A SUPER CHARTER: FEWER CHANGES, BETTER OUTCOMES

A report to the Treasurer and Minister Assisting for Financial Services and Superannuation

By the Charter Group appointed on 9 May 2013 to develop and recommend a Charter of Superannuation Adequacy and Sustainability and to develop and recommend an appropriate structure for a Council of Superannuation Custodians

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Covering letter

5 July 2013

The Hon Chris Bowen MP, Treasurer
The Hon David Bradbury MP, Minister Assisting for Financial Services and Superannuation
Parliament House
CANBERRA ACT 2600

Dear Ministers

Report on the Super Charter and Super Council

Since the establishment of the Charter Group on 9 May 2013, we have consulted and sought submissions from industry and public stakeholders.

This report outlines our views about the key principles that will guide the Council. The Charter Group has worked with key stakeholders to develop a Charter that it believes addresses the concerns people have about the future of their super and the way policy changes have been made to date. There was a remarkable singularity in the contributions from outside the Charter Group during this process.

We have used the Charter of Budget Honesty as the cornerstone of our thinking, but with some important variations that we detail in the report. We also decided to recommend that the Council be given a simpler name: the 'Super Council' and that its members be called Guardians, rather than Custodians.

There was overwhelming support for super to be disconnected from electoral politics, short-termism and 'budget night surprises'. In 2013 parlance, the Charter and the Council will create a 'firewall' around our super system, with a view to seeing that only changes that are consistent with super's core objectives and principles get through.

The Charter Group appreciated the generosity of time given by people during our consultations and the quality and content of the submissions.

We join in recommending this report to you.

Yours sincerely

Jeremy Cooper
Chair

Alan Goldberg AO QC

Ross Jones

Elana Rubin

Steve Tucker

Terms of reference for the Charter Group

Rationale

On 5 April 2013, the Government announced it would establish a Council of Superannuation Custodians to ensure that any future changes to superannuation are consistent with an agreed Charter of Superannuation Adequacy and Sustainability.

The Charter would be developed against the principles of certainty, adequacy, fairness and sustainability. The Charter would clearly outline the core objectives, values and principles of the Australian superannuation system.

The Council would be charged with assessing future policies against the Charter and providing reports to be tabled in Parliament.

In addition, the Council would provide an annual report on the superannuation system against the Charter, also to be tabled in Parliament.

By establishing an independent and robust institutional framework through which all future superannuation changes are measured, the Council and Charter would ensure that Australia's superannuation system is enhanced and protected for generations to come.

Terms of reference

Reporting by 5 July 2013, the Chair and Group members are requested to:

1. Develop and recommend a Charter of Superannuation Adequacy and Sustainability which embodies the principles of certainty, adequacy, fairness and sustainability and will be used to:

    1.1 assess future superannuation policy proposals for consistency with these principles; and

    1.2 guide the operation of the Council of Superannuation Custodians.

2. The Charter should have sufficient scope and breadth to accommodate a maturing superannuation system against the background of structural changes in the economy, such as the evolution of the financial system and demographic change.

3. Develop and recommend an appropriate structure for the Council of Superannuation Custodians, including:

    3.1 appropriate Council structure, including role and powers;

    3.2 appropriate size and representation; and

3.3 delineation of the Council's advisory function from that of the regulators.

4. In conducting its review, the Chair of the Charter Group is to put in place a process for consulting key stakeholders, including the community, industry and regulators.

Contents

Executive summary

If Australia's superannuation system is to be sustainable in the long run, fund members need to be able to participate in it confidently. Confidence is essential because superannuation contributions are preserved for the member's retirement, perhaps many decades in the future. There is widespread concern within the superannuation industry that frequent changes to the superannuation system, while improving its adequacy and sustainability, cause people to lose confidence.

In reaching its recommendations, the Charter Group has been guided by the axiom that, in order to promote confidence in the long-term benefits of superannuation, no change to superannuation should be regarded as urgent.

The Charter Group recommends the establishment of an independent Super Council to ensure that any future changes to superannuation are consistent with an agreed Super Charter that would operate along the lines of the Charter of Budget Honesty. The Charter at **Appendix A** would outline the core objectives and principles of the Australian superannuation system. The Charter Group concludes that, at a high level, the objectives of the Australian superannuation system are to:

- provide an adequate level of retirement income;
- relieve pressure on the Age Pension; and
- increase national savings, creating a pool of patient capital to be invested as decided by fiduciary trustees.

In this report, the Charter Group explores the principles of the Australian superannuation system: adequacy, sustainability, certainty and fairness. The Charter Group believes that these four principles cover the issues satisfactorily and that additional stand-alone principles are not warranted. However, it considers that the relative importance of the principles will depend on the particular issue the Council is examining.

The Charter Group considers that the Charter and Council should be enshrined in legislation. The Charter Group favours the Council being established as a separate and independent body with the ability to obtain information and services relevant to its work from other parts of government. However, the Charter Group is open to the Council sharing back office and research resources and other infrastructure with another agency, perhaps the Productivity Commission.

The report identifies criteria by which Council members should be appointed, on the basis of personal merit, skills, capacity and diversity. The Charter Group regards it as critical to the success of the Council that its members be appointed in a personal, rather than a representative, capacity.

Further, the Charter Group has been guided by its view that it is changes to tax concessions and entitlements to access super that are most likely to affect member confidence and which therefore require the additional processes and protections proposed by the Charter. A core function that the Charter Group sees for the Council is that it should certify, in the case of each change to superannuation that it considers, whether it believes the change is compatible with the Charter principles.

In assessing particular proposals, the Council will consult publicly or selectively where appropriate (for example, to avoid signalling a possible rule change with associated behavioural consequences). Consultation could be either on a formal or an informal basis.

When it comes to assessing future policy proposals, it will be important for the Council to be able to weigh the notional cost of proposed policies against expected future offsetting reductions in the Age Pension and other measurable benefits. This will require the development of a comprehensive framework of analysis which is able to combine these elements. This will allow over time the proper alignment of tax concessions to the objectives of superannuation.

The Council would report to the Minister on specific proposals within a time frame which would depend on the complexity of the proposal. The Council's reports would usually be required to be tabled in Parliament within a specified period of being provided to government. In addition to undertaking assessments of particular policy proposals, the Council would provide an annual report to Parliament on the state of the super system against the principles set out in the Charter. The annual report could include details of the Council's research and publications as well as recommendations on policy matters.

The Charter Group considers that the Council should be funded from the Australian Prudential Regulation Authority (APRA) levy and the supervisory levy imposed on self-managed superannuation funds (SMSFs). Where possible, the component of those levies attributable to the cost of running the Council should be transparent and shared as equally as possible across the sectors.

The report refers to a number of existing bodies that could make policy recommendations to government that could impinge on the Charter principles. It would be open to the Council and these other bodies to develop memoranda of understanding to establish communication channels and other mechanisms to deal with areas of potential overlap in their activities. Further, the Council may wish to develop an agreement with the Department of the Treasury in relation to material relevant to its research and publication of statistics and reports, and with APRA in relation to the types of research each body will be likely to conduct.

Australia's superannuation system will continue to change as it matures, as innovations occur and as it becomes proportionately larger than other parts of the economy. The Charter will see such changes being subject to a best practice consultation process fully spelt out in legislation, rather than by way of binding announcement. Nor does the Charter Group see the Charter as being set in stone: it is a living document that will change along with the super system.

The Charter Group recognises that super is one aspect of a broader retirement income system, which is in turn part of a bigger picture. Super's sustainability depends on policies implemented elsewhere, including those concerning health, aged care and immigration. The ultimate goal of the Council could be to advise government on how to link super, health care and aged care together in a seamless savings- and retirement-related policy.

Recommendations

List of recommendations

1. That there should be legislation establishing a Super Council that would administer a Super Charter along the lines of the Charter in **Appendix A** to this report.

2. That a Super Council be formed substantially along the lines outlined in this report.

3. That the Council perform an advisory function only and that it have no regulatory powers, but that it does have the power to initiate its own inquiries into matters connected with the Charter principles.

4. That the Council be independent of government and that its members be called ‘guardians’.

5. The basis on which people could be appointed to the Council as guardians should be as set out in **Appendix B** to this report.

6. That the Council consult widely with stakeholders on proposed changes to superannuation.

7. That, where appropriate, the Council recommend that there be a lead time between a legislative change and it taking effect.

8. That the Council derive and administer an appropriate benchmark for assessing the cost of tax concessions available to superannuation and the impact of future policy or rule changes on the cost to the budget.

9. Each report of the Council on proposed change to superannuation would clearly certify whether or not the Council considered it complied with the Charter principles.

10. That the Council establish and administer a confidence index that measures people’s satisfaction with the superannuation system.

11. That otherwise the various conclusions in this report be put into effect after further consultation on the terms of the Charter.

1 Australia’s retirement income system

Three pillars of retirement incomes

To ensure that retirement income policy is sustainable in the context of an ageing society, Australia has, for the last two decades, pursued a three pillar approach to the provision of retirement incomes, comprising of:

- the means tested and publicly funded Age Pension;
- compulsory private savings through the Superannuation Guarantee arrangements; and
- voluntary private savings, supported by taxation concessions and direct government payments for low income earners.

Superannuation and social welfare

The purpose of superannuation is to provide retirement savings for people that will give them an overall retirement income higher than the Age Pension alone can provide. Superannuation interacts with the Age Pension through the operation of the income and assets tests (collectively known as the means test). The means test contributes to the affordability and sustainability of the Age Pension. Once a person’s income and assets exceed certain levels (known as the free areas), Age Pension is withdrawn at specified rates.

The design of the means test aims to balance targeting the Age Pension to those most in need while ensuring there is an incentive for self-provision (through working and saving).

A brief history of the Superannuation Guarantee

Private superannuation first emerged for a small group of salaried employees in the 19th century and applied primarily to white-collar employees. Superannuation only covered a minority of Australians, being concentrated among professionals, managers and administrators, public sector employees, and the financial sector.

Between 1908 and the 1990s, most Australians relied on the taxpayer-provided Age Pension for their retirement income.

Compulsory superannuation began with industrial awards agreed as part of the 1985 Prices and Incomes Accord between the Hawke Federal Labor Government and the Australian Council of Trade Unions (ACTU). Under these arrangements, a three per cent superannuation contribution was paid by employers into employees’ individual superannuation accounts from 1986.

The 1985 Prices and Incomes Accord was an important first step towards compulsory superannuation in Australia, however, it had clear limitations. The three per cent contribution rate was not sufficient to provide a significant improvement in retirement incomes except for those on very high incomes. Also, while it was successful in expanding the coverage of superannuation (coverage of the private sector grew from 32 per cent in 1987 to 68 per cent in 1991), it was still not a comprehensive system of compulsory savings.[1]

The *Superannuation Guarantee (Administration) Bill 1992* was introduced on 2 April 1992 by the then Treasurer John Dawkins:

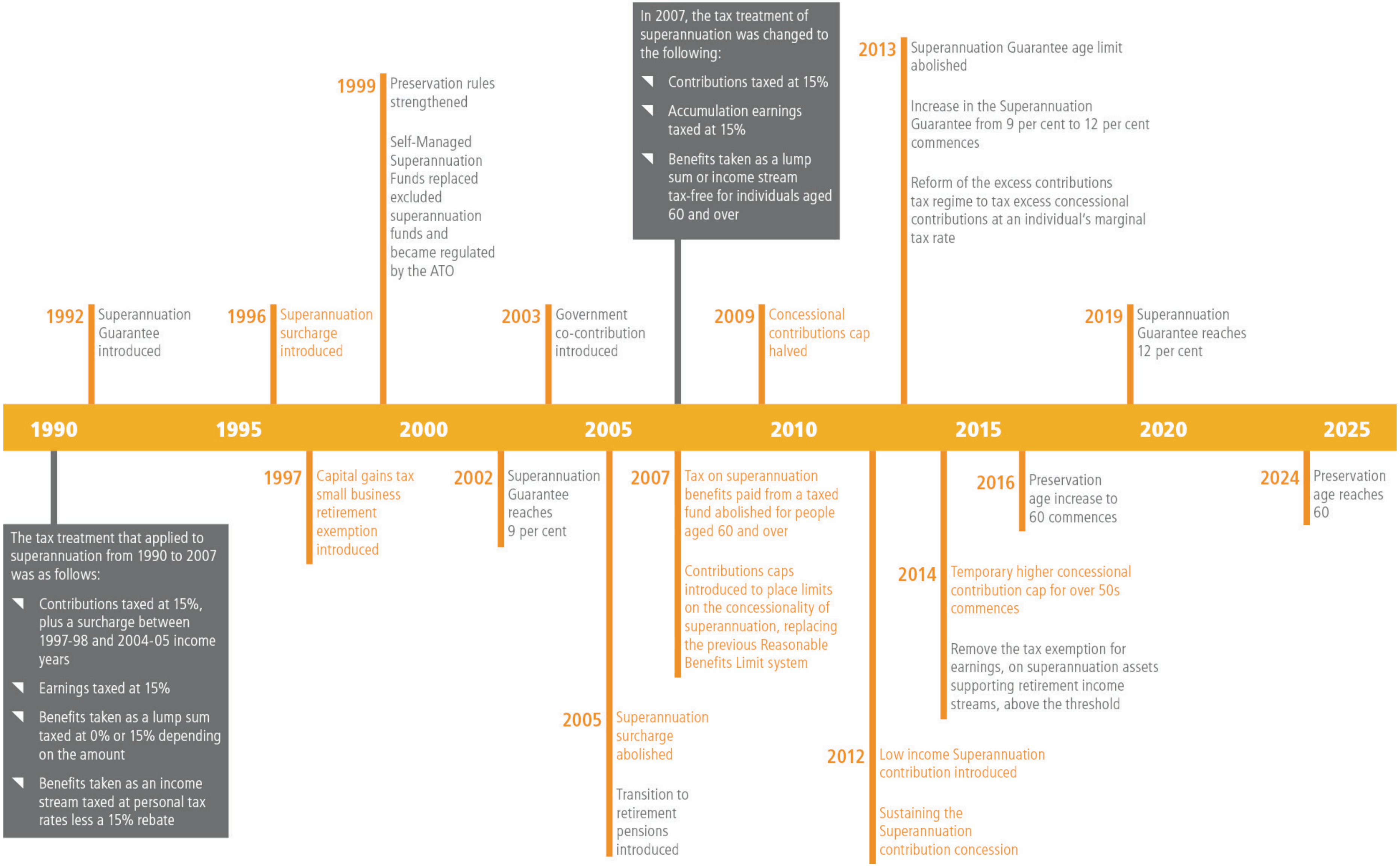
> *The increased self-provision for retirement will permit a higher standard of living in retirement than if we continued to rely on the age pension alone. The increased self-provision will also enable future Commonwealth Governments to improve the retirement conditions for those Australians who were unable to fund adequately their own retirement incomes. … Lastly, self-provision will increase the flexibility in the Commonwealth's budget in future years, especially as our population ages and will increase our national savings overall …*

Figure 1.1 provides a timeline of the major reforms since the introduction of the Superannuation Guarantee. The superannuation system has not remained static and will continue to change and adapt to the evolving demographic and economic landscape.

Appendix C provides a snapshot of the current state of the superannuation system.

1 Australian Prudential Regulation Authority, *A recent history of superannuation in Australia: APRA insight: Issue 2 2007* < http://www.apra.gov.au/Insight/Documents/History-of-superannuation.pdf >.

Figure 1.1: Timeline history of superannuation



2 How much does super cost the nation?

Is super cost effective?

Under Australia's three pillar retirement income system, most people's retirement income will be funded from a combination of super and the Age Pension as can be seen from Figure 2.2. This is expected to continue to be the case in the future, although the maturing of the system is expected to result in an increase in the proportion of the population who receive a part-rate, as opposed to a full, Age Pension.

Given that a key outcome of the superannuation pillars of our retirement income policy is to supplement retirement incomes and reduce reliance on the Age Pension, a key question is whether the superannuation pillars are cost-effective. That is, does the notional tax expenditure applied to superannuation pillars have an appropriate connection to the expected future reduction in the cost of the Age Pension, improved living standards of older Australians and other identifiable benefits to the economy? Put another way, does the government's investment in the notional tax expenditure for super represent good value for money? To what extent are the tax concessions used to support inheritances or are dissipated by spending of lump sums? Can this be accurately measured or does the analysis break down under the weight of too many assumptions and sensitivity to changing inputs? The Charter Group believes that questions like this will be central to the work of the Council.

While it might not be possible to provide a definitive answer to these questions, it is nevertheless instructive to weigh the notional cost of the super tax concessions and the actual cost of the non-tax initiatives against the expected offsetting reduction in Age Pension outlays, and other economic benefits, as a result of increased super savings. To do this, it is instructive first to review the concessional tax treatment of super and the methodology used by Treasury to value these concessions.

How super is taxed

For the majority of taxpayers, super contributions, and earnings on their investment in super, receive concessional tax treatment compared to tax imposed at personal marginal tax rates. A flat 15 per cent tax rate applies to employer and deductible personal contributions to superannuation, except for those earning over $300,000 per annum. For most employees, this flat tax rate compares favourably with the rates of tax they would pay if their super contributions had instead been paid in the form of salary or wages.

In the accumulation phase, investment earnings on superannuation assets are also taxed at 15 per cent, with certain capital gains taxed at 10 per cent. Again, this compares favourably to the tax rates that apply to most other investment income. In retirement, if superannuation benefits are paid as an income stream, such as a pension or annuity, earnings on the assets supporting that income stream are generally exempt from income tax altogether.

The concessional tax treatment has a number of purposes, including:

- to compensate people for super contributions being compulsorily preserved until retirement, rather than received as wages;
- to encourage people, particularly the self-employed, to save additional amounts through superannuation voluntarily; and
- to provide people with a better standard of living in retirement through larger super payments and correspondingly lower reliance on the Age Pension.

Cost of the superannuation taxation concessions

Two estimates of the notional cost to the government of providing the super tax concessions are published annually by Treasury in the Tax Expenditures Statement (TES). Both estimates look at tax revenue implications and neither method looks at long-term pension savings, which are addressed by Treasury's RIMGROUP model. This process has its own methodology that seeks to assist policy makers trading off tax concessions and actual expenditures to decide what is the best use of government money. It assists this process to know what it would look like if a particular policy were exchanged for another or discontinued altogether.

The **revenue forgone** method is similar to forward estimates, and assumes the continuation of the concessional taxation treatment of superannuation. The **revenue gain** method is like a costing — it assumes that contribution and earnings concessions cease on a particular date and examines the cumulative consequences of relatively lower contributions and assets. Table 2.1 shows how this is presented in the 2012 Tax Expenditures Statement.

Table 2.1: Comparison of revenue forgone and revenue gain estimates, 2012-13 to 2015-16 from the 2012 Tax Expenditures Statement

Concessional taxation of superannuation entity earnings							
Revenue forgone estimates ($b)				Revenue gain estimates ($b)			
2012-13	2013-14	2014-15	2014-16	2012-13	2013-14	2014-15	2015-16
17.1	19.1	21.7	25.1	13.2	14.2	15.6	17.7

Reason for difference It is assumed current preservation rules remain. In the accumulation phase voluntary concessional contributions are assumed to cease (as in the table below) and most non concessional contributions are also not invested in superannuation after the start date. Over time this reduces the superannuation asset base and thus the revenue gain on withdrawing the earnings tax concession. Additionally, a significant proportion of funds in the retirement phase (not preserved) are withdrawn. Because of other tax concessions for older Australians (particularly the Senior Australians Tax Offset), the funds withdrawn attract minimal tax in the new investments chosen.

Concessional taxation of employer contributions							
Revenue forgone estimates ($b)				Revenue gain estimates ($b)			
2012-13	2013-14	2014-15	2015-16	2012-13	2013-14	2014-15	2015-16
13.2	14.1	16.2	17.3	10.2	10.8	12.3	13.2

Reason for difference It is assumed that the Superannuation Guarantee remains and therefore compulsory contributions continue. Voluntary contributions are assumed to be directed to alternative tax preferred investments. Because more voluntary contributions come from those with higher marginal tax rates, the average tax rate for residual compulsory contributions is lower.

Revenue forgone method

The revenue forgone method measures the difference in tax paid by taxpayers who receive a particular concession relative to similar taxpayers who do not receive that concession. It operates on the assumption that, if the super system did not exist, wages and salary currently being contributed to super would be paid directly to employees and taxed at their respective marginal rates. That is, it assumes that if super did not exist, there is no alternative universal saving mechanism where taxpayers could enjoy concessional tax rates of 15 per cent. The money otherwise contributed to super would either be spent or invested and taxed at marginal rates. The revenue forgone method assumes no behavioural change (that is, it does not take into account the likely use of other ways to reduce tax).

Revenue gain method

Under the revenue gain method, regard is had to the likely behavioural change that would see taxpayers using other strategies to reduce tax, such as negative gearing. This approach measures how much revenue could increase if a particular tax concession were removed. For example, under the revenue gain method, it is assumed that voluntary concessional contributions (that is, non-Superannuation Guarantee concessional contributions) and most non-concessional contributions would not be invested in superannuation. Voluntary contributions are assumed to be directed to alternative tax preferred investments. Because more voluntary contributions come from those with higher marginal tax rates, the average tax rate for residual compulsory contributions would be lower.

For earnings, the smaller contributions and withdrawal of non-preserved assets would reduce the superannuation asset base and thus the revenue gain on withdrawing the earnings tax concession. It is assumed that non-preserved amounts in the retirement phase would be withdrawn from the system, and invested to yield minimal tax because of the tax concessions available to retirees.

Drivers of increased notional tax expenditure

Over the past 10 years, the notional tax expenditures on superannuation, as reported in the TES under the revenue forgone methodology, have risen from an estimated $13.8 billion in 2003-04 to an estimated $31.8 billion in 2012-13. Under the revenue gain method, the notional tax expenditures on employer contributions and earnings (the only superannuation tax expenditure estimates prepared under the revenue gain methodology) were estimated at $23.4 billion in 2012-13.

Under either of the methods Treasury currently uses to measure the notional cost of the superannuation taxation concessions, the cost is rising, and increasing relative to other taxation expenditures. This is a combination of two factors:

1. the superannuation system is subject to a robust growth rate, averaging a net compound annual growth rate of approximately 11 per cent.[2] It doubles in size roughly every six or seven years; and
2. the increase in Superannuation Guarantee contributions to 12 per cent by fiscal year 2020.

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2 APRA data show that the net compound annual growth rate of the superannuation system from June 1994 to June 2012 was 11.2 per cent.

Criticisms of the Treasury notional tax expenditure methodologies

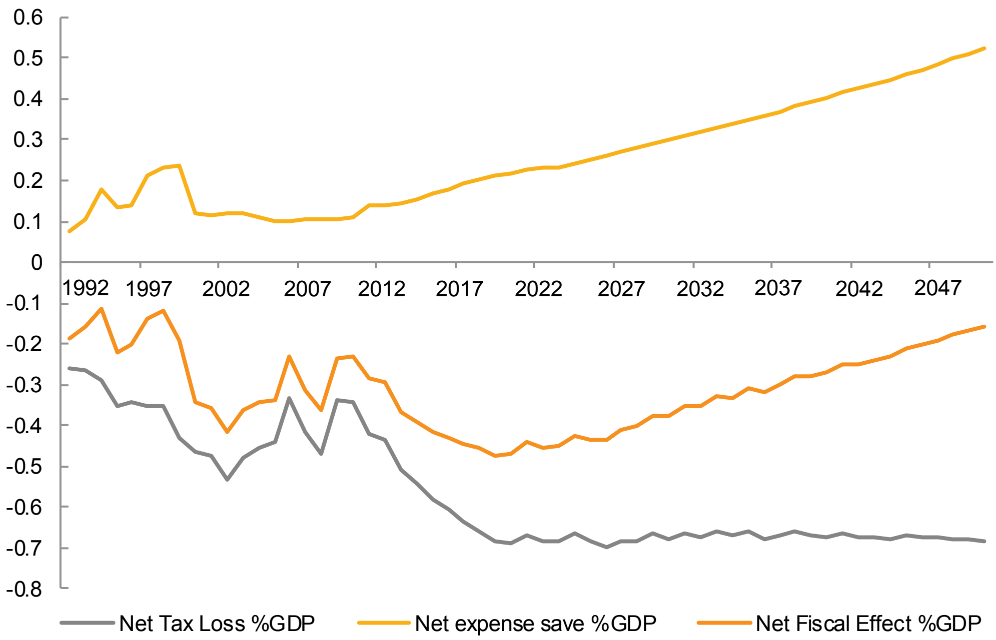
The three major criticisms of these methodologies are:

- that they are not costings with assumed behaviour changes in which assets inside the system would reduce year on year;
- the assumption that taxpayers would pay full marginal tax rates ignores likely behavioural changes directed towards the use of tax-effective investments (such as negatively geared housing, shares or investments with deferred capital gains); and
- that the long-term saving in Age Pension outlays should be factored into the cost estimate.

The revenue gain estimates are Treasury's attempt to address the criticism that the revenue forgone estimates are not costings that take account of likely behavioural change. The revenue gain estimates also have low or negligible taxation for amounts newly invested outside superannuation, but they still use a full marginal tax rate for earnings remaining in the system.

Treasury has published several estimates of the saving in Age Pension from superannuation changes, but has not included these in an alternative version of its tax expenditure estimates. The savings are highest for measures which impact people likely to receive Age Pension. For example, Figure 2.1 shows savings in Age Pension from an increase in the Superannuation Guarantee rate to 12 per cent and the balance between tax losses and Age Pension underlying the analysis.

Figure 2.1: Reduction in taxes and Age Pension outlays from the SG[3]



3 Treasury estimates. Treasury uses a model called RIMGROUP to estimate the long term aggregate and distributional impact of superannuation policy changes. RIMGROUP is an actuarial increment and decrement cohort model which breaks each cohort into career earnings deciles and gender. Accumulations are modelled in seven account types within this group structure.

Cost of non-tax incentives

In addition to the notional cost of the superannuation tax concessions, the government co-contribution and low-income earner superannuation contribution scheme impose a direct cost on the budget.

In the period since its introduction in 2003-04 up until the end of the 2011-12 financial year, the co-contribution has cost the government $8.3 billion.[4] The cost of the low-income earner superannuation contribution scheme is estimated to be just under $1 billion per annum over the forward estimates period commencing in 2013-14, which is the first year the contribution will be paid.[5] The cost of the co-contribution is expected to decline following the recent budget changes.

Offsetting reductions in the Age Pension

The TES is designed for a specific purpose — namely the publication of the tax expenditure. The Charter Group believes that a more holistic approach is needed to inform the debate on the cost of superannuation to the budget and the future work of the Council.

As superannuation savings continue to rise, it is expected that there will be an offsetting reduction in reliance on the Age Pension. Currently, around 50 per cent of people of Age Pension age are full-rate pensioners and around 80 per cent receive some pension. The maturation of the super system is expected to result in an increase in the proportion of the population who receive a part-rate pension as opposed to a full Age Pension. Nonetheless, the Age Pension will remain an important contributor to retirement incomes for most Australians.

Figure 2.2 shows the projected change in the proportion of the population of eligible age receiving full, part or no age or service pension. By 2047, it is projected that the proportion of those of eligible age not receiving an age or service pension will remain around 20 per cent, while the proportion receiving a part pension will rise to around 50 per cent and the proportion receiving a full pension will fall to around 30 per cent.[6]

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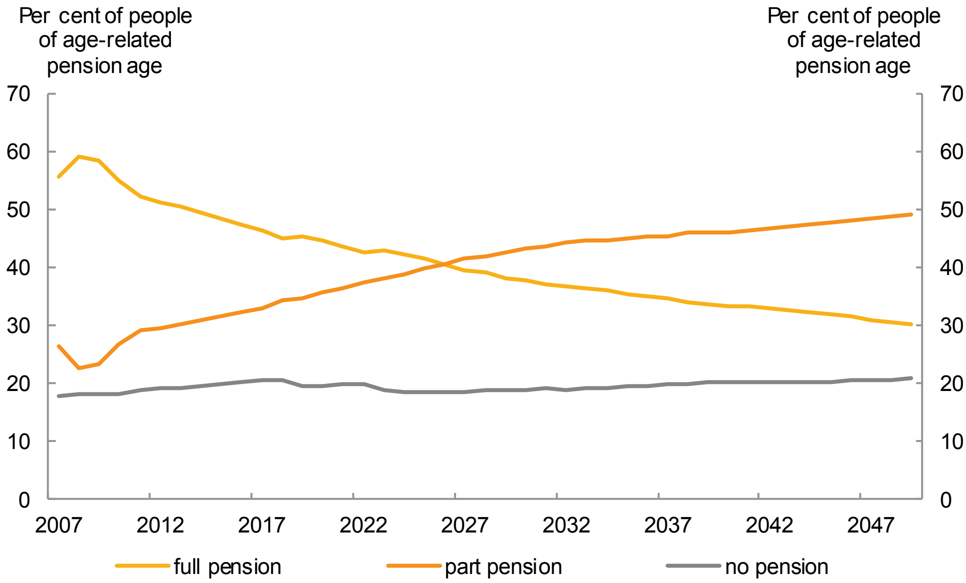
4 Australian Taxation Office, *Annual report 2011-12,* October 2012, Table 2.22 Administered expenses p. 60.
5 Portfolio Budget Statements 2013-14*, Budget-Related Paper No 1.18 Treasury Portfolio,* Table 2.16 p. 206.
6 Rothman, G. *Modelling the sustainability of Australia's retirement income system,* July 2012 Paper presented to the 20th colloquium of superannuation researchers.

Figure 2.2: Proportion of people of eligible age receiving full, part or no age or service pension



The above analysis is based on Treasury's RIMGROUP model, which projects the increasing income and wealth of successive cohorts of retirees. This modelling incorporates the maturing of the Superannuation Guarantee arrangements and other government policies, and other recent changes such as the legislated change to the Age Pension age and the 2012 Budget measure which reduces superannuation concessions for very high income earners. Growth in private incomes and wealth interacts with means tests to constrain future spending on age-related pensions. The impact of higher wealth is shown in the projected decline of full-rate pensioners and projected rise in part-rate pensioners.

The RIMGROUP model is a comprehensive cohort projection model of the Australian population, which starts with population and labour force models, tracks the accumulation of superannuation, estimates non-superannuation savings and calculates pension payments and the generation of other retirement incomes (after all taxes). Thresholds and withdrawal levels associated with income and assets tests are modelled in detail. The model is consistent with current policy and includes known future policy changes.

These projections indicate that the superannuation pillars are expected to achieve the objective of providing people with a better standard of living in retirement by supplementing the Age Pension, while not necessarily reducing the budget cost of retirement income policy overall.

While it is difficult to be definitive about the net cost of the superannuation incentives, based on Treasury analysis of the notional cost of the superannuation concessions and projections made using Treasury's RIMGROUP model, it is possible to draw the following conclusions:

- the growth in superannuation assets is projected to result in an increased proportion of the population achieving a higher standard of living in retirement than is possible from the Age Pension alone. This is evident from the RIMGROUP model projection of a decline in full-rate pensioners; and
- the notional cost of the superannuation taxation concessions, according to Treasury's current methodologies, will continue to grow, given the expected growth of superannuation savings.

Henry review

There was some useful discussion about the appropriate way to assess the cost of the superannuation tax concessions during the Henry review.

The following is a discussion from section 3 of the Henry review *Retirement income consultation paper* issued in December 2008:

Box 2.1: Concessionality of the superannuation taxation arrangements[(a)]

Under a comprehensive income tax benchmark the concession to superannuation is the difference between the tax paid if the superannuation contribution and the earnings were taxed as income at the individual's personal tax rate (plus the Medicare levy) and the tax paid in the fund (generally 15 per cent). Under this benchmark the superannuation concessions have an estimated cost to revenue of over $26 billion in 2007-08 (Australian Treasury 2007).

An alternative way to calculate the value of the tax concession is to use an expenditure tax benchmark. The two types of expenditure tax benchmarks are: a pre-paid expenditure tax based on direct taxation of labour income with an exemption for saving; and a post-paid expenditure tax based on the taxation of a direct measure of expenditure or of goods and services.

Under the pre-paid expenditure tax benchmark, the value of the concession is the difference between the tax paid if the superannuation contribution were taxed as income at the individual's personal tax rate (plus the Medicare levy) and the tax paid in the fund, less the tax paid on earnings in the fund. Benefits are tax exempt under this benchmark, which is consistent with the tax exemption of superannuation benefits in Australia's retirement income system. Under this benchmark, the superannuation tax concessions would have an estimated aggregate cost to revenue of $4.6 billion in 2007-08.

Under the post-paid expenditure tax benchmark, both contributions and earnings would be tax-exempt but benefits would be fully taxable when paid. Under this benchmark the tax concession is expected to be less than under the pre-paid expenditure tax benchmark, as individuals will generally have a lower tax rate on their retirement income than their income while working.

Under all these benchmarks, superannuation is taxed concessionally. However, the concessions are heavily weighted to individuals on higher personal tax rates.

(a) These estimates are not necessarily indicative of the cost of the superannuation concessions over the long term. The tax concessions help to reduce budgetary expenses in future years, particularly Age Pension payments, through the effect of the means tests.

Conclusion

When it comes to assessing future policy proposals, it will be important for the Council to be able to weigh the notional cost of proposed policies against expected future offsetting reductions in expenditure on the Age Pension and other economic benefits. This will involve developing a comprehensive framework of analysis which is able to combine these elements and be improved over time.

The Charter Group is attracted to the idea that the pre-paid tax expenditure method identified in the course of the Henry review is the place to start, but this will be a matter for the Council to determine.

3 Constant change?

Members need to be able to participate in the superannuation system confidently if it is to be sustainable in the long run. There is widespread concern within the superannuation industry that the many changes to the rules relating to superannuation are causing people to lose confidence in the system. A number of submissions suggested that there is a widespread sense that the changes in superannuation have been too frequent.[7]

This was mentioned as an issue as far back as 1993 in the FitzGerald report on national saving:

> *It goes almost without saying that further change to superannuation is not desirable in itself — continual change in recent years has engendered complexity and uncertainty and diminished confidence. But if change is highly desirable in the long term, it is better done sooner than later. The aim is to move quickly to a superannuation system that has the 'essentials' right, supports national saving objectives, and can justify community trust in its long-term durability.*[8]

There is also a range of attitudinal research, including the *FSC-DST Global Solutions CEO Report* and research from SPAA/Vanguard and ATO/Colmar Brunton,[9] that points to concerns with confidence.

There is also a concern that the very complexity of superannuation itself reduces confidence.[10]

The Charter Group has formed the view that it is changes to tax concessions and entitlements (for example, to the preservation age or the ability to access super) that are most likely to affect member confidence and call for the additional processes and protections proposed by the Charter. There could be other changes that indirectly affect these things, but it will principally be changes to tax (including how much can be contributed concessionally) and access to retirement benefits that occupy the Council.

Of the changes to superannuation since 2005-06, 30 of them (detailed in Table 3.1) have had impacts of over $50 million over the budget forward estimates and a large proportion of them relate to how much can be contributed, tax or other concessions. In each case, the table shows the cost or saving over the year of introduction and the four forward years—and it is important to note also that the costs or savings in all cases continue beyond those four years specified.

7 COTA submission p. 3, FSC submission p. 1, ISN submission p. 2 and p. 6, Confidential submission, AIR submission p. 2, AFA submission p. 1, SMSFOA 2013-14 *Pre-Budget Submission* p. 4, SMSFOA submission p. 5, National Seniors submission p. 1.
8 FitzGerald VW, *National saving – A report to the Treasurer*, Allen Consulting, 1993.
9 FSC *Excessive regulation is crippling productivity,* December 2012 p.13, ATO/Colmar Brunton *Super reforms communications developmental research: Qualitative findings* 2012 p. 9, p. 13 and p. 41.
10 FPA submission p. 2.

Table 3.1: Estimated budget impact of changes over $50m to superannuation since 2005-06

Superannuation measures over $50m since 2005-06 Impact on Budget ($m)	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Concessional contributions in excess of the annual cap									-15	-15	-25
Concessional contributions cap for those aged over 50								-195	105	230	225
Earnings on super assets supporting retirement income streams									2	152	202
Transfer of lost member accounts to the ATO										60	70
SMSF levy arrangements - recovery of ATO costs								70	164	88	
Transfer of lost member accounts to the ATO							555	150	36	34	
Deferral of higher concessional contributions cap							580	730	130	-10	
Tax concession for contributions of very high income earners								200	355	475	
Low income superannuation contribution - work test							26	27	26		
Concessional contributions caps - one year pause in indexation								360	125		
Reduction of co-contribution							352	342	329		
Co-contribution - pause to the indexation of the income threshold							25	25	25		
Contribution caps - operation of the higher cap for over 50s								65	90		
Co-contribution - pause for two years					35	70	95	95			
Low income superannuation contribution								-830			
Concessional contribution caps for over 50							-545	-785			
Reduction to the superannuation co-contribution							175	175			
Co-contribution - enhancing administration				34	31	31	42	42			
Increasing Superannuation Guarantee to 12%								-240			
Reducing the Government co-contribution				385	395	410	205				
Payment - lost accounts to unclaimed moneys					187	39	12				
Reducing the concessional contributions caps				625	640	720	825				
Temporary residents' superannuations measure			-64	-67	-76	-46					
Temporary residents' superannuation			220	415	290						
Payment of tax free benefits to the terminally ill		-15	-25	-25	-25						
Simplified Superannuation	-55	-1,276	-1,160	-1,413							
Superannuation fund investment rules - instalment warrants	-50	-90	-100	-110							
Ensuring appropriate use of pre-1 July 1988 funding credits	150	150	150	150							
Market linked and other life expectancy income streams	-11	-19	-26								
Surcharge abolition	-650	-875	-990								

NOTE: Costings provided are drawn from the date of publication in relevant Budget/MYEFO. The SuperStream reforms and financial assistance to fund members affected by the failure of Trio are not included, as the Government has cost recovery levies for these. See Budget Paper 2, 2011-12, p. 325; Budget Paper 2, 2012-13, p. 280. Further, implementation funding for Superannuation Choice and Simplified Superannuation are not included, as these did not involve any major change to entitlements. See Budget Paper 2, 2007-08, p. 307; and Budget Paper 2, 2005-06 p. 258. The Simplified Superannuation measure was concurrent with large changes to the Age Pension, which would take total spending on the measure to $7.2 billion.

The introduction of Simpler Super in 2007-08, with a large extension of tax concessions for superannuation, was concerned mostly with adequacy. The subsequent series of smaller changes relate more to sustainability and fairness: six relate to reduced concessional contributions caps, six relate to reductions in the co-contribution and five relate to lost members and temporary residents. The Charter Group believes that the volume and frequency of the changes impact on certainty.

It is also important that superannuation policy and changes are not only consistent with the underlying policy of super, but are also seen by ordinary people to be consistent, thereby reinforcing the value of super. The concessional contribution caps and the minimum drawdown requirements in the retirement phase are both sound policies from a revenue perspective, but are counter-intuitive for many Australians. Many people remain confused by policies that appear to be aimed at discouraging contributions to super. Perhaps this is largely a communication problem and a number of submissions suggested a role for the Council in education about super. At the very least, communications will be advanced by the Council making its reports public and via its consultation process.

The system will continue to change as it matures, as innovations occur and as it becomes proportionately larger than other parts of the economy. Inevitably, it will also be necessary from time to time to reconsider the size of the tax concessions for superannuation, as the population ages and possibly also in periods of fiscal austerity. These factors constitute what is called ‘political’ or ‘legislative’ risk, and are similar to the risk faced by all taxpayers that future governments might change the tax system more generally. However, many people seem to view changes to the way human capital is taxed (that is, an income tax increase) differently from the way accumulated retirement capital is taxed. It will be the mission of the Council, in administering the Charter, to ensure that, as far as possible, any changes to super that are necessary meet the Charter principles.

What do member contributions say about confidence?

While the level of member contributions might seem to be a good yardstick of confidence, it is difficult to disentangle other factors that might have reduced member contributions; for example, market conditions or the reduction in the concessional contribution caps in 2009.

The APRA data in Table 3.2 (which do not include SMSFs) show the pattern for member contributions (not including salary sacrifice contributions or outflows due to benefit payments) for each year (to the end of June) from 2006.

Table 3.2: Member contributions[11]

Year	Total contributions $b	Member contributions $b	Member contributions as a proportion of all contributions %
2005-06	83.5	33.2	**39.8**
2006-07 *	163.7	95.4	**58.3**
2007-08	115.8	46.1	**39.8**
2008-09	105.1	33.4	**31.8**
2009-10	99.5	29.8	**29.9**
2010-11	106.5	33.5	**31.4**
2011-12	117.5	34.2	**29.1**

* Better Super changes

11 APRA, *Annual superannuation bulletin, June 2012,* 9 January 2013. See Table 7, p. 38. http://www.apra.gov.au/Super/Publications/Documents/June%202012%20Annual%20Superannuation%20Bulletin.pdf.

This table shows a fall in contributions between 2007 and 2009. However, this is just as likely to have been caused by the global financial crisis and the reduction in the contribution caps. The Financial Services Council noted, in a media release dated 30 May 2013, that:

> *… voluntary contributions to superannuation funds posted their biggest increase since September 2007 [though also noting that] this increase was counterbalanced by a [relatively small] $40 million decline in employer contributions.*[12]

Given the roughly 20 per cent rise in the ASX for the nine months to the end of the March quarter in 2013,[13] there could be a causal link with a rising sharemarket, but the Charter Group would need more evidence to make a conclusion to this effect.

SMSFs

While there has been some media comment on recent Australian Taxation Office (ATO) statistics on the rate of formation of new SMSFs, the data suggest that if there has been a decline it is merely a return to trend after reaching high levels in the April to June quarter in 2012.[14] Table 3.3 shows ATO data on annual numbers of new SMSFs formed, with peaks in the 2006-07 and 2011-12 years.

Table 3.3: ATO data on the formation of new SMSFs[15]

Year	New SMSFs
2003-04	30,548
2004-05	23,049
2005-06	24,575
2006-07	45,666
2007-08	31,626
2008-09	32,592
2009-10	29,922
2010-11	33,187
2011-12	40,958

Data for the 2012-13 year is as yet incomplete, showing 5,840 new SMSFs established in the January to March 2013 quarter, compared to 9,863 in the same quarter in 2012. However, the longer run average for the quarter concerned is closer to 7,000, so the reduction might not be as significant as it appears.[16] Table 3.4 shows member and employer contributions to SMSFs.[17] It shows a similar pattern, with member contributions peaking in 2006-07 (with the introduction of Simpler Super and before the global financial crisis), falling considerably in 2009-10, and recovering to some extent in 2010-11.

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12 FSC, *FSC Bond report: Discretionary flows highest since September 2007* – 30 May 2013.

13 ASX All Ordinaries Price Index was at 4,135.5 at 30 June 2012 and 4,979.9 at 31 March 2013; a 20.4 per cent rise.

14 Sally Patten, 'More facts needed to reconcile super trend confusion', *Australian Financial Review*, 3 June 2013, p.18.

15 ATO, *Self-managed super fund statistical report - March 2013*, SMSF population table - annual data.

16 ATO, *Self-managed super fund statistical report - March 2013*, Population table - quarterly data.

17 The data is compiled from ATO, *Self-managed super fund statistical report - June 2012* and *Self-managed super fund statistical report - March 2013.*

Table 3.4: Member and employer contributions to SMSFs

Year	Member contributions $b	Employer contributions $b
2004-05	8.5	5.0
2005-06	13.0	7.5
2006-07	56.3	10.9
2007-08	20.9	10.0
2008-09	17.5	10.2
2009-10	14.3	6.8
2010-11	17.2	7.2

While the Charter Group cannot point conclusively to a fall in voluntary contributions as evidence of a lack of confidence (because it cannot rule out the independent variable of the global financial crisis as the cause), it has nonetheless concluded that there are significant concerns among members, and the industry more widely, about regulatory changes. In short, the Charter Group believes that regular changes to important rules relating to taxation treatment and what members are entitled to contribute concessionally, do affect confidence in the superannuation system.

Confidence as a yardstick

While confidence is hard to define, it is essential for the future health of the superannuation system. The Council might wish to consider developing an index of confidence, in part to help it monitor its impact on the system, although some caution would be needed in interpreting the results because many people, particularly young people, are not engaged with their super.[18] To overcome this, such a survey could measure:

- confidence among various subgroups, including SMSF members, older and younger members and self-funded retirees in particular;
- confidence in the ability of super funds to invest members' money to meet member needs;
- confidence in the long-term benefits of super;
- satisfaction with the compulsory Superannuation Guarantee system;
- willingness to direct discretionary income into super; and
- willingness to leave money in super in retirement.

18 There is considerable evidence that engagement with superannuation increases with age. See, for instance, the ATO's recent research on the subject, *Super reforms communications developmental research: Executive summary, p.2.*

4 Objectives and principles of the Australian superannuation system

Objectives

The Charter Group considers that the 'values' of the super system are inherent in its objectives and principles. For this reason, it has not attempted to identify separate values.

Having reviewed the primary and secondary sources at the time the Superannuation Guarantee was established, and subsequent materials, the Charter Group has concluded that, at a high level, the objectives of the Australian superannuation system are to:

- provide an adequate level of retirement income;
- relieve pressure on the Age Pension; and
- increase national savings, creating a pool of patient capital to be invested as decided by fiduciary trustees.

During the consultation process, it became obvious that there is a range of views on what super is for. Some see its purpose as alleviating poverty (not a widely held view) while some see super more as wealth-building and even as building intergenerational wealth. The great bulk of opinion is somewhere in the middle; that is, that super is intended to provide more dignity in retirement, giving people a standard of living above the safety net afforded by the Age Pension.

At its simplest, in the early years of superannuation in Australia, including when the Superannuation Guarantee was first introduced, superannuation was seen as a supplement to the Age Pension. As Superannuation Guarantee rates have increased, as the system has matured and as a strong community of academics and other superannuation experts has developed, our system is now more inclined to be described as having 'retirement income' as its purpose.

A commonly expressed aspiration for adequacy is for a superannuation balance large enough to provide an income stream (including capital drawdown) of around 60-70 per cent of pre-retirement income over a 25-30 year period. However, very few people view superannuation as having an unambiguous aim of providing a certain replacement rate[19] of income for the rest of people's lives. This mismatch most likely flows from the fact that a lump sum defined contribution system like Australia's does not necessarily target any

19 The replacement rate is the ratio of a person's (or a given population's) (average) pension in a given time period and the (average) income in a given time period. OECD Working Party on Private Pensions *Private Pensions: OECD Classification and Glossary, 2005 edition*, OECD, 2005, Paris.

particular level of replacement income in retirement.[20] In other words, the replacement rate concept might not fit a defined contribution system or, at least, it is not a natural fit.

Also, superannuation is still not a mature system. Retirees have not had the benefit of Superannuation Guarantee contributions for their entire careers. This will not occur until the 2030s. Even then, those retirees will not have enjoyed Superannuation Guarantee contributions at the full 12 per cent rate for long enough. Through that lens, a mature system will not arrive until the 2060s.

Further evolution of superannuation

Our superannuation system is not fully mature from a contribution perspective and is likely to need further substantial policy and industry reform in the retirement area.

In June 2012, the OECD Working Party on Private Pensions issued a 10-point roadmap for the good design of defined contribution pension (that is, superannuation) plans.[21] Australia scores about 6 or 7 out of 10 on these measures, with the key deficiencies being in the retirement phase. What this means is that the Australian superannuation system has a way to go in its evolution and will continue to change if it is to meet the principles laid down by the OECD. As a compulsory system, there is a very high onus on both policy makers and industry participants to meet world's best practice or have a good reason for not doing so. In simple terms, Australia is part way down the track of turning a lump sum defined contribution savings system into a retirement income system and so further change will be inevitable.

The role of the Charter is to create a state of affairs where those changes are made methodically and in accordance with the Charter principles, so that people can participate more confidently even though the system is not static.

Principles

Four principles have informed the Charter Group's work in recommending the form of a Charter. The terms of reference required the Charter Group to develop and recommend a Charter which embodies the principles of certainty, adequacy, fairness and sustainability.

The terms 'certainty', 'fairness', 'adequacy' and 'sustainability' when expressed as principles are abstract terms that are very general in nature unless used in a context that enables the terms to be given a specific meaning. It was left to the Charter Group to provide a context in which these four core principles, which are not mutually exclusive, operate. The Charter Group has developed and recommended a Charter that embodies these four principles. But it is not possible to list all the circumstances in which it can be said that a particular policy proposal will be certain, fair, adequate or sustainable in that context.

20 ERISA Advisory Council *Examining income replacement during retirement years in a defined contribution plan system*, 2012 < http://www.dol.gov/ebsa/publications/2012ACreport3.html >.
21 Organisation for Economic Co-operation and Development *The OECD roadmap for the good design of defined contribution pension plans* June 2012. < http://www.oecd.org/daf/financialmarketsinsuranceandpensions/privatepensions/50582753.pdf >.

It is best left for the Council to consider the matters arising within its area of operation against the principles of the Charter and, where appropriate, to consult with those interested in, or having a stake in, those matters.

Discussion on principle 1: Adequacy

Adequacy measures the degree to which the retirement income system enables people to achieve a sufficient standard of living in retirement relative either to the standard they enjoyed while working or as compared to an objective budget standard for retirees.

At a basic level, the retirement income system (which includes the Age Pension and superannuation) aims to ensure that people who can no longer support themselves by working can maintain a level of security and dignity in retirement.[22] It also reflects the community's belief that older Australians should not be required to work for their whole lives.

The Age Pension provides a basic safety net retirement income which is not directly linked to income earned over a working life, other than via the social security means tests. The role of the superannuation system is to enable people to build savings, through compulsion and voluntary incentives, that will allow them to achieve a standard of living in retirement above that which the Age Pension alone can provide.

No single retirement income target will be appropriate for all groups, and it should not be the role of the retirement income system to guarantee that everyone's retirement income expectations will be met.

Adequacy can be measured in different ways and there is no consensus as to what measure is most appropriate. Measures of adequacy include:

- replacement rates;
- budget standards; and
- broader wellbeing measures.

The replacement rate concept is a widely used benchmark which compares a person's spending power before and after retirement. As noted earlier, a commonly expressed aspiration for adequacy is for a superannuation balance large enough to provide an income stream (including capital drawdown) of around 60-70 per cent of pre-retirement income over a 25-30 year period. The underlying proposition is that a person's standard of living in retirement should be a reasonable proportion of their standard of living during their working life. As a policy benchmark or target, replacement rates become less relevant the higher the level of pre-retirement income becomes.

Personal budget standards estimate the level of income needed, on average, to live at a certain standard or lifestyle in retirement. However, the standard will be affected by what is included in the basket of goods and services which makes up the standard budget, and the circumstances of the benchmark household will affect whether a particular standard is applicable to other groups.

22 ASFA submission p. 4.

While replacement rates measure the effectiveness of the system in generating an income in retirement, they do not capture other factors such as the value a retiree places on not having to work. Wellbeing measures look beyond people's income needs to how they perceive their retirement. However, measuring the value of non-monetary benefits is more difficult than a replacement rate or budget standards because valuations differ significantly between individuals and groups. As a result, wellbeing tends to be measured through research surveys.[23]

Discussion on principle 2: Sustainability

Government expenditure, both actual and notional (through tax concessions) on the retirement income system (that is, the Age Pension and superannuation) must be affordable over the long term.

Successive intergenerational reports (IGRs) have concluded that population ageing will place substantial pressure on Australia's economy. As the ratio of working age people to people over 65 falls, potential economic growth rates will also fall and with them Australia's capacity to fund spending pressures associated with an ageing population.

In this context, it is crucial that future changes to retirement income policy not exacerbate future spending pressures, but rather contribute to fiscal sustainability. The Charter Group went through these issues in detail in section 2 of the report.

Discussion on principle 3: Certainty

Certainty requires that the general concepts and core workings of superannuation are sufficiently clear for an ordinary person to understand. People should have sufficient confidence in the regulatory settings and their evolution to trust their savings to superannuation, including making voluntary contributions.

Superannuation by its nature is a long term proposition. Superannuation savings made over a person's working life are likely to remain in the superannuation system for up to 40 years before retirement and 20 years or more post retirement.

While public policy, including superannuation policy, must be able to respond to changing economic and other circumstances and to continue to improve and evolve, uncertainty created by the pace or direction of change risks undermining confidence in the system.

Too much change can also impose unnecessary costs on funds, employers and members, which may ultimately come at the expense of lower retirement incomes.

Relevant considerations, when assessing policy against the principle of certainty, include the ability for people to plan for retirement and adjust to superannuation policy changes with confidence. People should have sufficient time to alter their arrangements in response to proposed policy changes, particularly those people nearing retirement who have made long-term plans on the basis of the existing settings.

23 For example, see the National Seniors Australia *Seniors Sentiment Index* (December 2012). < http://www.nationalseniors.com.au/icms_docs/143311_Dec_2012_NSPAC_Challenger_Report.pdf >.

While a number of submissions raised the issue that changes to super policy or rules should not be retrospective,[24] there is a need to be clear about what ‘retrospective’ means in this context. Some submissions seemed to assert that if a certain amount of retirement savings are already accumulated, any change to the way that capital, or the income from it, is taxed is retrospective. The Charter Group considers that such changes might be grounds for grandfathering existing capital, as with the capital gains tax regime introduced in 1985, where assets owned on or before 19 September 1985 (the commencement date) were not subject to the tax but assets acquired or deemed to be acquired after that date were.

Having said that, a change will only be retrospective where the rules that applied at a particular point in time (point x) are later changed so that a different rule applies at point x. That is not what happened in relation to the introduction of capital gains tax in 1985. If the introduction of capital gains tax in 1985 had been expressed to apply from 1 January 1983, then it would have been retrospective.

People should be able to participate with confidence. Proposed changes, taken together with existing rules, ought not create a system that is too complex for an ordinary person to participate in with confidence.

Certainty does not imply that there should be no changes to superannuation. The superannuation system must continue to evolve and improve. It is likely that there will always be a need for change. However, there are different types of changes. Changes that involve rules relating to taxation or people’s entitlements (for example, a change to the preservation age) have much more potential to affect confidence adversely than administrative or machinery changes such as the modernisation of the ‘back office’ contemplated by SuperStream. Of course, too many administrative changes can also have the same cumulative effect.

Also, instability in superannuation policy settings can reduce certainty and lead to behavioural change in relation to decisions about investments in various retirement income products and voluntary contributions. People should feel confident that the broad direction of superannuation policy is clearly understood and stable, and that any changes will be consistent with that direction.

Discussion on principle 4: Fairness

A fair superannuation system is one that treats people in the same circumstances equally and is perceived to be fair by the community. Given that building up superannuation is connected with employment, regard has to be had to those, who for a variety of reasons, have not fully participated in the workforce and therefore have less superannuation than others in their age cohort.

Different people have different views about what fairness is and any assessment of fairness is likely to involve trade-offs between different dimensions of fairness.

While it is broadly accepted that a fair tax system would feature a progressive tax rate structure, it does not necessarily follow that every tax or tax expenditure should be progressive. Typically, Australia has relied on the progressive rate structure of the personal income tax system, combined with means testing of income support payments to deliver distributional fairness. In the context of superannuation policy, it follows that redistributive

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24 SMSFOA submission p. 2, CBUS submission p. 2, SPAA submission p. 3, AustralianSuper submission p. 2.

fairness in the tax and transfer system as a whole does not necessarily require a progressive tax rate structure for superannuation. Superannuation has, in recent times, moved from a purely flat tax regime to a more progressive structure, with measures designed to assist lower income earners and reduce the tax concession available to those with high incomes (that is, above $300,000 per annum).

Other principles

The discussion paper sought to identify principles in addition to those outlined above. A number of submissions put forward suggestions.[25] The Charter Group was attracted to various suggestions about simplicity and efficiency, for example, but believes that these can be adequately covered as sub-sets of the four principles.

The Charter Group formed the view that the four principles outlined above covered the issues adequately and that additional stand-alone principles were not warranted.

Balancing the principles: is there a hierarchy?

There was a range of views on the relative importance of the principles. One submission,[26] for example, suggested the Charter should present the principles in an order that reflects their relative importance, and make clear that the principles of adequacy and fairness are paramount.

However, the Charter Group has come to the conclusion that the relative importance of the principles will depend on the circumstances applying at the time the Council is examining an issue, and on the nature of the issue the Council is examining. It will almost always involve a balancing act, trading off certain principles against others.

For this reason, the Charter Group has chosen not to rank the principles and considers that particular principles should not be singled out in the title of the Charter either.

25 AFA submission p. 2, AIR submission p. 2, ASFA submission p. 3, Ai Group submission p. 1, AIST submission p. 6, AustralianSuper submission p. 1, Cbus submission p. 2, COTA submission p. 3, CPA Australia submission p. 1, FPA submission p. 2, FSC submission p. 2, ISN submission p. 3, LCA submission p. 5, NFAW submission p. 2, SMSFOA submission p. 4, SPAA submission p. 3, WIS submission p. 2, Cuffe submission p. 1, Prudames submission p. 1, Confidential submission.

26 ACTU submission p. 3.

5 The Charter and Council

Role of the Charter

The Charter will provide a blueprint against which the Council would assess future superannuation policy and rule changes. For that reason, the draft Charter recommended by the Charter Group at **Appendix A** delineates the core objectives of super, as derived from primary and secondary sources at the time the Superannuation Guarantee was established, and subsequently. It also sets out the principles of certainty, adequacy, fairness and sustainability upon which the decisions of the Council will be based. While these principles might have been latent in the underlying thinking behind superannuation policy, the Charter will be the first time they have been expressed and used in this way.

The Charter will also outline the procedures under which policy will be referred to and assessed by the Council. Alternatively, those procedures could be spelt out in the enabling legislation so that the procedures are legally binding. This has not been necessary in the case of the Charter of Budget Honesty, upon which the Charter Group drew as guidance for the Charter.

Subsection 3(2) of the *Charter of Budget Honesty Act 1998* says, in effect, that the charter is non-binding. Nonetheless, it has been a very successful piece of policy since its introduction and, among other things, is responsible for the IGRs.

Nearly all submissions and roundtable participants endorsed the Charter being legislated on the basis that this would contribute to certainty and stability. The Charter Group considers that the Charter should be enshrined in legislation and that certain procedural measures might need to be binding, but ultimately Parliament cannot be fettered and the role of the Council would have to be advisory only. There are many examples of bodies that are created by legislation, but only act in an advisory capacity (for example, the Corporations and Markets Advisory Committee (CAMAC)).

As the Charter is further developed, there are also some potential administrative law issues to be considered, such as how the Council could effectively review policy proposals put forward by a Minister.

Charter without a Council?

An alternative approach might be to establish a Charter as a policy document that guides the development of public policy, without a Council at all. This would save money and could establish a policy-making process, but would tend to be less enforceable and less credible with the community. Therefore, the Charter Group considers that the establishment of a Council will be critical to the Charter’s effectiveness in ensuring that super policy conforms to the principles set down in the Charter.

Establishing the Council

The Super Council will ensure that any future changes to superannuation are consistent with the Charter. The Council will be charged with assessing future policy against the Charter and providing a report to be tabled in Parliament.

The Council could be established as a stand-alone entity or supported by an existing relevant body.

Stand-alone body

Existing advisory bodies provide possible models for how a Council could be established. Existing bodies range from advisory panels convened at the discretion of Ministers to statutory bodies with formal functions and powers set out in legislation. Examples of bodies that fall into the former category include the Government's Superannuation Advisory Committee and Superannuation Roundtable. Examples in the latter category include the Inspector-General of Taxation, CAMAC and the Productivity Commission.

The model of an informal advisory panel would not appear well-suited to the role envisaged for the Council, including the requirement to conduct reviews and to report regularly to Parliament. Also, the Council needs to inspire confidence among a range of stakeholders, including the general public, and form part of the institutional framework of the economy.

A more formal model would, therefore, seem an appropriate starting point. In this context, the Charter Group's consultation process revealed broad support for the Council and Charter to be formed by legislation, rather than as an informal advisory panel.

The key features of a number of existing bodies established along more formal lines are outlined below.

Corporations and Markets Advisory Committee

CAMAC provides independent advice to the responsible Minister on the administration of corporate and financial services laws or changes to them. CAMAC is a body corporate, comprising part-time members appointed by a Minister.

The members of the Committee must have relevant commercial or professional experience and are appointed in a personal, rather than a representative, capacity. CAMAC can act on its own initiative or when requested by the Minister to make such recommendations as the Committee thinks fit within its remit.

CAMAC only makes recommendations. There is no requirement for the Minister or government to act on CAMAC's reports.

Inspector-General of Taxation

The Inspector-General of Taxation is an independent statutory office formed to review systemic tax administration issues and to report to government with recommendations for improving tax administration for the benefit of all taxpayers.

The Inspector-General's reports to the Government are required to be made public by the Government.

The Inspector-General cannot review taxation policy. The Board of Taxation is responsible for advising the government on specific tax policy issues.

The Inspector-General, in the conduct of his reviews, can invite submissions from the public or particular groups of taxpayers or tax professionals. The Inspector-General has strong powers to compel production of documents by tax officials and to take evidence from tax officials where this proves necessary.

The Inspector-General is appointed by the Governor-General and the office is, effectively, an arm of the Executive, reporting directly to the Government, although accountable to Parliament as an independent statutory agency.

Reserve Bank of Australia

Some submissions[27] and stakeholders suggested the Reserve Bank of Australia as a possible model for the Council. While the Charter Group understands and is attracted to the analogy, it is not attracted to the idea of embedding the functions of the Council in the RBA. The RBA's enabling legislation creates two boards: the RBA Board and the Payments System Board. The question arises whether a third board, namely the Council, could be added to the existing RBA framework.

The history, independence and status of the RBA are all attractive features of the idea as is the concept of not establishing a separate body and utilising existing infrastructure and resources. The critical weakness, however, is that the work of the Council, the issues that it would deal with and the expertise necessary to make the Council work, are all too remote from the RBA's existing functions as outlined in section 10 of the *Reserve Bank Act 1959*.

Therefore, the Charter Group believes that while the RBA's independence and other features are useful analogies, it is not a logical home for the Council.

Productivity Commission

The Productivity Commission is an independent research and advisory body on a range of economic, social and environmental issues.

The Productivity Commission's core function is to conduct public inquiries on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. The Commission also undertakes a variety of research at the request of government and to support its annual reporting, performance monitoring and other responsibilities.

The Commission has a key role in benchmarking and reviewing regulation, as well as advising on the competitive neutrality of government business activities.

Recommended model

The Charter Group recommends that the Council be independent of government.

On balance, the Charter Group favoured the model of having the Council established as a separate and independent body with the ability to obtain information and services relevant to

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27 For example, SMSFOA's submission.

its work from government agencies and from independent regulators such as APRA and the Australian Securities and Investments Commission (ASIC).

The Charter Group was open to the Council sharing, subject to additional funding, back office and research resources and other infrastructure with the Productivity Commission or another agency. Advantages of this approach include that it could create synergies for the work of the Council, depending on the nature and role of the existing body, as well as efficiencies through the sharing of staff and other resources.

Membership of the Council

The Charter Group regards it as critical to the success of the Council that its members be appointed in a personal, rather than a representative, capacity. This is because many organisations and industry associations have positions on issues that are in direct opposition to each other and vested interests abound. Creating a Council with members acting in a representative capacity would only serve to entrench those positions. Similar concerns were raised during the Charter Group's consultation process; in particular that industry group representation on the Council would create a conflict of interest (however, it was felt that industry representatives could be consulted by the Council where appropriate).

There is also a dilemma in that as a person's expertise in relation to super increases, so too does the likelihood that they will have some sort of conflict of interest or duty or both. One government body that seeks to deal with this type of issue is the Takeovers Panel. The Takeovers Panel has a small executive, a president and a large membership (currently 48 members) who can be called to act on a particular matter (three at a time) as the need arises. The pool of members is designed to ensure that three members without a conflict can always be empanelled.

The Charter Group has thought about the Takeovers Panel model, but believes that it is more suited to a dispute resolution body, as opposed to a policy-oriented review body.

A requirement that members act in a personal capacity should not be seen as a universal panacea either, but the Charter Group believes it is the better option.

The Charter Group does not propose to identify people who might be suitable for membership of the Council, but rather it proposes to identify the criteria by which members should be chosen.

The Charter Group considers that selection of Council members should be on the basis of personal merit, skills, capacity and diversity. However, the Group also sees its role in making recommendations about the appropriate size and representation on the Council as requiring a degree of specificity about the criteria for membership. In **Appendix B,** the Charter Group has endeavoured to communicate its views on the makeup of the Council in quasi-legislative form.

Council procedures

Experience with existing advisory bodies, such as the Board of Taxation or the Productivity Commission, can provide a guide to how the Council might carry out its functions.

In general, each of those bodies conducts research, publishes statistics and undertakes reviews and inquiries into issues within the scope of their functions at the direction of the government (through the responsible Minister). Reviews and inquiries are generally public in nature and are informed by consultation with the public or relevant stakeholders. In the case of the Productivity Commission, reports are required to be tabled in Parliament within a specified period of the government receiving them.

Review procedures

The Charter Group has expressed its view about the procedures that should be followed by the Council in the Charter in **Appendix A**.

Referral of issues

A fundamental issue is whether the Council should have the power to initiate its own reviews, rather than just receiving references from the government on particular matters. The Charter Group's consultation process revealed mixed views on this issue, but the Charter Group is of the view that the Council must have the option to review all proposed changes to super policy and rules, regardless of whether the government of the day makes a formal reference.

Scope of jurisdiction

One submission[28] assumed that the Charter would also apply to disallowable rules issued by, for example, APRA and ASIC (that is, their prudential standards and class orders) and their general policy guidance as well. The Charter Group believes that the Charter should not apply to the delegated legislation of regulators or their policy pronouncements for two important reasons. First, as a matter of principle, the Council should not be concerned with matters of detail, but broad systemic policy issues at the time they are proposed by government. Secondly, and more practically, this view avoids the inevitable conflict with regulators that a more detail-oriented approach would entail. The Council will get its chance to critique government policy and rule change proposals in full detail before they become law, but their implementation, once they are law, is up to government and regulators. That is not to say that the Council would be prevented from identifying and commenting on issues as it saw fit, but adding another layer of bureaucracy on top of the day-to-day work of regulators is seen as counterproductive. There is already a process for dealing with disallowable rules under the *Legislative Instruments Act 2003*. These are supervised by Parliament already. As for policy guidance issued by regulators, the Charter Group sees these as being very unlikely to involve matters within the scope of the Charter principles.

28 LCA submission p. 3.

Consultation

In assessing particular proposals, the Council would be permitted to consult publicly or selectively where appropriate (for example, to avoid signalling a possible rule change with associated behavioural consequences). Consultation could be either on a formal or an informal basis and could include such things as 'focus groups' as appropriate.

One submission argued that broad consultation should only occur on system-wide reforms.[29] In the case of technical reforms, it considered that more targeted consultations should occur. The Charter Group believes that the Council would try to steer away from reviewing technical changes, but it might be best to see how it works in practice.

Other submissions endorsed a formal timeline and process for consultation prior to decisions being taken by government.[30]

One submission emphasised the need to provide reasonable notice of changes and time for comments during consultations. It argued that lawmaking in a 'tranche'-based fashion should be discouraged and not permitted under the Charter.[31] The Charter Group accepts this proposition and envisages that the Council would regard the tranche-based approach as offending against the principle of certainty, but it would, of course, be a matter for the Council to form a view on this.

Another submission proposed that the Council review legislation prior to release of exposure drafts for consultation. It said that reviews could be conducted as checks against whether objectives and potential market and consumer outcomes of proposed legislative changes would conform to the core principles outlined in the Charter.[32]

In carrying out its functions, the Council should have access to information and data held by relevant government agencies (including Treasury and the agencies with regulatory responsibility for superannuation).

Reporting

The Council would be required to report to the Minister on specific proposals within a certain time frame. The time frame could vary depending on the complexity of the proposal, but a minimum reporting period (for example, 60 days) could be specified. The Council's reports would usually be required to be tabled in Parliament within a specified period of being provided to government.

The Council's assessment of a proposal would inform government policy decisions and their implementation. However, government would not be bound by the Council's findings or recommendations. This is an important and unassailable qualification to the whole idea of a Council. Its recommendations would not be binding on governments, but would operate by way of 'moral suasion'.

29 ACTU submission p. 5.
30 ACTU submission p. 5, AustralianSuper submission p. 3.
31 LCA submission p. 6.
32 AustralianSuper submission p. 3.

In addition to undertaking assessments of particular policy proposals, the Council would provide an annual report to Parliament on the state of the super system against the principles set out in the Charter. The annual report could include recommendations on policy matters.

The Council would have an advisory role only and would have no regulatory powers or functions. This would ensure there is no overlap between the role of the Council and the regulatory roles of ASIC, APRA and the ATO.

Transparency and conduct of meetings

One submission stressed the need for transparency in the operations of the Council.[33] The Charter Group also felt that transparency was very important for the Council to be credible and effective. So much so, that the Charter Group is recommending to the Government that a certain number of meetings of the Council be accessible to the public. This is, in effect, what applies to government agencies in the United States under the so-called 'Government in the Sunshine' legislation introduced in 1976. There are certain exceptions for matters that would involve privacy considerations, internal personnel issues and so on, but the basic rule in the United States is that all meetings where the agency has a quorum and can make decisions are to be accessible to the public. These are called 'open meetings'.

For example, the United States Securities and Exchange Commission conducts open meetings under this legislation and posts meeting dates and topics on its website. The meetings are also webcast.[34]

The Charter Group believes that the special nature and purpose of the Council make this an attractive and appropriate solution to concerns including transparency, community engagement, lack of consultation and perceived conflicts of interest. In other words, the Charter Group believes that the open meeting concept would be part of building trust and confidence in the Council.

The Charter Group accepts that the open meeting concept would necessarily slow down the pace at which a super policy or rule could be changed. However, the Charter Group is recommending that the Council, in each case, would recommend whether a lead time between a particular legislative measure being passed and it taking effect was appropriate. In the Charter Group's view, such a requirement would be critical in breaking the nexus between super as part of the revenue-raising framework and super as a long term public/private sector partnership.[35] Put another way, the Charter Group was very attracted to the idea that no change to superannuation policy should be capable of being regarded as urgent. That is not to say that the Charter Group thinks the Council should be dilatory or ponderous; far from it. The Council should be speedy and effective. However, its members will be acting as guardians of a system where Australians are being asked to have part of their savings tied up for at least 40 years. This perspective must pervade the work of the Council and its contribution to the public policy landscape.

33 Women in Super submission p. 1 and p. 4.
34 See, for example, < http://www.sec.gov/news/openmeetings.shtml >.
35 AustralianSuper submission p. 1.

Funding for the Council

At the public forum in Sydney, a view was expressed that the Council should be funded from mainly private sources to reduce its dependence on government. The APRA levy was suggested as a possible funding source.

The Charter Group agrees with this approach and considers that the operation of the Council should be funded from the APRA levy and the supervisory levy imposed on SMSFs. Where possible, the component of those levies attributable to the cost of running the Council should be transparent and shared as equally as possible across the sectors.

Lifespan of the Council

At the roundtable meeting in Sydney, it was suggested that the Charter should include a so-called ‘sunset clause’ where the default would be that the Council would cease to exist at the end of a particular period. Alternatively, the operation of the Council could be reviewed after a specified period to assess whether it was performing a worthwhile function, having regard to both its operating cost and underlying purpose. The Charter Group considers that a review of the Council after it has been operating for five years would be appropriate.

6 Overlap with regulators and other parts of government

Overlap of the Council and regulators

The terms of reference directed the Charter Group to consider the potential for overlap with the work of regulators. The Charter Group has taken this to refer to the policy work of APRA, ASIC and the ATO. It has also considered the role played by CAMAC. Each of these organisations has the power to make policy recommendations to government that could potentially affect superannuation.

As for purely regulatory matters, the Charter Group is satisfied that it could be made amply clear in the legislation creating the Council that it was only able to make reports to Parliament, which would include a certificate of compatibility with the Charter principles, and had no regulatory power or function whatsoever.

Australian Prudential Regulation Authority

APRA, as the prudential regulator for superannuation, is responsible for establishing and enforcing prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions APRA supervises are met within a stable, efficient and competitive financial system. The *Superannuation Industry (Supervision) Act 1993* imposes stringent duties on trustees to manage the assets of super funds prudently and in the best interests of all the members of the fund.

Subsection 10(2) of the *Australian Prudential Regulation Authority Act 1998* says:

> (2) APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting:
>
> (a) matters that would improve the financial safety and efficiency, competition, contestability or competitive neutrality of the sectors in which the bodies regulated by APRA operate; or
>
> (b) changes to, or in relation to, any prudential regulation framework law that APRA considers would overcome or assist in overcoming problems APRA has identified in the course of performing or exercising any of its functions and powers.

Council research and publication of statistics

The discussion paper envisaged that the Council would have a research function. As a general proposition, superannuation is under-researched for such a large and complex system involving so many elements, so much capital and around 11.6 million Australians. However, the Council should, when carrying out research, avoid unnecessary overlap with research conducted by other bodies on superannuation.

APRA carries out research using the data that it collects under the *Financial Sector (Collection of Data) Act 2001*. The proposal to establish a Council should definitely not create even subtle signals or incentives for APRA to withdraw from its unique and constructive work in this area. APRA's 2012 report on the effect of fund size on the performance of Australian superannuation funds is one example of this sort of work.[36]

The challenge would be to ensure that the research activities of the two bodies did not overlap. A memorandum of understanding between the two bodies could outline the need to communicate and resolve any potential for overlap. The memorandum could also outline the types of research each body will be likely to conduct. The scope and range of research activities that they undertake should be quite different, given the different mandates involved. For example, it has been put to the Charter Group that there are some questions relating to superannuation and retirement savings that will be more difficult for governments to examine than others. These include:

- Should the lump sum regime be restricted so that there is a cap on drawdowns like in the United States?
- Should the family home be completely exempt from the Age Pension means tests?
- Should there be a more flexible system of lifetime caps to concessional contributions than the current annual limits?
- Should people be able to defer paying off their mortgage while working as part of a deliberate strategy of paying it off with their superannuation?

There is no suggestion that APRA would conduct research into those sorts of questions. Nor is it suggested that the Council would necessarily look at those questions either, but these examples highlight the difference between the ambit of issues able to be reviewed by a prudential regulator like APRA and a body like the Council.

Australian Securities and Investments Commission

ASIC is principally responsible for the administration of the *Corporations Act 2001,* which regulates the conduct and disclosure obligations of financial services providers. As the conduct and disclosure regulator, ASIC's role in superannuation primarily concerns the relationship between trustees and individual consumers. ASIC aims to look after consumers ensuring they receive proper disclosure, are dealt with fairly by qualified people, continue to receive useful information about their investment or product and can access proper complaints-handling procedures.

Paragraph 11(2)(b) and subsections 11(3) and 12A(5) of the *Australian Securities and Investments Commission Act 2001* give ASIC the power to make recommendations for improvements and changes to certain laws that could impact superannuation. Such recommendations are made from time to time in the course of ASIC's normal activities and are not published or tabled in Parliament, but any resulting law change would go through the normal legislative process. ASIC's regulatory, as opposed to policy-formation; functions would not be affected by the existence of the Council.

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36 Australian Prudential Regulation Authority, *Working paper: Effect of fund size on the performance of Australian superannuation funds* March 2012. < http://www.apra.gov.au/AboutAPRA/Documents/SA_WP_EFSP_032012_ex.pdf >.

The Charter Group therefore believes that there is nothing that needs to be done in relation to ASIC in order for the Council to be formed.

Corporations and Markets Advisory Committee

Under subsection 148(1) of the *Australian Securities and Investments Commission Act 2001*, CAMAC has the power to act on its own initiative to make recommendations to the Treasurer about changes to corporate law or matters connected to the financial services industry (among other things). Typically, CAMAC responds to requests from the Minister, but it does act on its own initiative from time to time. It is therefore possible that CAMAC might make a recommendation that is in some way related to superannuation, but it would be unlikely to be a high priority for CAMAC once the Council is in existence.

The Charter Group therefore believes that there is nothing that needs to be done in relation to CAMAC in order for the Council to be formed.

Overlap between the Council and other bodies

Superannuation Roundtable

The Government announced the formation of the Superannuation Roundtable on 29 January 2012 to consider ideas raised at the Tax Forum for providing Australians with more options in retirement and improving certain super concessions.

The roundtable brings together representatives of the super industry, small business, employees and the community sector, as well as technical experts and academics.

The roundtable has been examining proposals to expand options in the drawdown phase, like annuities and deferred annuities, as well as appropriate offsetting savings.

Some submissions mentioned the need for the work of the roundtable to be absorbed into the Council. The Charter Group is keen to avoid duplication, but as the roundtable is only an informal advisory group, its future is very much a matter for the government of the day and the Charter Group does not have a strong view either way. Obviously, the more roles the Council is given, the more resources it will need.

SuperStream Advisory Council

The purpose of the SuperStream Advisory Council is to provide advice to Government on the implementation of the SuperStream reforms with a core focus on industry readiness for the commencement of the superannuation data and payment standards. The Council monitors the success of the standards and recommends refinements and improvements to the standards where appropriate.

Some submissions mentioned the possibility of the Council managing the SuperStream Advisory Council. The Charter Group does not agree with these suggestions. They are very different functions and should not be combined. In any case, the role of the SuperStream

Advisory Council is finite — its role will not be ongoing. The Charter Group came to the same conclusion in relation to submissions that suggested that the Council should administer CAMAC.[37] The functions are simply too different.

The proposed Superannuation Consumer Centre

The Charter Group sees the work of the Council as being 'systemic'. When it reviews proposals for compliance with the Charter, it will be having regard to the core objectives of superannuation and the Charter principles and never individual cases. As the Charter Group understands the work proposed to be carried out by the Superannuation Consumer Centre, it would be focusing on the experiences and interactions of members with their superannuation: 'a bricks and mortar' service for consumers, effectively helping them with their super, providing information and warnings where appropriate.[38] There does not appear to be much scope for overlap between these two bodies, but it has to be said that both are only at 'concept' stage and so the potential for overlap would have to be monitored during their respective development phases.

Superannuation Complaints Tribunal

The Charter Group does not envisage any overlap between the work of the Council and the Superannuation Complaints Tribunal.

Parliamentary Committees

Parliamentary committees investigate specific matters of policy or government administration or performance. A given committee could potentially overlap with the work of the Council. For instance, in April 2013, a range of industry associations made submissions to a Parliamentary Committee regarding the consolidation of superannuation accounts and the accessibility of the co-contributions scheme. The government will need to bear the Council in mind when establishing committees in the future. Also, Parliamentary committees are an inherent part of the political process. The work of the Council will be independent of the government of the day.

Ad hoc policy reviews

Governments from time to time will also establish ad hoc reviews on policy issues by a group of experts such as the Harmer pension review and Henry review.[39] One submission questioned whether these would be more economical than setting up a standing Council.[40] Ad hoc policy reviews have been very effective over the years, but they suffer from the defect that a lot time and effort is spent setting up infrastructure, systems and processes that are

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37 For example, the Association of Independent Retirees (A.I.R.) Limited.

38 Bill Shorten MP *Establishment of a Superannuation Consumer Centre* media release October 2012. < http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/070.htm&pageID=003&min=brs&Year=&DocType= >, Choice, *Choice welcomes government funding for Superannuation Centre* 2012. < http://www.choice.com.au/media-and-news/media-releases/2012-media-releases/choice-welcomes-government-funding-for-superannuation-centre.aspx > .

39 Henry review < http://www.taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm >, Harmer pension review < http://www.budget.gov.au/2009-10/content/glossy/pension/html/pensions_overview_03.htm >.

40 SMSFOA submission p. 4.

taken for granted by standing bodies such as the Productivity Commission. Subject to reviewing the effectiveness of the Council after five years, the Charter Group believes that a standing Council would be more effective than ad hoc reviews.

Lastly, the Charter Group infers that part of the philosophy of the Council is that a body of knowledge is built up that benefits the superannuation system and retirement income policy more generally, that would not be possible by conducting a series of ad hoc policy reviews.

Parliamentary Budget Office

The Parliamentary Budget Office (PBO) is one of four parliamentary departments supporting the Parliament. As a newly established parliamentary department, the role of the PBO is to inform the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals.

As part of its responsibilities, the PBO is able to provide policy costings, to prepare responses to Members and Senators relating to the budget, to conduct research on the budget and to prepare submissions for Parliamentary committees.

There might be some use in the Council and the PBO having a form of explicit cooperation, potentially recognised in the Charter. Indeed, as part of its considerations of government policy, the Council could potentially request independent costings or advice on the fiscal outlook from the PBO.

Treasury

A number of submissions mentioned the need for the Council to be independent from government. Likewise, independence was a key part of the proposal for the Council, announced by the Government on 9 May 2013. The discussion paper made it clear, however, that:

> *… the Council would not replace the Treasury as having primary responsibility for advising Government on superannuation, taxation, regulation and prudential policy.*

The question arises: what would be the Council's relationship with Treasury?

Treasury would still give policy advice to government, as it does now, but in the knowledge that policy proposals might form part of a later, separate review by the Council when the Council conducts a review of a piece of legislation. It is likely that Treasury would advise government on compatibility with the Charter principles.

It is also likely that, in all scenarios, Treasury would have a central role in relation to the Council and the Council would be informed by the IGR, the RIMGROUP models and a range of other policy activities that Treasury carries out. However, the vital distinction is that the Council would be independent from government and would be able to conduct research, publish statistics and form its own conclusions about Treasury's assumptions, models and conclusions with a relatively modest application of resources.

Office of Best Practice Regulation

The Office of Best Practice Regulation (OBPR) promotes the Government's objective of improving the effectiveness and efficiency of regulation. It plays a central role in assisting government departments and agencies to meet the Government's requirements for best practice regulatory impact analysis and in monitoring and reporting on their performance.

The OBPR assesses whether a Regulation Impact Statement is required when regulations are proposed. A statement is required for all proposals that are expected to have an impact — whether positive or negative — on businesses or not-for-profit organisations.

As superannuation proposals can have an impact on businesses and not-for-profit organisations, there could be scenarios when proposals create opportunities for analysis by both the OBPR and the Council. The distinct roles of the two bodies and any conflict of responsibilities could be outlined in the legislation establishing the Council or a subsequent memorandum of understanding.

Australian Law Reform Commission

The Australian Law Reform Commission (ALRC) is part of the Attorney-General's portfolio, while being independent of government. It conducts inquiries—also known as references—into areas of law at the request of the Attorney-General. The ALRC then makes recommendations to government on law reform. Any potential conflict of responsibilities between the ALRC and the Council on a given issue will need to be managed either in the legislation creating the Council, by government (which will create the bulk of the work of the Council by referring proposed changes to it) or potentially between the two organisations, via a memorandum of understanding.

Impacts on the Charter principles

The Charter Group considers that the above bodies could potentially make recommendations to government in relation to matters that would impinge on the Charter principles.

It would be open to the Council and these other bodies to develop memoranda of understanding to establish communication channels and other mechanisms to deal with areas of potential overlap in their activities. For example, the Council might wish to develop an agreement with the Treasury in relation to material relevant to its research and publication of statistics and reports.

Should the Council identify an issue after the fact it would be able to raise it in its annual report at the latest.

Appendix A: Super Charter

Part 1 — Purpose

This Charter is to be administered by the Guardians making up the Council. It is intended to inspire confidence in superannuation by laying down a clear process for changes to superannuation policy and rules with a view to protecting all superannuation members from changes that are inconsistent with the Charter principles.

The Charter provides a framework for the Council to assess proposed changes to superannuation policy and rules for compatibility with the Charter principles. The philosophy of the Charter is that no substantive change to superannuation should be urgent and that balanced changes that accord with the Charter principles are more likely to inspire confidence in the superannuation system.

1. Jurisdiction

The Council has jurisdiction to review any proposed change to a government or legislative policy or rule, whether directly or indirectly relating to superannuation, in respect of:

(a) taxation or concessions available in the superannuation system;

(b) the entitlement of any person to access their retirement benefits; or

(c) any matter or thing not covered in paragraph (a) or (b) that the Council reasonably regards as within the spirit and intent of the Charter principles and its role in administering them;

for compatibility with the Charter principles in accordance with the review procedures.

2. Who can refer matters to the Council?

The Council must review any matter referred to it by the Minister.

The Government is the only party that has the authority to refer matters to the Council. Any person can provide information to, or raise issues with, the Council, but it is up to the Council to decide whether or not to act.

The Council can initiate its own inquiries and report on matters touching on or concerning the Charter principles as it sees fit.

3. Exclusions

The Council cannot review:

(a) any matter that relates only to a particular person, a particular superannuation fund or of a machinery or administrative matter only;

(b) any matter that relates to a disallowable instrument issued by a government agency; or

(c) any matter that relates to an industrial award or a family law issue.

The Council is not a tribunal, does not hear complaints or arbitrate disputes, does not exercise judicial power and has no regulatory power. Its purpose is solely to review matters within its jurisdiction, report on them to the Minister and give advice to the Government from time to time.

Part 2 — Core objectives of superannuation

4. The core objectives of the Australian superannuation system

The long-term aim of the superannuation system is to 'deliver private income to enhance the living standards of retired Australians'.[41] For many people, superannuation is one of the most significant forms of wealth outside the family home.[42]

Other core objectives are:

(a) to address the challenges posed by Australia's ageing population and to relieve the fiscal pressure on the Government due to the Age Pension so that the increased costs of an ageing population are not 'fully borne by the generation that will be working in several decades' time when the dependency ratio is higher';[43] and

(b) to increase national savings (via compulsory and voluntary elements of superannuation) building up the capital stock per employee in the economy bringing with it important macroeconomic benefits, including that the superannuation system:

  (i) creates a pool of patient capital to be invested as decided by fiduciary trustees;

  (ii) acts as a liquidity buffer in the case of economic shocks; and

  (iii) can fund the economy more generally.

5. Implementation

Superannuation's core objectives are implemented by:

(a) compelling people to save for the long term, by deferring access to a portion of current-day wages and income, in order to enjoy a better standard of living in retirement, with very limited access to those savings prior to retirement; and

41 Super System Review, *Super System Review Final Report*, 2010, Part One, p. 15.
42 Australian Government, *Stronger Super*, 2010, p. 3.
43 R Hanegbi, 'Australia's superannuation system: A critical analysis' *Australian Tax Forum* 25 p. 303, 312. See also The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues*, 2009, p. 30. In the former article, Hanegbi challenges the assumptions on which this position is based.

(b) achieving near universal coverage and inclusion via an appropriate mixture of compulsory and incentivised contributions, financial literacy, engagement and products that work in the best interests of members.

6. Normative elements

The system seeks to encourage:

(a) self-agency by incentivising people, principally through various categories of taxation concessions tailored to their financial and personal circumstances, to take responsibility for their own retirement; and

(b) confident and informed participation in superannuation over many years, including the making of voluntary contributions where possible and to leave savings in superannuation in retirement.

7. Key policy themes

(a) The superannuation system must operate efficiently, in the interests of members and with a focus on outcomes.

(b) Decisions about the investment of the retirement savings pool must be left with superannuation trustees and not the Government.

(c) Superannuation policy must align with Age Pension policy, particularly eligibility criteria and the superannuation preservation age and other policies that affect retirement savings, such as the concessional tax treatment of the family home.

8. Retirement income aspects

(a) In retirement, superannuation should ameliorate the risk of outliving private savings above the Age Pension (that is, longevity risk).

(b) In retirement, superannuation should involve the transformation of accumulated retirement capital into a mixture of accessible capital and regular and dependable lifetime income in retirement.

9. Other practical elements of superannuation

Superannuation generally seeks to provide a certain amount of insurance in the case of death, permanent disablement and loss of employment income.

Part 3 — The Charter principles

10. Charter principles of certainty, adequacy, fairness and fiscal sustainability

The following are short definitions of the Charter principles. The principles are necessarily broad and flexible and the boundaries between them are not always clear. This will allow the Council the degree of flexibility needed to assess a necessarily broad range of potential changes to superannuation policies and rules against the Charter principles giving relevant weight and priority to them as the circumstances require.

11. Principle 1 — Adequacy

A mature superannuation system must be oriented towards its participants being able to enjoy a level of income in retirement that, when taken with income provided by the Age Pension, meets their needs and expectations in light of the standard of living they enjoyed while working. This is the principle of adequacy.

In assessing adequacy, the Council will, among other factors, be informed by reference to replacement rates, retiree household budget standards, wellbeing measures and wider community standards and expectations. Retirement systems in other jurisdictions and the work of bodies such as the OECD can also be relevant.

Relevant considerations when assessing policy proposals against the principle of adequacy include:

(a) Ensuring adequate contribution rate

To be effective, a defined contribution retirement system must ensure that a sufficient level of contributions are made by its participants or on their behalf.

(b) Impacts on the adequacy of the retirement income system

At a high level, how the proposal impacts on the adequacy of the retirement income system, both in aggregate and for particular groups, is relevant.

The fact that a proposal might negatively affect a particular group would not necessarily conflict with adequacy if the affected group is still able to achieve what is a reasonable level of retirement income by prevailing community standards.

Proposals designed to improve adequacy should also consider the effect on particular groups of the trade-off between higher income in retirement and reduced consumption while working.

(c) Impacts on the overall efficiency of the superannuation system

How the proposal impacts the overall efficiency of the superannuation system (including costs that ultimately flow through to members) is important.

(d) The impact on workforce participation

Participation is an important determinant of a person's standard of living in retirement — it increases compulsory savings (for employees) and provides people with income to support voluntary contributions. Many employers make contributions at a rate higher than the Superannuation Guarantee rate.

(e) Impact on incentives to make voluntary contributions

The impact on incentives or the ability to make voluntary contributions to superannuation on either a pre-tax or post-tax basis is an important factor. Voluntary contributions are important for those who aspire to a retirement income above what the combination of the Superannuation Guarantee and Age Pension can provide, and for the self-employed who are currently not required to make any contributions.

(f) Impacts on the coverage of the superannuation system

How will the proposal impact the coverage of the superannuation system? For those with broken work patterns or limited ability to participate in the workforce, the Age Pension is likely to provide the major portion of their retirement income. Consequently, the adequacy of the Age Pension is likely to remain the most important determinant of retirement income adequacy for these groups.

(g) Access to advice

Access to advice about superannuation and retirement is more likely than not to facilitate adequacy. Proposals should therefore be assessed in terms of their impact on access to advice.

(h) Longevity

Adequacy is also affected by the increasing life expectancy of Australians.

(i) Retirement risks

Whether retirees' savings are adequate is not merely a matter of building up enough capital during their working lives. The design of products offered in the retirement phase and whether they ameliorate key retirement risks: market risk, inflation risk and longevity risk, is also important.

12. Principle 2 — Sustainability

A sustainable superannuation system is one that balances its short-term and long-term costs and benefits, having regard to other demands on the budget, the available sources of revenue and the ever-present circumstance of changing economic conditions.

Relevant factors when assessing policy against the principle of sustainability include:

(a) comprehensive costing of proposed measures;

(b) weighing up longer-term paybacks in the form of lower projected Age Pension expenditure and other benefits;

(c) affordability in light of demographic change;

(d) administrative sustainability; and

(e) other expenditures demanded of government.

(a) Comprehensive cost/benefit analysis of measures

Superannuation involves many tax concessions and special treatments for people in various age cohorts or other categories. Examples are super contribution splitting with a spouse or the transition to retirement rules. All such measures should be accompanied by estimates of their cost to the budget and benefit to the retirement income system (and potentially the economy more broadly) when introduced and there should be an ongoing assessment of their sustainability.

The Council could outsource this modelling work to Treasury with the Council determining the underlying assumptions and other relevant parameters.

(b) New econometric model

The Council will develop an econometric model, based on the cost/benefit model referred to in subparagraph (a), that will endeavour to take wider benefits of the superannuation system into account, rather than concentrating only on expenditures.

(c) Affordability in light of demographic change

Against the background of Australia's ageing population, it is crucial that future policy changes be made with a view to their long-term net revenue impact.

(d) Administrative sustainability

Proposed new rules should, as far as possible, be easy to understand and simple to comply with. The superannuation system is very complex. In some instances, this complexity is often the result of creating specific concessions for those who need the most assistance to build adequate savings. Proposals that impose a further significant regulatory burden and/or complexity can undermine administrative sustainability.

(e) Government expenditures and trade offs

To be sustainable, the retirement income system must be affordable in the context of all the other expenditures required to be made by government. Inevitably, there will be trade-offs that need to be made with other government spending priorities competing for finite budget resources.

13. Principle 3 — Certainty

Implicit in superannuation policy is the proposition that Australians have been asked to assume a greater personal responsibility for their financial wellbeing in retirement above the safety net afforded by the Age Pension. Superannuation involves a lifelong commitment, on the part of members, to build retirement income above that level. The trade-off for government is that people have to be given more certainty in relation to the policy settings affecting superannuation than in other policy areas that do not involve such a profound commitment and degree of self-agency.

(a) Super needs to evolve

Certainty does not, however, imply that there should be no changes to superannuation. The superannuation system must continue to evolve and improve. It is likely that there will always be a need for change, but uncertainty created by the pace or direction of change risks undermining confidence in the system.

(b) Changes to tax and entitlements

There are also different types of changes. Changes that involve rules relating to taxation or entitlements to access super (for example, a change to the preservation age) have much more potential to affect confidence adversely than administrative or machinery changes that principally affect industry participants, rather than members. Of course, too many administrative changes can also have the same cumulative effect.

(c) Ability to plan and adjust to change

Members should have sufficient confidence in the regulatory settings and their evolution to trust their savings to superannuation, including making voluntary contributions or leaving their savings in superannuation in retirement.

People should have sufficient time to alter their arrangements in response to proposed policy changes. This issue becomes more acute for those nearing or in retirement, who have fewer options and less time available to them (for example, to increase contributions or remain in the workforce longer).

(d) Capable of being understood

Certainty also requires that the general concepts and core workings of superannuation are sufficiently clear for an ordinary person to understand, particularly in light of the fact that superannuation is compulsory.

(e) No change should be regarded as urgent

What lead times will be appropriate before a proposed change takes effect will depend on the circumstances of each case. However, as a general principle, no change to superannuation should be so urgent that it needs to take effect immediately. A possible exception to this principle might apply in relation to taxation changes where certain conduct needs to be curtailed or where pre-announcement of the change would lead to ‘gaming’ or ‘front-running’ by certain taxpayers at the expense of the majority. For this reason, it seems likely that certain proposed changes will have to remain confidential during the Council’s assessment process, but would then be subsequently discussed in (for example) the Council’s annual report.

(f) Prospective and transparent; preserving existing rights

Making changes to superannuation rules prospective and transparent promotes certainty. Changes to the way existing rights are to be exercised or enjoyed in the future are not retrospective changes. However, such rights will usually need to be preserved, while recognising that this generally leads to additional complexity.

(g) Certainty does not imply a guaranteed outcome

Lastly, certainty does not imply a guaranteed outcome or removal of the uncertainties of financial markets, although this is a desirable objective for members and funds to pursue in retirement. Systemically, however, superannuation largely follows a defined contribution model where retirement outcomes are determined by a range of factors, including the level and period of contributions, asset allocation decisions and the performance of financial markets.

14. Principle 4 — Fairness

A fair superannuation system is one that treats people in the same circumstances equally and is perceived to be fair by the community. Incentives that place an undue burden or confer overly generous benefits on certain segments of the population are likely to be regarded as unfair.

Relevant considerations, when assessing policy proposals against the principle of fairness, include:

(a) progressive versus flat rate of taxation;

(b) equal treatment of individuals in like circumstances;

(c) inter-generational equity; and

(d) fairness with respect to legitimate expectations.

(a) Progressive versus flat tax rate structure

Typically, Australia has relied on the progressive rate structure of the personal income tax system combined with means testing of income support payments to deliver distributional fairness, rather than setting a progressive tax rate structure for superannuation. This has changed in recent times with certain measures aimed at making tax outcomes in superannuation more progressive. Also, the use of the superannuation tax concessions for wealth creation (beyond the creation of what might be regarded as reasonable retirement income) and estate planning will often involve a question of fairness.

(b) Equal treatment of individuals in like circumstances

A policy that, without good reason, favours one group of people over another where the two groups face similar circumstances (that is, is not horizontally equitable) is likely to be regarded as unfair.

People who are unable to access the superannuation concessions, for example, due to particular individual circumstances that have prevented them from contributing to superannuation, such as those who take time out from the workforce to care for family, might view policy proposals that extend the superannuation concessions as unfair.

Similarly, a policy that enables certain groups to structure their affairs to access the concessions in ways not open to all is also likely to be perceived as unfair.

(c) Inter-generational equity

Inter-generational equity requires that present generations should ‘pay their way’ and, as far as possible, not impose undue tax burdens on future generations.

(d) Fairness with respect to legitimate expectations

Policy changes that result in unexpected losses relative to previous expectations can be perceived as ‘unfair’. For example, a tax change that materially reduces the level of income that a person was expecting to enjoy in retirement might be perceived as unfair. In practice, virtually every policy change can potentially have this kind of effect. Such impacts are therefore difficult to avoid altogether and need to be balanced against other potential benefits of the proposed policy change. This aspect of fairness is closely related to the principle of certainty.

15. Tenets for changes to superannuation

1. The superannuation system must continue to innovate and policies must be directed towards the evolution of the system to meet the changing needs of the Australian population.

2. Superannuation is a large and complex system with an increasingly important social and macroeconomic dimension. It must be regulated and administered coherently and policy and rule changes should be made sparingly and in a way that engenders member confidence.

3. The system must have sufficient flexibility to accommodate its inherent growth path and should strive for continual improvement, rather than abrupt changes. Government decisions about superannuation should be taken with a long-term perspective.

4. The core objectives and principles of the Australian superannuation system must remain clear and transparent.

16. Guidelines for changes to superannuation policy and rules

Changes to superannuation policy and rules must:

(a) consistent and compatible: be consistent with the core objectives and must be compatible with the Charter principles;

(b) demographic and other trends: have regard to demographic, economic and social trends, particularly increasing life expectancies;

(c) made sparingly: be made sparingly and in a way that engenders member confidence, while recognising:

 (i) that the system must have sufficient flexibility to accommodate its inherent growth path and should strive for continual improvement; and

 (ii) the need for the system to improve and innovate in a coordinated and coherent way;

(d) adequate time for Council review: be made in circumstances where there is adequate time to assess the proposed policy changes against the Charter principles;

(e) prospective in effect: be prospective in effect and only adversely affect the rights and entitlements of existing participants in the superannuation system where absolutely necessary;

(f) sufficient lead time: be introduced so as to give participants sufficient time to adjust to the changes before they take effect;

(g) bi-partisan approach: where possible, be supported politically on a bi-partisan basis;

(h) long-term perspective: take the longer-term perspective into account;

(i) wider perspective: take into account the wider macroeconomic and social impact of the changes, but always keeping the core objectives in mind;

(j) no direction on investing: not seek to direct participants in the superannuation system to invest in particular assets or asset classes, nor to prevent investments in certain types of assets or asset classes unless there are prudential or regulatory reasons for doing so;

(k) simplicity of administration: where possible, be simple to administer and easy to understand for ordinary Australians; and

(l) harmony with other policies: where possible, be harmonious with other areas of government policy, including social security, health and aged care.

17. Guidance for the Council

1. The Council must address itself to superannuation as a system, not to matters of detail or regulatory issues. Certain proposals for change will also be immaterial to the system as a whole. It follows that not all proposals for a change to a superannuation policy or a rule should be reviewed by the Council. However, it should be up to the Council to determine its jurisdiction in any particular case.

2. The most recent IGR and Tax Expenditure Statements should guide the Council in its assessment of proposals, along with any other information it considers relevant.

3. The Council should have regard to wider retirement-related financial issues, including:

   (a) the taxation treatment of the principal place of residence;

   (b) the impact of housing tenure on retirement income and adequacy;

   (c) the availability of fair and transparent products for drawing down on home equity in the retirement phase;

   (d) aged care and health care issues and policies;

   (e) other means of building and accessing retirement wealth outside superannuation;

   (f) data relating to pre-retirement and post-retirement household indebtedness; and

   (g) workforce participation by older Australians.

4. The review the Council conducts of the proposed change to a superannuation policy or rule will be a 'de novo' review for compatibility with the Charter principles and is not limited by administrative law concepts such as an error of law or procedure. The Council can inform itself in any way it chooses.

18. Review procedures and consultation

The review procedure to be followed by the Council in any particular review is a matter to be determined by the Council having regard to the nature of the proposed change, its potential impact, scale and complexity and the number of issues involved. The following is a non-exclusive list of procedures that could be applied by the Council in dealing with a proposed change to a superannuation policy or rule:

(a) Notice of proposal to Council

The Government must give written notice to the Council of a proposed change to a superannuation policy or rule. Depending on the scale and materiality of the proposed change and its state of development (that is, anywhere from concept stage to draft Bill) the

Council would negotiate a review procedure with the Government that would deal with as many of the following steps as the circumstances required.

(b) Discussion paper released by government for public consultation

In all but the most exceptional circumstances, any proposed change to a superannuation policy or rule will be the subject of a discussion paper released by the Government with sufficient time for stakeholders to consider and respond to it having regard to the scale and complexity of the change. What is reasonable in the circumstances will vary between 7 to 14 days in the case of very minor changes to 30 to 45 days in the case of a more complex change or changes with more significant potential consequences.

(c) Council holds open meeting

The Council may hold one or more open meetings where its proceedings would be held in full public view, including by webcast.

(d) Council notifies and consults with stakeholders

The Council may also notify key stakeholders and engage in wide-ranging or selective consultations with them, having regard to the level of consultation that has already taken place and the nature of the proposed change.

(e) Council reports to Minister

The Council would report its conclusions, including recommending other options, to the Minister. The Council must have a reasonable time in which to prepare its report. In most cases, the Council would need not less than 60 days from first being advised of a proposed change to prepare its report. There will be occasions where less time is necessary, but there might also be cases where longer, up to 180 days, will be appropriate. The Council must be flexible and reasonable in relation to time periods, but it also has to be mindful of its obligation to uphold the Charter principles.

(f) Report must contain certification

Any report issued by the Council must contain a clear certification as to whether or not, in the opinion of the Council, the proposed change to a superannuation policy or rule is compatible with the Charter principles.

(g) Report then tabled in Parliament

The report to the Minister would then be tabled in Parliament within 15 days. If Parliament is not sitting, the report would be posted on the Council's website.

(h) Lead time for change to take effect

The Council will specify in its report to the Minister whether it considers that there should be a delay before the legislation takes effect and, if it decides that there should be a delay, the length of such delay.

19. Work program for the Council

From time to time, the Council should consider issues such as:

(a) the appropriate methodology for calculating the notional tax expenditure of the Commonwealth on superannuation, including an appropriate econometric model for analysing the benefits of superannuation;

(b) issues in respect of life expectancy and longevity;

(c) demographic trends such as predicted movements in the dependency ratio;

(d) research on retiree expenditure patterns;

(e) system design issues;

(f) sustainability issues;

(g) innovations evident in overseas systems that are not present in Australia; and

(h) other matters the Council considers are consistent with the core objectives and the Charter principles.

20. Annual report

The Council is required to table an annual report in Parliament each year on its activities. The annual report may also contain, among other things, the Council's views on:

(a) adequacy;

(b) trends;

(c) sustainability according to the Council's model;

(d) the superannuation system confidence index;

(e) a summary of research and publications issued during the year;

(f) areas for improvement; and

(g) the Australian system versus comparable overseas pension systems.

Appendix B: Membership of the Council

Example legislative provisions

1. The Council consists of the following members:

   (a) a Chair who must be a person with sufficient experience and expertise to command the trust and confidence of the public in the role; and

   (b) 6 other members, at least 2 of whom must be male and at least 2 of whom must be female.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

2. Council members are to be appointed by the Minister by written instrument and are to hold office purely in a personal capacity and not, whether formally or informally, as a representative of any other person or entity.

Note: A Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

3. A person is not eligible for appointment as a Council member unless the Minister is satisfied that the person has:

   (a) substantial experience or expertise; and

   (b) professional credibility and significant standing;

   in at least one of the following fields:

   (i) superannuation, taxation or life insurance;

   (ii) public policy;

   (iii) retirement income, welfare or aged care;

   (iv) the management of investments in financial assets;

   (v) the management or leadership of a significant commercial, not-for-profit or public enterprise; and

   (vi) demographics, actuarial science or economics.

4. A person is not, under any circumstances, eligible for appointment as a Council member if the person is:

   (a) a member or a person who was a member of the Parliament of the Commonwealth within the 5 years prior to the date of the proposed appointment;

   (b) a member or former member of the Parliament of a State, of the Legislative Assembly for the Australian Capital Territory or of the Legislative Assembly of the

Northern Territory within the five years prior to the date of the proposed appointment;

(c) a person who is or was a senior political staff member within the five years prior to the date of the proposed appointment;

(d) an employee of the Commonwealth;

(e) an employee of a statutory authority of the Commonwealth;

(f) an employee of a Commonwealth company;

(g) the holder of a full-time office under a law of the Commonwealth;

(h) an employee, director or officer of an Authorised Deposit-taking Institution or a registrable superannuation entity;

(i) an employee, director or officer of a responsible entity or the holder of an Australian financial services licence under the Corporations Act 2001;

(j) an employee, director or officer of an association representing members of the financial services or superannuation industry; or

(k) an associate or affiliate of any other persons mentioned in this subsection (4) as those expressions are defined in the Corporations Act 2001.

5. Notwithstanding subsection (4), the Minister must be satisfied, before appointing any person as a member of the Council, that:

(a) the person has no duty or interest that would be reasonably likely to prevent them from bringing independent judgment to bear on any matter to be considered by the Council;

(b) their conscience is not affected by any duty or interest that would conflict with their role as a Council member; and

(c) a reasonable person would perceive the proposed member as satisfying the requirement in subparagraph (a), regardless of whether they had any actual legal conflict.

6. The Minister must ensure, so far as practicable, that at any time there are members of Council from at least four different States and Territories.

7. For the purposes of subsection (6), a member is from a particular State or Territory if he or she is a resident of that State or Territory.

Note: A Council member is not an employee of the Commonwealth. A Council member holds a part-time office under a law of the Commonwealth.

Term of appointment and related matters for Council members

1. A Council member is to be appointed on a part-time basis.

2. A Council member holds office for the period that is specified in the instrument of appointment. Each term of appointment must not exceed 5 years and a member's total period in office must not exceed 10 years.

Note: A Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Appendix C: Superannuation snapshot

Size of superannuation

As at 31 March 2013, total superannuation assets were valued at $1.58 trillion, which is roughly equivalent to Australia's annual GDP. There was a 13.5 per cent increase in total estimated superannuation assets in the 12 months prior.[44] The size of Australia's superannuation industry relative to GDP has grown by 18 percentage points over the past 10 years.[45]

Participation in superannuation

During the 2011-12 financial year, contributions to superannuation totalled $117 billion. Employer contributions comprised $82 billion of the total, member contributions $34 billion and other contributions (for example spouse contributions or government co-contributions) comprised the remaining $1.2 billion.

Benefit payments made to June 2012 totalled $69.7 billion, comprising $34.9 billion in lump sum payments and $34.8 billion in pension payments.

Net contributions to June 2012 were $54.7 billion. Net growth of total superannuation assets to June 2012 were $49.6 billion.[46]

In 2009-10, there were around 754,000 people classified as self-employed by the ABS. This compares to 9.258 million wage and salary earners. However, around 29 per cent of the self-employed have no superannuation, more commonly males than females. On average, the self-employed are less likely to have superannuation than employees (Table C1); around 13 per cent of wage and salary earners say they have no superannuation (presumably part-timers below the threshold for the Superannuation Guarantee or the survey respondent not knowing about their superannuation).[47]

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44 Australian Prudential Regulation Authority, *Quarterly superannuation performance* March 2013.

45 Deloitte Access Economics, *Maximising superannuation capital: A report prepared for The Association of Superannuation Funds of Australia* June 2013. < http://www.superannuation.asn.au/ArticleDocuments/1089/ASFA_MaximisingSuperannuationCapital_June2013.pdf.aspx >.

46 Australian Prudential Regulation Authority *Annual superannuation bulletin* June 2012.

47 The Association of Superannuation Funds of Australia, Ross Clare *Equity and superannuation – the real issues* September 2012. < http://www.superannuation.asn.au/ArticleDocuments/1189/ASFA_Equity-and-super_Sep2012.pdf.aspx >.

Table C1: Distribution of superannuation by main source of income and sex of person, Australia, 2009-10

	Superannuation balance group				
	Nil	**Low**	**Middle**	**High**	**Total**
	Distribution of population (%)				
Male					
Wage and salary	12.9	46.1	21.8	19.2	100.0
Self-employed	30.5	40.4	17.8	11.2	100.0
Total	**16.8**	**44.4**	**20.6**	**18.2**	**100.0**
Female					
Wage and salary	13.5	58.5	17.4	10.5	100.0
Self-employed	25.8	52.7	12.8	8.7	100.0
Total	**16.0**	**57.1**	**16.5**	**10.4**	**100.0**
Persons					
Wage and salary	13.2	51.8	19.8	15.2	100.0
Self-employed	29.2	43.9	16.4	10.5	100.0
Total	**16.5**	**50.1**	**18.8**	**14.7**	**100.0**

Superannuation members

At June 2012, there were almost 32 million superannuation accounts in Australia, which is almost three accounts for every worker.[48]

The SMSF sector remained the largest sector of the Australian superannuation industry, with 99 per cent of the number of funds and 31.5 per cent of the $1.58 trillion total superannuation assets as at 31 March 2013.

At 31 March 2013, there were around 503,000 SMSFs holding $496 billion in assets.[49]

There were also approximately 958,000 members in the SMSF sector, about 8 per cent of roughly 11.6 million members in Australian superannuation funds.[50]

The value of lost and unclaimed superannuation decreased from $20.9 billion in 2010-11 to $17.7 billion in 2011-12.[51]

An ABS survey in 2010–11 found that the average age at retirement for those who had retired in the previous five years was 61.4 (with the average for men being 62.5 years and 60.3 years for women).[52]

Superannuation, housing and other post-retirement expenses

Another relevant factor in putting superannuation and its role in retirement in context is housing tenure; whether the family home is owned or rented and whether, if owned, there is a mortgage. Housing expenses are much lower if retirees own their home outright. Where

48 Australian Prudential Regulation Authority *Annual superannuation bulletin* June 2012.
49 Australian Prudential Regulation Authority *Quarterly superannuation performance* March 2013.
50 Australian Bureau of Statistics *6361.0 - Employment Arrangements, Retirement and Superannuation, Australia, Apr to Jul 2007* June 2009. < http://www.abs.gov.au/ausstats/abs@.nsf/mf/6361.0 >.
51 Australian Taxation Office *Annual report 2011-12* October 2012. < http://annualreport.ato.gov.au/uploadedFiles/Content/Downloads/n0995-10-2012_js23899_w.pdf >.
52 Australian Bureau of Statistics *6238.0 - Retirement and Retirement Intentions, Australia, July 2010 to June 2011* December 2011. < http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6238.0July%202010%20to%20June%202011?OpenDocument >.

there are mortgage or rental payments to be made, this will affect the level of income needed to meeting living expenses, giving rise to a number of policy consequences. The majority (77 per cent) of households in the age 65 or over category own their own homes and have no mortgage. Table C2 displays the home ownership statistics for households aged 65 and over.

Table C2: Proportion of households aged 65 and over by home ownership status

	Age group		
	65-74	**65+**	**75+**
Owner without a mortgage	75%	77%	82%
Owner with a mortgage	9%	6%	3%
Renter — State/Territory housing authority	5%	5%	5%
Renter — private landlord	8%	7%	5%
Other	4%	5%	5%
Total	100%	100%	100%

Source: ABS, Housing occupancy and costs, 2009-10, 4130.0; Housing expenditure survey, 2009-10. 6530.0

While the majority of retirees might be mortgage-free, a large number of people who retire from age 65 onward use their retirement savings to pay off their mortgage and other expenses. Of those who retired at age 65 and above who received a lump sum payment, 32 per cent used a part of the payment on home-related expenses. Around 25 per cent of those who received a lump sum invested some of the amount in an annuity or other superannuation vehicle, and around 25 per cent invested outside super. Some will have done both, so half or less maintain their savings for future use.

A recent report issued by the superannuation fund, REST, summarised the results of a 2012 survey of over 50s which found that 47 per cent of respondents still had a mortgage and 24 per cent had other debts over $50,000.[53]

Table C3: Use of lump sum payments for those who retired at age 65 and over and who received a lump sum

	Number of people ('000)	**% of people who received a lump sum**
Number of people who received a lump sum	206.6	
All methods of disbursement of lump sum payment from super*		
Rolled it over/invested it in an approved deposit fund/deferred annu annuity or other superannuation scheme	43.9	21%
Purchased an immediate annuity	7.3	4%
Invested the money elsewhere/personal savings/bank	55.6	27%
Paid off home/paid for home improvements/bought new home	66.0	32%
Bought or paid off car/vehicle	38.3	19%
Cleared other outstanding debts	24.6	12%
Paid for a holiday	28.8	14%
Assisted family members	9.5	5%
Undecided/Did not know	7.4	4%
Other	12.6	6%

Source: ABS, Charter Group estimates
*Lump sum might be used for more than one purpose.

On average, households of couples aged 65 and over spend approximately $44,000 a year on goods and services, while single people aged 65 and over spend approximately $23,000 a year. ASFA estimates[54] that a single person aged 65 and over will need $22,641 a year for a modest lifestyle and $41,169 a year for a comfortable standard of living. A couple

53 Retail Employees Superannuation Trust, *The journey begins: Australia's journey to retirement*, 2012.
54 The Association of Superannuation Funds of Australia, *ASFA retirement standard*: March quarter 2013. < http://www.superannuation.asn.au/resources/retirement-standard >.

aged 65 and over will need $32,603 a year for a modest standard of living and $56,317 a year for a comfortable standard. Singles and couples aged 65 and over, should on average, be able to afford somewhere between a modest and comfortable standard of living. ABS data (cat. no. 6523.0) indicate that median incomes are around 80 per cent of the average income for households aged 65 and over, so it is likely that the majority of households, particularly singles, can only afford the modest level of spending.

Table C4: Spending versus ASFA retirement living standards

	Couples 65+	Individual 65+
Average weekly spending	$855	$446
Average annual spending	$44,460	$23,192
ASFA — Modest single		$22 641
ASFA — Modest couple	$32,603	
ASFA — Comfortable single		$41,169
ASFA — Comfortable couple	$56,317	

Source: ABS, ASFA Retirement Standard, March 2013 Quarter.

Appendix D: Charter Group's consultation

Public discussions

The Charter Group met with stakeholders including academia, consumer and business groups and industry associations at roundtable discussions in Melbourne (5 June 2013) and Sydney (6 June 2013). A combined total of twenty-four people attended these forums.

The Charter Group also held public forums in Melbourne and Sydney on 7 June 2013. The public forums were widely advertised in the print media, with registration through the Charter Group webpage. A combined total of thirty-four people attended these forums.

Submissions to the Charter Group

The Charter Group received 32 submissions in relation to the *Discussion Paper: Charter of Superannuation Adequacy and Sustainability and Council of Superannuation Custodians* released by the then Minister for Superannuation and Financial Services on 9 May 2013.

Table D1: Summary of data relating to submissions

Author origin	Number
Individual	10
Industry	22
Total	32

The Charter Group is grateful for the level of stakeholder interest and support. The discussion paper noted that, unless submissions were made in confidence, a list of the individuals and organisations that made a submission would be made available. Public submissions can be found at www.treasury.gov.au/supercharter.

List of submissions

Achilles, Dallas

Association of Financial Advisers Ltd (AFA)

Association of Independent Retirees (A.I.R) Ltd

Association of Superannuation Funds of Australia Ltd (ASFA)

Australian Council of Trade Unions (ACTU)

Australian Custodial Services Association Ltd (ASCA)

Australian Industry Group (Ai Group)

Australian Institute of Superannuation Trustees (AIST)

AustralianSuper Pty Ltd

Cbus

Confidential

Confidential

Confidential

Council of the Ageing (COTA) Australia

CPA Australia

Cronin, Kevin

Cuffe, Chris

Elliott, Mike and Joan

Financial Planning Association of Australia Ltd (FPA)

Financial Services Council (FSC)

Griffith University

Industry Super Network Pty Ltd (ISN)

Law Council of Australia Ltd (LCA)

Mason, Andrena

Moodie, Viveca

National Foundation for Australian Women Ltd (NFAW)

National Seniors Australia (NSA)

Prudames, Geoff and Ann

Simpson, Paul

SMSF Owners’ Alliance Ltd (SMSFOA)

SMSF Professionals’ Association of Australia Ltd (SPAA)

Women in Super (WIS)

Appendix E: The Charter Group members

Jeremy Cooper (Chair)

Mr Cooper is currently Chairman, Retirement Income at Challenger Limited.

Mr Cooper was previously Chair of the 2009-10 Super System Review and a former deputy chairman of the Australian Securities and Investments Commission (ASIC).

While at ASIC, Mr Cooper had oversight responsibility across a range of ASIC's teams in the financial services sector, including superannuation, financial advisers and consumers and retail investors.

Prior to his appointment to ASIC, he was a partner of an Australian law firm, now Ashurst Australia, where he worked principally in the area of mergers and acquisitions and corporate advice for 20 years.

Mr Cooper is a member of the Policy Advisory Council of Finsia and the Industry Advisory Committee of the Australian Centre for Financial Studies.

The Honourable Alan Goldberg AO QC

Mr Goldberg served as a Judge of the Federal Court of Australia from 1997 to 2010, when he returned to practice at the Victorian Bar.

Mr Goldberg signed the Bar roll in 1965 and was appointed Queens Counsel in 1978. His commercial and public law practice focusing on administrative, constitutional, equity, commercial, corporate and trade practices law. He was the founding President of the Commercial Bar Association of Victoria.

In 1997 he was appointed Judge of the Federal Court of Australia. In 1998 Mr Goldberg was appointed Deputy President and then President in 2003 of the Australian Competition Tribunal.

Mr Goldberg was President of the Victorian Council for Civil Liberties (now Liberty Victoria). He has been the Deputy Chairman of the Melbourne Symphony Orchestra and is on the board of TarraWarra Museum of Modern Art.

In 2005 Mr Goldberg was appointed an Officer in the general division of the Order of Australia for his service to the judiciary, particularly in the areas of competition law and equity, and to the community as a contributor to debate on human rights and civil liberties, and as a supporter of the arts.

Ross Jones

Former Deputy Chairman and Member of the Australian Prudential Regulation Authority (APRA), first appointed in July 2003 and whose term expired on 30 June 2013. At APRA, he took principal responsibility for superannuation and private pensions and chaired APRA's Enforcement Committee.

Mr Jones was also President of the International Organisation of Pension Supervisors, a group whose members include pension supervisors and regulators from more than 70 countries.

Mr Jones was also Vice Chairman of the OECD Working Party on Private Pensions and was a member of the Singapore Central Provident Fund Advisory Panel.

Prior to joining APRA, Mr Jones was a Commissioner of the Australian Competition and Consumer Commission. He was also an Associate Professor in the School of Finance and Economics at the University of Technology, Sydney.

Elana Rubin

Ms Rubin is a Director of Mirvac Group Ltd, NAB Wealth / MLC, PPB Advisory and a member of the Federal Government's Infrastructure Australia Council, the Climate Change Authority, and a member of the Evans & Partners Advisory Board.

Ms Rubin recently retired as Chair of AustralianSuper, one of the largest multi-employer superannuation funds in Australia, and as a Director of TAL (previously Tower Ltd). Prior roles include as Chair of Victorian WorkCover Authority, Director of TAC, Director of Industry Super Property Trust and Chair of the Victorian Rail Track Corporation (VicTrack).

Ms Rubin is a Fellow of the Australian Institute of Company Directors, the Australian Institute of Management, Australian Institute of Superannuation Trustees and the Financial Services Institute of Australasia. She is also a member of Chief Executive Women.

Steve Tucker

Mr Steve Tucker was the Chief Executive Officer of MLC for nine years, and served for 25 years with MLC and NAB.

Mr Tucker was appointed CEO of MLC in 2004. He joined MLC in 1988 and held a number of senior roles including heading up MLC's Retail Investments business and leading MLC's Advice businesses, where he was responsible for MLC's partnership with financial advisers.

Mr Tucker was a director on a number of NAB company boards. He was also a director on the Financial Services Council Board, a Member of the FPA, a Fellow of Finsia and a Senior Associate of the ABA.

Appendix F: Glossary

Term	Definition
ABS	Australian Bureau of Statistics.
Annuity	Generally, a stream of payments made at regular intervals. In superannuation, a fund member can use all or part of their benefits to purchase an annuity from an insurer in order to receive the value of their benefit as an income stream, either for life or a term of years.
APRA	Australian Prudential Regulation Authority: APRA is the prudential regulator of most superannuation entities other than SMSFs.
ASFA	The Association of Superannuation Funds of Australia Limited.
ASIC	Australian Securities and Investments Commission.
ATO	Australian Taxation Office: the regulator of SMSFs under the SIS Act.
Concessional contributions	Concessional contributions are employer contributions to an employee's superannuation account made out of their pre-tax salary, including their Superannuation Guarantee and additional employer contributions. Generally, contributions are taxed concessionally at a reduced tax rate (compared to a person's marginal tax rate) of 15 per cent, referred to as 'contributions tax'. Contributions for the self-employed or those not working for which a personal tax deduction is claimed may also be concessional contributions. See also personal contributions.
Defined contribution fund	A fund that provides retirement benefits based on accumulated employer contributions and any investment earnings on those contributions. The assets of the fund are invested and any earnings (or losses) are credited (debited) to the member's account less any charges, such as administration fees and insurance premiums. Members bear the full effect of the fluctuation in investment earnings.
Discussion paper	The paper entitled: *Discussion paper: Charter of Superannuation Adequacy and Sustainability and Council of Superannuation Custodians* issued on 9 May 2013.
Drawdown phase	Post-retirement decumulation.

Term	Definition
Employer contributions	Employer contributions are contributions made by employers and include (but are not limited to) all mandated employer contributions (such as Superannuation Guarantee amounts), salary sacrifice contributions and voluntary employer contributions, less any repatriation to employer sponsors. See also personal contributions.
FSC	Financial Services Council.
Henry review	The 2009 report and recommendation of the Henry review, also known as the Australia's Future Tax System Review.
IGR	The intergenerational report issued by Treasury under the *Charter of Budget Honesty Act 1998.*
Lump sum	An amount of a superannuation benefit paid to a fund member as a stand-alone cash amount. Benefits can be paid as one or more lump sums.
Member	A person who holds an interest in a superannuation fund either because they are accruing benefits to provide income in retirement or because they are receiving benefits from the fund.
Post-retirement	The phase of a person's life during which the person has retired from the workforce and usually ceased to build superannuation benefits and begun to rely on their benefits for income in retirement.
Preservation age	The minimum age, prescribed in the SIS Regulations, at which the superannuation benefits of a fund member become available to be paid from the superannuation fund to the member, for example, on retirement or disability.
Replacement rate	The proportion of a member's current employment income that the current value of the member's superannuation benefits would represent if paid to the member as an income stream over the member's retirement.
Retirement income	The income on which a person relies after they retire from the workforce. This can include superannuation benefits, the Age Pension and private savings.
Retirement phase	The period of a person's life, and superannuation fund membership, after they have retired from the workforce and qualify for, and may be receiving, superannuation benefits.
SG	The legal requirement under the SG Act for an employer to make contributions at least quarterly equal to a percentage (currently 9.25 per cent per annum) of an employee's ordinary time earnings into a superannuation fund or RSA on behalf of the employee.
SG Act	The *Superannuation Guarantee (Administration) Act 1992*.

Term	Definition
SIS Act	The *Superannuation Industry (Supervision) Act 1993*.
SIS Regulations	The *Superannuation Industry (Supervision) Regulations 1994*.
SMSF	Self-managed superannuation fund.
Terms of reference	The terms of reference for the Charter Group issued on 9 May 2013.

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