Chapter 7

Voluntary superannuation contributions, co-contribution schemes and employer schemes

7.1 In this chapter, the committee continues its consideration of possible reforms to the superannuation system to help address the superannuation savings gap.

7.2 The previous chapter dealt with the distribution of superannuation taxation concessions; issues relating to compulsory superannuation contributions; and several other structural and operational matters relating to the superannuation system that affect women's retirement income. This chapter focuses on matters relating to voluntary superannuation contributions, including how current settings in relation to concessional contribution caps affect women wishing to make higher voluntary concessional contributions. The committee also assessed the effect of the government's co-contribution scheme for low-income earners in relation to women's superannuation balances.

7.3 This chapter also discusses voluntary schemes put in place by individual companies, such as Rice Warner and ANZ, to provide higher superannuation payments to their female employees. Whereas the previous chapter addressed the possibility of a mandatory higher superannuation guarantee (SG) rate for all female employees across the Australian workforce, this chapter explores the value of voluntary company schemes. In this chapter, the committee also considers whether there is a need for modest legislative reform to help facilitate the implementation of similar voluntary schemes in the future.

Concessional contribution caps

7.4 At present, the amount of concessional contributions that can be made to a person's superannuation account is subject to an annual cap of $30,000 for people aged under 49 years and $35,000 for people aged 49 years or older. The concessional contributions cap is indexed in line with average weekly ordinary time earnings (AWOTE), in increments of $5,000 (rounded down).[1]

7.5 Some witnesses suggested that the annual caps did not allow for the fact that many workers have interrupted working careers. Several recommendations for reform were put to the committee to allow people to make 'catch up' payments, including a shift to a lifetime concessional contribution cap or a rolling cap that allowed the unused portion of the annual cap (or a portion thereof) to be rolled over for use in

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1 ATO, webpage, 'Contributions cap', https://www.ato.gov.au/Rates/key-superannuation-rates-and-thresholds/?page=2, accessed 11 April 2016. Concessional contributions include employer SG contributions, employer contributions made through a salary sacrifice arrangement, and personal contributions claimed as a tax deduction by a self-employed person.

future years. Because women are more likely than men to take significant periods of time out of the workforce, it was argued that such reforms would go some way to closing the gender superannuation gap.

7.6 For example, BT Financial Group advocated greater flexibility in contribution caps, allowing workers to make additional contributions at times when they could afford to do so. This flexibility would better reflect changing income levels and expenditure patterns over a person's lifetime, and especially benefit 'those with broken work patterns such as parents who have taken extended time out of the workforce to raise children'.[2]

7.7 The Association of Financial Advisors (AFA) submitted that current concessional contribution cap arrangements 'favour those with consistent work patterns and disadvantage those who take career breaks'. To address this bias, it recommended that the government consider introducing lifetime concessional contribution caps for low income earners and individuals with broken careers.[3]

7.8 The CBA also recommended that consideration be given to more flexible contribution caps. It suggested this might be achieved through a three year averaging rule, enabling individuals to make contributions in excess of the concessional cap in any given year provided they had not contributed in excess of the cumulative cap over the prior two year period.[4]

7.9 PwC's preferred model was a lifetime concessional contributions cap, which it argued would better enable some women re-entering the workforce to make high enough contributions to meet their needs in retirement. It suggested the lifetime cap should be based on the level of savings required to provide the average person with a comfortable standard of living in retirement.[5]

7.10 ASFA submitted that the annual concessional contribution cap 'can be overly restrictive for members who are attempting to "catch-up" by making additional superannuation contributions when their circumstances permit'.[6] ASFA suggested there were several options for improving the capacity of members to make catch-up payments, including a shift to a lifetime cap on concessional contributions, or increasing the concessional cap for workers over 50, with the higher limit potentially restricted to members with a superannuation balance below a certain level.[7] ASFA provided an example of how such a policy might be structured and targeted to benefit women with broken workforce participation patterns:

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2 BT Financial Group, *Submission 60*, p. 4.

3 Association of Financial Advisors, *Submission 77*, p. 7.

4 Commonwealth Bank of Australia, *Submission 64*, p. 8.

5 PwC Australia, *Submission 23*, p. 2.

6 Association of Superannuation Funds of Australia (ASFA), *Submission 84*, p. 4.

7 Association of Superannuation Funds of Australia (ASFA), *Submission 84*, p. 4.

> For example, if you took it up to $45,000 for those over 50 with an account balance of less than $250,000, we think this would have a significant benefit, particularly for women, and the budget impact would not be significant.[8]

7.11 Ms Vamos from ASFA conceded that higher concessional caps would not benefit low-income earners. However, Ms Vamos maintained that a more flexible system would help redress the fact that the superannuation system was not in place throughout the working lives of many women who are now approaching retirement. She referred to her own experience to illustrate the point:

> There are many women today circa my age, because the system has only been in place for 20-odd years, who were excluded from the superannuation system. In the last few years—the last 10 years—I have been able to earn a decent salary. When I started work I was excluded from joining my superannuation fund and I have not earned enough to put a lot of money into my super—now I can catch up, and I cannot. There is a strong limit. So it is about allowing those women, or men, who have been excluded from the system, who have not been able to participate and who are in their 40s and 50s—maybe their kids are off their hands and the mortgage is nearly off their hands—to be able to contribute more. That is why you need to measure the impact on each one. In particular, what that will do is allow people in their late 40s and 50s to put in that extra amount. The ability of any government then to pull the levers on access to free aged care and access to free health care can really start to be pulled by encouraging those people, who can afford it, to put more money in while having that cap on.[9]

7.12 The National Foundation for Australian Women argued for a system of rolling contribution caps, which would allow workers to roll over into the future years the unused part of their cap from periods out of the workforce:

> The system of annual caps is not suitable for people who are in and out of the workforce, as many women are. The proposal we put in our own paper was a system of rolling caps—I think we said three to five years, which is about the time a lot of women are out of the workforce between children. I know there are also proposals for annual caps. I think we would be happy to see moves along those lines as well. But the point is that annual caps just are not suitable for women. They are also, I would say, far too generous, in the context of what I have said previously about misdirected concessions. Most women who are earning the average wage would not be putting anywhere near $35,000 into superannuation through salary sacrifice—let us be realistic about this.[10]

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8 Ms Pauline Vamos, Chief Executive Officer, Association of Superannuation Funds of Australia, *Committee Hansard*, 6 October 2015, p. 28.

9 Ms Pauline Vamos, Chief Executive Officer, Association of Superannuation Funds of Australia, *Committee Hansard*, 6 October 2015, p. 35.

10 Dr Helen Hodgson, Member, Social Policy Committee, National Foundation for Australian Women, *Committee Hansard*, 19 November 2015, pp. 36–37.

7.13 The committee also received evidence from the SMSF Association and Mercer advocating variations on the concept of rolling contribution caps.[11] Mercer explained that the problem with current contribution caps is that they treat superannuation as though it were an annual event, as opposed to a system for lifetime savings:

> I think the concept of this rolling cap makes sense. It starts to build up the concept that super is a lifetime investment—it is not this year-on-year decision. I think it is financially feasible. It is a fairer system, because it is giving everyone the same opportunity irrespective of their careers.[12]

7.14 It is noteworthy that in October 2015, the Treasurer, the Hon Scott Morrison MP, flagged the possibility of lifting the taxation cap on superannuation contributions for people who have breaks from their working lives to be full-time carers. Mr Morrison raised this idea with particular reference to helping build the superannuation balances of women taking time out of the workforce to care for children.[13]

7.15 Witnesses broadly agreed that more flexible concessional contribution caps would for the most part only benefit higher income earners or higher wealth individuals with the capacity to make contributions in excess of current caps. On this basis, some witnesses indicated that while they were not opposed to changes to the caps, they did not consider such reforms a high priority. For example, AustralianSuper explained that while it agreed some women might benefit from a shift to lifetime contribution caps, it placed a higher priority on reforms 'that affect the interests of low-income earners first, and women are disproportionately represented in that sector'.[14]

7.16 Mrs Louise Arnfield, National President of the Finance Sector Union of Australia (FSU), and herself a part-time finance sector employee on a modest income and with a relatively small superannuation balance for a 56-year-old, told the committee that solutions that relied on women putting extra money into their superannuation accounts would not help women on lower-incomes:

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11 Mrs Andrea Slattery, Managing Director/Chief Executive Officer, SMSF Association, *Committee Hansard*, 12 February 2016, p. 7; Mr Jordan George, Head of Policy, SMSF Association *Committee Hansard*, 12 February 2016, pp. 10–11.

12 Dr David Knox, Senior Partner and Senior Actuary, Mercer Australia, *Committee Hansard*, 18 February 2016, p. 29.

13 Simon Benson, 'Superannuation special, Treasurer Scott Morrison moves to plug savings gender gap', *Daily Telegraph*, 26 October 2015, http://www.dailytelegraph.com.au/news/nsw/superannuation-special-treasurer-scott-morrison-moves-to-plug-savings-gender-gap/news-story/c5dc0f2d5a3b2eedbd129e2dc7ae0ae8?= (accessed 9 February 2016).

14 Ms Louise du Pre-Alba, Head of Policy, AustralianSuper, *Committee Hansard*, 6 October 2015, p. 42.

> Women who are higher earners can definitely do that, but for those at the other end of the spectrum there just isn't the money to put there. It is not a solution at all because we are going from payday to payday. I have daughters in their 20s who are casual workers trying to get through university. I am supporting that. That is not an unusual situation in these times. There are a lot more demands on mature aged women these days. Caring responsibilities, and the financial impacts of raising your children, go a lot long longer these days. So there is simply no money left over to put towards super.[15]

7.17 Asked about the merits of replacing annual concessional contribution caps with lifetime caps, HESTA emphasised that few women would ever get anywhere near the current contribution caps:

> We do not think it is a bad thing but we really do not think it is relevant to our members. I think just under 20 per cent do actually make additional contributions, which is higher than I think most people would expect, but they are contributing very low amounts. Our members feel comfortable making contributions of $20 a week extra—that is the research and what they have told us. It is nowhere near the limit.[16]

7.18 Similarly, the view put to the committee by the SDA, CPSU and Australian Services Union was essentially that while reforms in this area were worthy of further consideration, they would only have a modest impact, and not on those women most in need of assistance.[17]

7.19 ISA warned that a shift to a lifetime concessional contribution cap should be considered with great caution. In addition to the fact that a lifetime cap would be difficult to administer and police, it would likely only benefit 'individuals with substantial wealth and income':

> Moreover, lifetime caps will not improve women's economic security, as most women are unable to make *any* additional voluntary contributions to their superannuation, let alone the significant additional contributions required to make up the gap in retirement savings.[18]

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15 Mrs Louise Arnfield, National President, Finance Sector Union of Australia, *Committee Hansard*, 19 November 2015, pp. 14–15. A similar point was made by Women in Super. Mrs Sandra Buckley, Executive Officer, Women in Super, *Committee Hansard*, 6 October 2015, p. 24. Also see Professor Miranda Stewart, *Submission 78*, p. 5.

16 Ms Lisa Samuels, Executive, Marketing Strategy, HESTA, *Committee Hansard*, 18 February 2016, p. 14.

17 Ms Katie Biddlestone, National Women's Officer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 19 November 2015, pp. 34–35; Dr Kristin Van Barneveld, Director of Research, Community and Public Sector Union, *Committee Hansard*, 12 February 2016, p. 14; Ms Linda White, Assistant National Secretary, Australian Services Union *Committee Hansard*, 18 February 2016, p. 38.

18 Industry Super Australia, *Submission 74*, pp. 47–48.

7.20 ACOSS took a firm view in opposition to proposals to change contribution caps to allow for 'catch up' contributions:

> We believe that into the future, as has been demonstrated in the past, this would disproportionately, again, benefit higher income male workers, even though the stated purpose might be to benefit women. Superannuation should be seen as a system which is designed to deliver the greatest benefits for long-term savings, not for last-minute catch-up in a system.[19]

7.21 The Grattan Institute was similarly critical of the concept of any policy changes that increased concessional contribution caps, either through higher caps or the introduction of rolling or lifetime caps. The Grattan Institute pointed to analysis it had undertaken showing that less than 5 per cent of median income earners make concessional contributions of more than $10,000 per year. The current generous concessional caps, it submitted, were 'predominantly used by older, high-income men to reduce their tax bills'.[20] The Grattan Institute concluded that:

> …providing greater flexibility in accessing generous superannuation tax breaks is a very expensive way to reduce the gender gap in retirement incomes because these tax breaks are poorly targeted and could in fact widen the gender gap in superannuation savings.[21]

7.22 Referring to its proposal to limit concessional contributions to $11,000 per year, the Grattan Institute wrote:

> For a small proportion of women with higher incomes later in life, the changes would reduce their catch-up contributions. Yet the changes would reduce the tax breaks far more for a lot of high-income earners, particularly men. Low-income earners, and especially women, would need to pay less in other taxes if super tax breaks for the wealthy were wound back.[22]

7.23 The committee was not able to determine with any certainty the number of women who are making voluntary concessional contributions, as distinct from simply receiving SG contributions. The ATO advised the committee that it was difficult to distinguish between voluntary concessional contributions and SG concessional contributions.[23] As such, the ATO was also unable to provide data that provided insight into how many women might in fact be pushing up against the concessional caps, and who might therefore benefit from higher or more flexible caps.

19 Dr Cassandra Goldie, Chief Executive Officer, Australian Council of Social Service, *Committee Hansard*, 12 February 2016, p. 33.

20 Financial Services Council, *Submission 57*, p. 3.

21 Grattan Institute, *Submission 87*, p. 3.

22 Grattan Institute, *Submission 87*, p. 6.

23 Mr James O'Halloran, Deputy Commissioner Superannuation, Australian Taxation Office, *Committee Hansard*, 19 February 2016, p. 45.

Committee view

7.24 As noted above, the committee did not receive any clear evidence on how many women would be pushing up against the concessional contribution caps in any given year. The committee considers that the number of women who are prevented from building adequate retirement savings as a result of current concessional contribution caps is likely to be relatively small. As a consequence, reform in this area is unlikely to significantly improve outcomes in aggregate for Australian women.

7.25 Nonetheless, the committee considers that there is a case to be made for providing women who have had interrupted work patterns—and subsequently wish make additional contributions—with the capacity to do so. The committee notes concerns that more flexible concessional contribution caps would be disproportionately utilised by higher income workers. The committee suggests that any changes in this direction would need to be designed to ensure they do not simply exacerbate inequities in the current distribution of superannuation tax concessions (as discussed in the previous chapter).

Super co-contribution scheme

7.26 The superannuation co-contribution scheme is intended to help eligible low or middle-income earners boost their retirement savings. Under this scheme, persons who are eligible can make personal after-tax super contributions and receive a co-contribution from the government of up to $500 per financial year.[24] The scheme has evolved over time to become less generous than was originally the case, as AustralianSuper explained in its summary of how the scheme works:

> The government currently contributes up to $500 to anyone who is under the age of 71 and earning less than $50,454 per year but makes a voluntary contribution from after-tax dollars. The co-contribution scheme has been in place since 1 July 2003, but has been significantly diminished over time. It was initially set at a rate of $1.50 for every one dollar contributed, up to $1,500. Since that time it has been significantly ramped up and then reined in almost to the point of irrelevance. It is currently a co-contribution maximum entitlement of $500 for a personal contribution of $1,000.[25]

7.27 AustralianSuper, which advocated retaining and developing the scheme, observed that the number of people accessing the scheme had declined significantly as the level of contribution from the government had become less generous. AustralianSuper expressed concern regarding this trend, noting that the Committee for Economic Development of Australia (CEDA) had provided:

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24 Australian Taxation Office, 'Super co-contribution', 26 November 2015, https://www.ato.gov.au/individuals/super/in-detail/growing/super-co-contribution/ (accessed 9 February 2016).

25 Ms Jane Hume, Senior Policy Adviser, AustralianSuper, *Committee Hansard*, 6 October 2015, p. 39.

> …some evidence that the superannuation co-contribution scheme has delivered benefits to low income employees and particularly women. CEDA data showed that 55 per cent of beneficiaries had incomes of less than $30,000, 39 per cent were single, 63 per cent were female and 47 per cent were baby boomers, the group with the lowest level of superannuation savings relative to retirement needs. An increased, enhanced, age-specific, gender-specific or balance-tested co-contribution scheme for low income earners would directly address low balances of women in retirement.[26]

7.28 Mrs Pauline Taylor argued that the value of the co-contribution scheme had been undermined by the reduction in the maximum value of the government contribution from $1500 to $500:

> Before the latest change, the co-contribution was a strong incentive to young women to build their super. At one of my seminars, a young woman of only 19 years proudly announced that she had contributed $1,000 of her savings to her super and had received the same amount from the Government. This encouraged her to take an active interest in her superannuation and see it grow further. Sadly the current $500 co-contribution—requiring a $1,000 voluntary contribution—does little to motivate young women, who face other demands on their savings, including rising costs of housing and education.[27]

7.29 The AIFS suggested that co-contributions schemes, including the current scheme, may go some way toward bridging the superannuation savings gap for low income earners who have taken time out of the workforce. However, AIFS also noted that participation in the scheme remained low. This suggested 'either ignorance of the scheme, or a lack of discretionary income available to make additional superannuation contributions'.[28]

7.30 While supportive of retaining the LISC (as discussed in the previous chapter), the Grattan Institute expressed a general scepticism regarding the value of other measures aimed at topping up the superannuation balances of low income earners, including the co-contribution scheme. It argued that:

> …measures to boost the retirement incomes of low income earners delivered through the tax and superannuation systems are inherently less well targeted than an increase in income support payments as they are directed at individuals, not households. For example, it is likely that a large number of people making voluntary post-tax super contributions to obtain

26 Ms Jane Hume, Senior Policy Adviser, AustralianSuper, *Committee Hansard*, 6 October 2015, pp. 39.

27 Mrs Pauline Taylor, *Submission 37*, p. [2]. The Tasmanian Women's Council also recommended increasing the maximum government contribution back to $1500. Tasmanian Women's Council, *Submission 28*, pp. 5–6.

28 Australian Institute of Family Studies, *Submission 18*, p. 17.

> the government co-contribution are in fact the spouses of high-income earners.[29]

7.31 The Grattan Institute supported its argument in this regard by pointing to an analysis it had undertaken suggesting that over 60 per cent of post-tax contributions made by people with incomes less than $37,000 are in fact made by individuals with superannuation account balances in excess of $500,000.[30]

'Super Seed' and other proposals

7.32 ISA suggested the super co-contribution scheme had two significant limitations:

> First, it is a voluntary scheme with a very low take-up. Only 14 per cent of income earners eligible for the benefit utilise it. Secondly, since the proportion of those making non-concessional contributions peaks at age 50–54, the benefits of compounding are very limited.[31]

7.33 To overcome these limitations, ISA recommended that the current co-contribution scheme be replaced with a scheme it called 'Super Seed'. It described its Super Seed proposal as an 'enhanced version of the government co-contribution which is targeted to provide an early propagation of superannuation savings, of most benefit to part-time women, especially those taking time out to have children.'[32] The Super Seed proposal would involve an automatic government contribution annually to the active superannuation account of persons in the three lowest income deciles whilst they are aged 27 to 36 inclusive. Noting the need to further refine its proposed scheme to ensure government contributions were targeted to those who needed it most, ISA presented modelling on its scheme based on an indicative figure of an annual $5000 government contribution to eligible account holders.[33]

Committee view

7.34 The committee considers that the costs and benefits of proposals for the government directly boosting the superannuation accounts of younger people, including the ISA's Super Seed scheme, would require additional and careful consideration before adoption. Proposals to build the superannuation balances of young, low income people at an early stage in their working lives so that they might better benefit from the power of compound interest are potentially powerful. However, such a measure may benefit individuals who later in life may not require

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29 Grattan Institute, *Submission 87*, p. 4.

30 Grattan Institute, *Submission 87*, p. 4n14.

31 Industry Super Australia, *Submission 74*, p. 39.

32 Industry Super Australia, *Submission 74*, p. 5.

33 Industry Super Australia, *Submission 74*, p. 39. This proposal was supported by ACTU, *Submission 69*, p. 10; National Education Union, *Submission 26*, p. 14; and Unions NSW, *Submission 67*, pp. 11–12.

support. More broadly, the committee welcomes the fact that proposals such as Super Seed help to focus attention on this aspect of superannuation policy, and stimulate valuable discussion regarding innovative policy approaches.

Employer initiatives—additional super contributions for female employees

7.35 The Workplace Gender Equality Agency noted that a number of organisations are introducing initiatives to reduce the gender retirement savings gap, and remove barriers for women returning to work.[34] For example, ANZ and Rice Warner have both introduced packages to reduce gender pay inequality and increase women's retirement savings. The measures ANZ and Rice Warner have introduced include superannuation contributions on parental leave for all employees, additional superannuation contributions to female employees and access to targeted financial advice.[35] This part of the chapter considers employer schemes in relation to additional superannuation payments for female employees. The possibility of a *mandatory* higher SG rate for all female employees, as distinct from voluntary schemes implemented by individual employers, was considered in the previous chapter.

7.36 ANZ explained to the committee that, as part of a broader suite of measures, it had decided to pay female staff an extra $500 per year in superannuation contributions.[36] Asked how it had arrived at this figure, ANZ explained:

> This is a benchmark of about one per cent on up to $50,000 of earnings for all female staff. We modelled out that this would mean approximately $30,000 in additional retirement savings over the lifetime of a 30-year-old woman. That is a start. It is not a perfect answer to close the gap but it is material and that is how we settled on that number.[37]

7.37 Rice Warner reported that it paid its female staff an extra two per cent superannuation on top of their SG payments, up to a cap of two times the Adult Average Weekly Ordinary Time Earnings (AWOTE) (about $155,000). Like ANZ, Rice Warner indicated that it did not believe its measure would by itself close the superannuation gap, but it would at least be a step in the right direction.

> We did a lot of modelling on the two per cent additional payment. Longevity is one challenge that women face, in that they live about three years longer than men, on average. To remove that longevity risk—it is about 1.5 per cent—and to place men and women, assuming all else is equal, on a level playing field, we selected two per cent. We wanted to, I guess, help our female employees. It was a business decision. There is no

34 Workplace Gender Equality Agency, *Submission 79*, pp. 15–16.

35 ANZ Wealth, *Submission 89*, p. 3; Rice Warner, *Submission 82*, p. 41.

36 Ms Joyce Phillips, Chief Executive Officer, ANZ Global Wealth, *Committee Hansard*, 6 October 2015, p. 2.

37 Ms Joyce Phillips, Chief Executive Officer, ANZ Global Wealth, *Committee Hansard*, 6 October 2015, p. 4.

> sort of, 'Two per cent is going to fix this', and it certainly will not close the gap completely. They are going to have to do things on their own as well.[38]

7.38 Rice Warner informed the committee that the response to the policy from within the company had been very positive.[39] Anticipating arguments about the fairness of making higher superannuation payments to female employees, Mr Rice noted that Rice Warner pays insurance for all of its staff, and while male insurance was more expensive, 'nobody ever complains about that'.[40] Rice Warner also indicated that it was not proposing that extra superannuation payments for women should be compulsory for all employers.[41]

7.39 Rice Warner suggested that as much as directly helping build the superannuation balances of its female employees, its policy was directed toward improving the engagement of staff in relation to their superannuation. Mr Rice said:

> I actually think the engagement with our staff is more valuable, because many of them are now contributing voluntarily. Even well-off people often do not save well. So if you can get them into the right habits they would be far better off later in life.[42]

7.40 The response from other participants in the inquiry to the voluntary steps taken by ANZ and Rice Warner was overwhelmingly positive. At the same time, a number of participants noted that voluntary schemes such as this would ultimately not deliver the structural change needed to close the retirement savings gap. For example, ISA observed:

> On the issue of additional employer contributions, we would certainly laud any employer who takes the proactive step of making additional contributions and we would encourage the removal of any obstacle to them being able to do that. We do not see it as a structural remedy to the issue, though, because there are a number of female dominated industries. We do not see the responsibility for remedying this important issue as one that should fall to employers.[43]

7.41 As discussed in the previous chapter, some inquiry participants suggested that while voluntary initiatives should be applauded, such initiatives should not deflect from proposals that offer systemic improvements to improve the retirement outcomes for women.

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38 Ms Melissa Fuller, Deputy CEO, Rice Warner, *Committee Hansard*, 19 November 2015, p. 45.

39 Ms Melissa Fuller, Deputy CEO, Rice Warner, *Committee Hansard*, 19 November 2015, pp. 43–44.

40 Mr Michael John Rice, CEO, Rice Warner, *Committee Hansard*, 19 November 2015, p. 47.

41 Ms Melissa Fuller, Deputy CEO, Rice Warner, *Committee Hansard*, 19 November 2015, p. 44

42 Mr Michael John Rice, CEO, Rice Warner, *Committee Hansard*, 19 November 2015, p. 46.

43 Ms Robbie Campo, Deputy Chief Executive, Industry Super Australia, *Committee Hansard*, 6 October 2015, p. 11.

Amending anti-discrimination legislation

7.42 To implement its abovementioned policy, Rice Warner had to apply to the Australian Human Rights Commission (AHRC) for an exemption from the *Sex Discrimination Act 1984*.[44] The process of securing the exemption was lengthy and complex, as Rice Warner recounted:

> We first wrote to the Human Rights Commission in January 2012 seeking a temporary exemption from the Sex Discrimination Act, and this led to an 18-month period of correspondence and negotiations. We were required to provide substantial evidence to demonstrate the disadvantages that women face, including complex modelling.
>
> The final outcome was that, rather than the commission granting a temporary exemption—which has a time limit of five years and cannot be challenged in court—it deemed the initiative to be a special measure. Importantly, a special measure can be challenged in court should a case ever arise. As a business, Rice Warner decided that the risk was low and that the benefits of introducing the policy outweighed the risk.

7.43 Rice Warner noted that the AHRC was supportive throughout this process. However, it submitted that the complexity and duration of the process might discourage other employers from pursuing similar initiatives. The lack of clarity in the process, Rice Warner observed, was illustrated by the fact that other organisations who had sought similar exemptions had actually pursued quite different processes.

> Whilst the commission was very supportive throughout the process, it is our belief that this could act as a barrier for many employers for the following reasons: the current process is unclear, and it appears that Rice Warner and the other two organisations I mentioned earlier [Unions NSW and ANZ] all followed different processes; the drawn out process may act as a deterrent for other employers; some might believe that the risk around the lack of certainty for special measures being challenged in court to be too high; and many would lack the capability to support their application. It is for these reasons that one of our recommendations in our submission will be to amend the sex discrimination legislation to ensure that employers who voluntarily choose to pay their female employees more super are not in breach of the legislation.[45]

7.44 Ms Loane from the (Financial Services Council) FSC also noted that Rice Warner and ANZ had taken different approaches to ensure their additional superannuation payments to female employees did not breach sex discrimination laws. Rice Warner had secured approval of a special measures package under section 7D(1)

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44 Rice Warner, *Submission 82*, p. 36.

45 Ms Melissa Fuller, Deputy CEO, Rice Warner, *Committee Hansard*, 19 November 2015, p. 44. Also see Rice Warner, *Submission 82*, pp. 36–37.

of the Sex Discrimination Act, whereas ANZ secured an exemption under NSW law.[46] Mr Briggs told the committee

> An important point to make there, and the reason we pulled this one out in particular, is around the commission that helped them put together these packages and get approval. There is no criticism of the commission; they wanted to help these packages succeed. However, the fact that the two organisations had to do it in different ways under the same governing legislation, and passed it differently—the inconsistency—makes it more complex and acts as a deterrent for organisations who have less to do with the superannuation sector of getting them over the line. So I think what we are recommending is either amendments that help streamline the process—so you look at the legislation and say that this is exactly the path that you have to go down to get this package approved—or greater consistency in how the legislation deals with these packages. It removes one of those soft barriers that sit in legislation that prevent companies from doing the right thing.[47]

7.45 The FSU also suggested that amending anti-discrimination laws to allow for schemes like ANZ's and Rice Warner's was particularly important for smaller companies who might lack the resources to ensure their schemes were permissible under current laws. Ms Black noted that while ANZ had been able to negotiate the implementation of its scheme so that it was compliant. However, she observed that many smaller organisations may not be in a position to achieve a similar outcome:

> I think that comparing large banks with other organisations is not always helpful because they do have access to high-level legal support when they need it to be able to work out what they need to do to navigate their way through. So I think some clarity around that to enable smaller organisations that may not have that same access to legal support would probably be useful.[48]

7.46 A number of other inquiry participants also recommended that the Sex Discrimination Act be amended to remove potential barriers for employers who wish to pay extra superannuation contributions to female employees.[49]

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46 Ms Sally Loane, Chief Executive Officer, Financial Services Council, *Committee Hansard*, 19 February 2016, p. 24.

47 Mr Blake Briggs, Senior Policy Manager, Superannuation, Financial Services Council, *Committee Hansard*, 19 February 2016, p. 24. Also see Financial Services Council, *Submission 57*, pp. 4–5.

48 Ms Veronica Black, National Coordinator, Organising and Development, Finance Sector Union of Australia, *Committee Hansard*, 19 November 2015, p. 15.

49 See for example, The McKell Institute, *Submission 53*, p. 8; Association of Superannuation Funds of Australia, *Submission 84*, pp. 8–9; Ms Katie Biddlestone, National Women's Officer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 19 November 2015, p. 35.

Committee view

7.47 The committee joins with other inquiry participants in applauding the steps taken by individual companies such as ANZ and Rice Warner to address the gender superannuation gap. While such steps are not by themselves sufficient to close the gap, they are a useful step in the right direction. The committee particularly welcomes the fact that these initiatives have served to highlight the issue of the retirement savings gap and stimulate public discussion on this critical issue.

7.48 The committee agrees that modest changes to anti-discrimination legislation would help clarify the legal standing of such schemes, and encourage further companies to pursue their own schemes. In particular, the committee shares the concerns expressed by several inquiry participants that smaller companies might lack the resources to be able to navigate a very complex and time consuming legal environment, and might be discouraged from doing so in the absence of appropriate legislative changes.

Recommendation 16

7.49 The committee recommends that the Australian Government amend the *Sex Discrimination Act 1984* to ensure companies are able to make higher superannuation payments for their female employees when they wish to do so. As part of this process the Australian Human Rights Commission should explore options and advise the Australian Government on appropriate legislative changes.

7.50 Following any amendments to the legislation, the Australian Human Rights Commission should develop guidelines and advice for any organisation contemplating providing additional superannuation payments for women.