

Women in Super submission to the Inquiry into Family, Domestic and Sexual Violence

**The House Standing Committee on
Social Policy and Legal Affairs**

24 July 2020



Committee Secretary
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RE: INQUIRY INTO FAMILY, DOMESTIC AND SEXUAL VIOLENCE

Women in Super

Women in Super (WIS) is a national advocacy and networking group for women employed in the superannuation and wider financial services industries.

WIS advocates on behalf of its members and women generally to government, politicians, unions, employer organisations, regulators, and superannuation funds to improve women's retirement prospects and access to superannuation.

WIS makes submissions to Parliament and has participated in previous Parliamentary and Treasury inquiries into the retirement income system and the role and objectives of superannuation in achieving financial security in retirement with a focus on women.

Terms of Reference

In relation to the Terms of Reference, WIS comments on how experiences of family, domestic and sexual violence can lead to a lack of economic independence for women which can translate into poorer financial and retirement outcomes for such women. Given that superannuation is increasingly becoming the largest or only family asset in a relationship breakdown, WIS also comments on progress being made by superannuation organisations, the courts and women's advocates to improve superannuation splitting and access to superannuation for women.

d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence.

Prior to the introduction of compulsory superannuation approximately 30 years ago, only one third of women had access to superannuation and many defined benefit schemes excluded the participation of women as discrimination was allowed based on sex, marital status and pregnancy. In fact, such schemes were specifically exempt from the Sex Discrimination Act 1984 (Section 41 (1) referred to superannuation and Section 41 (4) referred to insurance).

Today two thirds of women retire with superannuation but due to the structure of the current superannuation system whereby the Superannuation Guarantee (SG) is paid as a percentage of income earned, women retire with less superannuation than their male peers.

In 2016, the Senate Standing Committee on Economics found that on average women retire with approximately half the retirement savings of men.¹ In 2018, work by the Centre of Excellence in

¹ Senate, Economics References Committee, 'A Husband is not a Retirement Plan, Achieving Economic Security for Women in Retirement' - para 2.16.

Population Ageing Research found that in 2016, women's balances at age 60-64 were 64% lower than men's.²

The causes of the gender superannuation gap are structural and are well known. The contributing factors are complex and inter-related but at their heart is the fact that women's workforce participation differs markedly from men. Often the type and nature of how women engage with paid work means they do not meet the criteria for payment of SG. Overall women earn less than men; work in the lower paid industries that are female dominated (e.g. nursing, community services, education, child care, retail, tourism); work in casual, part-time or insecure roles; work multiple jobs and/or take time out of the workforce for unpaid caring responsibilities (caring for children, elderly parents, elderly in-laws and partners). Many of these factors lead to women either not earning any SG at all or earning substantially less than their male peers.

Additionally, women who are victims of family and domestic violence, report being forced to give up work by their partner and so if not already financially dependent, become completely financially dependent on them during the relationship. However, the impact of lack of superannuation can follow them even when they escape such relationships and stay with them into retirement.

In 2019, research by the Australian Housing and Urban Research Institute found that a growing number and percentage of older people are experiencing homelessness for the first time in older age. At the 2016 census, 18,615 people aged over 55 were homeless. Between 2011 and 2016, the proportion of older people who were homeless increased and the researchers also identified a pronounced increase in the number of women affected by homelessness in older age.³

This was attributed to relationship breakdown making women financially vulnerable later in life, lower lifetime earnings resulting in fewer assets, including superannuation and high housing costs and tenure insecurity in the private rental market.

Superannuation is increasingly becoming the largest or only family asset held in a relationship. While the Family Law Act recognises superannuation as an asset, many people currently experience difficulty tracking down their partner's funds. Yet, superannuation splitting is extremely costly, difficult, and stressful, and many women, particularly those in violent relationships, walk away without accessing their former partner's superannuation assets.

Migrant women, who now make up a higher percentage of the Australian population than in previous decades, face additional problems. If they have any understanding of superannuation (as often it did not exist in their country of origin), they are likely to have to contend with the cultural norms whereby financial assets 'earned' by their partner are likely to be viewed culturally as their partner's right, not theirs and so do not seek superannuation splitting.

WIS investigated the possibility of joint superannuation accounts previously but this was met with resistance from women's organisations and family and domestic violence organisations, all of whom strongly held the view that joint accounts would give perpetrators another method of control over their partners. Consequently, we do not recommend joint superannuation accounts as a solution to this problem.

When women have their own superannuation accounts, they cannot access their superannuation under the existing compassionate grounds as this measure does not extend to domestic violence. In

² CEPAR, Retirement Income in Australia: Part III – Private resources (2018).

³ AHURI, An effectiveness homelessness services system for older Australians (2019).

November 2018, the announcement by former Minister for Women, Kelly O'Dwyer MP, that the early access of super compassionate grounds would be extended to include domestic violence was widely welcomed. This would then enable women to access up to \$10,000 to help them flee a violent relationship in the same way that funds could be accessed to pay rent or mortgage if they were at risk of losing their home. However, it is also viewed as a double-edged sword as such women are jeopardising their future retirement outcomes for immediate safety when perhaps it should be the government who should provide them with support and the necessary services required to start a new life. To date the legislation has not been enacted so compassionate grounds mechanism is not available to such women.

We now refer the Committee to the Women's Legal Services Victoria (WLSV) submission to this Inquiry, and the project being undertaken in the superannuation industry to simplify the legal process of superannuation splitting. If successful, this project would make property settlements fairer and easier for victims of domestic and family violence. WIS provides a summary below.

Simplifying superannuation splitting in the family law system

WIS participated as an advisor to the Women's Legal Services Victoria project and final report titled 'Small Claims, Large Battles'. This report highlighted the barriers that women (many of whom were victims of family and domestic violence) are facing accessing small entitlements to superannuation after relationship breakdown through the family law system. The two main barriers are (i) financial disclosure and (ii) the complexity of the system itself.

As mentioned by WLSV in their submission, the first barrier was addressed in the Women's Economic Security Statement announced by former Minister for Women, Kelly O'Dwyer MP, in November 2018⁴ but has yet to be implemented. As the 'holder' of financial records, including superannuation assets, a process whereby the ATO would share financial information with the courts, would circumvent the need for sophisticated and costly detective work to locate assets when former partners refuse to co-operate with or disclose assets to the courts.

Together with WLSV and other key stakeholders in the superannuation industry including the Australian Institute of Superannuation Trustees (AIST) and the superannuation fund, HESTA, we have been working with the superannuation industry to remove the second barrier – the complexity of the system. The superannuation industry has removed fees for requesting information on a former partner's superannuation accounts. It has also agreed, in-principle, to a standardised superannuation splitting draft order template and procedural fairness letter. Furthermore, the courts and staff from the Attorney General's Department (Family Law division) are assisting WLSV to progress these reforms and judges in the Federal Circuit Court of Australia have been providing valuable input.

This work is necessary and extremely important as it should improve the financial outcomes of women in violent relationships who will no longer have to face a lengthy, costly and complex legal process and the intimidation (or lack of co-operation) by their former partner. Hopefully, the result will be an increased number of women escaping such relationships with a modicum of financial security in the form of their share of the family superannuation asset.

⁴ <https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/supporting-women-to-recover-financiallyafter-separation.aspx>

Conclusion

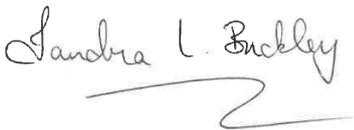
WIS encourages the Inquiry to seek out experience from women who have been through property law settlements to gain a better understanding as to how family, domestic and sexual violence might impede women from gaining access to a fair settlement.

It would also be worth understanding how current processes have deterred women from gaining access to relationship assets including superannuation and the extent to which this is due to the barriers of financial disclosure and the complexity of the system.

Given the change in the demographic makeup of the Australian population it would also be worth seeking out the experiences of migrant and CALD women who may face additional cultural barriers.

Hopefully, such experiences would help inform the next National Plan to Reduce Violence against Women and their Children in order to improve the processes for current and future generations of women so they could more easily gain their financial independence and escape from violent relationships.

Yours sincerely,

A handwritten signature in black ink that reads 'Sandra L. Buckley' with a long horizontal flourish underneath.

Sandra Buckley
CEO, Women in Super

A handwritten signature in black ink that reads 'Catherine Wood' in a cursive style.

Catherine Wood
Chair, Women in Super

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