COMMENTS ON "LEGISLATING THE OBJECTIVE OF SUPERANNUATION" AND PROPOSED 2025 SUPERANNUATION CHANGES

1 I would like to respond to the Treasury consultation on "Legislating the objective of superannuation" issued by Treasury on 20th February 2023.

2 I would also like to include comments on the "Better Targeted Superannuation Concessions" proposal announced by the government on 28th February 2023 for implementation on the 1st July 2025. Treasury has not yet issued a consultation paper for that proposal but I consider the two issues to be related.

3 I have always been a member of job-related superannuation schemes since I started work with a private company in 1971. I have been a member of six different superannuation funds, all of which have been chosen by my then current employer. My two current superannuation funds are a defined benefits CSS pension and an accumulation fund with Unisuper.

4 The Treasury consultation paper is seeking feedback on the following proposed objective:

> "The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way."

5 The consultation paper states that the legislated objective would … "ensure the stability of the objective and provide certainty to regulators, policy makers, and Government of the longevity of the objective." There is no mention of providing stability for the members of superannuation funds.

6 If the superannuation objective is legislated it does not provide stability. Any future government could legislate changes to the objective – I am reminded of "L-A-W law".

7 If the superannuation objective is legislated it would give an indication of the then current government's understanding of the objective of superannuation. I have concerns about the part of the proposed wording, and alternate wordings, from this government which say …"to deliver income". **I do not agree that superannuation should only deliver "income"**. I consider that more appropriate the words would be … **"to deliver adequate standards of living in retirement**" which are the words from the 2020 Retirement Income Review, as quoted in the consultation paper.

8 There may be times in retirement when one's plans change and accessing capital from one's own superannuation fund might be required. An income only stream and limited time in retirement may not allow funds and time to obtain and repay a loan. If it becomes compulsory to have only an income stream in retirement, then **having to beg the Tax Office for access to one's own funds would not be a "dignified retirement."**

9 In my own case, the following unexpected events occurred after my first retirement: marriage breakdown; coming second in the Family Law Court; CSA; losing all housing equity; re-joining the workforce; renting; saving for a housing deposit; adverse NCAT orders. It has been beneficial for me to be able to access lump sums from my superannuation fund in retirement.

10 The consultation paper includes a brief history of superannuation in Australia. A very brief history. It does not mention the Reasonable Benefits Limits on lump sums and pensions from 1994 to 2007. It does not mention changes to superannuation introduced in 2007 by Treasurer Costello and Prime Minister Howard which allowed the, recently much heralded, obscenely large personal retirement funds to be created. It does not mention the 2016/17 changes introduced by Treasurer Morrison and Prime Minister Turnbull which put a cap on concessional contributions and a cap of a total of $1.6 million (indexed) that could be held in pension mode accounts.

11 The Treasury factsheet on “Better Targeted Superannuation Concessions” states that:

> “From 1 July 2025, the Government will reduce the tax concessions available to individuals whose total superannuation balances exceed $3 million at the end of the financial year.”

That is not a correct statement. The proposed change is for tax concessions to be reduced for individuals **deemed** to have total superannuation balances exceeding $3 million.

12 Why must “**deemed**” be added to the Treasury factsheet summary to accurately describe the proposed superannuation concession changes? – to cover people with defined benefit pensions.

13 The 2016/17 “**Fair** and Sustainable Superannuation” changes seem to have been designed to punish people who have a lifelong defined benefit pension. Perhaps the thinking was that they were **Fair game** because they were mostly ex-public servants and military personnel. The changes include a common **valuation factor of 16** derived using “general actuarial considerations”. “General actuarial considerations” is an oxymoron – there is nothing “general” about actuarial considerations. As shown in Attachment A, the value 16 is not in accordance with valuation factors issued and used by other Government Departments. It is simple, simplistic, nearly always incorrect, and is **not equitable**. Was it endorsed by the Australian Government Actuary?

14 **The “Fair and Sustainable Superannuation” changes were introduced by Treasurer Scott Morrison at the same time and with the same federal cabinet as for the implementation of the Robodebt System**. Perhaps the then apparent desire to increase revenue led to a simplistic, inequitable method that over-valued defined benefit scheme pensions.

15 If the current Government wishes to proceed with the “Better Targeted Superannuation Concessions” to reduce the tax concessions available to individuals whose total superannuation balances exceed $3 million **I recommend that the calculation of the value of a lifetime indexed defined benefit pension should be corrected to a genuine actuarial calculation**. If not, continuing with the current “general actuarial considerations” method distorts the value of a defined benefit pension and may be regarded as misfeasance in public office and lead to a class action.

16 Only a small number of people receiving a defined benefit pension would have a real total superannuation balance that exceeds $3 million. There would be a number like me who have well below $3 million but are already **paying extra tax because of the inflated deemed value of their pension.** That number would be well below 0.5% of superannuants and the number is dying off.

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30 March 2023

ATTACHMENT A

PUTTING A VALUE ON A LIFETIME DEFINED BENEFIT SUPERANNUATION INCOME STREAM

A defined benefit scheme pension is generally not paid from a personal accumulation or pension superannuation fund but from a pool fund which is not linked to an individual. For example Commonwealth public service and military defined benefit pensions are paid from consolidated revenue, but may in the future be paid from the Future Fund.

The **"Fair and Sustainable Superannuation"** changes implemented in July 2017 included a limit for an individual of $1.6 million on all accounts that were in pension mode. The government included changes designed "to ensure commensurate tax impacts on members of defined benefit schemes" [Treasurer Morrison, 9 November 2016, 2nd reading of Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016].

To ensure commensurate tax impacts on members of defined benefits schemes it is necessary to calculate for each member a value which would be equivalent value to their lifetime payments from the scheme. It is impossible to predict in advance the actual value of anyone's lifetime defined benefit pension will be because that can only be calculated after the death of the member.

It is however possible to calculate a fair statistical approximation of the value of a member's defined benefit scheme pension using genuine actuarial considerations of: the member's age; gender; life expectancy; annual salary calculated from the first payment at the start of a pension; the expected return on the fund; and the expected CPI.

The "Fair and Sustainable Superannuation" changes calculate the value of a lifetime defined benefit pension as the annual entitlement multiplied by a factor of 16. The Explanatory Memorandum for the legislation, at section 3.225, explains that "The purpose of this rule is to provide a simple valuation rule based on general actuarial considerations." The meaning of the term "general actuarial considerations" is not defined.

The rule that **Value of a Defined Benefit Pension = Annual Entitlement x 16**
is simple, simplistic, almost always wrong, and **is not equitable**.

The current legislation **deems** the transfer balance contribution of a lifetime defined benefit pension to be sixteen times the annual entitlement, based on only one variable factor – the Annual Salary Entitlement. The valuation factor of 16 exaggerates the true value of a defined benefit pension so the **deemed** value is higher than its true value.

The **deemed** Value of a Defined Benefit Pension is added to the transfer balance total for that person. I would like to stress that the **deemed value is an imaginary figure**. There are no real funds in the transfer balance for the defined benefit pension, not even one cent. When the pension ceases on the death of a member there are still no funds in the balance amount. Zero.

While putting a current value on a lifelong defined benefit scheme is not straightforward it is a necessary requirement for some government departments. There is an Australian Government Actuary (AGA) office within the Department of the Treasury which provides actuarial advice to

Government, its departments and agencies. The AGA could have been approached to obtain genuine actuarial calculations for the Fair and Sustainable Superannuation changes. Was it?

Every three years the **Department of Finance** engages a consultant actuary to prepare a report on the Long Term Cost of the Public Sector Superannuation Scheme and the Commonwealth Superannuation Scheme. The latest report is dated 24 June 2021. Its results include the Projected Unfunded Liability for each of the next forty years for the PSS and CSS in dollars and percentage of the future GDP. The Actuarial Assumptions used include: rates for CPI; general salary and promotional salary increases; GDP growth; investment return; 15% tax on assessable income; resignation and age retirement rates; death and invalidity retirement rates; pensioner mortality rates [from the AGA Australian Life Tables 2015 – 17]; proportion with spouses; age difference between member and spouse. That is a “genuine actuarial calculation” – compare that to the “general actuarial considerations” which uses just one variable and the number 16.

Some federal government departments issue tables of valuation factors for calculating a value for a life-long defined benefit income stream.

I am very much aware that in 2001 the **Attorney General’s Department**, under the Family Act 1975, sponsored the production of Family Law (Superannuation) Regulations 2001. That regulation is 222 pages long and its sole content is how to put a value on a pension in accumulation mode or pension mode, and how to divide pension assets in a divorce. Schedule 4 of the regulations, pages 168 to 189, is the “Method for determining gross value of superannuation interest payable as life pension”. That schedule contains tables which show by gender, for each age between 18 and 99, a valuation factor to multiply the current annual pension amount. There are tables for eight different pension indexation rules – three fixed percentage rates, four different CPI based rates and one for a wage indexed rate. The formulae calculate a different value for each completed month of age between the values for consecutive years. Compare that to the single factor, 16, claimed to result from “general actuarial considerations”.

The following table is an extract of the valuation factors for CPI indexed pensions from the Family Law (Superannuation) Regulations 2001.

Age (in completed years)	Valuation factor - males	Valuation factor - females
50	17.2903	18.6467
55	15.7468	17.2848
60	14.0464	15.7414
65	12.2423	14.0096
70	10.4067	12.1143
75	8.5846	10.1036
80	6.8853	8.1006
85	5.4120	6.2766
90	4.3867	4.8017
95	3.7971	3.8209
99	3.3630	3.2459

All the Family Law valuation factors are less than 16 for males more than 54 and three complete months of age and less than 16 for females more than 59 and three complete months of age.

The **Social Security** (Pension Valuation Factor) Determination, made under subsection 1120(3) of the Social Security Act 1991, contains a table of valuation factors that are used to assign an asset value for a defined benefit income stream for use in Social Security means tests. The asset value is calculated by multiplying the pension Annual Payment by an aged-based factor, shown in the table below for CPI indexed pensions. The current Determination was signed by Paul Fletcher, the then Minister for Families and Social Services.

A similar table for **Veterans' Affairs** valuing CPI indexed income streams, from the Veterans' Affairs Compensation and Support Policy Library Part 10.5.7 Pension Valuation Factors For a Defined Benefit Scheme, is also included in the table below.

Age of person on next birthday	Pension Valuation Factor – Social Security	Pension Valuation Factor – Veterans' Affairs
51 to 55	15	14
56 to 60	14	12
61 to 65	12	11
66 to 70	10	9
71 to 75	8	7
76 to 80	7	5
81 to 85	5	4
86 to 90	3	3
91 to 95	3	2
96 to 100	2	2
101+	1	1

When the "Fair and Sustainable Superannuation" changes were implemented in 2017 I was 72 years old. From the tables above I believe that an actuarial calculation should result in a valuation factor for me of around 8. My CSS pension at 1 July 2017 multiplied by 16 gave me a **deemed** transfer balance amount of $1.8 million. There are not a**ny** actual funds in that inflated, artificial figure. If I had **a real $1.8M in say a Unisuper Balanced pension mode fund the returns would pay my lifetime pension and the fund balance would continue to grow in excess of CPI**. In reality, when I die there are no residual funds from a CSS pension. My **deemed** figure is artificially above $1.6M so I had to cancel my Unisuper pension and transfer the real funds back to an accumulation account.

Before the "Fair and Sustainable Superannuation" changes were implemented my CSS pension was taxed [it still is] but the returns on my Unisuper account-based pension fund were untaxed. In the five and a half years since 1 July 2017 when the changes were introduced, I have paid tax on the returns on the Unisuper accumulation fund. That tax has been tens of thousands of dollars. If the deemed value of the CSS pension at 1 July 2017 had been a genuine actuarial based value, much of my Unisuper fund could have been in pension mode and those returns would not have been taxed.

None of the Australian Government published valuation factors used for assigning a value for a life-long defined benefit pension support using a universal value of 16 as the only valuation factor. In nearly all cases the valuation factor is lower than 16. This means that the transfer balance value is artificially inflated and that **defined benefit pension holders are not treated in an equitable way**.