GRANDFATHERING SUPER TAX INCREASES

Grandfathering any tax increases to super would contain the damage to trust in the system, argues **Terrence O'Brien**

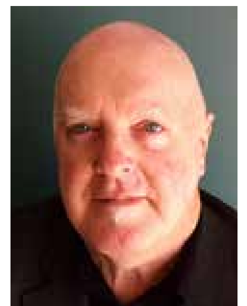
For politicians seeking to reduce government deficits, super is proving an irresistible target for tax increases.

Labor announced on 22 April 2015 an intended $1.9 billion of super tax increases over 2016-2017 to 2019-2020.[1] The Greens also announced super tax increases in early 2015 now estimated to raise some $11 billion over the same period.[2] In the Turnbull government's May 2016 budget, it abandoned repeated previous assurances that it would not tax superannuation earnings in the retirement phase, and announced superannuation tax increases (mostly with effect from 1 July 2017) to raise about $5.7 billion (gross) to 2019-2020.[3] With the Liberals now providing 'cover' for large tax increases, Labor changed its policy in late June to claim that if elected at the 2 July federal poll, it would match the higher Liberal revenue target through an unspecified mix of measures to be determined after consultation with industry and officials on issues of retrospectivity and the feasibility of the government's proposed changes.[4]

The close election outcome and the unpredictable behaviour of the Senate leave super savers and retirees facing protracted uncertainty. What tax increases, if any, will be legislated? At what rates and thresholds? From what date of effect? The last six months remind voters that when it comes to superannuation—the most enduring and inflexible financial commitment of savers' lives—politicians' commitments cannot be trusted even for a few months, still less the multi-decadal periods that citizens must commit to placing superannuation savings beyond their reach until preservation age, and then live on for several more decades. The continuing policy uncertainty compounds the damage to trust in superannuation from the government's and Labor's policy reversals.

The central nostrum shared by both Liberal and Labor proposals—a new increased tax rate on higher retirement balances—threatens a spiral back into complexity by retreating from a key design feature of the Costello *Simplified Superannuation* reforms of 2006-2007. *Simplified Superannuation* focused superannuation tax at the contribution and accumulation phases and removed previous complicated taxes from the pension drawdown phase. If that major, well-researched strategic direction to simplify super taxation can be reversed after less than a decade by chaotic policymaking in an election framework, what confidence can young superannuation savers have in the taxation framework on their lifetime savings?

Neither political party seems to have considered the historically useful practice of 'grandfathering'—an arrangement for an old rule to apply to some existing situations



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while a new rule will apply to all future cases. Yet both parties have used grandfathering in the past to ensure major adverse superannuation tax or regulatory changes affected those near or in retirement only prospectively.

Grandfathering tax increases could contain the damage to trust in superannuation. It would also meet the legitimate expectations of savers and retirees who have followed the current tax incentives that have increased superannuation saving.

The need for trust in superannuation rules

Increasing super tax is among the most complex, sensitive and difficult policy adjustments in a democracy. It affects lifelong saving plans, and can reduce the living standards of retirees who no longer have means to recover the loss other than to rearrange their affairs to access the age pension. Sensitivity is particularly heightened at present because market returns to super savings are at record (and likely persistent) lows, and often negative.[5] Attempted tax increases can destroy confidence in the rule-making around retirement policy, and damage voluntary saving in superannuation. Exit and other polls show the proposed superannuation tax increases were a high-ranking concern for both Labor and Liberal voters, and for younger voters as well as those nearer retirement.[6]

Superannuation requires a 40-or-more-year commitment by contributors to saving in a unique form quarantined beyond their use until retirement at preservation age or beyond. (A young worker compulsorily starts superannuation saving through the superannuation guarantee levy as soon as they first earn $450 a month.[7] A university student working a few shifts in a café earns enough to initiate forced superannuation savings.) And at retirement, a 60 year old today can expect to live past 90, so superannuation needs to finance a further 30 years of sustained retirement living standards, ideally in a predictable taxation environment. There might be 20 to 25 governments over that 70 years of a typical worker's saving and retirement, so it is important that there are some fundamental 'rules of the game' governing superannuation rule-making and taxation—a 'superannuation charter', if you will. As the 2013 Cooper Charter Group noted from its consultations: 'There was overwhelming support for super to be disconnected from electoral politics, short-termism and "budget night surprises".'[8]

Savers need a lengthy adjustment period to respond to retirement policy changes. That is why past successful significant changes to retirement parameters—such as means testing the age pension, the pension eligibility age, the superannuation preservation age or the taxation of superannuation—have generally been undertaken gradually, with advance notice, extended consultation and often with 'grandfathering' of existing arrangements to prevent disadvantaging workers close to retirement or retirees who have limited or no opportunity to change their lifetime savings strategies.

Proposed tax increases and the three stages of possible super taxation

Analysis of the taxation of superannuation usually distinguishes three stages at which tax may be collected: the contribution, accumulation and retirement stages. While some economists would argue for taxation to be collected at one end or the other of these three stages, essentially it doesn't matter much so long as one retains oversight of the cumulative tax burden over all three phases, relative to the discouragement to long-term savings from income tax and the age pension. A tax increase on either or both of the first two stages reduces the amount ultimately saved as well as the income in the retirement phase available for further taxation (and to finance the living standards of retirees, after tax). Equally, a tax increase in the retirement phase increases the need for more savings or income growth in the first two stages to meet any chosen retirement living standard. An unforeshadowed increase in tax on the retirement phase invalidates previous savings decisions in a way that older savers and those already retired cannot correct.

With these three stages of super taxation in mind, it is useful to tabulate comparatively the proposed original Labor and Liberal tax increases and regulatory restrictions that impact adversely on super savers, as best they can be understood with the sketchy information available.[9]

Major revenue-raising proposals for superannuation

Superannuation phase	Labor's original proposals, 22 April 2015 *Revenue gain*	Liberal proposals, 3 May 2016 *Revenue gain*
Contribution		G-1: Pre-tax annual contribution cap lowered from $35,000 for those over 50 (or $30,000 for those younger) to $25,000 for all.
	L-2: Current income cap of $300,000 for contributions taxed at 15% lowered to $250,000. (Tax at 30% above the cap.) *Revenue $0.5 bn to 2019-2020*	G-2: Current income cap of $300,000 for concessional contributions taxed at 15% lowered to $250,000. (Tax at 30% above the cap.) *Revenue total for G-1 and G-2: $2.5 bn to 2019-2020*
		G-3: Non-concessional contribution cap of $180,000 p.a. (or $540,000 over 3 years if under 65) lowered to $500,000 lifetime cap, counted from 1 July 2007. *Revenue $550m to 2019-2020*
Accumulation		G-4: Remove tax exemption on earnings supporting Transition to Retirement Income Streams from 1 July 2017 *Revenue $640 m to 2019-2020*
Retirement		G-5: Introduce $1.6m cap (indexed) on accumulated savings in the retirement phase (cf present tax-free draw-down for those over 60).
	L-6: Introduce 15% tax on income over $75,000 (not indexed) from accumulated savings in the retirement phase (cf present tax-free draw-down for those over 60).	G-6: Excess over $1.6m cap must be transferred to accumulation fund, and subsequent annual earnings on that fund taxed at 15%.
	L-7: Remove 10% tax rebate for defined benefit pensions above $75,000 (unindexed) from untaxed funds. *Revenue for L-6 and L-7:$1.4 bn to 2019-2020*	G-7: Cap 10% tax rebate on pensions received from untaxed funds at income of $100,000 (unindexed?) *Revenue total for G-5 to G-7: $2 bn to 2019-2020*
Total revenue gain	***$1.9 bn to 2019-2020***	***$5.7 bn to 2019-2020***
Sources	*Labor's Fairer Super Plan* (22 April 2015)	*Budget 2016-17, Budget Measures, Budget Paper No 2* (3 May 2016), pp. 24-30

Several striking features emerge from the Table and the evolution of Labor policy over the course of the recent federal election campaign.

1. Caps on concessional and non-concessional contributions are of most relevance to late-career savers seeking to top up super savings after meeting home mortgage and education commitments. So it can fairly be said that all seven government measures and all three Labor measures effectively target those nearest retirement or already retired—precisely the groups for which grandfathering has been used in implementing past tax increases.

2. Both parties proposed undoing the significant structural simplification to the overall taxation of super introduced by Treasurer Costello in his 2006-2007 *Simplified Super* reforms. That simplification was well-researched and extensively detailed in an 80 page consultation paper that drew some 1500 written submission over four months.[10] Compared to the 2015 Labor policy statement or the government's 2016-2017 budget documentation, the 2006 paper is a model of clarity, lucidity and comprehensiveness.

The 2006 paper identified a core problem: 90 years of amendments to superannuation law had culminated in unworkable complexity, especially in the taxation of end-benefits for individuals entering or contemplating retirement. As the paper noted: 'A lump sum may include up to eight different parts taxed in seven different ways (p. 2)'.

Among many other changes, *Simplified Super* removed taxation on the retirement income streams from the taxed funds of

those over 60, leaving the third phase of super little taxed, with taxation focused on the contribution and accumulation phases.[11] (Pensions from 'untaxed funds' still attracted tax at the super pensioner's marginal rates, but received a 10% tax offset. Untaxed funds are those where employers—overwhelmingly, government employers—had made no contributions, and where there had consequently been no tax collected on employer contributions or on the fund earnings that would have accrued on those contributions.)[12]

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3. Both parties have said of their tax increases, 'Just this once, and never again.' Labor's undertaking was in its original 2015 policy statement.[13] Prime Minister Turnbull made a corresponding verbal commitment during the Leaders Debate on 29 May 2016.[14] Neither commitment offered any time horizon, however Labor's original commitment was violated within 15 months when on 26 June 2016 it essentially tripled the size of the tax increase it supported, only to assert the next day that if elected this would be Labor's last superannuation change for five years.[15]

4. All Labor's original measures were revenue-raising. In contrast, the Liberals' measures also contain revenue-negative proposals, not shown in the Table on page 5, that cost in total some $3.1 billion to 2019-2020.[16] So the government's gross revenue gains in the Table of $5.7 billion reduce to net revenue gains to the budget of $2.6 billion to 2019-2020. It is notable that the government's proposed $3.1 billion in increased tax expenditures have sunk without trace: unremarked and unappreciated.[17]

If Australia is now in competition amongst Labor, Liberal and the Greens to take us backwards to the complicated pre-2006 landscape of multiple tax rates, we can already guess at the next changes—perhaps a 30% tax rate on savings balances above some higher level than now proposed for the 15% rate; or a lowering of the threshold for the 15% tax rate; or the progressive contribution tax rates proposed by the Greens; and/or other restrictions on savings into super.

Labor, of course, need not feel any partisan attachment to the Costello reforms of 2006-2007. But it is puzzling that the Liberals want to trash the greatest achievement of their own superannuation reform history.

Retrospective, 'effectively retrospective' or just unfair?

There has been intense criticism of both parties' super tax increases.

Some consider all the measures to be 'retrospective' changes to a long-term saving compact, reducing the living standards that can be sustained from lifetime savings that were deliberately induced by the previously agreed tax framework.[18]

Others focus criticism particularly on the Liberal's policy to reduce the non-concessional contributions limits introduced by Peter Costello in his 2006-2007 *Simplified Super* reforms (G-3 in the Table on page 5). They claim that this measure is literally retrospective in the narrowest sense, in that it counts towards a new, lower lifetime cap on contributions legally made back to 1 July 2007 (curiously, the very date from which those contributions were first encouraged under the previous rules).

Still others expressed aversion to the violation of a looser concept of 'effective retrospectivity'. That was Treasurer Morrison's presentation of the government's view as recently as February 2016 when he noted that 'taxing in the retirement phase penalises Australians who have put money into superannuation under the current rules . . . It may not be technical retrospectivity but it certainly feels that way. It is effective retrospectivity.'[19] Both former Treasurer Hockey and Treasurer Morrison had repeatedly asserted that a Liberal government would not increase taxes on superannuation.[20]

Those defending the changes have argued that an increase in super tax rates can be made as freely as any other tax increase, and the level of the increased super tax can properly be benchmarked against any other tax rate. For example, the Grattan Institute's Chief Executive, John Daley, argued: 'If I bought shares in a company yesterday, I expect that the future earnings on these assets will be subject to my marginal income tax rate. But if my income tax rates change, I would not expect that the old tax rate to be grandfathered [sic] to apply to all my future earnings.'[21]

Prime Minister Turnbull told voters critical of the measures to 'get real' and defended the new tax rates on retirement income as lower than the rate 'a kid pays on his marginal income stacking shelves at Woolies'. He argued that the retirement phase of super would still be more lightly taxed than labour income.[22]

Such defensive comments are literally true, but misleading. The investor in shares gains current income from them and faces no restrictions on selling them and spending the proceeds (after any capital gains tax) at any time. Similarly, the junior shelf-stacker is being taxed on current income. If he or she is (as likely) in the bottom 40% of taxpayers, at the end of the year they probably pay no income tax at all.[23] In contrast, the self-funded retiree has already paid tax on two earlier phases of super saving over 40 years, locking away their savings as part of a package deal including the taxation of the retirement income stage.

The misleading nature of the attempted political defences of the proposed changes suggests that those deploying them do not understand the disincentives to all saving—and especially long-term savings—from income taxation. (Robert Carling's article in this issue discusses this bias against savings and how to correct for it.) It is unsurprising, then, that they are unable to comprehend why many superannuation savers not only feel betrayed but also feel the government has destroyed both its own credibility on superannuation and savers' trust in the super system.

Given this array of views, and that some protagonists have changed sides, it is likely that semantic or legalistic debates about the precise meaning of retrospectivity will be futile. What should be easier to agree on—and more productive for policy design—is the proposition that adverse tax changes, if they are to be fairly applied, should only affect savers prospectively, and should particularly guard the lifelong savings legitimately made under previous rules of those close to retirement, or already retired.

Grandfathering: the principles

Across many democracies since at least the late 1800s, governments have been able to facilitate policy changes that would adversely change the legal treatment of the current generation but may be beneficial in the longer run by 'grandfathering' the legal change.[24]

A 'grandfather clause' or provision can be used for any arrangement under which an old rule continues to apply to some existing situations while a new rule will apply to all future cases. Grandfathering is a particularly useful approach where a policy problem or budgetary costs are developing slowly, but existing entitlements are important for the living standards of current voters. The important fiscal task is to stop the problems worsening. Where grandfathering allows that to be done without reducing the living standards of current voters, desirable changes that might otherwise be defeated can be successfully implemented.

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Earlier generations of legislators and their advisors were mindful of the potential unfairness of precipitately increasing super taxation or altering its distribution over the contribution, accumulation or retirement phases.

Justice Kenneth Asprey's Taxation Review Committee reflected deeply on super tax issues, among many broader tax design issues. In its final January 1975 report to the Whitlam government it argued that extensive change was warranted to align superannuation concessions better to

Justice Asprey on the Need for Careful Transitional Arrangements

21.9. Finally, and most importantly, it must be borne in mind that the matters with which the Committee is here dealing involve long-term commitments entered into by taxpayers on the basis of the existing taxation structure. It would be unfair to such persons if a significantly different taxation structure were to be introduced without adequate and reasonable transitional arrangements. . . .

21.61. . . . Many people, particularly those nearing retirement, have made their plans for the future on the assumption that the amounts they receive on retirement would continue to be taxed on the present basis. The legitimate expectations of such people deserve the utmost consideration. To change suddenly to a harsher basis of taxing such receipts would generate justifiable complaints that the legislation was retrospective in nature, since the amounts concerned would normally have accrued over a considerable period—possibly over the entire working life of the person concerned. . . .

21.64. There is nonetheless a limit to the extent to which concern over such retrospectivity can be allowed to influence recommendations for a fundamental change in the tax structure. Pushed to its extreme such an argument leads to a legislative straitjacket where it is impossible to make changes to any revenue law for fear of disadvantaging those who have made their plans on the basis of the existing legislation. . . .

21.81. . . . [I]t is necessary to distinguish legitimate expectations from mere hopes. A person who is one day from retirement obviously has a legitimate expectation that his retiring allowance or superannuation benefit which may have accrued over forty years or more will be accorded the present treatment. On the other hand, it is unrealistic and unnecessary to give much weight to the expectations of the twenty-year-old as to the tax treatment of his ultimate retirement benefits.

21.82. In theory the approach might be that only amounts which can be regarded as accruing after the date of the legislation should be subject to the new treatment. This would prevent radically different treatment of the man who retires one day after that date and the man who retires one day before. It would also largely remove any complaints about retroactivity in the new legislation. . . .

Source: *The Taxation Review Committee Full Report* (31 January 1975), Chapter 21: Income Taxation in Relation to Superannuation and Life Insurance.

the objective of retirement funding. It paid close attention to transitional issues, and remains an excellent guide to modern superannuation tax reform challenges (see box above).

More recently, the Gillard government's superannuation Charter Group led by Jeremy Cooper addressed concerns about the future of super savings and the way policy changes have been made. The Charter Group reported to the second Rudd government in July 2013 with useful proposals in the form of a 'superannuation constitution' that would codify the nature of the compact between governments and savers, including:

- To promote confidence in the long-term benefits, no change to superannuation should be regarded as urgent.
- People should have sufficient confidence in the regulatory settings and their evolution to trust their savings to superannuation, including making voluntary contributions.
- '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.[25]

These Charter Group suggestions would also appear to support the use of grandfathering in the case of the tax increases proposed by both major parties today. The Labor Party has recently reaffirmed its commitment to the idea of a council of superannuation custodians as recommended in the Charter Group report.[26]

Grandfathering fair tax increases on super: the recent practice

When the Commonwealth first enacted tax incentives for super in 1915, it allowed tax deductions for employer contributions and exemption from tax for superannuation fund earnings. It had only very low tax on

superannuation lump sums on retirement.[27] This approach meant governments received only a delayed revenue share of super growth at the third stage. Much of the super tax reform of the 1980s, 1990s and 2000s was directed at increasing and bringing forward in time the government's tax take while being mindful of adjustment issues and the overall tax burden over all three stages.

Reserve Bank research has noted:

> Important changes to the tax rules were made in 1983, 1988, 1992, and 1996, which generally reduced the tax benefits to superannuation, although the treatment remained concessional. . . . Changes were generally grandfathered at each stage, so that retirees would receive benefits taxed under a variety of rules depending on when contributions were made.[28]

When the Hawke government began addressing super tax design issues, it was clearly influenced by the Asprey principles summarised in the box opposite. Two cases that highlight the interdependence between taxation of the three phases of superannuation are worth sketching in more detail.

In May 1983, the Hawke government announced higher taxation of lump-sum superannuation payments. Previously, only 5% of such payments were added to the retiree's assessable income and taxed at the retiree's highest marginal income tax rate. Even at the then top marginal tax rate of 60%, this was highly concessional: (0.05*0.60 = 0.03)—a 3% tax rate.

The Hawke government proposed imposing a tax rate of 30% on the whole lump sum, but the change was grandfathered to ensure there was 'no element of retrospectivity'.[29] The government announced a delayed implementation date of 30 June 1983. For a lump sum received before 1 July 1983 it continued to be the case that only 5% was assessable, as under the old arrangements. For lump sums received after 1 July 1983, only that portion saved after the implementation date attracted the higher taxation arrangements (modified during consultations to include a tax rate of 15% of the lump sum below a certain threshold and 30% above that threshold). Of the remaining portion saved before the implementation date, only 5% was added to assessable income and taxed under the old rule.[30]

Paul Keating has reflected on the reforms of that era:

> That change preserved the concessionality of the system to 1983 while changing the tax treatment of superannuation post-1983. This meant that those people who, for a large part of their working lives had enjoyed the concessionality of the superannuation provisions, would have those accumulations protected under a 'grandfathering' concession—that is, with no retrospectivity—while income after 1983 would be taxed on a less concessional but sustainable long-term basis.[31]

Much of the super tax reform of the 1980s, 1990s and 2000s was directed at increasing and bringing forward in time the government's tax take while being mindful of adjustment issues.

In 1988, a 15% tax was imposed on employer contributions and deductible contributions (the contributions phase) and the earnings of super funds (the accumulation phase) were also taxed at 15%. This in effect brought forward from the retirement phase the revenue to government from the super saving stream. Without other adjustment, that would have reduced the amount that super balances would grow to by retirement, and would have reduced the after-tax lump sum a retiree could receive. So, at the same time, the higher lump sum benefit tax imposed in 1983 was lowered.

Once again, to avoid the imposition of a new tax on a retrospective basis, the tax treatment of the pre-1983 component of retirement benefits and amounts accumulated between 1 July 1983 and 30 June 1988 was grandfathered. Treasury has rightly noted, however: 'Grandfathering of this nature (which was also a feature of the 1983 amendments to super tax) has added to the complexity of superannuation taxation arrangements.'[32]

More recently, the 2009 lowering of the limit on concessional contributions from $50,000 to $25,000 was coupled with transitional measures to protect those already over 50 years of age (and thereby closest to retirement). The 2009-2010 budget papers noted:

> 'Grandfathering' arrangements were applied to certain members with defined benefit interests as at 12 May 2009 whose notional taxed contributions would otherwise exceed the reduced cap. Similar arrangements were applied when the concessional contributions cap was first introduced.[33]

Similarly, regulatory changes that affected savers' planning for retirement late in their working careers were phased in to spare those closest to retirement and to give advance notice to those further from retirement to make adjustments to their financial affairs. An example was the 1997-1998 budget confirmation of phased increases in the preservation age from 55 to 60 by 2025.[34]

A further illustration of recent relevance from the intersection of superannuation and the aged pension is the grandfathering of existing account-based superannuation pensions outside the aged pension income test, rather than deeming them as income counted against the test from 1 January 2015 as part of the revisions to that test.[35]

A final example, outside tax law but still informative for grandfathering, was the replacement of the 1948 compulsory Parliamentary Contributory Superannuation (PCS) defined benefit scheme with a less generous scheme by the Howard government in 2004. This followed criticism by Mark Latham that the old scheme was then some seven times more generous than prevailing industry and community benchmarks. The PCS scheme was closed to new entrants, but continued for parliamentarians who were already members of it.[36] This grandfathering reflected that existing parliamentarians, who had had no personal choice in the superannuation scheme they joined or their mix of salary and superannuation, had entered a quasi-contractual remuneration package, and had been making their lifetime saving plans and retirement decisions in the light of entitlements under that package.

What about the complexity?

Grandfathering is more important the larger the adverse impact of any tax increase or regulatory restriction on older workers' savings plans for retirement or retirees' living standards. While well-designed grandfathering can protect against some or all of the adverse impacts of change, it usually comes at its own cost in terms of some increased complexity in law, compliance and administration. Tax increases necessitating grandfathering should therefore be infrequent, well-researched and subject to extensive consultation.

Complexity can be contained if grandfathering is offered only for a limited period, and then removed from legislation under a sunset clause when the passage of time has rendered it no longer relevant.

In terms of the tax increases on retirement income in the proposals from Labor and Liberal, it would appear possible to apply grandfathering to less complicated forms of the tax increases (such as in the Labor proposals) and to have less complexity overall than is presently proposed without grandfathering.

What about the revenue?

Obviously, grandfathering would mean that the extra revenue from super savers or self-funded retirees would accumulate more slowly. We are told that the tax increases are really about making superannuation 'more sustainable' and 'fairer' (both subjective and complex concepts). If that is indeed the case, grandfathering is just the ticket, as it arrests what the proponents of the tax increases apparently see as the build-up of a problem over time. Any delay in extracting further revenue from those retired or nearing retirement merely increases the acceptability of changes that might otherwise be politically defeated.

If grandfathered superannuation changes add more slowly to revenue growth, then without cuts to expenditure growth (for example, by freezing expenditure in nominal terms and allowing very low inflation and economic growth to gradually erode its real value and share of GDP), the budget deficit would stay higher for longer, and

Commonwealth public debt and debt service would continue to grow for longer. That would be undesirable in my view, but would only serve to underscore the importance of returning the budget to sustainability by actively cutting waste rather than adding to revenue.

A sound fiscal strategy would start by acknowledging several principles evidenced in the experience of OECD economies over recent decades. Some present government expenditure is wasted: a dollar of alternative consumption is forgone to produce less than a dollar of benefit. Eliminating such waste is desirable in its own right, and is more likely than tax increases to lead to successful fiscal consolidation.[37] In contrast, even the most efficient taxes reduce welfare by significantly more than a dollar for every dollar raised.[38] So contrary to the budget figures for 2016-2017, expenditure constraint is preferable to revenue growth in fiscal consolidation.

Conclusion

Grandfathering is not 'all or nothing'. It can be comprehensive, as was the case in the 1980s tax increases on superannuation. Or it can be focused on one tax increase or another; or it can have a sunset clause to limit the time it gives savers to adjust to change; or it can be limited to those closest to retirement. Those choices are complex practical issues to be determined in consultation with savers, with those who have to administer super funds, and with those who have to collect the additional tax.

Both major political parties are already committed to consultations on implementation of proposed increases in super tax. They should also commit to using grandfathering in the implementation of any adverse changes the government introduces to parliament. That is a better way to preserve more trust in superannuation than the current draconian approach.

Endnotes

1 Australian Labor Party, *Labor's Fairer Super Plan* (22 April 2015), http://www.alp.org.au/fairer_super_plan

2 Parliamentary Budget Office, *Policy Costing of a Progressive Superannuation System*, GRN001 (Canberra: 24 June 2016).

3 Australian Government, *Budget 2009-10, Budget Paper No 2, Part 1, Revenue Measures* (Canberra: 12 May 2009). For some recent assurances that retirement balances would not be taxed by a Coalition government, see Scott Morrison (note 19) and also Chris Bowen and Jim Chalmers (note 20).

4 The sorry evolution of Labor super tax increases from initial coherency to total vagueness can be traced from *Labor's Fairer Super Plan* (22 April 2015); through *Labor's Fiscal Plan* (26 June 2016), https://cdn.australianlabor.com.au/documents/Labors_Fiscal_Plan.pdf; Chris Bowen and Tony Burke, Press Conference Transcript (Sydney: 27 June 2016) and finally Bowen and Burke, Press Conference Transcript (Sydney: 28 June 2016), available at www.tonyburke.com.au. Judith Sloan offered an explanation of the evolution in 'Federal Election 2016: Super Contributed to Libs' Poor Result', *The Australian* (9 July 2016).

5 Median returns on super fund growth portfolios in the year to 31 March 2016 were actually negative 1.6%. See https://www.chantwest.com.au/investment-returns/super-fund-returns

6 See for example John Roskam, 'Election 2016: Super Changes Bad Policy, Bad Politics' (Melbourne: Institute of Public Affairs, 4 July 2016) on exit poll concern at super changes. See also Sharri Markson and Sarah Martin, 'Federal Election 2016: Morrison's Super Policy Alienated Libs', *The Australian* (9 July 2016).

7 The $450 per month trigger has been unchanged since its introduction in 1992, when it corresponded to the $5,400 annual tax-free threshold in the income tax scale—see the ATO's historical tax rate record at https://atotaxrates.info/individual-tax-rates-resident/pre-2010-tax-rates/. That threshold has now more than tripled to $18,200. If the SG threshold had merely been indexed by the CPI, it would now be over $810 per month. To use different markers, the SG is now below 20% of the minimum wage and less than half of the dole. It is clear the $450 SG threshold is now compelling engagement in super saving at much lower real and relative levels than originally intended.

8 On the case for de-politicising super policy, see Jeremy Cooper, *A Super Charter: Fewer Changes, Better Outcomes: A Report to the Treasurer and Minister Assisting for Financial Services and Superannuation* (Canberra: 5 July 2013), p. iii. As a reminder of the increasingly febrile nature of Australian government relative to the length of superannuation commitments, John Howard and Bob Hawke are the only leaders to have won more than one election in the past 33 years. See Phillip Hudson, 'Federal Election 2016: Political Leaders Face a Trust Deficit', *The Australian* (6 June 2016).

9 Labor's original 2015 policy statement to increase super tax and cap contributions is six pages. The Budget's sketch of many more proposals runs to seven pages. In contrast, the major simplification of superannuation in 2006-2007 was foreshadowed by a lucid 80-page discussion paper

explaining and specifying proposed changes with explicit consideration of the weight of taxation at all three stages, see http://simplersuper.treasury.gov.au/documents/outline/download/simpler_super.pdf

10 Peter Costello, *A Plan to Simplify and Streamline Superannuation: Detailed Outline* (Canberra: May 2006).

11 Peter Costello, 'Simplified Superannuation–Final Decisions', Press Release 093 (5 September 2006).

12 Such untaxed funds are nearly all old state and federal public service funds, mostly closed to new members, and catering for fewer than 10% of all superannuation fund savers. I am a retired member of one such untaxed fund that I joined in 1972, which is why I would be adversely affected by policy proposals L-7 and G-7 in the Table on page 5 to reduce the tax offset. (My superannuation fund has been closed to new members for over a quarter-century.)

13 Australian Labor Party, *Labor's Fairer Super Plan* (see note 1).

14 Malcolm Turnbull quoted in David Crowe, 'Federal Election 2016: Turnbull Takes Sting out of Super', *The Australian* (30 May 2016).

15 Chris Bowen and Tony Burke, 'Press Conference Transcript' (Sydney: 27 June 2016), see note 4.

16 The $3 billion revenue loss goes to fund ideas such as a Low Income Superannuation Tax Offset and a measure to allow low income spouses to increase their super savings. Expect these new 'incentives' today to become tomorrow's 'rorts', and the subject of further future tax changes.

17 As I seem to recall, Peter Costello once said, 'In government, the easiest billion to save is the billion you have never spent.'

18 Brett Hogan, 'Why Scott Morrison's Budget Super Changes Are Retrospective' (Melbourne: Institute of Public Affairs, 10 May 2016).

19 Scott Morrison, Address to the SMSF 2016 National Conference (Adelaide: 18 February 2016), http://sjm.ministers.treasury.gov.au/speech/001-2016/

20 For a compendium of 16 recent statements from Treasurer Morrison that a Liberal government would not increase taxes on superannuation, see Chris Bowen and Jim Chalmers, Joint Press Release (20 April 2016), http://jimchalmers.org/Media/Media-Releases/Post/3682/failure-to-deal-with-super-retirement-phase-is-failure-to-make-super-fair-and-sustainable

21 John Daley, 'Retrospective Claims on Super Changes are a Furphy', *The Conversation* (6 May 2016).

22 Malcolm Turnbull, Transcript of Doorstop at A.H. Beard Mattresses (2 June 2016).

23 Ben Phillips, 'FactCheck: Is 50% of All Income Tax in Australia Paid by 10% of the Working Population?', *The Conversation* (28 July 2015).

24 The origin of the term 'grandfathering' in the 1880s in the United States is informative, if offensive: some southern US states sought to write 'Jim Crow laws' to deny freed slaves voting rights by enacting educational or property tax qualifications to register on the electoral roll. But white legislators realised many of their own grandfathers would be prevented from voting by such tests. (See, for example, *West's Encyclopedia of American Law*, 2005.) The laws were then expressed so as not to withdraw the voting rights of anyone who had previously been entitled to vote—that is, the laws' effects were literally 'grandfathered '.

25 Jeremy Cooper, *A Super Charter: Fewer Changes, Better Outcomes* (see note 8), with direct quote from page 24.

26 Bowen and Burke (see note 4), p. 5.

27 Ken Henry et al, *Australia's Future Tax System: Architecture of Australia's Tax and Transfer System*, Section 4, 'History of Australia's Tax-Transfer System' (6 August 2008), p. 194.

28 Malcolm Edey and John Simon, *Australia's Retirement Income System: Implications for Saving and Capital Markets*, Research Discussion Paper 9603 (Reserve Bank of Australia, Economic Research Department, September 1996), p. 9.

29 Paul Keating, 'Taxation Arrangements for Lump Sum Retirement and Kindred Benefits', Press Release No 27 (30 May 1983).

30 Ken Henry et al, *Australia's Future Tax System—Retirement Income Consultation Paper*, Appendix B: A History of Superannuation (Canberra: December 2008).

31 Paul Keating, *The Story of Modern Superannuation*, Address to the Australian Pensions and Investment Summit, (Queensland, Sanctuary Cove: 31 October 2007).

32 Treasury, 'Towards Higher Retirement Incomes for Australians: A History of the Australian Retirement Income System Since Federation', *Economic Roundup*, Centenary Edition (Canberra: 2001).

33 Australian Government, *Budget 2009-10, Budget Paper No 2, Part 1, Revenue Measures* (Canberra: 12 May 2009).

34 Trish Power, 'Accessing Super: Preservation Age Now 56 Years (Since July 2015)', *MLC Super Guide* (5 July 2015).

35 Liam Shorte, 'Age Pension Changes: Keeping Your Super Grandfathered', *Intelligent Investor* (26 August 2014).

36 For details of the old and new schemes, see http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0304/04bd131 For an account of Latham's criticisms and the Howard government's response, see http://www.theage.com.au/articles/2004/02/13/1076548186899.html The new, less generous scheme (which is an accumulation or defined contribution scheme, and may take the form of contributions into a parliamentarian's self-managed fund) was the only scheme offered to parliamentarians first elected at (or after) the general election in 2004. So John Howard and Mark Latham continue to enjoy the old scheme they terminated while Malcolm Turnbull (first elected in 2004) and Bill Shorten (first elected in 2007) entered the less generous scheme.

37 OECD, *Making Reform Happen: Lessons from OECD Countries* (Paris: OECD, 26 May 2010), pp. 283-284.

38 KPMG Econtech, *CGE Analysis of the Current Australian Tax System* (26 March 2010), http://treasury.gov.au/content/html/commissioned_work/downloads/kpmg_econtech_efficiencyoftaxes_final report.pdf