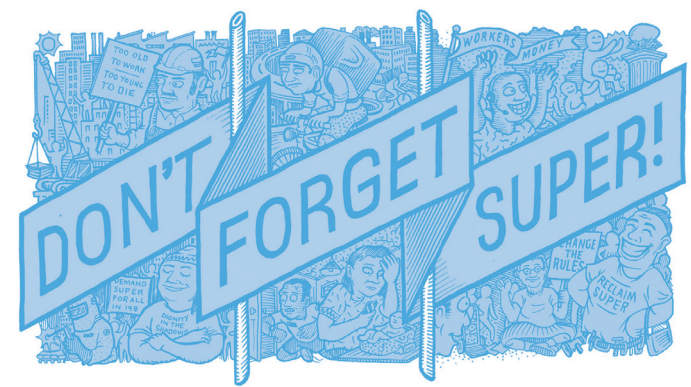




HOW TO RESTORE AUSTRALIA'S UNIVERSAL INDUSTRY SUPERANNUATION SCHEME

THE EMERGING CRISIS OF SUPERANNUATION INADEQUACY,
NON-COMPLIANCE & WAGE THEFT - AND HOW WE CAN FIX IT TOGETHER.

BRIAN BOYD



**How to restore Australia's universal industry
superannuation scheme**

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Forewords

It's time to change the rules. Wage and super theft is rampant. Wages are stalling. Workers are being farmed out to labour hire and too many of us are desperate for enough secure hours at work. Big business has become too powerful, and they've used that power over many years to weaken our rights at work.

But change is coming. We are building a powerful movement of people committed to a fairer Australia. We are organising in our workplaces, our families and our communities to build our strength and take the fight for fairness onto the streets and into the ballot box. Our campaign has a decent retirement as a priority for a fair society.

It's not good enough that so many women retire in poverty. It's not good enough that bosses steal the super of café workers, construction workers and convenience store workers. It's not good enough that the rules tie our hands as workers from standing up and doing something about this state of affairs. It is obvious we need better and stronger rights to even enforce the things we have already won, like weekly superannuation payments.

How we will win these rights is by standing together. Super for the many was only won because workers came together and fought for it. We need that same determination to rebuild super and make real for the next generation the promise of a decent retirement. We owe it to those who came before. We owe it to those yet to come.

I look forward to joining you all on the picket line, the rally front, the doorknock and the workplace meetings to build and win this campaign.

Together we're going to change the rules.

Sally McManus

ACTU Secretary

In recent times when the Australian labour movement has been elected to power and our political allies installed in high office, there has been a distinct absence of progress on a most important issue.

Universal superannuation was fought for and won by the union movement over many decades to secure for all workers the dignity of a decent retirement.

It was the 1983 Hawke/Keating-union Accord which afforded the spreading of this important right to more workers, and the 1992 Superannuation Guarantee Charge (SGC) legislation extended it to all. Superannuation is the child of the labour movement and it has been our role to nurture and protect it from those who would do harm to this world-class social right.

But somewhere along the way, our movement stopped pushing for protections and improvements to super to be a priority for government. Other things became important: scrapping WorkChoices, dumping the ABCC, securing paid parental leave and boosting education funding.

All worthy initiatives, which we support wholeheartedly. But in the heat of reaction we forgot about our baby.

Between conservative attack and Labor malaise, universal superannuation that guarantees decency in retirement has become a myth for too many. 40% of workers are not receiving any super payments. Shamefully, our super funds are the ones bankrolling some of the worst wage-thieving companies that contribute to that 40%.

As Brian Boyd details in this publication, industry superannuation has been under attack for decades. Whether it be through political interference with the super guarantee rate itself, banks circling like legislative vultures, or by massive employer non-compliance and blatant wage theft in companies swindling hard-working Australians of their super. We have lost too much ground.

It's time we turned the tables. It's time we protected and extended universal super in leaps, not patches.

This booklet calls for full recognition by both industrial and political wings of the labour movement of the importance of super to our mission in the next few years. We cannot forget super again – it must be a major priority at the bargaining table with any government.

We offer some ideas for how to protect and extend superannuation to restore its promise of a dignified retirement at all. At most, these proposals will be taken up by unions, peak bodies and political parties and we will see them put into law. At worst, we have contributed to sparking a real debate about this important issue.

As always, it falls to the workers ourselves to ensure our brothers and sisters are taken care of in the dawn and dusk of life. We are up to the task.

Troy Gray

Secretary ETU Victoria



Introduction

Superannuation in Australia is in a state of crisis. The dual problems of inadequate super accounts; and non-compliance and wage theft by employers has produced an emerging public policy nightmare.

The inaction of successive federal governments and lack of enforcement by the ATO has exacerbated this grossly unacceptable situation.

It is fine for the industry super funds to promote that currently the total amount of super savings under funds management has reached around \$3 trillion and growing. But the average individual account balance is not able to provide a 'comfortable retirement' for the 'pioneer' generation who fought for industry super, let alone the new generation of low paid, casual and part-time workers.

Millions of Australians are staring into the abyss of poverty in retirement. Our politicians, employers and even our union movement leaders have failed to ensure our super system keeps faith with the promise of a dignified end to a person's working life.

The mounting evidence of the super crisis is catalogued in this publication to serve as a wake-up call to workers and our leaders. It is our responsibility to articulate the problem and win the solutions.

The consequences of not doing so are enormous. Having a large number of retirees dependent on the federal pension puts incredible strain on a public

benefit not designed to carry such a large load. Either governments will cut the pension entitlement, or they will cut other vital public services and support to – to protect working people against the prospect of poverty through austerity.

There is reason to be hopeful of our chances of doing it: of fixing super.

As the baby boomer generation retires, the focus on the gender pay gap increases, and concern about wage theft rises: so too does the consideration about the adequacy of, or lack thereof, super. The gig economy and the rise of part-time and casualised work mean that our employment-based social welfare entitlements need to be reformed, anyway.

We are at crossroads of opportunity where the nation is willing to talk about super.

Far from being in the preserve of dry accountants, super is becoming a hot topic again as many stir from their complacency slumber and rise to the challenge of fixing what was the pride of the Australian system.

It is not too late to protect and extend our industry superannuation scheme to restore its promise.

What we offer here is some of ideas for the fixing. The list of recommendations is by no means exhaustive, but it is a start to get the conversation going.

We need to preserve and protect our superannuation entitlements – there is no more time to lose.

The next step is for a solid, broad-based, determined industrial and political campaign to prioritise super in the union movement's "Change the Rules" strategy.

Brian Boyd
2018



The Super Crisis: Reason 1 – False Guarantees

THE PROBLEM: JUST NOT ENOUGH IN OUR SUPER ACCOUNTS

When Australia embarked on a path towards industry superannuation and away from the universal means-tested pension, we set ourselves a challenge of making super accounts worth retiring on as the workforce aged.

By 2018, we had utterly failed this challenge. Experts differ on just how large the super gap is for different groups of workers, but the common denominator is that not enough has been contributed across the board.

In 2016 it was estimated by the financial advisory industry that a couple would need their superannuation accounts to contain collectively anywhere between \$600,000 and \$1.2 million to retire comfortably, while a single person would need anywhere between \$406,000 and \$545,000 in their account. The same experts reported that as of 2016 the estimated average/typical account for a male was only between \$290,000 and \$320,000, while for a female it was between \$138,000 and \$180,000 saved.

Countless millions of workers have super accounts far below these averages as they approach retirement age. Half of all of retirees will outlive their savings by more than five years.

The Australian Institute of Superannuation Trustees (the industry superannuation funds representative body) confirms most workers today have a typical balance of less than \$150,000. This is drastically less than the accepted “retirement standard” for a comfortable post-work lifestyle which requires a single person to have their own home, and \$545,000 in super. A couple is supposed to have their own home and \$640,000 between them in their super accounts.

For most workers, those figures are a world away. The Commonwealth Bank and actuarial firm Rice Warner compiled and published the Retire Ready Index (RRI) in 2017 which showed that there are 5.1 million Australian workers who are likely not to have enough money in their super accounts to comfortably retire. 5.1 million people represents almost half (47%) of our active workforce.

For these millions of workers, retirement brings the necessity to rely in-part on the Commonwealth pension. Almost 30 years later after the ‘super guarantee’ was introduced, almost half of all Australian retirees say their main source of income is a government pension.

The RRI estimates that if couples need \$58,000 per year in retirement just to survive, and singles need \$43,000 per year, then a full 7 million Australians will have rely on the pension to top up their inadequate super.

In 1997, 79% of retirees relied on some form of support from the age pension. By 2017, this reliance had only dropped to 70% of retirees, with a fall predicted to half of retirees needing some form of pension support by 2050. These figures indicate that our super contributions have not kept pace with the original plan for super. By now, only a minority of Australian retirees should be reliant on the government pension.

We are already seriously lagging behind original estimates and intentions for a modern retirement system for all Australians.

It is not just that the pension is inadequate – it’s also unstable. For punters calculating how they can make their retirement work, the chopping and changing (and more chopping) affecting the state pension makes including it in ones’ retirement plans as a very unsure bet.

In recent years, access to the pension has become more and more difficult. The Abbott/Turnbull government has hacked away at eligibility criteria, leaving workers too poor to stand on their own two feet in retirement, and too wealthy to qualify for help.

With the gloomy prospect of a retirement lived in poverty, it is understandable why a 60% of workers predict that they will have to continue some level of work to make ends meet in their twilight years. Industry Super Australia’s CEO Davis Whitely said many Australians will not be able to find suitable work when they do retire.

However there is a major impediment and dilemma – where will this work come from?

Sadly, stagnant wages, insecure work and eroding work rights mean that where older people can find work, it will be precarious and force them to work longer for less.

HOW WE GOT HERE

The Superannuation Guarantee Charge (SG) is a proportion of wages that the employer has to pay into a workers’ nominated superannuation account, above and beyond salary and leave entitlements.

The super guarantee was set by the Keating Government at 3 per cent, and 4 per cent for large employers. The intent was to increase the superannuation guarantee rate every year to a rate that would ensure enough was put away to reach a comfortable retirement by 60. The rate should be north of 20% by the mid-2000s if the scheme was going to work.

In particular the original aim of the SG worker accounts was to decrease, over time, the ever-widening reliance on the nations’ pension system as the population got older.

THE BIRTH OF SUPER - 1983

The Prices and Incomes Accord was an agreement between the peak union body the Australian Council of Trade Unions (ACTU) Hawke Labor Government following a national tripartite summit held in Canberra soon after Hawke led Labor to victory in 1983.

While employer associations did not formally sign on to the Accord they certainly did not complain about one main aspect of it – the union movement agreeing to restrict wage demands immediately across the board while the government introduced, over time, the social wage package trade off. Wage restraint was seen as necessary by the government to reduce inflationary pressures in the economy and accommodate employers who would face new superannuation costs for their workers.

The social wage ingredients included:

- increases in supplements for low-income families
- Medibank improved to Medicare (universal, free healthcare)
- Modest increases to the pension
- Cuts to personal income tax rates
- Unions accepting that an initial 3% award superannuation could be pursued industrially (rather than across the board)

For decades superannuation had been the privilege of a minority of some high income earners, permanent public servants and certain classes of white-collar employees. Under Hawke and his Treasurer Paul Keating’s landmark reforms, all Australians gained the ability to industrially convert notional access to superannuation into a reality.

The IR laws were changed to allow unions to pursue, by Awards and industrial agreements, industry superannuation contributions for their members.

In return, the ACTU, led by Bill Kelty, agreed to an immediate adjustment downwards of normal wage increases expectations:

4.3%	only	Sept 1983
4.1%	only	April 1984
2.6%	only	1985 – 87

SUPER TAKES OFF ‘83 - ‘92

The union movement had ‘superannuation for all’ in its industry-by-industry Logs of Claim for years. With universal industry super recognised in the historic Accord , union members across many industries of the economy commenced substantial campaigns to achieve superannuation accounts for thousands and thousands of workers.

For example, the building and construction unions set up Building Unions Superannuation Scheme (BUSS), that later became C+BUS and today known as Cbus. This entailed union organisers and onsite shop stewards (delegates) convincing building companies and their subcontractors to sign Deeds of Adherence that legally obliged them to regularly pay into BUSS super contributions for their workers. In the case of BUSS these payments needed to be made by employers on a monthly basis. This policy continues today.

This exercise became a major industrial issue through site agreements and Building Industry Award negotiations, throughout the 1980’s. Industrial action and disputation often occurred. Such activity happened because some employers continued to resist superannuation payments.

Similarly in the metals and manufacturing sector the metal unions and the MTIA (later to become Australia Industry Group – or AIG) “eventually co-operated” to bring about widespread superannuation in this key area of the economy.

The Superannuation Trust of Australia (STA) became a major industry super fund for the manufacturing sector. It would later merge with the Australian

Retirement Fund to form Australian Super, today Australia's biggest industry super fund.

The industry super fund model was replicated gradually across as much of the industrial and services landscape as possible.

All the main elements of the Accord social wage trade off were rolled out where applicable, but it was access to universal superannuation that was always 'uncertain' and 'painful'.

BIG CHANGE IN '92

Nine years later after the Accord made it legal to pursue industry-by-industry super, hundreds of thousands of workers won super accounts that their employers were paying into regularly.

But during the initial, pioneer phase of getting superannuation more widely established as an industrial right (industry by industry, individual employer by individual employer, contractor by contractor), millions of workers were still not signed up and faced retiring in poverty.

This created a huge unfairness. Wage increases for all workers had been curtailed since 1983, but NOT all workers received the superannuation benefit. All employers benefited from lower wages, but few of them had to pay forward the cost of super for their workers, during this period.

The push for universal, compulsory super grew. Union successes 'in the field' of the 1980's campaigns provided enough political weight for the federal government, in 1992, to legislate for a formal system of "compulsory superannuation" to be created.

Unions agreed yet again to forgo another 3% from a scheduled national wage increase claim, which ALL employers were supposed to pay into the new Superannuation Guarantee scheme for ALL employees in Australia. As a trade-off, Keating committed to more super guarantee rate increases. He stated that the Government's aim was for the SGC to go to 15% as soon as possible.

THE UNRAVELLING BEGINS

When Keating won the "unwinnable" federal election in 1993, big changes came to the world of work. Keating industrial relations minister Laurie Brereton championed in new laws that replaced Australia's centralised arbitration system for setting wages and conditions, with a new neoliberal model that put enterprises (individual businesses) across the table from workers in negotiating agreements.

A particular nasty aspect of the changes was the creation of so called non-union Enterprise Flexibility Agreements (EFA's). Industry-wide agreements covering many thousands of workers faded away.

However, it was not all bad - a limited 'right to strike' law came into being, but it contained many strict limitations.

Keating's work laws placed great burdens on the union movement, as unions had to scramble to protect basic wages and conditions. An employer could offer a wage rise, but often they would require decades-held conditions in exchange.

As unions tried to keep their members' basic conditions afloat, the momentum needed to consolidate and grow industrial super was lost.

The legislative achievement of compulsory super in 1992 was to be continually buffeted and hindered by the hostile industrial relations environment that marked the next 25 years, as unions (the main drivers of expanding and monitoring superannuation) were forced to divert attention and resources inwards.

Such a radical, game-changing initiative like universal super required a fertile, nurturing or even a benign economic backdrop. This did not happen.

From 1 July that Year	Minimum contribution percentage
1992	3 / 4*
1993	3 / 5*
1994	4 / 5*
1995	5 / 6*
1996	6
1998	7
2000	8
2002	9
2013	9.25
2014	9.5
2021	10
2022	10.5
2023	11
2024	11.5
2025	12

* For the period 1993-1996, a higher contribution rate applied for employers whose annual national payroll for the base year exceeded \$1m.

This table need a caption.



With the election of the Howard conservative government in 1996, successive waves of anti-union legislation further pushed superannuation down the list as a day-to-day union priority.

In one of his first acts, Howard formally abandoned the delivery vehicle of universal superannuation – The Accord. In 2002, Howard stopped increases to the super guarantee. The rate would stay at the inadequate 9 per cent for another decade.

The ‘big freeze’ ensured workers would fall behind as the cost of retirement (health, care services, accommodation) increased swiftly and their super balances did not.

Howard went further to erode the super gains of the eighties and nineties, as he and his industrial relations minister Peter Reith championed individual contracts, non-union agreements and single enterprise agreements over collective agreements, industry standards and nation-wide Awards.

Howard made a special effort to intimidate the Australian labour movement, furthering pulling away the attention of organised labour from the mission of super.

When Howard brought in the now-infamous WorkChoices legislation in 2005, for millions of Australians it was a step too far.

WorkChoices and the community response to the controversial law, led to the Howard Government's electoral demise in 2007. However, in the meantime a considerable amount of lot of damage was done to the collective bargaining rights of workers as millions were put on individual contracts and the ability of unions to enforce super payments disappeared with each shredded collective agreement.

LABOR'S LITTLE THAW: 2007-2013

Riding a wave of anger at Howard and his WorkChoices, the Rudd Government swept to office in 2007 with the promise of fairer times ahead for workers.

The Rudd/Gillard years posed a major opportunity to advance universal super, and make up the huge lost ground since 1996.

The union movement's peak body, the ACTU, pushed for a hike of 12 per cent, to 21 per cent. Others in the movement pushed for the original 15% immediately. Even if the ACTU claim had been met, it will be shown that for the required catch up for the 'pioneer' cohort of workers, it would never have been enough.

To its detriment, the ACTU too readily conceded to 12%, but to be introduced over 10 Years!

There was an immediate rise in the SGC – a miniscule 0.25%. This was to be followed by another rise of 0.25% in July 2014, bringing the super guarantee to 9.5%. Labor's timidity was met by the tide of political change, and the inevitable happened – the conservatives came to power again by 2013.

THE CONSERVATIVES RETURN TO RAID OUR SUPER: 2013-

When Abbott brought down his 2014 federal budget the Rudd/Gillard 'slow burn' schedule for increasing the SGC rate to 12% was frozen at 9.5% until 2021 with 0.5% to be added after that date annually until 12% was reached (i.e. by 2026!).

The sabotage of the scheme aimed at providing a generation of workers a 'comfortable retirement' was now entrenched.

It should be acknowledged that the ACTU had plenty on its plate with the Rudd and Gillard administrations. The promise to abolish WorkChoices after the massive union led industrial campaign (2005 – 07) resulted in extensive, laborious negotiations over two long years. The creation of the Fair Work Act 2009 would be described by many unionists as 'WorkChoices-Lite' and didn't provide any pathway to grow the industry super schemes outside the restrictions of the nobbled SGC.

In fact, workers' rights to industrial action and collective organisation through unions by workers, was severely restricted.

In the lead up to the May 2017 federal budget there was public debate around using salary sacrifice super savings for a first home deposit. In a warning against such a notion Age commentator Harold Mitchell reminded everyone that most super accounts were already well shy of providing "enough money" for retirement as proposed by Paul Keating. Mitchell emphasised that Keating's original scheme required "ultimately...15% of a workers' salary as savings for old age"... [be] ..."set aside".

Under the heading: 'Policy chaos undermines super funds', chief executive of Vision Super, Stephen Rowe wrote: "When you look at the changes the Abbott-Turnbull governments have made or wants to make to superannuation, it's not immediately clear what the actual outcome might be.

"But when you step back and look at the whole picture, a single, purposeful objective reveals itself.

"The government has stumbled through a series of seemingly chaotic changes. Freezing increases to the superannuation guarantee. Super tax changes from the last budget. Changes to the pension asset test that left 300,000 retirees worse off...

"There is widespread agreement that increasing the superannuation guarantee is necessary, or many Australians will reach retirement age with inadequate savings for a comfortable retirement.

“Delaying planned increases to the superannuation guarantee was first proposed by Tony Abbott when opposition leader. The superannuation guarantee rate is now not set to reach 12% until July 2025 – seven years after the timetable initially legislated by the former Labor government...”

“Despite seeming chaotic and unrelated, there is a clear public policy agenda behind the government’s changes to superannuation.

“Simply, they want to dismantle superannuation, and particularly, the sector where five million Australians’ have their retirement savings.”

Recently the chief executive of the Australian Institute of Superannuation Trustees (AIST), Ms Eva Scheerlinck wrote an article for the Investment Magazine, (May 2017), defending the enshrining of super in industrial awards and agreements and gave recognition to the “pivotal” role “collective trade union action” played “in the development of a universal retirement savings system” from the 1980’s onwards.

Ms Scheerlinck also gave recognition to the “pioneering forebears” who had made sacrifices to get industrial law to give birth to industrial superannuation through ‘profit- to –member’ funds.

WHAT SHOULD THE SUPER RATE BE?

In 2017, Paul Howes, a partner and head of wealth management advisory at KPMG (and formerly a national secretary of the Australian Workers’ Union and long-time superannuation board member) wrote a detailed assessment of the superannuation industry and its relevance to account holders.

Howes’ assessment was called ‘The Great Super Rethink’ and it painted a gloomy picture facing current and upcoming retirees. Howes succinctly captures the problem in finding a Super Guarantee Rate befitting the problem facing Australia in the super space:

The point is that when we ask how big the Super Guarantee should be, the answer is that depends on when you started work...If you started in 1992 you would need the SG to be 24% starting from this year until your retirement.

Given this research let us at least start with the long ago promise of having the SG go to 15%, given by an ALP Treasurer back in 1992.

A progressive federal government could then commission the Treasury Department to update the original rationale for industry superannuation and provide an actuarial report to project the required SG ratio into the future. That is re-assert the basic aim of reducing reliance of our ageing population on the national pension scheme.



Reason 2: Rise of the Super-Less – Non-compliance

OUR SUPER FAILURE: WORSE FOR WOMEN

A key flaw in any workplace-based social wage scheme, such as Australia's industry superannuation, is that benefits are tied to a person's experience in the labour market. As super contributions are typically a share of weekly wages, those with lower and zero wage incomes receive less in retirement.

The gender pay gap is one example, where a group of workers is punished in retirement for unfairness experienced in their working life. Whether it is unequal pay for doing the same job, or lower pay for doing work of equal value in underpaid female-dominated industries; women earn less and retire with much less.

Time spent out of the labour market is also a major factor in how our industry-based scheme is failing some Australians.

If someone spends less time in the labour market (to have or raise children, to care for family, to volunteer, during unemployment or if they have work-preventing disabilities or injuries etc), they receive less benefit in retirement than other workers.

There's more bad news for these workers: savings schemes tend to exacerbate inequalities in the labour market over time, because savings sourced from the labour market grow as interest accrues and investments appreciate.

SUPER ISN'T KEEPING UP WITH THE CHANGING NATURE OF WORK IN THE PART-TIME, PRECARIOUS, GIG ECONOMY

The number of workers in stable, full-time work is falling with each jobs report out of the Australian Bureau of Statistics. Employers are opting for part-time arrangements, fixed term contracts and insecure work arrangements like keeping workers casual.

While these problems need to be tackled through industrial relations work laws to give workers stronger and better rights to get stable, full-time work if they want it; we also need to move to change super so that these workers are not doubly punished.

ANY MINIMUM WAGE WORKER WHO WORKS 27 HOURS OR LESS EACH WEEK, IS NOT ENTITLED TO SUPER.

This is because if a person receives wages in any given week of \$449 or less in any job, you are not entitled to superannuation from that employer. However, if you earn \$450 or more, you are entitled to the super guarantee of 9.5% on the whole amount. It is ridiculous that this is not pro-rata, or applicable from the first dollar earned. Why should a part-time worker be entitled to any less super than a full-time worker?

Furthermore, in the current economy few hours on offer from employers, and amoral bosses are deliberately exploiting this loophole to keep workers' super entitlements at zero by restricting hours so that workers consistently earn under the \$450 super kick-in trigger.

What makes the current policy even worse is that workers cannot combine their wages over many employers to show they earn more than \$450 per week. Instead, the wages must all come from one employer. Conceivably, someone could work 60 hours each week across two, three or four jobs and receive no super.

The rise of contracting (real and sham) is also harming the super saving potential of millions of Australians. There are essentially two groups negatively affected in this space.

The first is the group of workers who choose to be contractors (such as graphic and web designers, photographers, musicians, and other knowledge or creative workers).

The second group is the rapidly growing mass of workers forced into insecure work arrangements through sham contracting. Uber drivers, Airtasker workers, food delivery workers and even warehouse workers. These 'contractors' can work over 40 hours each week for one company, but are still expected to handle all their responsibilities like a business would – paying their own income tax, insurances and superannuation.

Under Australia's model, contractors have the option to contribute to their super or not. It is their choice. With the rising cost of living and often below minimum wage rates offered by these companies, it's no surprise that many workers keep the cash and defer their contributions for a sunnier day.

NON-COMPLIANCE AND WAGE THEFT

Whilst there is general consensus that the level of non-compliance of super entitlements is rampant, there is slight variation in the figures from the experts.

Another press report from The Australian in July of that year highlighted a major flaw in the system. Headed: "No sign of crackdown on super rip-off", it was reported: "There is little evidence the [federal] government is taking steps to crackdown on avoidance of superannuation payments by businesses across Australia", says former Treasury director Phil Gallagher who prompted a Senate inquiry after finding a third of workers were losing out on around \$5.6 billion in super entitlements ...

"Although a working group chaired by the ATO, with representatives from Treasury, Department of Employment and financial regulators ASIC and APRA, was set up in Dec 2016 with a deadline of March [of 2017] to report to Financial Services Minister Kelly O'Dwyer..."

To date the Minister has not acted on the need to combat the 'roting' and 'outright avoidance' aspects of the report.

The article went on to state that: "the tax office currently relies on employers self-reporting underpayment or non-payment of super, which is rife in sectors and industries already known to be at risk of systemic underpayment..."

In the March 2017 edition of 'Cbus news' it was reported that 30% of workers miss out on their super contributions. The industry newsletter went onto predict that "without action unpaid super and lost earnings will reach \$66 billion" in six years!

Under the heading: 'The Time Bomb of Unpaid Super' it was reported: "A senate committee has recently heard evidence of widespread unpaid superannuation.

"The Australian National Audit Office put unpaid SGC contributions at \$2.6 billion per year...

"The ATO figures show...bad debts in unpaid super topped \$1billion in three years and are rising 12% per annum. In addition, insurance benefits worth hundreds of millions of dollars have been lost with no superannuation to support insurance premiums...

"The ATO receives more than 18,000 unpaid super notifications from workers each year...and yet the [ATO's] Superannuation Business Line staff were slashed by 20% in 2015-16. They now represent less than 4% of the ATO's total staff."

It is clearly not a priority for the ATO that countless thousands of Australian suffer and pay the price in retirement for non-compliance.

Under the heading: 'Senate inquiry blasts ATO on unpaid super', it was reported "A senate committee has attacked the ATO's "inadequate" and 'problematic' approach to policing wage theft through the non-payment of superannuation entitlements.

"Business fails to pay Australian employees an estimated \$6 billion a year in mandatory super guarantee payments, affecting almost 3 million workers.

"The senate committee said the adverse economic impact of foregone super was "stark", with employees losing retirement income, which led to lower standards of living and greater reliance on the age pension."

Under the heading: 'ALP urged to jail bosses for 'wage theft' it is reported: "National union leader and former ALP vice-president Tony Sheldon has called for the Labor Party to make executives of companies engaged in "wage theft" subject to criminal prosecution and potential jail terms...

"Mr Sheldon, the national Secretary of the TWU, said Australia was 'gripped by a new crime spree'.

"It's not break and enter, it's not drunken brawls...it is the plague of billions of dollars in wages and superannuation which employers take from the pay packets of their employees," he said.

"It is wage theft. And needs to be treated like any other form of theft by making it an offence, with jail sentences."

Sheldon called on the union movement "to stop being polite".

Nick Dyrenfurth, executive director of the John Curtin Research Centre tackled the issue from a nation building perspective. In an Age article entitled: 'Giving the economy wings', he argued that Australia needed to "reset its economic settings" going forward.

He is also the author of a policy report called: 'Super ideas: Securing Australia's Retirement Incomes System'.

He pointed to "the success of our superannuation industry and its vast untapped potential as a source of future growth and wealth". However he emphasised "there are bigger challenges to the future of super ... [it] ...must be fit-for-purpose in the 21st century".

He stressed:

“The first challenge is to maintain its integrity and equity. We need to renew efforts to increase the Super Guarantee (SG) rate to where it should be, from 9.5 to 12 per cent.

“Superannuation compliance is another issue. Australian workers have been fleeced of about \$17 billion worth of payments since 2009...

“Then there is the disappearance of traditional nine-to-five jobs in favour of a so-called “gig economy” dominated by casual and part-time workers. This has encouraged a situation whereby a third of young people are not eligible for SG contributions [!]....

“This is not only unfair and bad news for individual employees, but bad news for our nation: \$37 billion in lost taxes due to lower super contributions and higher age pension payouts. Then there is the opportunity cost-we are missing out on \$100 billion to invest in wealth-creating infrastructure projects.”

CASH IN HAND, MIGRANT SERVICE ECONOMY (RESTUARANTS, CLEANING ETC)

There has always been cash-in-hand in our economy. However, it is now the mainstay for many businesses who seek to avoid their tax obligations and those of their workers. Unfortunately for the workers involved in this ‘black economy’, they also miss out on their super and any way to deal with underpayments in wages. Chances are that some of your favourite restaurants are paying ‘under the table’, undercutting the minimum wage and fleecing their workers of proper super entitlements.

For long the ruling class in this country has been happy to build the comfortable lifestyle of the middle Australia by creating a two-class economy where those above ground receive rising wages and social entitlements; and those below toil for a pittance. Sadly, this has often meant migrants to Australia filling the ranks of the latter. An analysis of migrant super accounts would likely show this group with far smaller nest eggs than their native-born compatriots (even accounting for arrival date and lower on average wages).

PHOENIXING AND BANKRUPTCY CONTINUE IN SOME INDUSTRIES

Once it was construction companies and their subcontractors who would fall over and leave workers to pick up the pieces. Now it's also trendy cafés, retail outlets and publicity-hungry start-ups who fleece workers as the self-styled ‘entrepreneurs’ let the business fold and make off with workers’ stolen super and other entitlements.

These unscrupulous business operators are confident that there will be no consequences for non-payment. Typically they go into liquidation, start up another company and the cycle starts all over again.

THE ATO HAS FAILED US

The ABC radio news on 29 August 2017 broadcast a lead story that revealed since 2009 over \$17 billion was not paid into the superannuation accounts of several million workers. The report went on to state that since 2010 the Australian Tax Office (ATO) had only recovered \$2 billion out of the \$17 billion. This means that \$15 billion of workers’ money has been stolen by employers.

Under the heading: “Workers ‘missing \$17 Bn in super’ “, The Australian newspaper on the same day reported: “ Australian workers have lost out on more than \$17 billion in superannuation payments sine 2009 from shonky operators and businesses now at the centre of a tax office probe.

“The Australian Taxation Office is tightening the net on small businesses and operators skimping on superannuation payments in the wake of its first superannuation guarantee audit, measuring the difference between super owed and super paid to workers.

“Australian workers were short-changed more than \$3.27 billion in super payments during fiscal 2014-15, according to the study, with construction companies, retailers, food services and accommodation providers among the worst offenders.

The fact that it took the ATO 25 years to investigate this scandal is a scandal in itself.



How We Can Fix It

OUR CHALLENGE

An independent, vocal and organised union movement must articulate and agitate for the ongoing protection of superannuation entitlements and the setting up of a compensation process to enable the recovery of stolen super.

Superannuation is as an integral, non-negotiable part of wages and salaries. It must not remain as some 'optional' entitlement at the whim of employers. There needs to be a much stronger recognition by government that the non-compliance of many employers, past and present, cannot be set aside.

A clear set of demands must be put to all political parties in the lead up to the next federal election. Super needs to be front and centre of any agenda and campaign to 'Change the Rules'. Secure retirement and ethical use of workers' capital are cornerstones to a more just and fair society, and dignified retirement for workers.

OUR PLATFORM:

1. **15% SG universal super immediately**
2. **Extend super payments to those out of the formalised labour market**
3. **Criminalise non-payment by employers**
4. **Establish Super Recovery Australia**

Super Recovery Australia would be a federal government agency charged with recovering the stolen superannuation of workers.

It would be a fee-free service available to workers, unions, businesses and government departments to take up claims on behalf of workers who have been underpaid or cheated of their superannuation. The agency would be given powers to issue court-enforceable orders of payment on companies and individuals associated with the super underpayment of a worker or group of workers (including ultimate employers, financiers and company directors).

The agency would compile and publicly publish a searchable database of current companies and individuals who have been served with payment orders so that prospective employees, business partners and government procurers are knowledgeable about the risks of engaging a particular company or individual.

The agency would support unions, worker peak bodies, employers and employer groups to lift the superannuation payment compliance rate of Australia's employer.

The agency should have a sufficient number of compliance officers for the effective monitoring, investigating and enforcing of superannuation payments in Australia, alongside union and employer initiatives.

Ultimately, Australia can only work towards 100% compliance by allowing workers through their unions to educate, train and resource each other on their rights regarding superannuation and processes for recourse. No one has more incentive to fix super underpayments than workers and their unions.

5. **Establish a Super Safety Net for workers who are defrauded of super payments and have no other remedy.**
6. **Introduce new rules for employer associations to guarantee their members have and are paying super**
7. **Enact whistle-blower legislation for individuals who speak out about non-payment**

Workers and those interested in their welfare would be able to register an anonymous report with Super Recovery Australia, which the agency will then consider before taking any action against a company or individual regarding super underpayments. This is important for employment situations where workers feel intimidated, or have been employed in circumstances that may make them reticent to engage organisations of authority.

Policing government contracts by demanding evidence of contractors and sub-contractors' track records, in paying workers' entitlements, before awarding such contracts, has to occur.

8. **Require employer reps on super boards to crack down on super non-payments by their employer members**

This should require demanding evidence that their members and potential members are paying all appropriate entitlements, especially superannuation. Let us not lose sight of the fact that all major employer associations directly or indirectly are represented on the boards of Industry Super funds.

These representatives are trustees of the funds and have 'a primary responsibility'. They have a 'duty of care' to ensure they dispense their obligations accordingly.



Opportunities For The Rebuild – “Change The Rules”

THE WINDS OF CHANGE

The failure of “trickle-down economics” started long before the 2008 Global Financial Crisis. The effects of globalisation and the marked shift to insecure work in all its forms (casualisation, part-time work, individual contracts, cash-in-hand, all-in payments), coupled with the black economy, corporate tax evasion and a sustained attack on workers’ rights across the board, (weakened collective bargaining, curtailed right to strike, restricted right of entry and non- recognition of union representation), have all impacted negatively over the last 20 years.

POLITICAL STARS ALIGN

As a lead up to the next federal election, the Labor parliamentary leadership has made “fairness” and tackling “inequality” a core policy objective.

The ACTU has also launched an important, major campaign – ‘Change the Rules’ - to win comprehensive amendments to the Fair Work Act 2009 in order to win back lost rights at work.

Throughout the latter half of 2017 Opposition Leader Bill Shorten and shadow federal ministers have publicly stated that addressing growing “inequality in our society” is central to making Australia a better place. ALP opposition

workplace spokesperson Brendan O'Connor has fleshed out a key aspect of this issue by acknowledging with "hindsight" that the current IR laws are "broken" and have placed workers and their unions at a clear disadvantage. This is particularly so in relation to industrial rights and less ability to improve and protect wages, entitlements and workplace conditions.

O'Connor has flagged a "revised" workplace relations policy will be taken to the next federal election. Measures to combat under payment of wages and entitlements, labour hire abuses, sham contracting and the rise of phoenix companies for example have been raised in public statements.

The decline in the proportion of workers covered by collective agreements has also been blamed for the increase in 'wages theft' by unscrupulous employers. The massive growth in unpaid superannuation over many years, makes up a great segment of the national 'wages theft' phenomenon.

This ALP policy initiative offers a particular opportunity to develop a dedicated campaign to protect and recoup industry superannuation entitlements for millions of workers. It is 'a window' for the unions, super funds, a supportive federal government and employers who do the right thing, to redress uneven and unfair treatment of super accounts for countless working people over many years.

The ALP National Conference in Adelaide in July 2018 is where the party's National Platform is developed. This provides one avenue for the ACTU's 'Change the Rules' agenda to be hammered home, especially with respect to reconciling the past and present abuse of industry superannuation.

In October 2017 Brendan O'Connor told the national press club that the ALP will seek new IR laws to stop employers "gaming the system" in order to rip off workers entitlements.

WHAT UNIONS AND WORKERS NEED TO DO

The union movement needs to 're-own' superannuation as a central industrial issue as it was three decades ago. It would be a great recruiting strategy.

It is commendable for the ACTU to promote that the union movement played a leading role in the establishment and rolling out of industry superannuation and that the funds are dedicated to putting the interests of members first. But with the membership of those funds under 5 million (out of a national workforce of 13 million) then the original target participation has not reached a satisfactory level.

The sabotage and undermining of superannuation, as a hard-won part of the social wage in Australia has been systemic and is ongoing.

Ensuring the importance of superannuation on any industrial or political platform is required to recalibrate the super industry by the stakeholders in order to redress the inequities that have emerged.

A pro-active, overt campaign to recoup these growing losses is the essential starting point.

A KEY ILLUSTRATION OF WHY A NEW SYSTEM IS NEEDED

During the politically motivated, anti-union Heydon Royal Commission into the building industry (2013-15), much was made of some well-meaning staff at Cbus providing information to a union stakeholder, aimed at recovering many hundreds of thousands of dollars owed to construction workers superannuation accounts by a major NSW building contractor (LisCon).

The Royal Commission focused on the release of the information issue rather than the core issue about how an employer had illegally dodged paying the superannuation monies owed to his employees, in the first place.

Key membership of the Cbus board at the time included trustees from the Master Builders Association. Instead of using their good offices to inform and urge the wayward contractor to obey the law, they urged the Royal Commission to recommend harsher industrial laws to prevent unions getting onto any site to chase up the lost worker entitlements including many thousands of dollars of owed superannuation.

In fact any super trustee board member is bound by 'a primacy of responsibility' provision under Corporations Law to insist non-paying employers comply with the compulsory super contributions owed their employees.

Immediately following the release of the Heydon RC final report LisCon folded and went out of business. The workers did not receive a cent of their entitlements.



Suggested Remedial Actions: In Detail

1. Super contributions on behalf of employees, by employers, need to be paid into the relevant funds far quicker than currently required. It must become an integral part of regular wage and salary payments, not spread out as with some schemes to only four times or less a year. Electronic Funds Transfer (EFT) and other modern banking services can make this an easy, straight forward task.
2. Ban employers from using collected or accrued superannuation for business cash flow or any other business
3. That the Fair Entitlements Guarantee (FEG) be expanded to cover any lost superannuation due and not paid by employers. The Governments' FEG should apply to all worker entitlements, not just some, when an employer goes bankrupt.
4. That the Superannuation Guarantee Charge (SGC) needs to rise to 15% as soon as possible in 2019. Then the necessary actuarial calculations to be made, to ascertain the required SGC rate(s) overtime needed to provide 'a comfortable retirement' into the future.
5. Make a criminal offence the non-payment of superannuation. Establish an upgraded, legally-based comprehensive compliance agency/regime that ends the non-payment of the compulsory guarantee charge to all workers going forward.

6. This should be coupled with a dedicated, no-cost process that facilitates workers (and/or their representatives) to re-coup any demonstrable stolen/avoided/unpaid superannuation (SGC) from 1992 onwards.

This could be similar to the system that the Turnbull federal government put forward in 2017 to mediate and resolve ‘legacy cases’, where victims of bank financial scandals could seek lost monies. Similarly, this would be a ‘compensation scheme’ with a specialised ‘panel’ to oversee its work.

A broad-based ‘last resort compensation scheme’, for recovering financial losses generally, was also recommended by Professor Ian Ramsay, who chaired an independent review of Australia’s external dispute resolution processes in a supplementary report released in December 2017.

7. Require the Employer Associations with representation on industry super boards to act on their duties under Corporations Law (ie ‘primacy of responsibility’) to take visible, measurable, regular activities with their employer memberships to insist they observe their legal obligation to pay all employees all of their superannuation, all of the time. Establish an enforceable ‘code’ by the industry superannuation industry to govern this requirement.
8. Enact ‘whistle blower’ legislation to help workers win back their lost super.

RECOVERING LOST SUPER SHOULD BE EASY – COMPENSATION A RIGHT

A threshold issue to satisfy these claims will be the creation of a new investigative, dedicated body, which can gather the core data from individual income tax records. Accurate annual income information will be needed so that the due SGC amounts for all relevant periods of employment can be calculated. This information is passed onto the relevant super fund for checking. Any detected shortfalls in super entitlements to be documented.

Expert personnel will have to be recruited and trained.

Such basic, primary information will be needed for chasing all lost and owed super.

The ATO’s current ‘SGC non-compliance unit’ and ‘One Touch’ payroll system (that allows the ATO to monitor only some major employers pay functions in real time), are not geared widely enough to guarantee protection of superannuation entitlements. Small and medium sized businesses payrolls are not regularly surveyed and these enterprises employ most workers.

The Fair Entitlements Guarantee (FEG) provisions will also need to be expanded to provide a wider safety net to cover SGC entitlements owed/lost when an employer, company or contractor suddenly closes up operations. Currently FEG doesn’t cover superannuation.

Such improvements to FEG could dovetail into the proposed new broader supplementary ‘super compensation scheme’, along the lines of a proposal suggested by federal treasurer Scott Morrison in Nov 2017 for the thousands of victims of the banking industry financial scandals.

Morrison’s special ‘panel’ process is a precedent that could be replicated for super claimants who have missed out on legally entitled contributions.

A ‘Future Fund’ – like investment pool could be created to establish, through initial government seeding and with an oversighted investment portfolio, a reliable financial asset for underwriting missing, stolen super. This will be a long term ‘last resort’ safety net for covering unpaid super that is deemed not likely ever to be recovered from miscreant employers. This pool could be supplemented by re-directing and substantially increasing the penalties for non-complying employers and hypothecating monies collected as fines, only to be used for super recovery.

SIMPLIFIED PROCESS REQUIRED

The ‘facts then restore’ process needed for an individual seeking lost SGC entitlements or equivalent compensation, could include:

- a. Relevant personal income tax records or copy of same from ATO for employment period(s) of concern;
- b. Calculation(s) of due SGC entitlements due for period(s) of concern;
- c. Confirmation from the relevant super fund(s) the SGC amount(s) actually received, or not received, for the queried period(s) of concern;
- d. Calculation(s) of demonstrable shortfall amount(s) against relevant employer(s) for follow up and recovery or compensated if required.

An oversight 'superannuation reconciliation body' could be established with the power to issue a 'Claim Certificate' that details, based on independent, verified advice, a workers super shortfall.

The total back claim would then be pursued on behalf of the worker, at no cost to the claimant, involving an enhanced process that co-ordinates the roles of super funds, ATO, stakeholders where applicable-unions and employer associations, FWA, ASIC, FEG and APRA.

Only when the 'facts then restore', exercise is exhausted, the proposed 'last resort' central investment pool safety net would be prevailed upon to satisfy the agreed outstanding SGC deficit.

(The issue of any extra actuarial calculations that takes into account the compound interest factor, would require government and stakeholder deliberations and agreement).



Photo: Troy Gray and Brian Boyd

BIOs

BRIAN BOYD

1979-1988: BLF organiser and National Industrial Officer (1982-85 participated in the roll-out of BUSS [now Cbus], including signing up hundreds of construction contractors for original 'Deeds of Adherence' to launch building industry super).

1988-2005: Senior Industrial Officer VTHC and

Secretary VTHC 2005-2014 (during these positions, Chair VTHC Superannuation Committee; VTHC delegate to ACTU committees and forums re superannuation).

*Currently: On board of Incolink; Co-editor of 'On Site' magazine;

Freelance writer on industrial, political and social matters.

TROY GRAY

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Secretary since 2013

Director Protect

Director Co-Invest.

