8. Superannuation

Contents

Summary

8.1 Superannuation laws contain age-based rules regarding the accumulation of, and access to, superannuation. This chapter considers whether the age-based rules amount to limitations or barriers to mature age workforce participation.

8.2 The ALRC has not found specific evidence that the age limits on contributions create barriers to workforce participation. Accordingly, no recommendations regarding the removal of the age limits have been made. However, concerns have been raised about the work test imposed on people aged 65 years and over if they wish to contribute to superannuation. It is not clear that the work test is meeting its policy objective and the ALRC recommends that the Government review the test.

8.3 There is evidence that age-based rules regarding withdrawals from superannuation accounts have a significant impact on mature age workforce participation. Access to superannuation funds makes retirement possible, or at least more attractive, and increasing access ages is likely to increase older people's workforce participation rates.

8.4 The Terms of Reference for this Inquiry direct the ALRC to consider legislation that imposes limitations or barriers that could discourage older people from working. The ALRC considers that these terms require the identification of disincentives to participation and incentives to leave the workforce.[1] The ALRC has also identified six framing principles for the Inquiry: participation; independence, self-agency; system stability; system coherence; and fairness.[2]

8.5 Access to superannuation may amount to an incentive to leave the workforce. However, it is also an earned benefit and a statutory right. Delaying access to superannuation may delay retirement and compel workforce participation. Such an outcome would conflict with the framing principles for this Inquiry, particularly independence and self-agency. Accordingly, the ALRC has not recommended changes to access rules.

8.6 The relationship between access to superannuation and older people's workforce participation is of significant public interest. For this reason, this chapter reviews the issue and reports on the submissions received on this topic. In particular, the arguments made both for and against changing access rules are examined. Arguments for increasing access ages are concerned with improving the adequacy and sustainability of the superannuation system. They are also concerned with the economic benefits that would accrue if mature age workforce participation increased. If a recommendation to increase access ages is to be made, this should occur after an inquiry that fully considers all of these issues.

The superannuation system—an overview

8.7 The superannuation system broadly consists of two components: mandatory employer contributions to private superannuation savings (the 'superannuation guarantee'); and voluntary contributions encouraged by preferential tax treatment. As noted in Chapter 2, mandatory and voluntary superannuation savings respectively constitute the second and third pillars of Australia's three-pillar retirement income system.[3]

8.8 Most Australians have their superannuation in a 'defined contribution' (also known as an 'accumulation') fund.[4] In these funds, a member's superannuation benefits in retirement are based on the amount contributed by his or her employers, the

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1 See Chapter 1.

2 See Chapter 2.

3 The third pillar also includes other forms of private long-term savings. The first pillar is the means-tested Age Pension. See, eg, The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 8–13.

4 ASIC, *Types of Super Funds* <www.moneysmart.gov.au> at 21 March 2013.

amount contributed voluntarily by the member, and the amount earned by the superannuation fund in investing the contributions.[5]

8.9 Superannuation can be taxed at three stages: when it goes into the fund (the contributions stage); while it is in the fund (the earnings stage); and when it leaves the fund (the benefits stage).[6] Superannuation generally receives concessional tax treatment across these three stages.

8.10 The *Income Tax Assessment Act 1997* (Cth) refers to two categories of contributions: 'concessional contributions' and 'non-concessional contributions'.[7] Concessional contributions include mandatory employer contributions made according to the superannuation guarantee or under an industrial agreement or award,[8] contributions made under 'salary sacrifice' arrangements, voluntary contributions and most contributions made by self-employed people. Currently, concessional contributions are taxed at 15% on entry to the fund[9] and there is a cap of $25,000 per year on concessional contributions.[10]

8.11 Non-concessional contributions are those made by members from after-tax income, including contributions for a spouse. They are not further taxed on entry to the fund.

8.12 Investment earnings within superannuation funds are taxed at 15%, and withdrawals after the age of 60 years are tax-free.

Reviews and recent developments

8.13 The Australian Government initiated two major reviews addressing superannuation: the Tax Review (chaired by Dr Ken Henry AC) and the Super System Review (chaired by Jeremy Cooper). Both reviews reported in 2010.

8.14 The Tax Review examined the retirement income system—including the superannuation system—as a key part of the tax-transfer system. It made a wide range of recommendations for significant reform of the superannuation system, particularly in relation to taxation arrangements.[11] Part of the Australian Government's response to the review was to increase the superannuation guarantee levy from 9% to 12% and to remove the exclusion of employees 70 and over from the entitlement to the

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5 By contrast, 'defined benefit' funds pay benefits according to a formula based on factors such as years of service, age and salary. Certain defined benefit schemes may present particular barriers to work, as identified in the Issues Paper. The ALRC does not make recommendations with respect to defined benefit schemes, as these barriers are generally embedded in the design of individual schemes. Further, defined benefit schemes are declining, with most closed to new members: Super System Review Panel, *Super System Review* (2010), pt 2, 176.

6 As discussed below, 'non-concessional contributions' do not receive concessional treatment at the contributions stage.

7 *Income Tax Assessment Act 1997* (Cth) ss 292–25, 292–90, 292–165, 995–1.

8 *Superannuation Industry (Supervision) Regulations 1994* (Cth) reg 5.01(1).

9 ASIC, 'Tax & Super', 29 June 2012 <www.moneysmart.gov.au> at 21 March 2013.

10 *Income Tax Assessment Act 1997* (Cth) s 292–20.

11 The Tax Review's recommendations about superannuation are contained in The Treasury, *Australia's Future Tax System: Final Report* (2010), pt 1, Recs 18–24 and The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 2–4.

superannuation guarantee.[12] The Australian Government also introduced the Low Income Earners Government Contribution that returns the tax paid on contributions to low income earners.[13]

8.15 The Super System Review addressed the governance, efficiency, structure and operation of Australia's superannuation system. The review made recommendations aimed at creating member-orientated architecture for the superannuation industry.[14] These included the creation of 'MySuper', a simple, low cost default superannuation product; and 'SuperStream', measures to improve the 'back office' of superannuation, improving its productivity and ease of use.[15] The Australian Government responded to the review with the 'Stronger Super' package, and it is in the process of implementing the Stronger Super reforms.[16]

Age-based rules and work tests

8.16 There are a number of age-based rules in superannuation law. These rules restrict contributions to superannuation by members when they reach certain ages, and stipulate when members can access their superannuation.

8.17 Some age-based rules are necessary to encourage and support the accumulation of superannuation over the course of a working life. As noted by the Law Council of Australia (Law Council), age restrictions

> allow people to benefit from their superannuation at an appropriate time to fund their living standards, while preventing them from accumulating assets in a tax advantaged environment for purposes other than funding their retirement (or providing for dependants in the case of early death).[17]

8.18 The present settings allow a person to make voluntary contributions to superannuation until the age of 75 and to withdraw from the age of 55.[18] These settings mean that people can make their own decisions about when to work and contribute to superannuation funds, and when to retire and withdraw from superannuation funds. The settings are consistent with contemporary values of choice and flexibility. However these settings also create a risk that, for people between the ages of 55 and 75, the tax incentives of superannuation will be used to increase current expenditure rather than to save further for retirement.

8.19 One response to this risk is to allow continued contributions after a certain age if the person is working—that is, to impose a work test. Contributions made while a person is working are consistent with saving for retirement. This has been the approach taken regarding voluntary contributions by people aged 65 to 75 years, contribution

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12 *Superannuation Guarantee (Administration) Amendment Act 2012* (Cth). These amendments altered the *Superannuation Guarantee (Administration) Act 1992* (Cth) s 19 (increased levy) and s 27 (age limit).

13 *Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012* (Cth).

14 Super System Review Panel, *Super System Review* (2010), pt 2.

15 The Treasury, *Stronger Super* <strongersuper.treasury.gov.au> at 21 March 2013.

16 Australian Government, *Stronger Super—Government Response to the Super System Review* (2010). See also The Treasury, *Stronger Super* <strongersuper.treasury.gov.au> at 21 March 2013.

17 Law Council of Australia, *Submission 46*.

18 These settings are discussed in more detail later in the chapter.

splitting with spouses who are 65 and over, and spouse contributions to spouses between 65 and 70. As the Tax Review put it, the contribution caps, work tests and age limits are ‘consistent with the primary purpose of the retirement income system, which is to smooth income over a person’s lifetime’.[19]

8.20 This chapter considers whether removing the upper age limits and extending the work tests would have an impact on workforce participation.

Superannuation in context

8.21 This Inquiry examines superannuation legislation in order to determine whether it incorporates limitations or barriers to mature age workforce participation. In conducting such an examination, it is useful to consider the context of the legislation—the purposes of the superannuation system, its effectiveness in achieving these purposes, and its impact on equity and fairness.

8.22 The superannuation system contributes to the ‘smoothing’ of income by delivering private income to retired Australians.[20] While the Age Pension is intended to satisfy the minimum needs of Australians, the mandatory superannuation contribution is intended to contribute to ‘the improved wellbeing of employees in retirement’.[21] Voluntary contributions allow people to increase their retirement incomes.[22]

8.23 The superannuation system is also intended to help address the challenges posed by Australia’s ageing population.[23] By making saving for retirement compulsory, the superannuation system ensures that the increased costs of an ageing population are not ‘fully borne by the generation that will be working in several decades’ time when the dependency ratio is higher’.[24]

8.24 Australia’s retirement income system—including the superannuation system—is considered strong by world standards. The Melbourne Mercer Global Pension Index survey of 18 countries ranked Australia third. The system was described as having ‘a sound structure, with many good features, but has some areas for improvement’.[25] It rated well across the three domains of adequacy, sustainability and integrity.[26]

8.25 However, there are concerns that the superannuation system reproduces existing income inequalities. High income earners receive a substantial proportion of

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19 The Treasury, *Australia’s Future Tax System: Final Report* (2010), pt 2, vol 1, 115–116.

20 Super System Review Panel, *Super System Review* (2010), pt 1, 15.

21 The Treasury, *Australia’s Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 11.

22 Ibid, 8.

23 The Treasury, *Towards Higher Retirement Incomes for Australians: A History of the Australian Retirement Income System since Federation* (2001), 83.

24 R Hanegbi, ‘Australia’s Superannuation System: A Critical Analysis’ (2010) 25 *Australian Tax Forum* 303, 312. See also The Treasury, *Australia’s Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 30. In the former article, Hanegbi challenges the assumptions on which this position is based.

25 Australian Centre for Financial Studies, *Melbourne Mercer Global Pension Index* (2012) <www.mercer.com/articles/global-pension-index> at 21 March 2013, 6.

26 Ibid, 7

superannuation tax benefits, while low income earners receive comparatively little benefit, and some of the lowest income earners receive no benefit.[27] Because superannuation is linked to workforce participation, people who take time out of the workforce to care for others are likely to have lower retirement incomes.[28] The Australian Human Rights Commission reports that women's retirement incomes are affected by their caring responsibilities, domestic and family violence, separation and divorce, and the gender pay gap. [29]

8.26 Recent changes to the system have responded to these problems but not resolved them.[30] These changes include a reduced cap on contributions, a low income government contribution, and an additional contributions tax on those earning more than $300,000.[31]

8.27 There are also concerns that the withdrawal or 'decumulation' stage of the system is not well developed. The authors of the Melbourne Mercer survey recommended a requirement that retirement benefits be taken as an income stream rather than a lump sum. They also said the system would be improved if the time between access to superannuation and access to the Age Pension was not more than five years.[32] The Actuaries Institute indicated that there is low consumer awareness of income stream products such as annuities, and considers that current tax and social security laws present barriers to the development of these products.[33]

8.28 These observations regarding the strengths and weaknesses of the Australian superannuation system provide a context for this Inquiry. The Inquiry's Terms of Reference require a specific focus on the impact of superannuation rules on workforce participation. Issues of equity, efficiency and the policy goals of the superannuation system are taken into account when considering the interaction between superannuation's age-based rules and workforce participation. The framing principles, including fairness and self-agency, are also relevant.

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27 The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 28–29. The Australia Institute, *Can the Taxpayer Afford 'Self-funded Retirement'?: Policy Brief No 42* (2012), 3. For an alternative perspective see ASFA, *The Equity of Government Assistance for Retirement Income in Australia* (2012) and Financial Services Council, *Submission 89*.

28 National Welfare Rights Network, *Submission 50*. See also Australian Human Rights Commission, *Accumulating Poverty? Women's Experiences of Inequality Over the Lifecycle* (2009).

29 Australian Human Rights Commission, *Investing in Care: Recognising and Valuing Those Who Care*, Research Report Volume 1 (2013), 53; Government of South Australia, *Submission 95*.

30 K Swoboda, 'Thirty Percent Tax for High-income Earners, Delayed Changes to Contributions Cap' <www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs> at 21 March 2013. According to ASFA, in 2009–2010 (after the co-contribution and the reduced cap, but before the increased contributions tax), those on the highest marginal income tax rate received 15% of the total tax concessions while making up only 2.4% of wage earners: ASFA, *The Equity of Government Assistance for Retirement Income in Australia* (2012), Tables 2.1, 2.2.

31 K Swoboda, 'Thirty Percent Tax for High-income Earners, Delayed Changes to Contributions Cap' <www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs> at 21 March 2013.

32 Australian Centre for Financial Studies, *Melbourne Mercer Global Pension Index* (2012) <www.mercer.com/articles/global-pension-index> at 21 March 2013, 23.

33 M Howes, *Exploring Barriers to Australia's Annuities Market* (2012).

8.29 Finally, there are concerns about the frequency of change in the superannuation system.[34] The Inquiry's framing principles of stability and system coherence are particularly important in the case of superannuation because of the long-term nature of superannuation savings and because almost every working person is affected. A lack of certainty about superannuation rules reduces the response to incentives,[35] discourages contributions[36] and makes retirement planning more difficult.[37] Stakeholders emphasised that incentives to work or save are not effective if they are not understood.[38] The ALRC's consideration of superannuation and workforce participation is guided by the framing principles and is undertaken in a context where system stability is highly valued.

Voluntary contributions

8.30 People aged under 65 may enter into arrangements with employers to deduct money from their wages and pay it into their superannuation accounts. These are known as voluntary contributions. However, people aged 65–74 are not permitted to make voluntary contributions to superannuation unless they meet a work test. They must be 'gainfully employed' for at least 40 hours over a 30-day period in the financial year.[39] People aged 75 years and over are not permitted to make voluntary contributions at all.[40]

Is the work test a participation incentive?

8.31 The ALRC has not found evidence that the age-based restrictions on contributions constitute a barrier to mature age workforce participation. The restrictions might amount to a barrier if the inability to contribute to superannuation, and the loss of access to the associated tax concessions, discouraged people from working. However, the decision to work or retire does not appear to be significantly influenced by the availability of tax concessional saving. The major determinants of retirement are discussed later in this chapter, and include 'reaching retirement age', eligibility for superannuation or a pension, sickness, injury or disability, and care responsibilities.[41]

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34 Super System Review Panel, *Super System Review* (2010), 7; Suncorp Group, *Submission 66*; National Seniors Australia, *Submission 27*; Association of Independent Retirees, *Submission 17*.

35 B Headey, 'Economics of Population Ageing: Australia May Not Have a Labour Supply Problem, but Recent Superannuation Reforms Have Not Helped' in T Griffin and F Beddie (ed) *Older Workers: Research Readings* (2011).

36 National Seniors Australia, *Submission 27*.

37 National Seniors Australia, *Submission 92*.

38 Ibid; J Willis, *Submission 42*.

39 *Superannuation Industry (Supervision) Regulations 1994* (Cth) regs 7.01, 7.04. 'Gainful employment' is employment or self-employment 'for gain or reward in any business, trade, profession, vocation, calling, occupation or employment': reg 7.01(3).

40 Ibid reg 7.04.

41 Australian Bureau of Statistics, *Retirement and Retirement Intentions, Australia, July 2010 to June 2011, Cat No 6238.0* (2011). There is no compulsory retirement age in Australia, but 'reached retirement age/eligible for superannuation/pension' is a reason for retirement in the ABS survey. Certain occupational groups, such as judges and military personnel, have compulsory retirement provisions: see Chapter 4.

8.32 The Australian Government has indicated that the work test is intended to ensure that people aged 65–75 can only make voluntary contributions when 'they maintain a bona fide link with the paid workforce'.[42] The Explanatory Statement to an amendment to the regulations regarding the work test indicated that allowing contributions only to people in the workforce is consistent with superannuation's 'intended role as a retirement vehicle. Without a work test people could abuse the taxation concessions provided to superannuation'.[43]

8.33 There is no suggestion in the Explanatory Statements that the work test was designed as a workforce participation incentive. A work test intended to encourage mature age workers to make a substantial commitment to work would be set at a higher level than the present test.

8.34 Further, it does not appear that the work test is, in fact, a workforce participation incentive. When making a decision whether to work or retire, people take into account their personal preferences, health, income, and caring responsibilities.[44] As the Financial Services Council submission put it, those who work past 65 are likely to do so either because they 'genuinely wish to work, or have inadequate retirement savings and therefore have a financial need to continue working'.[45] In either case, the presence or absence of a work test for superannuation contributions does not appear to drive the decision to work.

8.35 Finally, if the work test does have a workforce participation function, it is not well targeted. For example, the Association of Independent Retirees (AIR) noted that Australian Tax Office (ATO) statistics show that only about 10% of the three million people aged 65 and over paid tax above the 15% marginal rate.[46] The reason people invest in superannuation rather than elsewhere is the concessional tax rate of 15% on contributions and earnings. The work test could only motivate a person to work (in order to contribute to superannuation) if the person is paying more than 15% tax on their income. Therefore, only the 300,000 taxpayers identified by the AIR have an incentive to work and contribute to superannuation. These people are likely to have the highest incomes in their cohort. Financial incentives for workforce participation are more likely to be effective if they are directed to low to middle income earners, rather than to the highest 10%.

8.36 The ALRC concludes that the work test for superannuation contributions by people aged 65–75 appears not to have a significant impact on workforce participation by this age group. However, stakeholders raised a range of other concerns about the work test, and these are outlined in the next section.

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42 Explanatory Statement, Superannuation Industry (Supervision) Regulations (Amendment) No 117 1997 (Cth) Attachment B.

43 Explanatory Statement, Superannuation Industry (Supervision) Amendment Regulations (No 4) 2004 (Cth).

44 The determinants of retirement are discussed in more detail below.

45 Financial Services Council, *Submission 89*.

46 Association of Independent Retirees, *Submission 59*.

Reviewing the work test

8.37 As noted above, the work test is intended to ensure that the superannuation system is used by working people to save for their retirement. There is some doubt as to whether the work test, as presently framed, achieves this goal. The ALRC recommends that the Australian Government review the work test to determine whether the test is necessary, and whether it achieves its policy objective.

The integrity of the superannuation system

8.38 Without a link between contributions and work, superannuation moves away from its purpose as a retirement savings scheme. It becomes 'a more generalized savings mechanism that can also be utilized by people who are outside the workforce'.[47] Stakeholders in the superannuation industry indicated that the work test is intended to 'prevent abuse of a low tax environment'[48] and to 'maintain a level of integrity for the superannuation system'.[49]

8.39 The work test may not be effective in maintaining the link between contributions and work. Contributions do not have to be sourced from work-related income. A person 65 or over can work for as little as 40 hours in a year and contribute up to $25,000 from non-work income (for example, from inheritance, rent or dividends).

8.40 The Law Council suggested that, while the work test was originally 'an "integrity" measure to avoid excessive accumulation in a tax concessional environment', it is no longer needed because contribution caps now perform this function.[50] Abolition of the work test would improve system coherence because contribution rules would then be the same irrespective of a member's age.[51] The Council was concerned, however, that removing the work test might be a disincentive to work. For the reasons given above, the ALRC does not consider this to be a risk.

Does the work test cater for older people's work patterns?

8.41 The current work test of 40 hours in 30 days replaced a test which required at least 10 hours work per week. It was intended to be consistent with work patterns of older people who 'prefer to work on an irregular part-time basis'.[52] Despite this change, there are still concerns that the work test is not sufficiently flexible. Women In Super pointed out that the work test 'excludes workers who ... might work a significant

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47 A Borowski, 'Back at the Crossroads: The Slippery Fish of Australian Retirement Income Policy' (2008) 43 *Australian Journal of Social Issues* 311, 329.

48 Women in Super, *Submission 64*.

49 Australian Institute of Superannuation Trustees, *Submission 77*.

50 Law Council of Australia, *Submission 96*.

51 Ibid.

52 Explanatory Statement, Superannuation Industry (Supervision) Amendment Regulations (No 4) 2004 (Cth).

number of hours in blocks'.[53] Such workers might include exam invigilators or polling officials.[54]

8.42 Suggestions for reform included the removal of the work test,[55] or the replacement of the work test with a test based on:

- earnings or superannuation balance;[56]
- a minimum number of hours per year;[57] or
- a requirement that funds contributed come from work-related income.[58]

8.43 The Australian Council of Trade Unions (ACTU) suggested that the work test under the Paid Parental Leave Scheme might be a suitable model. This test is significantly more stringent than the current work test, requiring work for at least 330 hours in 10 months.[59] Some stakeholders supported the work test in its current form,[60] and others thought that increasing the amount of work required might be appropriate.[61]

Compliance with the work test

8.44 The Australian Institute of Superannuation Trustees (AIST) raised concerns about compliance with the work test:

> Currently, it is left to the member's discretion to confirm that they satisfy the work test and it is not actively audited by superannuation funds. Therefore, there is an opportunity for people to take advantage of this and make contributions when they have not worked, knowing they are unlikely to be audited.[62]

8.45 AIST suggested that increased auditing by the ATO might be necessary.

The nature of the review

8.46 In the light of the concerns raised above, the ALRC considers that the Government should review the work test to determine whether it is meeting its policy objective. This Inquiry has considered whether the age-based work test for superannuation contributions is a barrier or disincentive to work. The ALRC has concluded that it is not likely to have a significant impact on workforce participation by people aged 65–75 years. A further review should consider more broadly whether the work test is necessary for maintaining the integrity of the superannuation system. It

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53 Government of South Australia, *Submission 95*; ACTU, *Submission 88*; Australian Institute of Superannuation Trustees, *Submission 77*; Women in Super, *Submission 64*; Association of Independent Retirees, *Submission 59*.
54 Women in Super, *Submission 64*.
55 Government of South Australia, *Submission 95*; Financial Services Council, *Submission 89*; Association of Independent Retirees, *Submission 17*.
56 Association of Independent Retirees, *Submission 17*.
57 Australian Institute of Superannuation Trustees, *Submission 77*.
58 Australian Chamber of Commerce and Industry, *Submission 44*.
59 ACTU, *Submission 88*.
60 National Seniors Australia, *Submission 92*; P Gerrans, *Submission 74*.
61 Australian Industry Group, *Submission 97*; DOME Association, *Submission 62*.
62 Australian Institute of Superannuation Trustees, *Submission 77*.

should also consider whether the current settings are suitable for achieving this objective.

8.47 This review should also consider the work test for the government co-contribution, discussed further below. The work test for the government co-contribution is 10% of total income from work. It is different from the work test for voluntary contributions and spousal contributions, which is 40 hours in 30 days. It would contribute to system coherence if the work tests were the same. This review should consider whether the work test for voluntary contributions and spousal contributions should be consistent with the work test for the government co-contribution.

Recommendation 8–1 The *Superannuation Industry (Supervision) Regulations 1994* (Cth) prohibit contributions by members aged 65–74 unless the member meets a work test. The work test requires the member to work for at least 40 hours over a 30-day period in the financial year. The Australian Government should review the work test and consider:

(a) the policy objective of the work test;

(b) whether that policy objective remains relevant;

(c) how the work test contributes to achieving that policy objective; and

(d) whether the work test in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) should be consistent with the work test in the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Workers 75 years and over

8.48 A person over 75 years may not make voluntary contributions to superannuation, and therefore cannot access the tax advantages of this form of saving. In the Discussion Paper, the ALRC asked if this restriction should be removed and the work test extended to people over 75 years.[63]

8.49 Some stakeholders suggested that removing the restriction and extending the work test would encourage workforce participation by people 75 years and over.[64] However, for reasons similar to those set out above in relation to workers aged 65–75 years, the ALRC is not convinced that such a change would have a significant impact on workforce participation. The predominant determinants of the decision to work or retire include personal preference, health and disability, financial security and caring responsibilities. There does not appear to be evidence that the opportunity to contribute

63 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), Proposal 8–1.

64 National Seniors Australia, *Submission 92*; Brotherhood of St Laurence, *Submission 86*; Suncorp Group, *Submission 66*.

to superannuation would create an incentive to work. If it did so, the incentive would only exist for those people 75 years and over who have a marginal tax rate higher than 15%, who are the highest earning workers in this age bracket.

8.50 The ALRC has received submissions from stakeholders who report that age-based restrictions are objectionable because of their discriminatory nature.[65] However, identifying age-based discrimination is not in itself a sufficient justification for removing the age-based restrictions on contributions. The superannuation system is an age-based scheme. It both compels and encourages younger people to save for their retirement. Some age-based rules are essential to ensure that superannuation is used for retirement savings, rather than for tax minimisation or for estate planning purposes.[66]

8.51 Stakeholders also raised concerns that the restrictions discourage people who are 75 years and over from saving for their retirement.[67] While the ALRC notes such concerns, contributions made at this age do not necessarily have the advantage of significant long term investment returns.

8.52 Many stakeholders considered that people aged 75 years and over should be able to make contributions subject to a work test, in the same way as people aged 65–75.[68]

8.53 One submission suggested that both age restrictions on contributions and the work test should be removed altogether, in order to eliminate age discrimination.[69] Similarly, as the Law Council points out, removing the age-based restrictions might improve system coherence as the rules would be consistent for members of all ages.[70]

8.54 There are considerable concerns about the age-based restrictions on voluntary contributions. The ALRC makes no recommendation as it has not been convinced that these restrictions affect workforce participation. The ALRC also considers that some age-based restrictions are justified in superannuation legislation. However, the Australian Government should consider removing the restriction on contributions by people 75 years and replacing it with a work test. This approach could alleviate concerns about age discrimination without undermining the retirement savings

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65 National Welfare Rights Network (NWRN), *Submission 99*; Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; COTA, *Submission 51*; National Seniors Australia, *Submission 27*; Olderworkers, *Submission 22*; My Longevity Pty Limited, *Submission 15*.

66 P Gerrans, *Submission 74*; Law Council of Australia, *Submission 46*.

67 Government of South Australia, *Submission 95*; Financial Services Council, *Submission 89*; Suncorp Group, *Submission 66*; COTA, *Submission 51*; National Seniors Australia, *Submission 27*.

68 National Welfare Rights Network, *Submission 99*; Law Council of Australia, *Submission 96*; Australian Industry Group, *Submission 97*; Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; ACTU, *Submission 88*; Brotherhood of St Laurence, *Submission 86*; Australian Institute of Superannuation Trustees, *Submission 77*; P Gerrans, *Submission 74*; Suncorp Group, *Submission 66*; Women in Super, *Submission 64*; Women's Equity Think Tank, *Submission 63*; Brotherhood of St Laurence, *Submission 54* (age restrictions should be replaced with eligibility based on account balance); COTA, *Submission 51*; Australian Institute of Superannuation Trustees, *Submission 47*; Australian Chamber of Commerce and Industry, *Submission 44*; Media Entertainment & Arts Alliance, *Submission 33*; *National Seniors Australia, Submission 27*; Olderworkers, *Submission 22*.

69 Association of Independent Retirees, *Submission 17*.

70 Law Council of Australia, *Submission 96*.

objective of the system. Such a change has the potential to affect revenue, but if the work test is retained, the impact would be minor. At present, very few people over 75 are in the work force.

Some consequential changes

8.55 If the Government decides to remove the age limit on voluntary contributions, two consequential reforms will be necessary. First, employers should be able to claim income tax deductions for voluntary contributions made for employees aged over 75.[71] If voluntary contributions are tax deductible then employers can offer employees aged over 75 access to salary sacrifice arrangements. Without this option, the benefits of removing the age limit on voluntary contributions would be significantly limited.

8.56 Secondly, self-employed workers should be able to claim income tax deductions for contributions made from the age of 75 years.[72] Extending the deduction to the self-employed ensures fair and consistent treatment.

8.57 Stakeholders uniformly agreed that if the age limits for employees were removed, then the contributions should be tax deductible for both employers and self-employed workers.[73]

Spouse contributions and contribution splitting

8.58 A person may make superannuation contributions on behalf of a spouse, or may split contribution contributions with a spouse. There are age restrictions on spouse contributions and contribution splitting. This section considers whether these age restrictions should be removed and contributions made conditional on the spouse meeting a work test.

8.59 The ALRC has concluded that such a change is not likely to have an impact on workforce participation, and therefore makes no recommendation for change.

The current law and its rationale

Contribution splitting

8.60 The current law does not allow contribution splitting with a spouse aged 65 years or older, or a retired spouse who has reached 'preservation age'—that is, the age at which a person may access superannuation benefits when retired.[74]

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71 *Income Tax Assessment Act 1997* (Cth) s 290–80 currently prevents employers claiming these deductions.

72 Ibid s 290–165(2) currently prevents self-employed workers claiming these deductions.

73 Australian Industry Group, *Submission 97*; Law Council of Australia, *Submission 96*; Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; ACTU, *Submission 88*; Brotherhood of St Laurence, *Submission 86*; Australian Chamber of Commerce and Industry, *Submission 85*; Australian Institute of Superannuation Trustees, *Submission 77*; Suncorp Group, *Submission 66*; Women in Super, *Submission 64*.

74 *Superannuation Industry (Supervision) Regulations 1994* (Cth) reg 6.44; APRA, *Prudential Practice Guide: SPG 270—Contribution and Benefit Accrual Standards for Regulated Superannuation Funds* (2012), [58]. As discussed below, preservation age is age 55 to 60 years, depending on year of birth.

8.61 If there were no age restrictions on contribution splitting, a younger spouse could split contributions with an older spouse who could immediately withdraw the money. This would minimise tax but not contribute to retirement savings.

8.62 Before 2007, there was a maximum amount that a person could contribute to a superannuation fund at concessional tax rates (the ‘reasonable benefit limit’). It was therefore beneficial for a person approaching the reasonable benefit limit to split contributions with a spouse with a lower balance. The reasonable benefit limit was abolished in 2007.[75] The remaining taxation advantage of contribution splitting is for those who reach preservation age and retire before 60 years of age. Withdrawals before the age of 60 are subject to tax, but splitting contributions can allow a couple to take full advantage of two tax-free amounts of $175,000.[76]

8.63 According to the AIST, contribution splitting is not common.[77] However, splitting contributions with a spouse may become more popular if the Australian Government reintroduces arrangements based on superannuation balances. The Australian Government has announced its intention to increase the contributions cap for individuals aged over 50 years with balances under $500,000 in their accounts, but has delayed implementation of this measure.[78] AIST submitted that, if introduced, this would encourage some members to split their contributions with a spouse with a lower balance in order to stay under $500,000.[79]

Spouse contributions

8.64 A person may make a non-deductible superannuation contribution on behalf of a spouse, and may be eligible for a tax offset when the spouse is receiving low or no income (less than $13,800 for the income year).[80] Spouse contributions can be made where the spouse is aged under 65 years, or has reached 65 but not yet 70 years and is gainfully employed on a part-time basis. Contributions cannot be made on behalf of a spouse aged 70 years and over.[81]

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75 *Tax Laws Amendment (Simplified Superannuation) Act 2007* (Cth).

76 See for example ESS Super, ‘Contribution Splitting’, 11 February 2013 <www.esssuper.com.au> at 21 March 2013.

77 Australian Institute of Superannuation Trustees, *Submission 77*.

78 ATO, ‘Key Superannuation Rates and Thresholds’ <www.ato.gov.au> at 21 March 2013.

79 Australian Institute of Superannuation Trustees, *Submission 77*.

80 *Income Tax Assessment Act 1997* (Cth) s 290–230. The maximum rebate for the income year is $540: *Income Tax Assessment Act 1997* (Cth) s 290–235(2). The *Income Tax Assessment Act 1997* definition of a spouse, applicable in this context, is generally consistent with the definition in the *Superannuation Industry (Supervision) Act 1993* (Cth): *Income Tax Assessment Act 1997* (Cth) ss 290–230(3), 995–1(1).

81 *Superannuation Industry (Supervision) Regulations 1994* (Cth) reg 7.04(1).

Contribution splitting, spouse contributions and workforce participation

8.65 There is no work test associated with contribution splitting. In the Discussion Paper, the ALRC proposed that the age restriction on contribution splitting should be removed and replaced with a work test on a receiving spouse aged 65 or over.[82]

8.66 There is a work test associated with spouse contributions when the spouse is aged between 65 and 70. In the Discussion Paper the ALRC proposed that the upper age limit should be removed and replaced with a work test on a receiving spouse aged 65 or over.[83]

8.67 These proposals were intended to introduce, or preserve, a workforce incentive for spouses and facilitate the policy intention of superannuation as a retirement income vehicle.[84]

8.68 Some stakeholders agreed that such reforms would create workforce participation incentives.[85] Others indicated, however, that rules about spouse contributions have little impact on decisions concerning work and retirement.[86]

8.69 The ALRC has concluded that removing the age limit on contribution splitting and spouse contributions, subject to a work test, would not have a significant impact on workforce participation decisions. The reasons are the same as those discussed above in relation to voluntary contributions by people over 75 years—namely, that the retirement decision is not usually influenced by the availability of tax concessional savings, and very few people in this age group would benefit from the tax concessions of superannuation. Furthermore, in the case of contribution splitting, the proposed reforms may facilitate the use of superannuation for tax minimisation purposes.[87] Accordingly, no recommendation has been made.

8.70 Several stakeholders argued that the age restrictions should be removed to eliminate age discrimination.[88] Another suggested that removing the restrictions would encourage contributions to lower income spouses' (usually women's) accounts.[89] It appears, however, that contribution splitting and spouse contributions are currently not widely used among people aged under 65. Therefore it seems unlikely that these arrangements would be widely used if extended to people aged 65 and over. The ALRC acknowledges the problem of women's lower superannuation balances, but

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82 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), Proposal 8–5.

83 Ibid, Proposal 8–4.

84 Ibid, [8.68].

85 Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; Australian Chamber of Commerce and Industry, *Submission 44*.

86 P Gerrans, *Submission 74*; Australian Institute of Superannuation Trustees, *Submission 47*.

87 The problem does not exist regarding spouse contributions as these contributions are made from after-tax income.

88 National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; COTA, *Submission 51*.

89 Government of South Australia, *Submission 95* (this submission supported the removal of the age restrictions but not the imposition of a work test).

considers that removing the age restrictions is not likely to make a significant contribution to improving the situation.

8.71 The Law Council supported the current rules as a reasonable restriction on accumulation, but suggested that a change in the age limit might be justified for simplicity and consistency.[90] Similarly, Suncorp suggested that the age restrictions should be consistent with the restrictions imposed on voluntary contributions, that is, an upper limit of 75 years and a work test from the age of 65.[91]

8.72 AIST pointed out that

> member splitting and spouse contributions are not commonly used and it is arguable that, for simplicity reasons, these could be removed altogether. These types of rules create confusion and complexity.[92]

8.73 Issues of age discrimination, measures to improve women's superannuation balances, and measures to reduce the complexity of superannuation rules should be considered in future reviews of superannuation.

Government co-contribution

8.74 If a low-income earner aged under 71 years makes a voluntary contribution to his or her superannuation fund, the Government makes a matching co-contribution. The ALRC recommends that eligibility for the co-contribution be extended to people aged up to 75 years. This would be consistent with the present restrictions on voluntary contributions generally, and would be a workforce participation incentive for people aged between 71 and 75 years.

The current law

8.75 Low-income earners making personal after-tax superannuation contributions may be eligible for co-contributions under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth). The purpose of government co-contributions is to help low-income earners save for retirement.[93] The co-contribution amount depends on the personal contribution amount and the individual's income. In 2011–2012, the maximum co-contribution amount was $1,000, but it is expected to be $500 in 2012–2013.[94]

8.76 The co-contribution is subject to both a work test and an age limit. A co-contribution is only payable if 10% or more of the person's total income for the year comes from work or carrying on a business.[95]

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90 Law Council of Australia, *Submission 96*.

91 Suncorp Group, *Submission 66*.

92 Australian Institute of Superannuation Trustees, *Submission 47*.

93 Explanatory Memorandum, Superannuation (Government Co-Contribution for Low Income Earners) Bill 2003 (Cth), [1.4].

94 *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) s 10. The Tax and Superannuation Laws Amendment (2013 Measures No 2) Bill 2013, that reduces the maximum co-contribution, was introduced into Parliament on 21 March, 2013.

95 Ibid s 6(1)(b), (2).

8.77 People aged 71 years and over are ineligible for government co-contributions.[96] The age restriction affects workers who are aged 71 but under 75 years (because people 75 years and over cannot make voluntary contributions to their superannuation funds). It is possible that the exclusion of those aged 71–74 years was unintentional: the co-contribution bill had its second reading in October 2002, only a few months after the age limit on voluntary contributions moved from 70 to 75 years.

Should the restriction be removed?

8.78 The proposal to remove the exclusion of workers aged 71–74 years[97] was widely supported by stakeholders, both on the basis that it would be a workforce incentive,[98] and to avoid discrimination.[99] AIST reported, moreover, that women interviewed on their experiences in retirement confirmed that the government co-contribution was, in fact, an incentive to remain in the workforce.[100]

8.79 One word of caution was offered by the Law Council. The Council noted that low income earners over 71 years may also be entitled to access the Age Pension and 'funding of the Co-contribution without any age limit might create complexities in term of avoiding a duplication of entitlements'.[101] The Australian Industry Group also considered that the proposal should be more thoroughly assessed.[102]

8.80 The ALRC is not able to calculate the cost of extending eligibility, but it is not likely to be high. In 2009, only a quarter of people eligible for the co-contribution made voluntary contributions.[103] In the year to June 2011, there were only 94,400 people over 70 years still in the labour force.[104] The ALRC recommends that the age restriction should be removed on the basis that it would be an incentive to workforce participation for people on low incomes. It would bring the age limit for the co-contribution in line with the age limit for voluntary contributions, contributing to system coherence and simplification. Finally, it would avoid unnecessary age discrimination.

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96 Ibid s 6(1). This restriction is intended to limit the cost of superannuation tax concessions: The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 32.

97 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), Proposal 8–6.

98 Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; Financial Services Council, *Submission 89*; Australian Institute of Superannuation Trustees, *Submission 77*; Brotherhood of St Laurence, *Submission 54*; COTA, *Submission 51*; Superannuated Commonwealth Officers' Association, *Submission 14*.

99 Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; COTA, *Submission 51*.

100 Tom Garcia, Policy and Regulatory Manager, Australian Institute of Superannuation Trustees, personal communication, 18 January 2013. The interviews were conducted as part of a survey. The results were reported in AIST, *Super-poor but surviving. Experiences of Australian Women in Retirement* (2011).

101 Law Council of Australia, *Submission 96*.

102 Australian Industry Group, *Submission 97*.

103 The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 30.

104 Australian Bureau of Statistics, *Retirement and Retirement Intentions, Australia, July 2010 to June 2011, Cat No 6238.0* (2011), Table 1.

Recommendation 8–2 Section 6(1)(e) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth), which provides that government co-contributions are payable only for people aged under 71 years, should be repealed.

Accessing superannuation

Introduction

8.81 The ALRC has been directed to consider legislation that imposes limitations or barriers that could discourage older people from working. This consideration requires identifying disincentives to participation and incentives to leave the workforce.[105]

8.82 Access to superannuation may amount to an incentive to leave the workforce. However it is also an earned benefit and a statutory right. Delaying access to superannuation may delay retirement and compel workforce participation. This outcome would conflict with the framing principles for this Inquiry, particularly independence and self-agency.

8.83 Accordingly, the ALRC has not recommended changes to access rules. If such recommendations were to be made, then they should be made after a review considering all aspects of the superannuation system, including equity, adequacy and sustainability, and not only its impact on workforce participation.

8.84 However, because the relationship between access to superannuation and older people's workforce participation is of significant public interest, this section reviews the issue and reports on the submissions received on this topic.

8.85 The Transition to Retirement (TTR) rules were designed to encourage continued workforce participation among mature age workers. There is no evidence that they are meeting this goal, and some evidence that they might be a disincentive to participation. The ALRC recommends that the TTR rules be further reviewed to determine what changes are required to ensure that the rules encourage workforce participation.

When can members access superannuation?

8.86 Members of superannuation funds can withdraw their money as follows:

8.87 ***At age 65***. There are no restrictions on the way people 65 years and over may access their superannuation benefits.[106]

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105 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), 1.12.

106 *Superannuation Industry (Supervision) Regulations 1994* (Cth) sch 1 item 106.

8.88 ***At preservation age if retired.*** The preservation age ranges from 55 to 60 years, depending on year of birth:

(a) for a person born before 1 July 1960—55 years; or

(b) for a person born during the year 1 July 1960 to 30 June 1961—56 years; or

(c) for a person born during the year 1 July 1961 to 30 June 1962—57 years; or

(d) for a person born during the year 1 July 1962 to 30 June 1963—58 years; or

(e) for a person born during the year 1 July 1963 to 30 June 1964—59 years; or

(f) for a person born after 30 June 1964—60 years.[107]

8.89 In other words, the preservation age will increase from 55 to 60 years between the years 2015 and 2025.

8.90 A person who has reached preservation age (but is less than 60 years old) is considered retired if an employment arrangement has come to an end and the superannuation fund is satisfied that the person does not intend to become employed again. If the person is aged 60 years or over, the person is considered retired if an employment arrangement has come to an end after the person turned 60 years.[108]

8.91 There are no restrictions on the way members of, or over, the preservation age can access their superannuation when they retire.[109]

8.92 ***Under the Transition to Retirement rules.*** These rules enable members who are of, or over, preservation age to access their superannuation before they retire. Members may only take superannuation benefits as a non-commutable income stream (that is, an income stream that cannot be converted into a lump sum).[110] No more than 10% of the account balance may be paid each year.[111] Members can continue working in any capacity while receiving superannuation benefits under the TTR rules, as no work test applies.[112]

8.93 ***Early access.*** Early release of benefits is possible but the grounds are limited. They include severe financial hardship and certain compassionate grounds.[113]

8.94 There are two further age settings relevant to superannuation: the tax-free access age at 60 years, and the Age Pension age. In 2013, the Age Pension age is 65 years. From 2017 to 2023, the Age Pension age will incrementally increase to 67 years.[114]

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107 Ibid reg 6.01.

108 Ibid reg 6.01(7).

109 Ibid sch 1 item 101.

110 Ibid regs 1.05(11A)(a); 1.06 (9A)(a); 6.01; sch 1 item 110.

111 Ibid reg 6.01. This reflects the underlying policy that the rules are ‘not intended to provide people with a vehicle to dissipate their superannuation savings excessively before retirement’: Explanatory Statement, Superannuation Industry (Supervision) Amendment Regulations (No 2) 2005 (Cth).

112 ATO, *Transition to Retirement—Information for Superannuation Professionals* (2006).

113 *Superannuation Act 1976* (Cth) s 79B; *Superannuation Industry (Supervision) Regulations 1994* (Cth) regs 6.01, 6.19A.

114 *Social Security Act 1991* (Cth) s 23(5A), (5D).

How do superannuation access ages affect workforce participation?

8.95 There are many determinants of continued participation in the paid workforce among older workers: health and disability, educational attainment, a spouse's retirement, caring responsibilities, employer attitudes, and financial resources (including superannuation and Age Pension eligibility).[115] Access to training and skills development, and opportunities for flexible work also affect the decision to work or retire.[116]

8.96 Access to superannuation is clearly a highly relevant factor. The Australian Bureau of Statistics (ABS) reported that, among retired men and women whose last job was fewer than 20 years ago,

> the most commonly reported main reason for ceasing their last job was 'reached retirement age/eligible for superannuation/pension' (44% of men and 27% of women). These people had one of the highest average retirement ages of 62.0 years (62.8 years for men and 60.8 years for women).[117]

8.97 Superannuation, an annuity or allocated pension was the main source of income at retirement for 27% of men and 13% of women.[118] For the 44% of women whose partner's income was their main source of funds at retirement,[119] their partner's access to superannuation might be a relevant factor in their retirement decision.

8.98 There are substantial numbers of people whose retirement decision is affected by having reached the access age for superannuation, and those numbers will rise as the superannuation system matures. Changes to the access age for superannuation can be expected to affect the workforce participation rates for these people.

8.99 However, many people retire due to sickness, injury or disability (26% of men and 21% of women), because of unemployment (10% of men and 9% of women),[120] or to care for children or an ill, disabled or elderly person (11% of women and 3% of men).[121] These people are, on average, younger than those who retire because they have 'reached retirement age or are eligible for superannuation or a pension'.[122] For these people, a change to the access age is less likely to affect workforce participation, but it may affect their financial circumstances. Some of these people rely on

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115 J Borland, *Transitions to Retirement: A Review*, Melbourne Institute Working Paper 03 (2005), Melbourne Institute of Applied Economic and Social Research, the University of Melbourne, 19–26.

116 C Phillipson and A Smith, *Extending Working Life: A review of the research literature*, Research Report No 299 (2005), Department for Work and Pensions, 44–50.

117 Australian Bureau of Statistics, *Retirement and Retirement Intentions, Australia, July 2010 to June 2011, Cat No 6238.0* (2011), 5.

118 Ibid, Table 7.

119 Ibid, 6.

120 Ibid, 5.

121 Ibid, Table 5.

122 Ibid, 5. There is no compulsory retirement age in Australia, but 'reached retirement age/eligible for superannuation/pension' is a reason for retirement in the ABS survey. Certain occupational groups, such as judges and military personnel, have compulsory retirement provisions: see Chapter 4.

superannuation funds to replace or supplement income support payments until reaching Age Pension age.[123]

8.100 The gap between the superannuation preservation age and Age Pension age is of concern both in terms of workforce participation and the sustainability of the superannuation system. The Grattan Institute said that

> many workers retire before reaching the pension age and start using their superannuation. … The ability to use superannuation like this weakens the incentive to continue to work until the pension age.[124]

8.101 In other words, access to superannuation funds creates an incentive to withdraw from work and rely on superannuation funds until Age Pension age.[125] Drs Diana Warren and Umut Oguzoglu measured this incentive, finding that

> for men aged between 60 and 64 years, there are significant financial incentives to retire from the labour force and once the age pension eligibility age has been reached, the incentive to retire is much stronger. For women, the financial incentives before the age pension eligibility age are not significant, but there appears to be a weak incentive to retire once the age pension eligibility age has been reached.[126]

8.102 In 2004, the Australian Government made changes to superannuation arrangements that were intended to reduce incentives to retire. Taxes on lump sum withdrawals, and on earnings on superannuation accounts in pension phase were abolished, and income from superannuation was disregarded in assessing income tax. It was thought that these arrangements would encourage people over 60 years to remain in the workforce.[127] This did not prove to be the case. While there is an upward trend for mature age participation in the workforce, the trend was not affected by the 2004 changes.[128]

Calls for increased access ages

8.103 The Tax Review recommended that the preservation age be increased to 67 years, to align with the increased Age Pension age.[129] This recommendation was framed as a response to a changing environment for the retirement income system, including:

> Dramatic long term changes in Australia’s demographic structure, with an increasing proportion of aged people and a declining proportion of working-age people;

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123 Women in Super, *Submission 64*.

124 J Daley, *Game-changers: Economic Reform Priorities for Australia: Grattan Institute Report No 2012–5* (2012), 54.

125 J Freebairn and D Warren, ‘Retirement Incomes and Employment Decisions of the Mature Aged’ (2010) 43(3) *Australian Economic Review* 312.

126 D Warren and U Oguzoglu, ‘Retirement in Australia: a Closer Look at the Financial Incentives’ (2010) 43(4) *Australian Economic Review* 357. This article models the effect of changes to the pension age but not changes to superannuation access ages.

127 B Headey, ‘Economics of Population Ageing: Australia May Not Have a Labour Supply Problem, but Recent Superannuation Reforms Have Not Helped’ in T Griffin and F Beddie (ed) *Older Workers: Research Readings* (2011).

128 Ibid.

129 The Treasury, *Australia’s Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 17.

> Increasing life expectancies, leading to a longer average period in retirement and particularly strong growth in the number of people in the oldest age groups;
>
> Advances in health technology that are improving the quality of life for many people with previously debilitating ailments.[130]

8.104 The changes were said to create problems for the sustainability of the retirement income system. In particular, future taxpayers will have to pay much higher taxes to pay for the health care and pensions of older people who will make up a higher proportion of the population.[131]

8.105 There are also concerns about the adequacy of retirement incomes. Superannuation was intended to improve retirement incomes, but longer periods in retirement mean that people may not be able to accumulate sufficient savings to make a real difference to their retirement incomes.[132] Submissions from the superannuation industry were particularly concerned about the adequacy of superannuation in light of increased longevity.[133]

8.106 The approaching seven year gap between the preservation age of 60 years (from 2025) and the Age Pension age of 67 years (from 2023) may contribute to problems of sustainability and adequacy. Early retirement funded by superannuation savings both increases the length of retirement and reduces retirement savings, resulting in increased dependence on the Age Pension.[134] The Tax Review noted that responding to increasing longevity by increasing the preservation age would 'enhance the acceptability, adequacy and sustainability of the retirement income system'.[135] It anticipated that increasing the preservation age would reduce total pension costs and reduce tax for workers.[136]

8.107 A related concern arising from the changing demographics of the Australian population is that Australia will have a labour supply problem, leading to reduced economic growth. The *Intergenerational Report (2010)* suggests that average annual growth in real GDP will slow from 3.3% to 2.7% in 40 years, and says the ageing of the population is 'the major factor driving the slowing in economic growth'.[137] The

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130 Ibid, 15.

131 Ibid, 15. This analysis has been disputed by Hanegbi who suggests that the increased costs of an ageing population will be dwarfed by the increase in GDP per capita, so that the tax burden on future tax payers will be insignificant: R Hanegbi, 'Australia's Superannuation System: A Critical Analysis' (2010) 25 *Australian Tax Forum* 303, 310.

132 The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 15.

133 Financial Services Council, *Submission 89*; Australian Institute of Superannuation Trustees, *Submission 77*; Suncorp Group, *Submission 66*.

134 The Treasury, *Australia's Future Tax System: The Retirement Income System—Report on Strategic Issues* (2009), 37.

135 Ibid, 35.

136 Ibid, 37.

137 The Treasury, *Intergenerational Report 2010—Australia to 2050: Future Challenges* (2010), ix. Not all commentators agree that Australia's changing demographics create concerns about economic growth. Heady notes that participation rates for both men and women aged 55–64 have been steadily increasing since the mid-1980s, driven by improvements in health and education, changed attitudes to women's participation and more white collar jobs. He argues that these trends are likely to continue and the participation rate of 55–64 year olds 'will easily surpass the 67% level mentioned as desirable by

report calls for improved labour force participation and, in particular, the removal of barriers to participation for mature aged people who want to work.[138] However, the report stops short of calling for the removal of incentives to retire, such as access to superannuation at 60 years.

8.108 Increasing the preservation age may assist individuals by encouraging workforce attachment, increasing their superannuation savings and reducing the likelihood of exhausting these savings. It is easier for mature age people to continue working rather than to withdraw from the workforce and later seek to re-enter when their retirement savings are diminished. In particular, people without financial literacy may retire at 60 believing their superannuation is sufficient to fund their retirement until reaching Age Pension age. If they are incorrect and their funds are exhausted before they reach 67, they face having to try to re-enter the workforce after a long absence.[139] This is more difficult for older workers, who tend to have a longer duration of unemployment than younger workers.[140] The Grattan Institute found that:

> Aligning incentives for older people to stay in work seems to be more important than helping them find it. Measures to encourage people to work for longer in life are likely to have the greatest impact on older age workforce participation.[141]

8.109 Stakeholders said that an increase in the preservation age is consistent with increases in life expectancy,[142] particularly healthy life expectancy.[143] One stakeholder noted that it is a legitimate response to another contemporary reality, the replacement of labour intensive work with less demanding white collar work.[144]

Objections to an increased preservation age

8.110 Access to superannuation funds has a significant impact on retirement decisions in Australia. However, financial resources are not the only determinant in the retirement decision. ABS data indicates that many people retire for health reasons, because of unemployment, or because of caring responsibilities. Stakeholders emphasised that many people do not choose when to retire,[145] and were particularly concerned about workers in labour intensive industries who are physically unable to

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Treasury': B Headey, 'Economics of Population Ageing: Australia May Not Have a Labour Supply Problem, but Recent Superannuation Reforms Have Not Helped' in T Griffin and F Beddie (ed) *Older Workers: Research Readings* (2011), 70.

138 The Treasury, *Intergenerational Report 2010—Australia to 2050: Future Challenges* (2010).

139 J Piggott, *Correspondence*, 13 August 2012.

140 In May 2012, the average duration of unemployment for people aged 45 and over was 62 weeks, compared to 34 weeks for those aged 25–44 years: DEEWR, FaHCSIA, DHS, DIISRTE, *Submission to the Senate Inquiry on the Adequacy of the Allowance Payment System for Job Seekers and Others* (2012), 47.

141 J Daley, *Game-changers: Economic Reform Priorities for Australia: Grattan Institute Report No 2012–5* (2012), 52.

142 Australian Industry Group, *Submission 37*.

143 Suncorp Group, *Submission 66*. See further Chapter 2.

144 Financial Services Council, *Submission 89*. See also P McDonald, 'Employment at Older Ages in Australia: Determinants and Trends' in T Griffin and F Beddie (eds), *Older Workers: Research Readings* (2011) 25, 39.

145 Government of South Australia, *Submission 95*; DOME Association, *Submission 62*.

work until aged 67 years.[146] Stakeholders reported significant discrimination against older workers,[147] and there is evidence suggesting that, while unlawful, this form of discrimination may be widespread.[148] Unemployed mature age people spend longer looking for work than do younger people. For these workers, an increased preservation age might increase the time they have to rely on the Disability Support Pension or unemployment benefits.

8.111 While there is a shift away from labour intensive work, this work remains an important and continuing component of the modern workforce. A number of submissions said that it is unreasonable and unfair to expect people who have spent their entire adult lives doing hard physical work to continue to do so until aged 67 years.[149]

8.112 An increased preservation age would also have a disproportionate impact on Aboriginal and Torres Strait Islander people who have a life expectancy approximately 10 years less than other Australians.[150]

8.113 These submissions highlight the difficulty of setting a preservation age that applies to all workers, and does not take individual differences into account. While most people over 60 years are in good health and do not do hard physical labour, the preservation age should be fair for all workers. One way to achieve this goal might be to expand the early access provisions, which currently allow early access because of 'severe financial hardship or on compassionate grounds'.[151] The regulations limit the grounds for release to specified situations including a need to pay for medical treatment, palliative care, funeral or burial or to avoid foreclosure of a mortgage or the forced sale of a home.[152] AIST suggested that another approach would be to vary the preservation age according to 'a person's gender, occupation or other factors that may impact on a person's ability to participate in the workforce'.[153]

8.114 A number of stakeholders reiterated the importance of choice for older people.[154] This concern is consistent with the framing principles for the Inquiry. These principles include independence and self-agency, both of which encompass the principle of choice. The ACTU stated that it

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146 Australian Institute of Superannuation Trustees, *Submission 77*; Women in Super, *Submission 64*; Cbus, *Submission 41*; but see Financial Services Council, *Submission 89*: 'labour intensive sections of the workforce make up a declining portion of the total workforce, and should not be afforded a disproportionate level of emphasis'.

147 Law Council of Australia, *Submission 96*; National Seniors Australia, *Submission 92*; COTA, *Submission 51*; Olderworkers, *Submission 22*.

148 See Chapter 3.

149 Law Council of Australia, *Submission 96*; ACTU, *Submission 88*; Australian Institute of Superannuation Trustees, *Submission 77*; Women in Super, *Submission 64*; Cbus, *Submission 41*.

150 Australian Bureau of Statistics, *Experimental Life Tables for Aboriginal and Torres Strait Islander Australians, Australia, 2005–2007, Cat No 3302.0.55.003* (2009).

151 *Superannuation Act 1976* (Cth) s 79B.

152 *Superannuation Industry (Supervision) Regulations 1994* (Cth) reg 6.19A.

153 Australian Institute of Superannuation Trustees, *Submission 77*.

154 Law Council of Australia, *Submission 96*; Government of South Australia, *Submission 95*; ACTU, *Submission 88*; Suncorp Group, *Submission 66*.

> rejects the notion that existing age settings encourage workers in meaningful paid employment to retire before they are ready to, and increasing such age settings would only serve to unfairly limit their choices, restrict individual agency, and would provide no incentive or assistance for workers who wish to remain in employment to do so.[155]

8.115 While some stakeholders rejected the proposal regarding raising access ages outright,[156] others indicated that the preservation age should not be raised 'at this time'.[157] For example, both National Seniors Australia and COTA Australia (representing older Australians) suggested that the preservation age should not be increased until there are changes in employer attitudes to older workers so that people can reasonably expect to be employed until the age of 67 years.[158] Other stakeholders said that the preservation age should not be raised without further review, consultation or research.[159] Among these stakeholders, there seems to be a recognition that, in the long term, the preservation age will require adjustment. The adjustment may need to be accompanied by some flexibility for workers who have worked in labour intensive industries, who have health problems, disability, or caring responsibilities. Future reconsideration of the preservation age should also include reconsideration of the early access provisions.

The tax-free access age

8.116 This section considers whether to raise the age at which a person of preservation age may access superannuation (above a set cap) without paying tax. The ALRC concludes that this change should not be recommended—because there is little evidence that it would increase workforce participation.

8.117 The taxation arrangements for superannuation benefits are complex and are not fully described here. For the purposes of this Inquiry, it is sufficient to note that, \in most cases, people aged 60 years and over are not required to pay tax when they receive superannuation benefits.[160]

8.118 People who have reached preservation age, but who are under 60 years old, can generally withdraw funds up to a 'low rate cap' amount tax-free.[161] The low rate cap is a lifetime limit. In 2012–2013 it is $175,000.[162] Amounts above the low rate cap are taxed up to 15% (plus Medicare levy).[163]

8.119 In the Discussion Paper, the ALRC asked whether, as an alternative to raising the preservation age, the tax-free access age should be raised from 60 years to:

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155 ACTU, *Submission 88*.
156 Ibid; DOME Association, *Submission 62*; Cbus, *Submission 41*.
157 National Seniors Australia, *Submission 92*; COTA, *Submission 51*; Olderworkers, *Submission 22*.
158 National Seniors Australia, *Submission 92*; COTA, *Submission 51*.
159 Australian Industry Group, *Submission 97*; Law Council of Australia, *Submission 96*; Australian Institute of Superannuation Trustees, *Submission 77*; Women in Super, *Submission 64*.
160 *Income Tax Assessment Act 1997* (Cth) s 301–10.
161 Ibid s 301–20.
162 Ibid s 307–345; ATO, 'Low Rate Cap on Super Lump Sum Benefits' <www.ato.gov.au> at 21 March 2013.
163 *Income Tax Assessment Act 1997* (Cth) s 301–20.

- 62 years—to maintain the current five-year gap with the Age Pension age when the latter increases from 65 to 67 years;
- 65 years—to align with the unrestricted superannuation access age; or
- 67 years—to align with the Age Pension age.[164]

8.120 Raising the tax-free access age may be a softer approach than raising the preservation age. It would allow mature age people to access superannuation benefits at age 60 (rather than, for example, 62 or 67 years) if they choose to do so. In other words, it uses the 'carrot' of tax incentives rather than the 'stick' of raising the age at which a person can access their retirement savings.[165] Professor John Freebairn and Dr Diana Warren, in their examination of ways to increase mature age participation, said that aligning the tax-free access age with the Age Pension age is a 'logical policy option'.[166] This approach may be more consistent with this Inquiry's framing principles of independence and self-agency. Some stakeholders agreed that raising the tax-free age might amount to an incentive to continue working.[167]

8.121 However, the evidence that increasing the tax-free access age will result in increased workforce participation by older workers is not strong. Until 2007, lump sum superannuation withdrawals up to $129,000 were tax-free.[168] In 2007, tax-free access was extended to all withdrawals made by people aged over 60 years. This was intended to be an incentive to continue working until at least that age.[169]

8.122 In a 2008 survey of 2,501 Australian workers aged 40–59, around half of the respondents indicated that the change was likely to influence them to stay in the workforce up to, or past, the age of 60.[170] However, a 2010 report from the Melbourne Institute assessed the 2007 changes and found that they did not have a statistically significant impact on mature age workforce participation.[171] In particular, men aged 55–59, who would be expected to be affected by the changed arrangements, did not increase their participation.[172] Modelling commissioned by Mercer Asia Pacific also showed that the reforms had a 'marginal' impact on workforce participation by people

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164 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), Question 8–3.

165 This terminology is used in R Chomik and J Piggott, *Mature-Age Labour Force Participation: Trends, Barriers, Incentives, and Future Potential* (2012), Centre of Excellence in Population Ageing Research Briefing Paper 2012/01, 11.

166 J Freebairn and D Warren, 'Retirement Incomes and Employment Decisions of the Mature Aged' (2010) 43(3) *Australian Economic Review* 312, 318.

167 Australian Chamber of Commerce and Industry, *Submission 85*; Suncorp Group, *Submission 66*; Women in Super, *Submission 64*.

168 A Borowski, 'Back at the Crossroads: The Slippery Fish of Australian Retirement Income Policy' (2008) 43 *Australian Journal of Social Issues* 311, 327.

169 P Costello (Treasurer), 'A Plan to Simplify and Streamline Superannuation' (Press Release, 9 May 2006).

170 M Walter, N Jackson, and B Felmingham, 'Keeping Australia's Older Workers in the Labour Force: A Policy Perspective' (2008) 43 *Australian Journal of Social Issues* 291, 301.

171 B Headey, J Freebairn and D Warren, *Dynamics of Mature Age Workforce Participation: Policy Effects and Continuing Trends, Final Report* (2010), Melbourne Institute of Applied Economic and Social Research, 131.

172 Ibid, 74.

over 55.[173] It has been suggested that a likely reason for the lack of impact is that the removal of the tax on amounts over $129,000 only affected a small number of high income workers.[174]

8.123 The tax-free amount for members accessing superannuation before the age of 60 years is now $175,000.[175] Increasing the tax-free age would still allow people to access up to $175,000 tax-free at preservation age. This amount is much higher than the median superannuation balance for people aged 55–59 in 2009–10 ($35,932).[176] While balances will certainly grow as the system matures, it will take some time before the tax-free age can be expected to be a workforce participation incentive for a large portion of the population.

8.124 Further, as noted earlier, many people are not able to take advantage of financial incentives to stay in the workforce. Many leave the workforce involuntarily due to disability, unemployment or caring responsibilities. For these people, loss of tax-free status until reaching 62, 65 or 67 years could mean a lower standard of living in retirement and heavier reliance on the Age Pension or other income support payments.[177]

8.125 Several stakeholders opposed raising the tax-free age on the basis that it would not remove barriers to work, but would limit choice and restrict the independence of older people.[178]

8.126 There was little support among stakeholders for raising the tax-free age but not the preservation age. Those supporting an increased tax-free age thought that both the tax-free age and the preservation age should increase.[179] It was suggested that this would both reduce complexity and maintain the present five-year gap between the tax-free age and the Age Pension age.

8.127 Some stakeholders also indicated that the tax-free status of superannuation is unaffordable and should be reconsidered.[180]

173 P Promnitz, 'Better Super: 12 Months On' <www.ceoforum.com.au> at 21 March 2013.

174 J Freebairn, *Some Policy Issues in Providing Retirement Incomes* (2007), Melbourne Institute Working Paper Series, Working Paper No 6/07, 18.

175 *Income Tax Assessment Act 1997* (Cth) s 307–345; ATO, 'Low Rate Cap on Super Lump Sum Benefits' <www.ato.gov.au> at 21 March 2013.

176 R Clare, *Developments in the Level and Distribution of Retirement Savings*, Association of Superannuation Funds of Australia Research Paper (2011), Table 2. The median balance is quite low because many people (32% of males and 39% of females) have no superannuation: ibid, 9.

177 National Seniors Australia, *Submission 92*.

178 Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; ACTU, *Submission 88*.

179 Financial Services Council, *Submission 89*; Brotherhood of St Laurence, *Submission 86*; Australian Chamber of Commerce and Industry, *Submission 85*; Suncorp Group, *Submission 66*. The Law Council of Australia submitted that the tax-free age and the preservation age should be the same: Law Council of Australia, *Submission 96*.

180 National Welfare Rights Network (NWRN), *Submission 99*; Australian Institute of Superannuation Trustees, *Submission 77*.

8.128 Finally, stakeholders suggested that the question of the appropriate age for tax-free access should be considered as part of an inquiry that can consider all aspects of the superannuation system and conduct broad public consultation.

8.129 The ALRC concludes that the evidence that raising the tax-free age (rather than the preservation age) would encourage workforce participation among mature age workers is not strong, and therefore no recommendation to raise this age has been made.

Transition to Retirement (TTR) rules

8.130 The TTR rules allow workers to access their superannuation when they have reached preservation age but not retired. The TTR rules were introduced to encourage continued workforce participation, but do not appear to have done so. The ALRC recommends that the Australian Government initiate a review of the rules to determine what changes are required to ensure that they encourage workplace participation.

8.131 Prior to the introduction of the TTR rules in 2005, workers under 65 years of age generally had to retire before accessing any superannuation benefits. In 2004, the Australian Government noted that this may have led to ‘people deciding to retire prematurely just so they can access their superannuation’.[181] The objective of the TTR rules is to ‘encourage people to retain a connection with the workforce for a longer period’ by providing flexibility in the superannuation access rules.[182]

8.132 The Australian Government also noted that the pre-2005 laws did not ‘adequately cater for more flexible workplace arrangements where people may choose to reduce their work hours as they get older’.[183] The TTR rules were intended to facilitate continued employment by enabling people over preservation age to reduce work hours and supplement their income with a superannuation income stream.

8.133 The TTR rules can also be used to allow workers 55 years and over to increase their contributions to superannuation and reduce their tax. This is an accepted use of the rules—for example, it is described on the Australian Securities and Investments Commission’s Moneysmart website as a way to boost superannuation.[184]

8.134 The TTR income stream enables workers over preservation age to:

> salary sacrifice more of their remuneration package into superannuation, with the TTR pension income replacing the salary income they would have received if they did not salary sacrifice. Here, the person’s current lifestyle and cashflow can remain the same and, in effect, the super pension withdrawals can fund superannuation contributions.[185]

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181 The Treasury, *A More Flexible and Adaptable Retirement Income System* (2004), 10.
182 The Treasury, *Transition to Retirement Consultation Paper* (2004), 4.
183 The Treasury, *A More Flexible and Adaptable Retirement Income System* (2004), 10.
184 ASIC, ‘Transition to Retirement’, 29 June 2012 <www.moneysmart.gov.au> at 21 March 2013.
185 D Shirlow, ‘Bringing the Use of TTR Pensions Closer to Home’ (2011) (4) *CCH Australian Superannuation News*.

8.135 This use of the TTR rules is limited by the caps on superannuation (although it can sometimes be tax effective to fund non-concessional contributions in this way).[186] This approach to TTR is not available to all workers, as some employers do not offer salary sacrifice arrangements.

8.136 The above strategy can be used by people who do not intend to retire, but wish to benefit from the concessional tax treatment applied to superannuation. The benefits vary according to a person's taxable income and the balance in the fund. In 2012–2013, they were said to be between $2,473 and $8,154 per year.[187]

Do TTR rules encourage workforce participation?

8.137 A 2008 survey of 2,501 Australian workers aged 40–59 asked respondents about their awareness of the TTR rules and how they might use them. Only half of the respondents were aware of the TTR rules, and only 29% of respondents aged 50–54 thought they would use them.[188] Of those who were aware of the TTR rules, two thirds said they were likely or very likely to use the rules to *reduce* their workforce participation (by working fewer hours and still retiring at the same age).[189]

8.138 In a 2010 report commissioned by the Department of Education, Employment and Workplace Relations, the Melbourne Institute analysed the effect of the TTR reforms. The Melbourne Institute concluded that the TTR rules had 'no significant effect' on the workforce participation of mature age men and women.[190] Professor Paul Gerrans suggested that the TTR rules are now primarily a tax planning mechanism rather than a workforce participation incentive.[191]

8.139 The ALRC has not found any evidence that the TTR rules are encouraging workforce participation. The determinants of retirement, reviewed above, include financial resources, health and disability, the availability of work and caring responsibilities. The availability of tax concessional retirement savings arrangements does not appear to be a significant incentive or disincentive.

8.140 On the other hand, the superannuation industry and others contend that the TTR rules create workforce participation incentives.[192] The Financial Services Council suggested that the Melbourne Institute study may not have found a workplace participation effect because the 2001–2008 period examined was also a time of mining,

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186 Ibid.

187 SMSF Academy Managing Director Aaron Dunn cited in J Frost, 'Breach cap and you'll wear it', *The Australian*, 14 July 2012.

188 M Walter, N Jackson, and B Felmingham, 'Keeping Australia's Older Workers in the Labour Force: A Policy Perspective' (2008) 43 *Australian Journal of Social Issues* 291, 299.

189 Ibid, 300.

190 B Headey, J Freebairn and D Warren, *Dynamics of Mature Age Workforce Participation: Policy Effects and Continuing Trends, Final Report* (2010), Melbourne Institute of Applied Economic and Social Research, 83–85.

191 P Gerrans, *Submission 74*.

192 Financial Services Council, *Submission 89*; Australian Institute of Superannuation Trustees, *Submission 77*; Suncorp Group, *Submission 66*; Australian Chamber of Commerce and Industry, *Submission 44*.

asset price and share market booms in Australia that may have encouraged earlier retirement.[193]

8.141 Some stakeholders supported the TTR rules on the basis that they encourage retirement savings.[194] The original policy intention of the rules was to encourage workforce participation and to cater for more flexible workplace arrangements—not to encourage retirement savings. It is not clear that their continued existence could be supported on the retirement savings ground alone. The targeting of the incentives to middle and upper income earners aged 55–65 could be difficult to justify on equity grounds.[195] Access to TTR arrangements for the purpose of increasing retirement savings is also limited because some employees do not have access to salary sacrifice arrangements;[196] and many are unaware of the existence of the rules.[197] Setting up a TTR arrangement can be complex and it is usually necessary to speak to a financial adviser before doing so.[198] This creates a barrier to access for those who do not normally use an adviser to manage their finances.

8.142 The TTR rules do not represent a limitation or barrier to mature age workforce participation. However the ALRC is concerned that they may not meet their policy objective of encouraging continued mature age participation in the workforce. In the Discussion Paper, the ALRC proposed that the rules should be reviewed to determine what changes, if any, are required to ensure that the rules meet their policy objective.[199] Many stakeholders addressing this issue supported such an inquiry.[200] No further evidence has come to light indicating that TTR rules are encouraging mature age participation in the workforce. Accordingly, the ALRC recommends that an inquiry be held into the TTR rules to consider whether they should be altered to ensure that the rules meet their policy objective.

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193 Financial Services Council, *Submission 89*.

194 Australian Institute of Superannuation Trustees, *Submission 47*.

195 A Borowski, 'Back at the Crossroads: The Slippery Fish of Australian Retirement Income Policy' (2008) 43 *Australian Journal of Social Issues* 311, 324–326.

196 Australian Institute of Superannuation Trustees, *Submission 47*.

197 DOME Association, *Submission 62*; Law Council of Australia, *Submission 46*; National Seniors Australia, *Submission 27*. See also M Walter, N Jackson, and B Felmingham, 'Keeping Australia's Older Workers in the Labour Force: A Policy Perspective' (2008) 43 *Australian Journal of Social Issues* 291.

198 ASIC, 'Transition to Retirement', 29 June 2012 <www.moneysmart.gov.au> at 21 March 2013.

199 Australian Law Reform Commission, *Grey Areas—Age Barriers to Work in Commonwealth Laws*, Discussion Paper 78 (2012), Proposal 8–7.

200 National Welfare Rights Network (NWRN), *Submission 99*; Australian Industry Group, *Submission 97*; Law Council of Australia, *Submission 96*; Government of South Australia, *Submission 95*; National Seniors Australia, *Submission 92*; ACTU, *Submission 88*; Brotherhood of St Laurence, *Submission 86*; Australian Chamber of Commerce and Industry, *Submission 85*; P Gerrans, *Submission 74*; DOME Association, *Submission 62*. AIST 'would not object' (Australian Institute of Superannuation Trustees, *Submission 77*) and the FSC opposed the proposed review as 'neither appropriate or necessary' (Financial Services Council, *Submission 89*).

Recommendation 8–3 The 'Transition to Retirement' rules were introduced into the *Superannuation Industry (Supervision) Regulations 1994* (Cth) to encourage continued mature age workforce participation. The Australian Government should review these rules to determine what changes, if any, are required to ensure they meet their policy objective. The review should consider matters including:

(a) the use of the rules in practice;

(b) whether there is sufficient access to the scheme;

(c) the relationship to the concessional superannuation contributions cap; and

(d) comparable international schemes.