



**Grey Areas—Age Barriers to Work in
Commonwealth Laws (DP 78)
ALRC**

November 2012

AIST Submission

Background

This Discussion Paper commences the second stage in the consultation processes in this inquiry into Commonwealth legal barriers to older persons participating in the workforce or other productive work. It highlights ALRC thinking to date and puts forward proposals for law reform in the areas of recruitment and employment, work health and safety, insurance, social security, and superannuation.

This submission to the Australian Law Reform Commission's (ALRC) discussion paper 'Age Barriers to Work in Commonwealth Laws' is a supplementary submission to our previous submission¹ made to the ALRC in June 2012. In this submission, we are limiting our comments to Chapter 8 – Superannuation.

AIST

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST is a registered training organisation and has recently expanded its education program to encompass the growing and changing needs of all members of the not-for-profit superannuation sector.

AIST offers a range of services including compliance and consulting services, events - both national and international - as well as member support. AIST also advocates on behalf of its members to relevant stakeholders.

AIST's services are designed to support members in their endeavour to improve the superannuation system and build a better retirement for all Australians.

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¹ <http://www.aist.asn.au/policy-new/submissions/2012-collection.aspx>, June 2012

1 Executive Summary

AIST welcomes the opportunity to make submissions on this discussion paper and enjoyed the ability to meet with the ALRC with our members. We support improvements in the legal system that can increase mature age participation in the workforce by encouraging them to remain or return to the workforce. This support is based around the potential improvement in retirement incomes and increased productivity for the Australian economy.

AIST supports:

- Removing the restriction on voluntary contributions for members aged 75 years and over, and to extend the work test to these members;
- Retaining the work test, but reviewing it so it is more relevant to modern work practices;
- Enabling employers to claim deductions for voluntary concessional contributions made for employees aged 75 years and over;
- Enabling these workers to claim deductions for concessional contributions made at age 75 years and over;
- Enabling a member of a superannuation fund to make contributions for a spouse aged 70 years or over, when the spouse meets the work test, subject to reviewing the definition;
- Removing 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;
- Repealing the restriction on providing government co-contributions for persons aged over 71 years; and
- Conducting a review into the rules around Transition to Retirement, preservation age and the tax free status of superannuation after 60.

2 Chapter 8 – Superannuation

2.1 Questions and Proposals

2.1.1 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.

AIST supports the above proposals. The age limit for superannuation contributions should be removed and a work test should be extended for those aged 75 years and over.

However, we believe that the current work test, namely 'a minimum of 40 hours over a consecutive 30-day period', requires review as it does not reflect modern and future employment practices and may, in fact, work as a disincentive for people seeking part-time or casual work. Any new work test developed should apply to contributions for all ages post 65. AIST discusses possible changes to the work test in the following Question 8-1.

2.1.2 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?

AIST supports the retention of the work test, because it is designed as an incentive for Australians to participate in the workforce and it also maintains a level of integrity for the superannuation system. However, we are of the opinion that the current work test is out-dated and has not kept pace with modern employment practices.

The monthly calculation of the work test could be altered to better accommodate workers with cyclical working patterns or those who work consistently throughout the year, but for fewer hours than required. AIST suggests that a new definition of the work test be open for consultation, with potential options to altering the requirement of gainful employment being:

- A certain number of hours per annum (e.g. 50 hours per annum) or;
- Presentation of a group certificate or similar to provide evidence of employment.

We also draw the ALRC's attention to the relative ease in which the work test is satisfied. Currently, it is left to the member's discretion to confirm that they satisfy the work test and it is not actively audited by superannuation funds. Therefore, there is an opportunity for people to take advantage of this and make contributions when they have not worked, knowing they are unlikely to be audited. Conversely, it can deter more honest members to not make contributions if they have not strictly met the test, despite the fact that they have worked. We are not proposing at all that superannuation funds should be required to validate the work tests as this would only add cost to members. However, to increase the integrity of the work test, the ATO could apply greater attention to this area as part of its annual audit process.

2.1.3 Proposal 8-2

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

AIST supports this proposal with respect to voluntary contributions that are concessional. We note that the term 'voluntary' also includes non-concessional contribution (e.g. after tax) which are not deductible under any circumstances.

2.1.4 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 s 290-165(2) to enable these workers to claim deductions for contributions made at age 75 years and over.

As above, AIST supports this proposal with respect to voluntary contributions that are concessional. We note that the term 'voluntary' also includes non-concessional contribution (e.g. after tax) which are not deductible under any circumstances.

2.1.5 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; and

(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.

AIST submits that the aged based limits on spousal contributions should be removed and the work test should be extending to members aged 70 years and over. Any work test should be altered to move in line with our suggestions proposed in question 8-1.

We outlined in our previous submission that spousal contributions and member splitting are not commonly used and could potentially be removed. These complex rules create confusion around contribution rules and increase costs for superannuation funds to administer. However, they do not necessarily encourage members to remain in the workforce.

We note that member splitting may become more popular in the future should the Government's proposed changes for members who are over 50 and have under \$500,000 in superannuation be able to contribute up to a higher level of \$50,000 in contributions each year. AIST foresees members over 50 with account balances near \$500,000 splitting their contributions with their spouse to stay below the \$500,000 superannuation balance.

AIST encourages industry consultation on the usefulness of spousal contributions.

2.1.6 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.

We support the proposal to remove the age restriction from age 65 years when the spouse meets a work test. As discussed in our answer to Question 8-4, the work test should be altered to move in line with our suggestions proposed in Question 8-1.

2.1.7 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.

AIST agrees that the age limit on the eligibility to receive the government co-contribution should be removed.

Surveys undertaken by AIST found members above retirement age, particularly those with low superannuation account balances and receiving Age Pension benefits, said that the government co-contribution was one of the major factors for them continuing to remain in the workforce.

2.1.8 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.*

AIST supports the current ‘Transition to Retirement’ (TtR) system and strongly believe that it encourages mature age workforce participation, however we would not object to a review of the rules as outlined above.

2.1.9 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?

AIST supports broad consultation into any possible further increase to the preservation age.

Further increasing the preservation age is more of a “stick” approach to mature age participation, rather than a “carrot” and needs to consider overarching issues of equity between generations (i.e. transition period), effect on retirement savings outside of the superannuation environment and potential budgetary effects linked to affordability and Age Pension benefits.

AIST is very much aware of the impact of longevity and conducted research² earlier in 2012 that highlighted the impact of Australian’s living longer. Under a purely economic affordability model, raising the preservation age seems an obvious and prudent response, however this takes no account of individual experience or circumstance. By way of example, many tradesmen start full-time employment at around age 16 and are often engaged in heavy manual work. By age 55, they have been working for 39 years. Notwithstanding that, there may be new careers available in training new apprentices or working at Bunnings (which has a reputation for seeking such employees), as a general statement these workers have fatigued bodies and cannot continue their main line of work. Increasing the preservation age may just have the effect of increasing the number of people on the Disability Support Pension.

AIST is currently reviewing its policy position on the preservation age and retirement age. We are considering the history of these terms and whether they are relevant today and in the future, and how they may be better defined. In future, the preservation age may need to take into account a person’s gender, occupation or other factors that may impact on a person’s ability to participate in the workforce. We feel that any changes to the preservation age will have widespread and significant effect on the Australian economy and would need to be part of a greater consultation process.

² <http://www.aist.asn.au/policy-new/research-papers/2012-research.aspx>, Retirement outcome projections under 12% SGC

2.1.10 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?

Firstly, AIST would welcome any review into the tax free status of superannuation for those over 60. We believe that this rule that was introduced as part of Better Super in 2007 has distortionary effects on individual contribution patterns and is unaffordable for future generations to maintain.

Consequently, we are not in a position to support any alignment of the tax free status after 60 and any of the above mentioned age limits.