than the employer thought fit. This was a fundamental change in the nature of superannuation in the Australian workforce and in the dependence and independence of Australian workers in relation to their employer.

There was further expansion in the coverage of superannuation with the introduction of the Superannuation Guarantee (SG) in 1992, which required all employers to make contributions on behalf of their employees. Along with this expansion in coverage came minimum vesting standards for a superannuation scheme to meet the SG requirements. Superannuation coverage is now around 87% of all persons employed (including the self employed), and nearly 100% for full time employees.

This changing nature of superannuation at the employee level also facilitated changes in approach to the treatment of dependants and family members of an employee. Employees now had something more akin to property to dispose of. More specifically there have been developments in regard to the distribution of death benefits from funds and the treatment of superannuation assets when there is a breakdown of marriage. This paper will focus in particular on how the approach to death benefits has changed. With changing patterns of families and social values there have been changes to how superannuation funds are permitted to provide death benefits, who they can be provided to, and to the taxation treatment of such payments.

Rationale of the pre 30 June 2004 super death benefit rules

The treatment of death benefits in the legislation providing the supervisory framework for superannuation funds and in the tax treatment of death benefits had its genesis in traditional notions of dependence in families. Typically the design characteristics of defined benefit schemes provided for a spouse pension and/or benefits for dependents. If there were no spouse or dependent child, no benefit following death of the member was paid. Married women were not assumed to provide financial support for a husband.

With the rise of defined contribution schemes (where the member has an account balance rather than the promise of a benefit in certain circumstances) and insured death benefits, there was a shift to better vesting of the financial interest of a member in a fund. However, superannuation death benefits are treated differently to assets of the member, in that the first call on them is by dependents. They are the property alone of the persons who receive them, and creditors of the deceased member's estate have no call on them. This is in contrast to normal inheritance rules, where an individual can leave their assets to anyone they want to, subject to any claims by financial dependents under inheritance Family Provision legislation. There is provision in the superannuation legislation for what are known as binding death benefit nominations, but for a valid nomination to be made the nomination has to refer to a dependant or dependants.

Layered on top of these dependency and distribution rules are the rules relating the taxation of death benefits. The Commonwealth provides tax concessions for superannuation contributions and fund earnings, and has been strict about the type of benefits which in effect receive the tax concession. As the rules stood prior to 30 June 2004, widows (whether financially dependent or not), children under age 18, and those financially dependent were regarded as sufficiently deserving to get the benefit of the tax concession, while all others were not. While adult children and those benefiting from distribution of the estate of the deceased member could get the benefit of the superannuation entitlement of the deceased member, a higher rate of tax on the benefit was generally payable. There clearly were some political considerations in regard to the setting of these rules, along with application of notions of dependency. Taxing widows and orphans is clearly an area where politicians proceed with considerable caution.

Were these rules relevant to contemporary Australia?

To be fair, and I like to be fair at least once or twice a year, the dependency rules were actually relevant for a large proportion of the population. Most persons in Australia have been or will be in a legal or de facto marriage, with less than 5% of those aged over 45 having never been in a marriage. As well, by the end of child bearing years, around 90% of women will have had a child. Marriage and children remain relevant for the vast bulk of Australians.

On the other hand, the incidence of de facto marriage and cohabitation prior to marriage has increased, the age at which the first child is born has risen on average, while many adult children remain at least intermittently in the family household. As well, 30% or more of marriages will result in divorce. As a result, while around 70% of households of retired persons are accounted for by married couples, around 20% of such households consist of divorced or widowed women. As younger age cohorts move into retirement together with their longer life expectancy and higher divorce rates, there will be a surge in the number of households made up of divorced women and a fall in the number made up of widows. More women will have to rely only on their own resources.

Even within marriage, there are changing patterns and notions of dependency. The labour force participation and economic independence of women has increased. That said, men are in paid work for 38 years on average, with the figure for women being the equivalent of 20 years of full-time work. While the gap in labour force experience is projected to narrow a little, this remains a very significant difference. Patterns of dependency remain, but for some couples at least there will be independence and mutual support rather than more traditional types of dependency.

There is also an argument that fund design and taxation rules did not appropriately deal with the same sex partners. The extent of such a problem depends somewhat on the incidence of such relationships, but there is also the ethical dimension that is impossible to quantify (is a law not bad because it affects only a few people?).

Official data on the incidence of same sex couples is hard to come by, but there are some relatively sound European studies of recent vintage. They indicate that the proportion of men (in Europe) who have had at least one male sexual partner during their life ranges from 2.7% to 4.1%. The frequency is somewhat lower for women (that

is, in regard to having a woman sexual partner, rather than a male). In the Netherlands, Census data indicates that the proportion of same sex couples living together represents around 0.5% of the male population aged 20 to 69, and around 0.33% of the female population. In other European jurisdictions the incidence might even be lower.

These data are consistent with the recent estimate by David de Vaus in the AIFS publication *Diversity and change in Australian families: Statistical profiles*, which puts the incidence of same sex couples at about 0.5% of household couples.

The old rules relating to dependency did not generate universal support. Some commentators pointed to the importance of a range of other relationships, which may or may not involve financial dependence of one party on another. Same sex relationships, which may or may not involve cohabitation, adult child and parent, and carer and care recipient who is a fund member, were some of the examples given. In these cases the basis for transmission of a superannuation benefit and/or receipt of favourable tax treatment for such benefits depends on notions of importance of the relationship and claimed equivalence to other relationships, rather than on notions of dependence in a strict sense.

In particular, the treatment of a same sex partner in the context of the distribution of death benefits was the subject of considerable parliamentary debate and was the subject of a number of Private Members Bills. However, it was not until 2004 when negotiations became serious over the choice of superannuation fund legislation that the definition of dependant was amended to include a number of interdependent relationships.

Expansion of definition of dependency

The 30 June 2004 amendments repealed the old definition of dependant and replaced it with one which includes the term interdependency relationship. The legislation provides that two persons have an interdependency relationship if they: have a close personal relationship; live together; one or each of them provides the other with financial support; and one or each of them provides the other with domestic support and personal care. If each of these conditions are met, then there is an interdependency relationship and each person is a dependant of the other. As well, if a close personal relationship exists but the other requirements for interdependency are not satisfied because of a physical, intellectual or psychiatric disability, then an interdependency relationship does exist. A person with a disability who may live in an institution but is nevertheless interdependent with the deceased appears to be covered by this provision.

A close personal relationship is one that involves a demonstrated and ongoing commitment to the emotional support and well-being of the two parties. Indicators of a close personal relationship may include the duration of the relationship; the degree of mutual commitment to a shared life; and the reputation and public aspects of the relationship (such as whether the relationship is publicly acknowledged).

In regard to who is included, the then Assistant Treasurer indicated the definition covers, for example, two elderly sisters who reside together and are interdependent. Similarly, an adult child who resides with and cares for an elderly parent will be eligible. She also indicated that same-sex couples who reside together and are interdependent will be eligible.

There also is a regulation making power (not yet exercised) that will allow more detailed guidance on the interpretation and application of the provisions. This might involve some interesting bureaucratic descriptions of the "love that dare not speak its name" along with other interdependent relationships covered by the legislation.

While the evidentiary burden for establishing interdependency is likely to be less that in regard to the old test of financial dependency, there still will be tests, particularly in regard to situations where there are competing claimants. This is fair enough, as getting half of a house and all of a person's superannuation would be an excessive return for, say, a big Saturday night out. Notions of dependency or at least of relationships of some duration of relationship are likely to remain relevant to the distribution of property.

What will be the impact on funds and tax revenue of greater access by same sex partners to death benefits?

The financial impact is unlikely to be significant. The proportion of the population that could potentially benefit is relatively low. As well, most people die after normal retirement age with many no longer in a superannuation fund, and those that die prior to normal retirement age often have a tenuous link to paid employment and superannuation. For instance, in the case of one fund with around 300,000 members, only 350 death benefits were paid in a year. Based on the statistics earlier in this paper, only about one of these on average might involve a same sex partner. However, in some other funds the incidence of same sex partners and death benefit claims by a same sex partner might be higher.

It would be nice if there were lots of elderly sisters with superannuation, or elderly parents with lots of superannuation being cared for by adult children. However, the unfortunate fact is that not many such people have much in the way of superannuation, and the new definition of interdependant is unlikely to be much used in such contexts. Where there is likely to be some use of the new definition and some loss to tax revenue will be the transmission of superannuation benefits from a young adult child to their parents. While the incidence of death amongst young adults is not high, both accidents and suicide do happen. Insured benefits also can be quite large for young people.

Adequacy of superannuation benefits for women (and men)

Expansion of coverage of superannuation, treatment of superannuation in a manner more or less consistent with it being the property of the fund member, and recognising a wider range of relationships in the transmission of superannuation assets clearly are good things. The legal framework for superannuation is now much more in accord with contemporary notions of dependence, interdependence, and independence.

However, reflecting the nature of contemporary relationships and giving individuals greater control is only of limited joy if there is not that much to control.

Table 1 indicates that women are less likely to have superannuation than men across all age groups. On top of this for those with superannuation the average account balance is lower for women than men. These differences in average account balances primarily relate to differences between men and women in their involvement in the paid labour force.

Table 1: Superannuation Balances by Age Group and Gender

	Men		*Women*	
Age Group	*% with Superannuation*	*Average balance for those with Superannuation ($)*	*% with Superannuation*	*Average balance for those with Superannuation ($)*
15 - 24	59.3	6,800	55.3	4,300
25 - 34	92.2	27,200	82.5	20,800
35 - 44	91.7	65,400	78.3	37,600
45 - 54	86.8	122,300	77.0	67,500
55 - 64	68.8	**183,600**	53.4	**94,700**
65+	26.6	184,900	12.6	124,300
Total	**73.6**	**78,700**	**61.8**	**43,300**

Source: Unit record file of the 2002 data collection of the Household, Income and Labour Dynamics in Australia (HILDA) Survey.

As shown by the table, there is not much difference in the incidence of superannuation and the average superannuation balance prior to age 25. However, after that age there is an increase in the disparity between men and women in both the incidence of having superannuation and the average balance of accounts. By around age 60 there is a 15 percentage point difference between men and women in the incidence of having superannuation. As well, for those women with superannuation the average account balance at the time of retirement is around half that of men.

Women are disadvantaged by having higher rates of both part-time work and not being in the labour force. However, even for full time workers the average superannuation account balance is lower for women than it is for men. This disparity begins to grow by about age 35. Career breaks prior to resuming full time employment and lower wages on average for women together with gender segmentation of the paid labour force are likely reasons for the disparity in average balances for those close to age 35. For older women a lack of access to superannuation prior to the introduction of compulsory superannuation also is likely to have contributed to the difference in average balances as well.

The HILDA data also indicate that the disparity between men and women in their superannuation balances starts at about age 25 and progressively increases with age (Table 2). While the absence of compulsory superannuation prior to 1992 is largely responsible for the relatively low superannuation balances of certain older women (or, to be more accurate, women in their prime) even relatively young age cohorts of women on average have lower superannuation balances than those of men of the same age cohort. For instance, while in 2002 one in six 35 to 44 year old men had achieved significant superannuation balances (more than $100,000), only one in twelve women had done so. For those aged 45 to 54 the ratios for more than $100,000 are one in three for men, and one in seven for women.

The pattern of balances for women aged 35 to 44 also suggests that it will be very difficult for women to catch up with the balances achieved by men and even more difficult to achieve a comfortable level of retirement income. Assistance over and above compulsory superannuation would be needed to achieve this, and options in this regard are discussed later in the paper.

The table also highlights that most women and men currently achieve only relatively modest superannuation savings, with only one in three men and one in six women in the 55 to 64 age group achieving balances greater than $100,000.

Table 2: Distribution of Superannuation Balances by Age and Gender

		Superannuation Balances								
		No Super	$1 - $1000	$1000 - $4999	$5000 - $9999	$10000 - $19999	$20000 - $49999	$50000 - $100000	> $100000	Total
Males	15 - 24	7.5%	3.7%	4.2%	1.8%	.8%	.3%	.1%	.1%	18.4%
	25 - 34	1.5%	.6%	2.8%	2.8%	4.9%	4.3%	1.5%	1.0%	19.3%
	35 - 44	1.6%	.4%	1.4%	1.6%	2.7%	5.6%	2.8%	3.1%	19.3%
	45 - 54	2.3%	.2%	.8%	.7%	1.5%	3.2%	2.6%	**6.1%**	**17.3%**
	55 - 64	3.9%	.2%	.4%	.2%	.7%	1.4%	1.4%	4.4%	12.6%
	65+	9.6%	.1%	.1%	.1%	.2%	.5%	.5%	1.9%	13.1%
	Total	26.4%	5.2%	9.7%	7.3%	10.7%	15.2%	8.8%	16.6%	100.0%
Females	15 - 24	7.8%	4.0%	3.3%	1.1%	.8%	.3%	.1%	.0%	17.4%
	25 - 34	3.4%	1.1%	3.7%	3.0%	4.0%	2.7%	1.1%	.4%	19.2%
	35 - 44	4.1%	.8%	2.9%	2.0%	3.1%	3.0%	1.5%	1.3%	18.7%
	45 - 54	4.0%	.4%	1.7%	1.4%	2.3%	3.2%	1.7%	**2.6%**	**17.2%**
	55 - 64	5.7%	.4%	.5%	.5%	.6%	1.3%	1.1%	2.1%	12.2%
	65+	13.4%	.1%	.1%	.1%	.2%	.4%	.3%	.8%	15.3%
	Total	38.2%	6.8%	12.2%	8.0%	11.0%	10.9%	5.7%	7.2%	100.0%

Source: Unit record file of the 2002 data collection of the Household, Income and Labour Dynamics in Australia (HILDA) Survey.

Some conclusions and recommendations

The survey and other evidence in this paper clearly indicate that women on average have lower retirement savings than men, and that many people have superannuation savings which will not be sufficient to generate a comfortable standard of living in retirement. Changes to scheme designs and tax rules relating to dependants to reflect changed community circumstances and expectations will not have much impact on this.

More specifically, ASFA research indicates that:

- The differences between men and women in the incidence of superannuation and average balance are less for younger age cohorts, but as these cohorts age and experience differences in paid labour force experience the differences will increase.

- Catching up and/or achieving a reasonable level of retirement savings will be difficult for many women. For instance, while one in six 35 to 44 year old men have achieved significant superannuation balances (more than $100,000), only one in twelve women have done so. There are not enough paid working years to reduce the gap, particularly as many people retire prior to age 60 and even age 55.
- The surcharge (an additional tax on superannuation contributions paid by high income earners) is a misogynistic tax, particularly for women aged over 55 without much super but who have eventually achieved a relatively high paying job.
- Death benefits and sharing of resources in retirement are unlikely to be satisfactory methods for women to achieve adequate retirement savings and income given the amounts that typically flow to women.
- Women, and their partners, are likely to retire earlier than they expected, and the availability of paid work of the type preferred following retirement is likely to be less than expected.
- While many women are looking forward to retirement in order to have more time for family and their interests, many women are likely to not have their retirement expectations met due to a low level of retirement income.

Solutions to the problems identified generally are not simple or easily implemented. However, there are a range of things that individuals, funds and governments can do. These might include:

- Reducing the surcharge. Reducing it for older persons with relatively low superannuation account balances would be a more targeted measure, but one which would add to complexity and would have some equity oddities associated with it.
- Implementing fund benefit structures and employment remuneration arrangements which encourage or require personal contributions, thereby attracting the co-contribution for low income employed women.
- Putting in place further arrangements at the fund and ATO levels which encourage and support account consolidation.
- Supporting decisions of women and men to work until older ages or to return to the paid labour force on some basis after formal retirement.