

59 Association of Independent Retirees (A.I.R.) Ltd

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*The Association of Independent Retirees (A.I.R.) Ltd supports amendment of Reg 7.04(1) to remove the restriction on voluntary contributions for members aged 75 years and over.*

The SG contribution is made by employers on behalf of employees. It is only available as part of employment remuneration for persons in the age cohort 65 years and over if a person meets the work test. A person working at a rate less than that required to meet the work test suffers an effective 9% reduction in remuneration (increasing to 12% over time).

The SG contribution is compulsory (except for low income earners where the SG contribution is less than \$450 per month or where the work test is not met) and must be paid into a superannuation fund whether the fund is being used to accumulate assets or to pay a pension. An eligible person in the age cohort 65 and over can select whether superannuation assets can be taken as (i) a lump sum, or (ii) a pension, or (iii) retained and accumulated in the fund. An eligible person wishing to take paid work to supplement retirement income, a common desire, cannot elect to have the SG contribution paid directly as part of total remuneration. The desired use of the SG component must be administered through the selected superannuation fund. It is not possible to elect to receive the SG contribution immediately as remuneration. The administrative process and delay in recovering the SG contribution is a disincentive to work.

An incentive to undertake additional paid work would arise if the regulations were changed to provide for an employer to pay the equivalent of the SG contribution directly to an employee in this age cohort on request.

Employers are exempted from paying the SG contribution for low income employees where the SG contribution is less than \$450 per month. This is convenient for the employer but unfairly discriminates against employees who are undertaking low levels of paid work.

Similarly, employers are exempt from paying the SG contribution if the employee cannot meet the work test. Employers should be required to pay the equivalent SG contribution of low income employees, or employees who do not meet the work test, directly to them as part of their remuneration.

*Summary.* For people in the age cohort 65 and over, a disincentive to work exists when a person is forced to contribute 9% (increasing to 12%) of remuneration into superannuation, particularly when the person's personal taxable income is less than the tax-free threshold and the earnings from the SG contribution in the fund are taxed at 15% and non-recoverable. This is the situation for the majority of people in the age cohort. The regulations should be changed to provide for a) people working with incomes less than the \$450 minimum or who do not meet the work test to be paid the SG contribution as part of the employee's remuneration, and b) an employer to pay the equivalent of the SG contribution directly to an employee in the age cohort on request.

*The Association of Independent Retirees (A.I.R.) Ltd recommends that Proposal 8-1 be extended to provide payment of the SG contribution directly to employees in the age cohort as part of remuneration:*

Question 8–1:

## **1. Structure of work and superannuation for people in the age cohort 65 and over**

The Discussion Paper noted some criticism of the superannuation system: that it was inequitable (Discussion Paper Para 8.13), and that some people had limited opportunities to accumulate superannuation (Discussion Paper Para 8.14). These paragraphs were focused on people working to build their retirement assets before retirement, generally in the age range 45 to 65. The criticisms are even more relevant to the age cohort 65 and over.

The Discussion Paper acknowledged that “a person’s workforce participation, and the kinds of choices he or she will make about participation, vary within the wide age range covered by this Inquiry—‘from 45 through 65 into retirement’” (Discussion Paper Para 1.43). It quoted the Association of Independent Retirees (A.I.R.) Ltd statement that:

Work to gain income to support an individual and/or family is an imperative between the ages of 45 and retirement; Government support can be an exception. After retirement, participation in paid work becomes one of the options for an individual to participate in the life of society to achieve a fulfilling retirement. The incentive to work is one of a number of competing retirement priorities and is often not the sole imperative driving financial wellbeing. The priority given to work depends on the need to supplement savings, eligibility to access Age Pension support, individual and family interests, and to some extent habit

The importance of the role of paid work in contributing to an active retirement is widely acknowledged (Brotherhood of St Laurence, Discussion Paper Para 1.42).

The Discussion Paper noted that superannuation can be taxed at three stages, the contribution stage, the earnings stage and the benefits stage (Discussion Paper Para 8.10). It noted that “superannuation generally receives preferential tax treatment across these three stages” (Discussion Paper 8.11). Preferential tax treatment includes concessions: a) on the tax rate applied to earnings contributed and to earnings from accumulated funds, and b) in the benefits stage, through tax free earnings from accumulated funds used to pay pensions.

It is incorrect to state that there are concessions generally available for the majority of people with superannuation in the benefits stage. The benefits stage corresponds predominately to the age cohort 65 and over of whom there are about three million people<sup>[ii]</sup>. About one million have superannuation<sup>[iii]</sup>. A high proportion does not receive concessions compared to their peers who do not have superannuation because their income is less than the personal tax-free threshold. Only about 380,000 (11% of the three million people)<sup>[iiii]</sup> had super fund earnings above the tax-free threshold and consequently gained superannuation concessions during the benefits stage.

Contributing concessional or non-concessional amounts to superannuation assets generally provides no taxation advantage where income from superannuation assets used to pay a pension is less than the upper limit of the 15% marginal tax rate. Exceptions include possible loss of the \$500 co-contribution and where contributions may lift earnings, together with private income, into the 30% marginal tax rate. ATO statistics<sup>[v]</sup> show that in the 2009/2010 financial year about 10% (300,000) paid tax above the 15% marginal tax rate. Apart from the exceptions, this is the only group who gain some tax benefit or concessions from having or

contributing to superannuation. Over two million of the three million people in this age cohort receive no taxation advantage.

A person in the age cohort 65 and over may choose to make concessional or non-concessional contributions to superannuation assets as a retirement investment vehicle for the purpose of:

Many people with earnings from superannuation assets less than the personal tax-free threshold would be better off to take their funds from superannuation and invest them privately; they would not incur the costs associated with superannuation administration or be constrained by regulations in superannuation that specify pension minimum withdrawal amounts, and they would have a wider range of investment options including annuity style products. This may be one explanation why people in this group take all or a large proportion of their superannuation as a lump sum on retirement (Discussion Paper Para 8.162).

*Summary.* For most of the 3 million people in this age cohort, there is little advantage in working to contribute to superannuation because any income earned from investing the funds privately will be similarly tax free in the personal tax system. The only reason for keeping some accumulated funds in superannuation is to provide a convenient, albeit expensive, mechanism for managing the investment of retained retirement assets. Superannuation regulations provide little encouragement for the majority of people in the age cohort to increase their participation in work.

## **2. Equity in Retirement Income**

The Association of Independent Retirees (A.I.R.) Ltd's policy is that people over the age of 60 without superannuation should have access to the same concessions as those with superannuation. It does not agree with the concept that the compulsory nature of superannuation demands concessions over those who use their own initiative to meet their future retirement requirements. It does not support a device that denies many in this age cohort, who have used their own initiative to establish their retirement assets without support from government, the right to access benefits and concessions available to those with superannuation.

The Discussion Paper quotes the Cooper Review three-pillar retirement system for superannuation. However, the three-pillar retirement system does not recognise the importance of private assets accumulated outside superannuation as part of the retirement system. Private assets accumulated while participating in and investing the proceeds of paid work form a retirement vehicle at least as significant as superannuation; accumulation of these assets has received no concessions. The argument that concessions should be granted because of compulsion is not accepted by Association of Independent Retirees (A.I.R.) Ltd members. People accumulating private assets have had to make more arduous decisions to accumulate rather than spend to protect their future and should be at least as favourably treated.

*Summary.* Association of Independent Retirees (A.I.R.) Ltd does not support a work test in any form on equity grounds. However, if the Government insists on retaining it, the issues discussed below should be addressed.

## **3. Work Test**

The Discussion Paper has acknowledged the argument presented by the Association of Independent Retirees (A.I.R.) Ltd in its first submission that the drivers to undertake paid work for the age cohort 65 and over are very different to those for younger people accumulating wealth. A characteristic of the former is the need for flexibility to balance the amount and timing of gainful employment against family, volunteer and other leisure priorities. The work test is based on the definition of ‘gainful employment’; undertaking paid work for a minimum of 40 hours in a thirty day period in a financial year, which does not provide the flexibility needed by many in this age cohort. Consequently discrimination occurs which often deprives the most in need from building their retirement savings through superannuation.

Examples of retirees using flexible work patterns were quoted in the Association of Independent Retirees (A.I.R.) Ltd’s previous submission to include ‘non-traditional’ types of work such as working at polling booths during elections, emergency work in teaching or nursing, or standing in for a family member (supporting family members is recognised as a major unpaid work role of retired people (Discussion Paper Para 8.49). Many casual consulting contracts, which are often for significant amounts of work, are drawn up on the basis of a financial return for delivering a specified outcome within an agreed timeframe; the method of arriving at the specified outcome is not defined, nor is the work pattern. A common example in universities is in supervision of a research student. The supervision pattern cannot be defined as 40 hours in any one thirty day period.

ABS statistics<sup>[v]</sup> do not provide a breakdown of type of work or frequency for the age cohort 65 and over. However, they do provide statistics for ‘non-traditional’ work patterns across all employees. The percentage of casual workers working one day per week was 2.4%; 6.2% worked 1 hour or less per day. These groups would not meet the work test. Further, 6.4% worked less than 3 months with one employer; the number of days worked in any one week varied between weeks in 16.7% of cases; and 26% reported that they did not work the same number of hours each week. A large percentage of people in the age cohort would be expected to be represented in these work patterns. These work patterns will have difficulty meeting the work test of 40 hours in any one thirty day period. The statistics indicate that a significant number in the workforce, of the order of 5% of the casual workforce, undertake gainful employment, but are unlikely to meet the work test. The age cohort 65 and over are likely to be more strongly represented.

Although females made up about 46% of total employed persons in all age groups in 2011, they made up only 33% of employed persons in the age cohort 65 and over. The Discussion Paper (Paras 1.70, 8.14) recognises the difficulty females have in managing their affairs because of their need for greater flexibility giving rise to greater difficulty in meeting the requirements of the work test. The work test should be adjusted to include all members of the casual workforce and particularly females.

The work test does not recognise the needs of people, particularly the more elderly, to manage their financial affairs using superannuation assets as the vehicle. Members of the Association of Independent Retirees (A.I.R.) Ltd report that emergency health and changing accommodation requirements often need lump sums to be withdrawn temporarily from superannuation assets (allowed under the regulations). The ability to return some of this capital to an individual’s superannuation account is denied where the person cannot meet the work test.

The work test does not take into account the size of the retirement asset held by an individual in superannuation. Individuals unable to participate in paid work for whatever reason, and with low asset balances that allow access to the age pension, are denied the ability to add to those assets through non-concessional contributions. In contrast, those with the ability to undertake paid work, no matter what their asset balance is, can make non-concessional contributions irrespective of the size of their superannuation asset balance. This is clearly discriminatory.

There are more appropriate methods of measuring gainful employment that allow for the flexibility required by the age cohort 65 and over. These methods are generally monetary value based. For example, Centrelink allows a pensioner to estimate average weekly earnings to determine whether allowable fortnightly income is in excess of allowable income of \$152 per fortnight or \$329 per month (amounts effective 20 September to 31 December 2012). Employers are exempted from paying the SG contribution for low income employees where the SG contribution is less than \$450 per month. The 40 hour test corresponds to an amount of \$624 per month at the minimum wage (as at 1 October 2012). A common value should be determined and applied to all cases.

*Summary* The work test is a disincentive to undertake paid work for the age cohort 65 and over because it is structured on traditional work patterns, which are inappropriate to meet the need for flexibility of this age cohort. About 5% of those participating in paid work are unlikely to meet the work test because of their pattern of work, despite the fact that their work is clearly gainful employment. Of those eligible to access the work test only 32% are females, who have the greatest need for flexibility. The work test should be adjusted to include all members of the casual workforce as defined in the ABS casual workforce statistics. A common monetary value applicable to all measures of minimum employment should be established across Centrelink and the superannuation system.

#### **4. Obtaining Access to the SG Contribution**

People in the age cohort 60 and over and contributing to superannuation may nominate the use to which those funds are to be put; to be accumulated, to be taken as a lump sum, or to be used for the purpose of taking a pension. The need for separation of assets into those which are used to pay a pension or pensions and those which are still interpreted as being in the accumulation phase arises because of the different tax treatment applying to each. Earnings from funds used to support a pension or pensions are tax free, whereas the earnings from those not used for that purpose are taxed at 15%. Age-related minimum drawdown conditions are specified which apply only to the pension proportion of the assets. The balance between the minimum amount of pension to be taken from the fund and the amount of assets that will incur tax on the earnings at 15% becomes a decision for the individual within their retirement priorities and assets.

The definition of a pension is an age-based issue applying to this age cohort, but not generally to the age group 45 – 59. The definition prevents the capital supporting a pension being increased after the pension has commenced.

*Meaning of pension (Act, s 10): A benefit is taken to be a pension for the purposes of the Act if (a) it is provided under rules of a superannuation fund that (i) meet the standards of subregulation (9A); and (ii) do not permit the capital supporting the*

*pension to be added to by way of contribution or rollover after the pension has commenced.*

People in the age cohort 60 and over who participate in work and meet the work test have the SG contribution paid into their nominated superannuation fund. In addition to nominating the superannuation fund, they need to nominate whether:

1. The contribution is to be taken as a lump sum. The employer is required to pay the SG contribution into a fund and then the fund is required to pay the amount to the person.
2. The contribution is to be used to commence a new pension. It cannot be used to add to an existing pension
3. To have the contribution placed into an accumulation account (existing or new) in the fund.

Another, but more expensive, option is to request the fund to commute any existing pension, add the SG contribution, and commence a new pension with the total proceeds.

Many people in the age cohort 60 and over wish to undertake paid work to supplement their income. They do not wish to have to cope with detailed, cumbersome and complex administrative processes to earn relatively small amounts of additional income. The fact that many people use default funds to accumulate their SG contribution is evidence of their unwillingness to become involved in complex administrative processes.

For people in the age cohort 60 and over the following situation applies:

- If they meet the means test, they need to apply for the Low Income Earners Government Contribution to offset the 15% tax their employer paid on their behalf;
- If they wish to take the SG contribution as a lump sum and avoid the 15% tax on the income from the contribution, they need to notify the nominated fund that they wish to take this option; the amount of the contribution may be reduced by a fee charged by the fund;
- If they wish to have the SG contribution used to support a pension, they need to notify the fund accordingly, have the contribution reduced by any fee charged by the fund to administer the pension, and, if they make a number of contributions, end up with multiple pensions paying small amounts.

These processes are cumbersome, complex and cause delays in receiving the funds

The Association of Independent Retirees (A.I.R.) Ltd argues that no case has been put by the ATO/Government that justifies retention of clause (ii) of the definition of pension. It recommends that this clause be removed from the definition. **The Association stated in its previous submission that this regulation is the most significant of all disincentives discouraging people in this cohort from participating in paid work.** Yet it was not addressed in the Discussion paper.

*Summary* Complexity in the administrative process for dealing with the SG contribution and its use for people in the age cohort 60 and over is an aged-based regulatory issue. **It is the most significant disincentive to participate in paid work for people in this age cohort.** There has been no case put by Government to justify retention of the restriction to add to an existing pension. The co-contribution is a clumsy way of offsetting tax paid for people below the top of the 15% marginal tax bracket in this age cohort.

## 5. Data Collection

The extent to which the work test meets its objective is far from clear. For example, Income Tax statistics<sup>[vi]</sup> do not indicate any significant non-concessional inflow to superannuation from the age cohort 65 and over who work. Tax revenue from this cohort has reduced from \$8.17billion in 2007, the financial year before the introduction of Simpler Super to \$6.65billion in 2010, a fall of 18.6%. The number paying tax has decreased from 544,749 in 2007 to 393,875 in 2010, a fall of 28% suggesting that the fall in revenue has come from people at the lower end of the marginal tax rate structure. These figures include the fall in revenue from the ability to add \$1million to a super fund in the 2007/2008 financial year as well as the effect of the work test. Research should be carried out to determine the extent that people who meet the existing work test do contribute non-concessional contributions and its impact on Government tax revenue.

Recognising the increase in longevity and to aid in research on retirement incomes, the Australian Bureau of Statistics and the Australian Taxation Office should be asked to present the relevant statistics for five year cohorts from age 65 to age 90.

## 6. Response to Question 8-1.

1. If the government insists on retaining discriminatory limitations on contributions to superannuation for the age cohort 65 and over, then the gainful employment test:
  - o should be redesigned to provide consistency between the private income allowed under the full-age pension, that allowed from participation in work under the gainful employment test, and that exempt from SG contributions and at a level equal to the existing minimum allowable income for the full age pension;
  - o should be modified to include all formally established casual employment/consulting contracts;
  - o should be adjusted to include all members of the casual workforce as defined in the ABS casual workforce statistics.
2. People in the age cohort 65 and over with retirement asset levels below a defined level (for example, \$500,000 has been defined for increasing the concessional cap for people over age 50) should not be subject to a work test;
3. Employers should provide the equivalent of the SG contribution to employees in the age cohort 65 and over as remuneration on request. SG amounts less than the minimum specified (\$450 per month) should be paid by employers to employees as part of remuneration.



4. The limitation on adding assets to existing pensions should be removed;
5. Independent research should be carried out to determine the cost to Government of inflows into superannuation from removing the work test;
6. Relevant statistics from the ABS and ATO should be modified to provide five-year statistics between the ages of 65 and 90.

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[i] Australian Bureau of Statistics. *Population by Age and Sex, Regions of Australia*. Cat. No. 3235.0 (2011).

Australian Bureau of Statistics. *Forms of Employment Australia* Cat. No. 6359.0 (November 2011). Table 3 shows that about 12% (354,700) of the 3.1 million people age 65 and over were employed in paid work in November 2011. Of these 181,000 were employees, of whom 43,000 were casual. The remainder were independent contractors or other business operators (farmers and small businesses). The number of employees may be understated and the number of independent contractors may be overstated because some employees may establish consultancy or part time contracting on retiring from work as an employee.

[ii] Australia Bureau of Statistics, Census Characteristics of Australia 1991 Table 1. The age cohorts 45-49 to 65 and over approximate the number of people with compulsory superannuation in the age cohort age 65 and over in 2011. It is assumed that industry characteristics are similar between 1991 and 2011 to estimate the number of employees to total employed persons.

[iii] Australian Taxation Office. *Taxation Statistics 2009-2010*, Table 11: Personal Tax, Selected items by age, sex, taxable status, and taxable income, 2009-2010 income year.

[iv] Australian Taxation Office. *Taxation Statistics 2009-2010*, Table 11: Personal Tax, Selected items by age, sex, taxable status, and taxable income, 2009-2010 income year.

[v] Australian Bureau of Statistics. *Forms of Employment Australia* Cat. No. 6359.0 (November 2011), Table 3.

[vi] Australian Taxation Office. *Taxation Statistics 2009-2010*, Table 11: Personal Tax, Selected items by age, sex, taxable status, and taxable income, 2009-2010 income year.

Proposal 8-2:

The Association of Independent Retirees (A.I.R.) Ltd supports Proposal 8-2.

Proposal 8-3:

Proposal 8-4:

Proposal 8-5:

Proposal 8–6:

The Association of Independent Retirees (A.I.R.) Ltd supports repeal of the restriction on payment of government co-contributions to persons aged 71 years and over.

Proposal 8–7:

Question 8–2:

Question 8–3:

File 1:

File 2: