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Australian Law Reform Commission  
Inquiry into barriers to mature age work

The paper on grey areas in tax, superannuation and workers' compensation accurately identifies the main barriers to work for older people.

I would add that indirect discrimination, of the attitudinal kind, is notoriously hard to prove. Interviewing people as part of the *Elephant in the Room* research a couple of years ago, I was told time and time again by individuals that it was not worth the trouble, time and potential distress of complaining.

Union leaders spoke of a preference for using Fair Work provisions such as bullying, rather than complaining under human rights legislation.

My own view is that the remedy for being victimised as a complainant – making another complaint of victimisation – is double jeopardy.

I wish you well with this work and would be happy to discuss these issues further. I also attach an article from the SMH Money section of 1.6.12.

Yours sincerely

Penelope Nelson



# Token super t

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## COMMENT

In March the Gillard government introduced legislation into Federal Parliament to make superannuation "simpler and fairer" by allowing individuals to have an excess concessional contribution of up to \$10,000 without being taxed at 46.5 per cent. This is a token measure that will not fix an injustice in the tax system.

One of the reasons why the new legislation is not simpler or fairer is because the \$10,000 limit applies once only. This means that if an individual makes an excess contribution of \$10 in one year, perhaps due to a mistake by their employer, and they will never be eligible for concessional contributions tax again.

The excess concessional contributions problem will also become worse as a result of compulsory employer contributions and because the Gillard government is not allowing the concessional contributions cap to increase. Even before the introduction of the Guarantee Charge there are many examples where taxpayers have paid the excess super contributions tax on concessional contributions because of circumstances beyond their control.

In one case a person had three employers in the same financial year. At all times during the year he had at least two employers paid a 2009 contribution in the 2010 year, and because of compulsory super contributions made by each employer, he ended up paying excess contributions tax.

In another case a small business owner mailed a \$90,000 super contribution cheque to his superannuation fund on June 30, 2008, with appropriately signed and dated application forms. The super fund did not receive the contribution until July 4, 2008, a month after the contribution year had ended.

Unaware this had happened the small business owner made a contribution for the 2008 year of \$100,000. As a result of the error he paid \$41,950 in excess super contributions tax on the \$90,000 contribution.

At the heart of the excess super contribution problem is the inflexible attitude taken by the ATO.

The commissioner of taxation has always had the ability to not charge the excess contributions tax. Instead of using this discretion the commissioner has chosen to maximise tax revenue collection at the expense of fairness and equity.

An example is a woman whose husband was terminally ill with only months to live. In addition to looking after her ill husband she had to manage her financial affairs. Unfortunately she made a mistake and transferred too much money to their super fund as a non-concessional contribution. This resulted in excess contributions being made that year.

Despite the fact she was able to produce supporting documentation from doctors that showed her husband at the time of the contribution did not have full control of her faculties, the commissioner refused to exercise his discretion and not charge the excess contributions tax.

Adding insult to injury, the ATO in a letter confirming the tax would be payable stated they did not accept she would have been able to manage her financial affairs.

The relevant section of the legislation that provides the commissioner of taxation with the discretion not to impose the excess contributions tax is broad enough to have allowed him to exercise his discretion in all of the examples above.

Until the ATO and both sides of government realise the taxation system must operate fairly, taxpayers can be forgiven for not paying their tax.

Max Newnham

