AIST submission

ALRC – Grey Areas – Age Barriers to Work in Commonwealth Laws

June 2012

Australian Institute of Superannuation Trustees

Background

The Australian Law Reform Commission (ALRC) is seeking submissions on what Commonwealth legal barriers exist that prevent or deter older persons participating, or continuing to participate, in the workforce or other productive work (defined as volunteering or civic duties).

The ALRC has been directed to consider all relevant Commonwealth legislation and related legal frameworks, including superannuation law.

AIST

The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose members are superannuation fund trustee directors and officers of industry, public sector, and corporate superannuation funds who operate with a representative trustee board of directors.

AIST advocates on behalf of its members, it undertakes research, develops policy and provides professional training, consulting services and supports trustee directors and staff to help meet the challenges of managing superannuation funds and advancing the interests of their fund members. AIST members manage $450 billion of retirement savings for Australian workers.

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1 Executive summary

AIST supports any improvements in the legal system that increase mature age participation in the workforce. This support is based around the potential improvement in retirement incomes and increased productivity for the Australian economy, rather than any self-interest related to an increased superannuation pool.

AIST is of the opinion that currently, there are too many age related limits associated with superannuation and that these cause confusion and disengagement. The complexity of understanding different amounts relative to different ages and that these can then be applied across financial years makes it a veritable minefield. Any process that looks to simplify the system is, in principal, applauded.

Overlaying this process however, the interaction of superannuation tax concessions, the transfer system and the economy as a whole must be considered. Mature age participation is important, but any significant changes to age based limits must be weighed against the cost to society in terms of intergenerational equity, loss of confidence in a system that appears to be changing frequently and affordability.

2 Response to inquiry questions

In this submission, AIST will be concentrating on responding to the superannuation-related questions. As an overall comment, AIST would suggest that the relevant laws that mention age 65 be altered to move in line with the raising of the Age Pension age to 67. In order to retain simplicity however, it may be sensible to change to 67 when that age is reached, rather than changing it in steps as this could create even more confusion.

Also of note is that if an age-based limit works as incentive for an individual to retire, this will often act as a catalyst for a younger spouse to retire, so the couple can retire together.

Question 1. The ALRC has identified as framing principles: participation; independence; self-agency; system stability; system coherence; and fairness. Are there other key principles that should inform the ALRC's deliberations?

AIST would add that another framing principle should be simplicity. In particular, reference to superannuation, the laws and regulation have become so convoluted that it is arguably a significant reason why the general public is "disengaged" with superannuation. It is possible that participants are not so much disengaged as utterly confused. The numerous age-based limits within superannuation cause considerable confusion and are difficult to navigate, before consideration of the penalties for breaching them.

Question 2. As there is a five year difference in qualifying age for a Service Pension under the *Veterans' Entitlement Act 1986 (Cth)*, should it be increased incrementally in the same manner as for the Age Pension?

It is AIST's opinion that these two payments should be linked. Furthermore, many veterans who are injured would qualify for an invalidity pension through Centrelink anyway. Anecdotally, it is understood that Service pension recipients prefer to deal with The Department of Veterans Affairs (DVA) as the service is deemed to be better. Further efficiencies within the system could be made through combining Centrelink and DVA, or alternatively consider that Centrelink acts as agents for a number of other departments. Any differences between the two pensions could be made up with an extra payment.

Question 3. In what ways, if any, should the means test for the Age Pension be changed to remove barriers to mature age participation in the workforce or other productive work?

AIST would not dispute that a means test must be applied to the Age Pension in some form; however as with many laws it is overly complex and difficult for the layperson to understand. There has been previous discussion that the assets test be reformulated into the income test so there is only one test. One of the main issues with the current means test is that the home is not included as an asset and therefore people can be capital rich and income poor. This acts as a disincentive to downsize the family home as it could reduce any Age Pension payment through increased levels of assessable assets which then has affects on the housing market.

Anecdotally, there are numerous myths around the interaction of the Age Pension and both the income and assets tests. Many people are of the belief that one must have no assets (other than the family home) and no income before they receive the Age Pension. Perhaps better communication of how the Age Pension interacts with these tests could help encourage people back to work as they may realise that can earn a certain amount of income before their Age Pension is affected.

Question 4. In what ways, if any, should the Pension Bonus Scheme be changed to remove barriers to mature age participation in the workforce?

The Pension Bonus Scheme was quite a complicated scheme and operated on an 'opt-in' basis where applicants needed to apply for entry into the scheme; so many people missed out on it or were completely unaware of its existence. The scheme was closed to new entrants from 2009, so there may be no need to make any changes to the scheme.

Question 5. How effective has the Work Bonus been in removing barriers to work for mature age persons? In what ways, if any, could it be improved?

The Work Bonus is a far simpler system that the former Pension Bonus Scheme. It is easier to understand because it is automatic, i.e. the Age Pensioner does not have to apply to be enrolled in the scheme. A way to improve this scheme would be to increase awareness and communication to the target audience.

Question 10. What changes, if any, should be made to the Superannuation Guarantee scheme, to remove barriers to work for mature age persons?

It is our understanding that recent legislation has removed the age based limits for receipt of the Superannuation Guarantee. It is covered under the *Superannuation Guarantee (Administration) Amendment Act 2011* which received royal assent on the 29th March 2012.

Question 11. The *Superannuation Industry (Supervision) Regulations 1994* (Cth) prescribe age-based restrictions on voluntary contributions. Members cannot:

a) Make voluntary contributions from age 65 until age 75 unless they meet a work test; or
b) Make voluntary contributions from age 75.

What effect do these restrictions have on mature age participation in the workforce? What changes, if any, should be made to these regulations to remove barriers to work for mature age persons?

The current age based limits on superannuation contributions do not necessarily prevent people from working, on the other hand the work test is designed as an incentive for Australians to keep working. AIST would suggest removing the age limit for contributions, but retaining the work test. It should be noted that the work test is often self-assessed, so better auditing may be required to ensure the legitimacy of the contribution.

Question 12. The *Superannuation Industry (Supervision) Regulations 1994* (Cth) prescribe age-based restrictions in relation to members splitting contributions with a spouse and making contributions to a spouse's fund. Members cannot:

a) Split contributions for a spouse aged 65 and over;
b) Split contributions for a retired spouse of preservation age and over;
c) Make spouse contributions for a spouse aged 70 and over; or
d) Make contributions for a spouse aged 65, but under 70 unless the spouse meets a work test.

What effect do these restrictions have on mature age participation in the workforce? What changes, if any, should be made to these regulations to remove barriers to work for mature age persons?

AIST believes that the age based limits associated with spouse related contributions have very little effect on mature age participation. It is our understanding 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 rules create confusion and complexity; however they do not really stop people from working.

Question 13. In what ways, if any, does the age restriction on government co-contributions in the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) create barriers to work for mature age persons? What changes should be made to the Act to remove such barriers?

In our opinion, the age limit on the eligibility to receive the Government Co-Contribution should be removed. As noted in the issues paper, the new Low Income Earners Government Contribution does not have an age limit, so it would make sense to have both contributions applied on a consistent basis. Most certainly, this Government Co-Contribution payment is used by mature age Australian's to boost their superannuation, particularly those on the Age Pension, so removing the age limit would provide greater motivation to participate in the workforce.

Question 14. What effect, if any, does the increased concessional contributions cap for persons aged 50 years and over have on mature age participation in the workforce?

Firstly, it should be noted that the recent 2012-13 Federal Budget has reduced the concessional contributions cap for those aged over 50 to $25,000pa. There is effectively one limit for all Australians regardless of age. The proposed concessional contributions cap for those age over 50 of $50,000 with superannuation balances less than $500,000 has been delayed by two years until 2014-15.

Regardless, AIST does not believe that any increased contributions cap affects the level of workplace participation. The cap is more linked to adequacy and the affordability for the individual to save for retirement in a tax advantaged environment.

Question 15. What effect, if any, does the 'bring forward rule' (in relation to the non-concessional contributions cap) have on mature age participation in the workforce? What changes should be made to this rule to address barriers to such participation?

The 'bring forward rule' with its age based limit at 65 acts as an incentive for an individual to retire as it is affectively the last chance one gets to contribute a significant level of assets to superannuation. This can also have unpleasant tax consequences as individuals are potentially forced to realise an asset (i.e. sell down shares or an investment property to cash) to make the contribution when it may not be most ideal time to sell. This can be potentially avoided by *inspecie* transfers to some types of superannuation funds, however this in itself provides for an uneven playing field for other sectors of the superannuation industry.

Question 16. The age settings for access to superannuation benefits are:

a) 55 years increasing to 60 years for 'preservation age'—when persons may access superannuation if retired; and
b) 65 years for unrestricted access to superannuation.

The Australia's Future Tax System Review recommended that the preservation age be raised to 67 years. In what ways, if any, do existing age settings provide incentives for retirement for mature age persons, rather than continued workforce participation? What changes should be made to address these incentives?

The age-based setting of unrestricted access to superannuation certainly provides motivation to retire. The retirement age of 65 was legislated some many years ago and is arguably out of date considering increases in longevity and the changing in workplace practices from the industrial worker to the knowledge worker.

The ability to withdraw superannuation in lump sums (and after 60, tax free) provides further motivation and this is an area that should be reviewed with some minimum (either dollar or percentage of balance based) being compulsorily allocated to a retirement income product.

Raising the preservation age to 67 would be more like a disincentive to leave work. Overriding issues associated with changing the preservation age is equity between generations and it also might have the affect of people saving outside the superannuation environment since their retirement monies are locked away for longer.

Question 17. In practice, how do the 'transition to retirement' rules encourage continued mature age participation in the workforce? What changes, if any, should be made to these rules to encourage continued workforce participation?

AIST is of the firm opinion that Transition to Retirement (TtR) rules encourages mature age participation. They are generally not utilised as per their original design (that being reducing to part time work and making up the difference with a retirement income stream), but rather as a tax effective way of saving more for retirement. It allows many pre-retirees a crucial few years to catch up, particularly post GFC. The TtR rules could be reviewed to include other types of retirement income streams. This would allow for greater choice and flexibility, rather than an incentive to participation. If a fund did not offer a TtR product currently, it is likely that an individual would change funds to access a suitable product. This is true for accumulation style products, however the individual would need to check their options if they were a defined benefit member.

Question 18. In practice, do persons of preservation age have sufficient access to the 'transition to retirement' rules? If not, what measures could improve such access?

AIST believes that persons of preservation age have sufficient access to the TtR rules, although it should be noted that the age limits associated with TtR will need to move in synch with the changing preservation ages. One area that needs to be reviewed is universal access for employers to salary sacrifice as some employers do not offer the facility. Furthermore, employers should not be allowed to reduce the level of superannuation guarantee based on the reduced "take home" pay due to the salary sacrifice amount.

Question 19. What changes, if any, should be made to the taxation of superannuation benefits to remove barriers to work for mature age persons?

Any proposed changes to the nature of taxation within superannuation need to be undertaken in the light of the entire government budget and its interaction with the transfer system, as opposed to just barriers to work for mature age persons. The size of the superannuation system necessarily means that any changes to the taxation of contributions, earnings or withdrawals will have significant affects on others parts of the economy.

That said, the tax-free nature of superannuation payments after the age of 60 should be reviewed and similarly the low rate cap as it is very generous as compared to current average retirement balances. The tax free nature of super after 60 works as a disincentive to make non-concessional contributions to superannuation and hence the intense lobbying around concessional contributions.

Question 20. What other changes, if any, should be made to superannuation laws, including tax laws, to remove barriers to mature age participation in the workforce?

An increase in the concessional contribution limit may work as an incentive to remain in the workforce as it will give individuals nearing retirement to further boost their superannuation. This naturally has to be weighed up against adequacy and budgetary considerations.