

SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION IN RELATION TO THE GREY AREAS – AGE BARRIERS TO WORK IN COMMONWEALTH LAWS ISSUES PAPER

This submission focusses on chapter eight of the discussion paper.

General Comment: What is in a number?

The discussion paper (section 8.6) correctly identifies that a number of age-based rules exist in current superannuation law. The rationale and basis for these particular age levels is difficult to establish either from at the time they were introduced or, now, with the benefit of hindsight. The various proposals in the discussion paper invariably anchor to existing ages and therefore provide a relative justification for continuation, extension or removal of age based rules. An absolute justification of specific ages is, however, missing which is not to be too critical given the absence of such justifications previously and the inherent difficulty in specifying one. For example, why is aged 60 the preservation age for those born after 1st Jul 1964 or why is age 75 the current limit for allowing voluntary contributions?

However, to the extent that any proposal requires a change to such a number a basis to ensure that number is grounded in a stated rationale would be preferable than arbitrarily arguing for a two or five year adjustment. For example, setting pension age such that the expectation would be an average eligibility of 17 years based on current life expectancy as at age 67 (as at present for a male). Similarly aligning preservation age to such a rationale would move the system away from anchoring on specific numbers and thinking more of the life cycle and provides greater prominence to the purpose (ie. the need for income supported by savings rather than employment) rather than the age at which sums become available. This of course raises the question of whether it should be life expectancy +/- a particular number of years but this discussion is welcomed as it moves the focus to issues of sustainability of the overall system. The system requires a nominated age and therefore any such one has a symbolic meaning and signalling effect. The question is more as to how to frame that symbol or signal.

Many of the proposed changes to superannuation in the discussion paper are better characterised as based on concerns of fairness rather than directly being workforce participation related or remedying a barrier to workforce participation.

Finally, it is difficult to maintain arguments for the removal of age based rules in one sphere (superannuation) while retaining them in another (taxation), the principle of “system coherence”. For example, it is difficult to reconcile supporting the removal of age based restrictions on superannuation contributions for those aged 65 and above while accepting the age based treatment of income such as that in Seniors and Pensioners Tax Offset. Doing so, or at least introducing the former and leaving the latter, has a cost for taxpayers which

will grow over time as the ageing demographic prevails. This fundamentally impacts the principle of “system stability”. Whilst comment was not sought on the issue of income and age based treatment such inconsistencies should be noted.

Specific comments

Proposal 8-1 is sensible in its combination of removing the age-based restrictions for contributions while maintaining a work test. The extension of the work test is important because without it the income provision objective is more readily replaced by an estate planning objective. As noted in the general comments above, where an age-based requirement is maintained (for example the work test) it would be preferable that it be linked relative to an agreed benchmark rather than an absolute number.

Question 8-1

Support for Proposal 8-1 is not a comment on the appropriateness of the current work test. Variation in working patterns are noted in the discussion paper but specific evidence on for whom such a work test prevents from making contributions is not. In the absence of evidence, retaining the current rules on hours worked over the nominated period meets the requirement to encourage work force participation.

It is difficult to support proposals 8-4 and 8-5 given their minimal relationship to increased workforce participation. To the extent that accepting the proposals would remove a barrier to workforce participation, the cost of introducing the proposed incremental rule changes must be considered as they do not simplify existing rules. Additionally, introducing the changes arguably would be more about varying tax planning activity as against genuine additional retirement savings through workforce participation. In regards the spouse contributions rebate, tax expenditure statements¹ suggest that it is not an extensively used measure.

Proposal 8-6 is sensible and consistent with Proposal 8-1 to 8-3.

Proposal 8-7 to review transition to retirement (TtR) rules is strongly supported. The policy expectation stated at the time of introduction was “Providing greater flexibility in the rules for accessing superannuation benefits may encourage people to retain a connection with the workforce for a longer period” with a “policy principle that savings should be drawn down in a regular and orderly way over the course of retirement”.² The discussion of TtR in section 8.129 is an example of how TtR is now viewed primarily as a tax planning

¹ Commonwealth of Australia (2012). Tax Expenditures Statement 2011. Canberra

² Explanatory Statement to the Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 2)

mechanism. The implication that TtR is not available to those without salary sacrifice arrangements available is not correct though access to salary sacrifice is needed to take advantage of tax benefits that the legislation allows. In fact it could be argued that those accessing TtR without a salary sacrifice arrangement involved, but rather reducing their work hours and supplementing reduced employment income with superannuation income are doing exactly what the legislation intended.

Question 8-2

A decision to amend the preservation age is, of course, a fundamental one for the system. However, there is nothing magical about 60, 62, 67 or any other number. These reflect numbers visible elsewhere in the retirement income system which themselves do not necessarily have a well-articulated justification or logic. A robust system would include a transparent description of the basis for any particular number at a point in time. Increases to preservation ages in the future will become more difficult, politically, as the share of the population that is adversely impacted by an increase grows. If the logic of increasing the age is accepted today, then at some point in the future the logic would be as compelling if life expectancies continue to increase and the length of time superannuation savings are required to last, and/or the age pension paid, increases.

In supporting a review therefore, the recommendation would be to focus less on specific ages of access and be more explicit in developing a focus on stating a transparent benchmark that is employed across the retirement income system. The benefit of this focus is it turns attention to the length of time out of the workforce and allows system sustainability to become an integrated feature.

Also, although the question does not include it specifically, the discussion on p.194 of the discussion paper touches on the form of preservation, that is whether a lump sum or compulsory annuitisation. Before any decisions on this are made it is recommended that the Australian Government remove existing impediments that prevent product suppliers from offering possibly attractive annuity products, such as non-commutable deferred lifetime annuity products, which individuals could *voluntarily* incorporate into the retirement income portfolio. Such proposals have been previously outlined.³

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³ See for example the Challenger submission to the 2011 Tax Forum available at <http://www.futuretax.gov.au/content/Content.aspx?doc=TaxForum.htm>.

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