

21 November 2012

Dear Professor Croucher,

**Grey Areas - Age Barriers to Work in Commonwealth Laws: discussion paper**

Thank you for the opportunity to comment on the above discussion paper as part of the greater ALRC inquiry. We intend to confine our submission to the proposals and questions raised in chapter 8 on matters concerning superannuation.

**About us**

Women in Super (WIS) is a national advocacy and networking group for women employed in the superannuation and financial services industries.

WIS lobbies on behalf of its members and women generally to government, politicians, unions, employer organisations, regulators, and superannuation funds to improve women's retirement prospects and access to superannuation.

WIS provides education and support to assist women in gaining opportunities to develop broader business, professional and personal networks, and aims to educate the greater community in order to improve their knowledge of superannuation. WIS strongly supports and encourages the appointment of women to superannuation fund boards, and works with other organisations and stakeholders to achieve this.

**General comments**

Women in Super is generally supportive of encouraging workforce participation amongst older workers. In particular, we advocate for special consideration of the impact of current and proposed provisions in terms of their effect on women's interaction with the labour force.

More generally, WIS aims to ensure that the legislative framework for mature-age female workers produces the result to which the Productivity Commission referred to in its 2005 report, that growing participation of mature age female workers is important to the economic wellbeing of the country.<sup>1</sup> For example, the report states:

'Applying these age-specific trends to Australia's ageing population, aggregate labour force participation rates are projected to fall by around 7 percentage points: from their current level of 63.5 per cent to 56.3 per cent by 2044-45. Had there been no change in the age structure of the population, participation rates would have risen by around 2.5 percentage points, reflecting the continued importance of increasing female participation.'

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<sup>1</sup> Productivity Commission, *Economic Implications of an Ageing Australia* (2005), pXXI.

Furthermore, according to the ABS, male participation rates for 65-74 year-olds have risen from 15 per cent to 24 per cent, and women's rates have doubled from six per cent to 13 per cent.<sup>2</sup>

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It is widely acknowledged that women retire with much lower superannuation balances than men – recent research conducted by AIST (based on HILDA data) showed that balances for women aged 58-62 averaged around \$95,000, compared to \$210,000 for men in the same age bracket. Therefore, consideration of all proposals and questions in the discussion paper should not be in isolation from other aspects of retirement savings policy and post-retirement policy.

### **Key issues**

It is in this context that WIS makes this submission: promoting women's workforce participation at older ages whilst recognising that in a superannuation sense, the current legislative platform is not assisting women to build adequate retirement savings. Given the imbalance between the desirability of older women participating in the workforce and a lower workforce participation rate during years typically recognised as 'child-bearing years' (e.g. between 25-40), the main issues for WIS are:

- \$450 monthly threshold for employers making superannuation contributions should be removed, as women tend to have casual or part-time roles, particularly in the 25-40 age bracket, and this often continues into mature years
- The current caps on people contributing to super over the age of 50 does not assist women to 'catch up' and further build their retirement savings. This age group is often when women will have the ability to contribute more to their super in an attempt to close the gap opened by a career break. Feedback from not-for-profit funds in particular indicates that women who were over 50 and (prior to recent Government changes) contributing over \$25,000 had relatively low or average superannuation balances
- Co-contribution scheme: recent changes to this scheme will also hinder the ability of women to catch up in later years, or build savings at an early age

## **Chapter 8: Superannuation**

### **Proposal 8-1**

Regulation 7.04(1) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) restricts superannuation funds from accepting voluntary contributions for members of superannuation funds:

- a) Aged 75 years and over; and
- b) Aged 65 years until 75 years, unless they meet a work test, that is, where they are gainfully employed on at least a part-time basis during the financial year.

The Australian Government should amend reg 7.04(1) to remove the restriction on voluntary contributions for members aged 75 years and over, and to extend the work test to these members.

### **Comment**

WIS supports the recommendation to have consistent provisions regarding eligibility to make voluntary contributions for those over 65.

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<sup>2</sup> Australian Bureau of Statistics:  
[http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by+Subject/4125.0~Jan+2012~Main+Features~Labour+for  
ce~1110](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by+Subject/4125.0~Jan+2012~Main+Features~Labour+force~1110)

### **Proposal**

Section 290-80 of the *Income Tax Assessment Act 1997* (Cth) provides that superannuation contributions made by employers for employees aged under 75 years are tax deductible. The Australian Government should amend s290-80 to enable employers to claim deductions for voluntary contributions made for employees aged 75 years and over.

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### **Comment**

Agree. Where the SIS Regulations are amended to remove the age-based restriction for funds to accept voluntary contributions, the corresponding provisions in the *Income Tax Assessment Act 1997* (Cth) should also be amended so as to remain consistent.

### **Proposal 8-3**

Section 290-165(2) of the *Income Tax Assessment Act 1997* (Cth) provides that superannuation contributions made by self-employed, and substantially self-employed, workers aged under 75 years are tax deductible. The Australian Government should amend s290-165(2) to enable these workers to claim deductions for contributions made at age 75 years and over.

### **Comment**

Women in Super supports this proposal. As stated above, any amendment to the SIS Regulations should coincide with amendments to other relevant legislation to ensure consistency.

### **Proposal 8-4**

Regulation 7.04(1) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) restricts superannuation funds from accepting spouse contributions when the spouse is:

- a) Aged 70 years or over
- b) Aged from 65 years until 70 years, unless he or she meets a work test, that is, being gainfully employed on at least a part-time basis during the financial year.

The Australian Government should amend reg 7.04(1) to enable a member of a superannuation fund to make contributions for a spouse aged 70 years or over, when the spouse meets the work test.

### **Comment**

Women in Super supports the removal of the age-based restrictions for spouse contributions.

### **Proposal 8-5**

Regulation 6.44(2) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) provides that an application for spouse contribution splitting is invalid if the member's spouse is aged 65 years or over, or has reached superannuation preservation age and retired. The Australian Government should amend reg 6.44(2) to remove the age restriction from age 65 years when the spouse meets a work test, that is, being gainfully employed on at least a part-time basis during the financial year.

### **Comment**

While Women in Super supports both spouse contributions and spouse splitting in principle, the practical application of both these policies is questionable. WIS notes AIST's earlier submission to the ALRC where it was argued the rules relating to these policies are complex and rarely used.

### **Proposal 8-6**

Section 6(1)(e) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) provides that government co-contributions are payable only for persons aged under 71 years. The Australian Government should repeal this restriction.

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### **Comment**

Women in Super strongly supports this proposal, especially as the Co-contribution does provide some incentive for workforce participation.

### **Proposal 8-7**

The 'Transition to Retirement' rules were introduced into the *Superannuation Industry (Supervision) Regulations 1994* (Cth) to encourage continued mature age workforce participation. Research has suggested that the rules may not meet this policy objective in practice. The Australian Government should initiate a review of the Transition to Retirement rules to determine what changes, if any, are required to ensure that the rules meet their policy objective. The review should consider matters including:

- a) The use of the rules in practice;
- b) Whether there is sufficient and widespread access to the scheme;
- c) The relationship to the setting of the concessional superannuation contributions cap;
- d) Eligibility criteria; and
- e) Comparable international schemes.

### **Comment**

WIS notes there is potential for TTR rules to be used by women to 'catch up' in their super balances pre-retirement, and notes research conducted by AIST showed women were making appropriate use of the provisions.

The terms of reference for any review of the TTR provisions should include a gender analysis of use of the TTR rules.

### **Question 8-1**

Regulations 7.04(1) and 7.01(3) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) stipulate a work test for members of superannuation funds aged 65 years and over who wish to make voluntary superannuation contributions. Members must be gainfully employed on at least a part-time basis during the financial year, that is, for a minimum of 40 hours over a consecutive 30-day period. What changes, if any, should be made to the work test? For example, should the minimum hours of work be increased and, if so, over what period?

### **Comment**

Women in Super notes the uncertainty around the work test's useability, which makes it difficult to assess. WIS supports the use of the work test in that it prevents, in some respects, abuse of a low-tax savings environment.

However, WIS is of the opinion that the work test does need to be reviewed, as the way it applies in practice excludes workers who, for example, might work a significant number of hours in blocks, but then spend several months of the year without paid employment. For example, those who work with the Australia Electoral Commission (or relevant State Commission), exam invigilators, etc.

### Question 8-2

The Australian Government has legislated two key changes to the retirement income system: the superannuation preservation age will increase from 55 to 60 years between 2015 and 2025; and the Age Pension age will increase from 65 to 67 years between 2017 and 2023.

Should the preservation age be increased beyond 60 years? For example, to:

- a) 62 years – maintaining the five-year gap between the Age Pension age and the preservation age; or
- b) 67 years – aligning the preservation age with the Age Pension age?

### Comment

For some, increasing the preservation age will not necessarily provide an incentive to remain in the workforce. Workers in labour-intensive industries often cannot continue in their jobs, and need access to their superannuation – particularly where savings outside of super are low, and the Age Pension cannot be accessed until age 67. Increasing the preservation age could deny access to superannuation for many who will have no realistic opportunity to work. WIS believes any increase in the preservation age should only be introduced after review of the potential impact and consideration of other measures (including labour market changes).

WIS also notes that a ‘one size fits all’ option may not be relevant, given the diversity of jobs, time in the workforce, and ability to work amongst Australian workers. Any consideration of the preservation age should be done in conjunction with an examination of the TTR rules.

### Question 8-3

The age for tax-free access to superannuation benefits is set at 60 years. Should this age setting be increased:

- a) To align with any further increase to superannuation preservation age (that is, beyond 60 years); or
- b) Instead of any further increase to preservation age – for example, to:
  - i. 62 years – maintaining the five-year gap between the Age Pension age and the tax-free superannuation access age;
  - ii. 65 years – aligning the tax-free superannuation access age with the unrestricted superannuation access age; or
  - iii. 67 years – aligning the tax-free superannuation access age with the Age Pension age?

### Comment

WIS notes the tax-free access to super at age 60 may act as a disincentive to remain in the workforce.

WIS supports an examination of the tax-free access to superannuation, within the context of an overall review of the concessional taxation within the retirement savings system. We note any changes to tax-free access would have far-reaching impacts, including significant budgetary and political impacts.

**Contacts**

If you have any queries, or you wish to discuss this submission further, please do not hesitate to contact us:

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cate Wood', written in a cursive style.

Cate Wood  
Chair  
Women in Super