

SUPERANNUATION (OBJECTIVE) BILL 2016

Submission to Senate Economics Legislation Committee

Submitted by:

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BACKGROUND

This submission has been prepared by CDI Consulting Pty Ltd (CDI). CDI is a management consulting firm which is active in advocating for improved support to families who provide care to a dependant with a disability or serious illness.

The purpose of this submission is to recommend resolution of a legislative anomaly pertaining to the superannuation Sole Purpose Test.

Whilst it is recognised that the Superannuation (Objective) Bill is legislatively independent to the Sole Purpose Test, CDI argues that the Sole Purpose Test gives practical effect to the Objective and the principles which underpin it. Therefore, any legislative anomalies pertaining to the Sole Purpose Test should not be ignored by the Parliament at this time of significant reform.

Consequently, this submission recommends that Government establish a credible timeline for resolving the legislative anomaly concerned as soon as possible. It should be noted that CDI initially presented this anomaly to Government in March 2014 with the support of Carers Australia.

PROPOSED LEGISLATIVE AMENDMENT

The proposed amendment relates to Section 62(1)(b)(ii) of the Superannuation Industry (Supervision) Act 1993 (SIS Act) which describes an “ancillary purpose” for which a superannuation fund may be maintained in conjunction with at least one of the core purposes set out in Section 62(1)(a). This ancillary purpose is shown below in its current and proposed forms.

SIS Act 1993 Section 62(1)(b)(ii) - Current:

"the provision of benefits for each member of the fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged and the cessation is on account of ill-health (whether physical or mental)."

As shown, the current legislation provides a benefit to fund members who experience disruptive work patterns due to Sick Leave but denies access to fund members who experience disruptive work patterns due to Carer's Leave.

SIS Act 1993 Section 62(1)(b)(ii) - Proposed:

*"the provision of benefits for each member of the fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged and the cessation is on account of the member's ill-health (whether physical or mental) **or their provision of care to a dependant who requires such care due to ill-health (whether physical or mental).**"*

As shown, the proposed amendment remedies the anomaly described by providing parity of treatment between fund members who experience disruptive work patterns due to personal illness and fund members who experience disruptive work patterns due to carer responsibilities.

A careful examination of Section 62(1)(b)(ii) of the Sole Purpose Test in its current form reveals that it is not compatible with the primary Objective of Superannuation as it fails to provide the required flexibility and equality of treatment to superannuants who experience disruptive work patterns due to Carer's Leave. The impact of this unfairness is that fund members on Carer's Leave are unable to maintain contributions to their retirement savings accounts during their absence from work via the use of income protection insurance - an outcome which is contrary to the Objective.

Consequently, in light of the government's intention to make the superannuation system equally accessible for all Australians, there is no justifiable basis upon which fund members on approved Carer's Leave should be *excluded* from access to income protection insurance benefits within superannuation whilst fund members on approved Sick Leave rightfully enjoy these benefits.

Moreover, this double standard conflicts with the Carer Recognition Act 2010 which aims to ensure that carers are not unnecessarily disadvantaged and *"have access to the same rights, choices and opportunities as other Australians"*.

STATEMENT OF COMPATIBILITY

Prepared in accordance with section 6 of the Superannuation (Objective) Bill 2016

The proposed amendment to the Sole Purpose Test is compatible with the following superannuation subsidiary objectives.

(i) **"Be simple, efficient and provide safeguards"**

The provision of income protection insurance payments to superannuants who experience disruptive work patterns due to Carer's Leave will serve to *safeguard* the source of funds needed for affected individuals to make ongoing contributions to their retirement savings accounts during their absence from work.

Critically, this safeguard is currently available to superannuants who experience extended periods of Sick Leave. As such, the proposed fairness measure is simply an extension of an existing safeguard which reflects the reality of modern day working patterns.

(ii) “Facilitate consumption smoothing over the course of an individual’s life”

The proposed amendment will facilitate consumption smoothing across an individual’s life by limiting the burden of income loss during an affected individual’s absence from work. The amendment will also provide an opportunity for affected individuals to minimise disruptions to their superannuation savings thus facilitating consumption smoothing during their retirement phase.

i *The proposed amendment to the Sole Purpose Test recognises that working life disruptions can diminish superannuation contribution rates thereby resulting in reduced retirement incomes for affected fund members. As such, the proposed amendment will assist these fund members to offset the impact of such disruptions through the use of income protection insurance thus meeting the primary **Objective of Superannuation**.*

BENEFITS

Benefits associated with the proposed fairness measure are:

- (i) Improved flexibility and equality of access to the superannuation system for all Australians thereby enabling the system to better meet its primary Objective.
- (ii) The opportunity for carers to make uninterrupted contributions to their retirement savings accounts via income protection insurance during their absence from work thereby helping to maximise their retirement savings.
- (iii) Compliance with the Carer Recognition Act 2010 which seeks to ensure that “all carers have the same rights, choices and opportunities as other Australians”.

SUMMARY

In order to assure the integrity of Australia’s superannuation system, it is essential to ensure that the SIS Act is appropriately aligned to the primary and subsidiary objectives of the system.

An assessment of the SIS Act reveals that the Sole Purpose Test in its current form fails to provide fund members who experience disruptive work patterns on account of carer responsibilities with equal access to income protection insurance. This failure is contrary to the principle of fairness and flexibility required by the subsidiary objectives and is in conflict with the intent of the Carer Recognition Act. As such, it is necessary to enact an amendment to the Sole Purpose Test in order to rectify this unfairness and thereby better meet the primary Objective of Superannuation.

In closing, this submission recommends that Government establish a credible timeline for resolving the legislative anomaly concerned as soon as possible.

A superannuation system which fails to provide flexibility and equality of access to its participants cannot be considered fit for purpose by a modern and socially inclusive Australia.