The Senate

Economics
Legislation Committee

Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018 [Provisions]

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Senate Economics Legislation Committee

Committee members

Senator Jane Hume *(Chair)*	Victoria, LP
Senator Chris Ketter *(Deputy Chair)*	Queensland, ALP
Senator David Bushby *(to 21 January 2019)*	Tasmania, LP
Senator Jenny McAllister	New South Wales, ALP
Senator Amanda Stoker	Queensland, LP
Senator Peter Whish-Wilson	Tasmania, AG

Substitute members

Senator Rachel Siewert — Western Australia, AG
(Substitute Member to replace Senator Peter Whish-Wilson from 6 December 2018)

Secretariat

Mr Mark Fitt, Secretary
Mr Alan Raine, Principal Research Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3540
Fax: 02 6277 5719
E-mail: economics.sen@aph.gov.au

Table of Contents

Chapter 1

Background

1.1 On 6 December 2018, the Senate referred the provisions of the Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018 to the Economics Legislation Committee for inquiry and report by 11 February 2019.[1]

1.2 The bill amends the *Social Security Act 1991* (the Social Security Act) and the *Veterans' Entitlements Act 1986* (the Veterans' Entitlement Act) to introduce new means test rules for lifetime retirement income products, expand the Pension Loans Scheme, and increase and expand the Pension Work Bonus.[2]

1.3 The estimated financial cost of this bill to the fiscal balance over the forward estimates is $258.6 million.[3]

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting submissions by 18 January 2019. The committee received 11 submissions which are listed at Appendix 1.

1.5 The committee did not hold a public hearing for this inquiry.

1.6 The committee thanks all the individuals and organisations that contributed to the inquiry.

Background

1.7 The bill contains four schedules to introduce the following measures:

- Schedule 1 establishes new means test rules to accommodate the development of new innovative income streams. It also amends the current rules for lifetime income streams to create fairer, more equitable means test outcomes.
- Schedule 2 increases the Work Bonus to $300 per fortnight and extends the application of the Work Bonus to income earned from remunerative work that involves personal exertion, including self-employment and work undertaken by contractors or consultants.
- Schedule 3 expands the Pensions Loans Scheme to provide more Australians with access to this scheme whether they be of Age Pension age (for social security recipients), income support supplement qualifying age or service pension age (for Veterans' Affairs recipients).

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1 *Journals of the Senate*, No. 137, 6 December 2018, p. 4479.

2 *Explanatory Memorandum*, p. 1.

3 *Explanatory Memorandum*, p. 2.

- Schedule 4 makes technical amendments to simplify the Social Security Act and confirms that income support recipients over the Age Pension age qualify for the employment nil rate period.[4,5]

Lifetime income streams

1.8 The 2016–17 Budget included a commitment to review the social security means test rules for retirement income products in the context of changes to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). These changes enabled innovative pooled lifetime income stream products to qualify for earnings tax concessions, provided they comply with requirements contained in the SIS Regulations.[6]

1.9 Pooled lifetime income streams are products that pool the funds of multiple people to provide consistent income to surviving members for life. These products are intended to help people use their retirement savings in a way that supports their specific needs and help manage the risk of running out of retirement savings. They also include products that defer making payments for a period of time (for example, until age 85). The changes to the SIS Regulations are designed to allow product providers to innovate and create new pooled lifetime income products for Australians in and approaching retirement.[7]

1.10 The existing means test rules for lifetime income streams were made for simple income stream products, such as lifetime annuities. Continuing to use them for complex products that are expected to emerge as a result of the changes to the SIS Regulations would leave the income support system open to exploitation and could distort people's financial decisions in retirement.[8]

1.11 The new means test rules will apply to all pooled lifetime income products held by social security or Department of Veterans' Affairs income support recipients that are acquired or purchased on or after commencement. Products purchased before commencement will not be affected by the new rules.[9]

1.12 Under the income test, the new means test rules will assess 60 per cent of payments from a pooled lifetime income stream as income. This reflects that part of the payments made by the income stream are a return of a person's initial investment amount, and, therefore, are not income.[10]

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4 *Explanatory Memorandum*, p. 1.

5 The 'employment nil rate period' allows an income support recipient whose social security pension or benefit is not payable because of employment income to immediately return to payment if the work ceases within 12 weeks, provided they still meet all other qualification requirements for the payment. Department of Social Services, *Submission 5*, p. 23.

6 *Explanatory Memorandum*, p. 2.

7 *Explanatory Memorandum*, p. 2.

8 *Explanatory Memorandum*, p. 3.

9 *Explanatory Memorandum*, p. 3.

10 *Explanatory Memorandum*, p. 3.

1.13 Under the assets test, the new means test rules will generally assess a proportion of the total purchase amount for the pooled lifetime income stream. At the point of purchase, 60 per cent of the purchase amount will be assessed as an asset. This will continue until a certain point in time, known as the 'threshold day', after which 30 per cent of the purchase amount will be assessed.[11]

1.14 As income stream products can be purchased outside the superannuation system, the new means test rules have some additional provisions for products with high surrender values or death benefits. Accordingly, the new means test rules under the assets test will assess the higher of:

- 60 per cent of a product's purchase amount as an asset up until the threshold day, or 30 per cent from that point onwards;
- any current or future surrender value about the limits of the Capital Access Schedule; or
- any current or future death benefit above the limits of the Capital Access Schedule.[12]

Work Bonus

1.15 Social security pensioners of Age Pension age and Department of Veterans' Affairs pension recipients of qualifying age are able to access the Work Bonus. The Work Bonus is an income test concession, and is currently set at $250 per fortnight. The first $250 of fortnightly employment income is not counted under the pension income test. Any unused part of the Work Bonus currently accrues to a maximum balance of $6,500, and is used to exempt future earnings.[13]

1.16 The Work Bonus was set at $250 in 2011 and has not been increased since. The bill will increase the Work Bonus to $300 per fortnight and, in line with current arrangements, will not be subject to automatic indexation.[14]

1.17 To improve the consistency and equity of the Work Bonus, it would be extended to all earnings from gainful employment that involves personal exertion. It is not intended that managing personal or family financial or real estate investments, or undertaking domestic duties in relation to a person's own residence would meet this requirement for personal exertion. For example, work undertaken managing an investment portfolio, or renting or leasing out real estate would not be considered gainful work.[15]

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11 *Explanatory Memorandum*, p. 4.

12 The Capital Access Schedule refers to the limits placed on the amount that a person can recover from their pooled lifetime income stream should they withdraw from the product (the surrender value), or should they die (the death benefit). *Explanatory Memorandum*, p. 4.

13 *Explanatory Memorandum*, p. 33.

14 *Explanatory Memorandum*, p. 33.

15 *Explanatory Memorandum*, p. 33 and p. 34.

1.18 It is intended that the Work Bonus would only apply to income that is commensurate to the work performed. For example, if a person received a $10,000 distribution from a trust, the Work Bonus would only apply to the amount that a person could show that they had performed work commensurate to the amount paid.[16]

1.19 The amendments to the Work Bonus would commence on 1 July 2019.[17]

Pension Loans Scheme

1.20 The current Pension Loans Scheme (PLS) allows Australians of Age Pension age, income support supplement qualifying age or service pension age, who cannot receive one of these payments because of their income or assets (but not both), to receive a payment. Additionally, people who receive only a part-rate payment can increase the rate of their payment to the maximum rate of the payment by borrowing the difference between their fortnightly part-rate and the maximum rate.[18]

1.21 Amounts borrowed under the PLS become a debt due and payable to the Commonwealth, and is secured by a charge against the person's real property in Australia. The debt is usually recovered from the person once the relevant property is sold or from the person's estate once the person dies.[19]

1.22 The bill would allow people to participate in the PLS even if they are assessed as having a nil rate of payment under both the income and assets tests for the relevant payment. It would also expand the PLS to allow people to participate in the PLS even if they are already receiving the maximum rate of the payment.[20]

1.23 The fortnightly amount that can be borrowed would increase by up to 150 per cent of the maximum fortnightly rate, including supplements, for both new and existing participants in the PLS.[21]

1.24 Existing age-based loan-to-value ratio limits will continue to apply when determining a person's maximum loan amount under the PLS. This will link the amount that PLS participants can borrow to the value of the property or properties they have given as security for their loan.[22]

1.25 The majority of amendments would commence on 1 July 2019 with some consequential amendments commencing on 20 March 2020.[23]

16 *Explanatory Memorandum*, p. 34.

17 *Explanatory Memorandum*, p. 34.

18 *Explanatory Memorandum*, p. 39.

19 *Explanatory Memorandum*, p. 39.

20 *Explanatory Memorandum*, p. 39.

21 *Explanatory Memorandum*, p. 39.

22 *Explanatory Memorandum*, p. 40.

23 *Explanatory Memorandum*, p. 40.

Other amendments

1.26 A recipient whose social security pension or benefit is not payable because of employment income may qualify for an employment income nil rate period. During this period, the recipient is considered to be receiving a social security pension or benefit for certain purposes, including retaining their Health Care Card or Pensioner Concession Card.[24]

1.27 Income support recipients over Age Pension age were given access to the employment nil rate period provisions as part of Pension Reform changes in September 2009. However, this was not reflected at subsection 23(4A) of the *Social Security Act 1991*.[25]

1.28 The bill makes clear that income support recipients over Age Pension age may qualify for the employment income nil rate period. Changes made by the bill are beneficial in mature, and will not adversely impact any individual.[26]

Human rights

1.29 As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, the government has assessed the bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The government considers that the bill is compatible because they improve a person's access to social security.[27]

Scrutiny of bills

1.30 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) commented on the bill in *Scrutiny Digest 15 of 2018.* The Scrutiny committee noted that the bill allows for specific determinations to be made by the Secretary through notifiable instruments. However, notifiable instruments are not subject to tabling, disallowance or sunsetting requirements imposed on legislative instruments and, as such, there can be no parliamentary scrutiny over a notifiable instrument. The Scrutiny committee requested advice from the Minister as to why it is appropriate to make a number of instruments under the bill notifiable instruments rather than legislative instruments.[28]

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24 *Explanatory Memorandum*, p. 55.

25 *Explanatory Memorandum*, p. 55.

26 *Explanatory Memorandum*, p. 55.

27 *Explanatory Memorandum*, [p. 57].

28 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2018*, pp. 44–45.

Chapter 2

Views on the bill

2.1 Due to the nature of amendments contained in the bill, this chapter explores stakeholder views on each schedule separately.

Lifetime retirement income streams

2.2 The majority of stakeholder comments on the bill were directed at the proposed reforms to means testing for lifetime retirement income streams.

2.3 Most of these submissions welcomed the changes proposed by this schedule.[1] For example, Council of the Ageing (COTA) Australia strongly supported the changes to encourage the development and take-up of lifetime retirement income products:

> COTA's view is that there is a real need to improve the range and variety of retirement income products available to retires that will generate appropriate and sustainable income streams designed to ensure that retirees' needs are optimally provided for within the limits of their retirement resources, taking into account their retirement goals and need to plan for probable needs (such as aged care).
>
> Such products will not be optimal or appropriate for everyone, but they provide an important option for significant numbers of people now and that proportion will increase into the future as the numbers and proportions of retirees with significant superannuation balances, and often other assets, increases.[2]

2.4 Mercer considered that the changes would improve the attractiveness of lifetime income products:

> We expect the proposed legislation will lead to an expansion in the number and types of longevity products in the market place which will lead to greater choice for retirees and an increased awareness of the benefits of longevity products amongst financial advisors. These represent positive outcomes in the ongoing development and maturing of Australia's retirement income system.[3]

2.5 Mercer also supported the flexibility provisions to allow for forms of longevity products that have not yet developed:

> The ability for the Secretary to make a legislative instrument in respect of this definition will enable future lifetime products (which have not yet been developed) to be treated in a manner consistent with existing products.[4]

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1 See also Financial Services Council, *Submission 9*, [p. 1].

2 COTA Australia, *Submission 2*, p. 3.

3 Mercer, *Submission 3*, [p. 3].

4 Mercer, *Submission 3*, [p. 3].

2.6 COTA Australia gave strong priority to the means test rules being relatively simple in formulation and easy to understand.[5]

2.7 Mercer agreed with that sentiment:

> We also note that the proposed rules are simpler to understand than the current arrangements for annuities and are also product neutral, thereby encouraging a greater range of longevity products.[6]

2.8 The Association of Superannuation Funds of Australia (ASFA) also considered that:

> …the new means testing rules have arrived at an appropriate trade-off between simplicity and neutrality in application to different types of retirement income products.[7]

2.9 Similarly, Challenger endorsed the simplicity approach:

> In our view, the provisions of the Bill have arrived at an appropriate trade-off between simplicity and neutrality. When considered over a retiree's lifetime, on average, the new means testing rules are marginally less concessional for income stream products than the current arrangements. However, they are simple, clear, and provide a much-needed resolution to the current uncertainty regarding means test treatment of deferred lifetime products.[8]

2.10 However, not all submissions supported the timing of the proposed changes.

2.11 Industry Super Australia warned that the new means testing rules may encourage the sale of new and complex retirement income products before an appropriate disclosure and regulatory framework has been put in place to protect consumers:

> In short, the proposed rules are intended to promote the sale of complex retirement income products before implementing measures that would help to protect consumers from buying products that may not be in their best interests.
>
> In particular, many of the products that will be sold from July 2019 are likely to comprise annuities that purchasers may not be able to exit from should they later conclude (perhaps when a disclosure regime is in place) that a different product is better.[9]

2.12 While the Australian Institute of Superannuation Trustees took the view that:

> Whilst we are aware that the industry requires certainty in relation to the new rules, we believe that these are being implemented in the wrong order,

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5 COTA Australia, *Submission 2*, p. 4.

6 Mercer, *Submission 3*, [p. 1].

7 Association of Superannuation Funds of Australia, *Submission 4*, [p. 2].

8 Challenger, *Submission 8*, [p. 2].

9 Industry Super Australia, *Submission 6*, [p. 3].

> and the unintended consequences of incentivising Australians to potentially choose the wrong retirement income product at this early stage are too great.[10]

2.13 AustralianSuper was concerned that the Comprehensive Income Products for Retirement (CIPR) framework is still being developed and, as such, creates uncertainty in the future application of means testing rules to products not yet developed:

> AustralianSuper suggests that it is not the right time to impose means test treatment on limited types of retirement income products based on current products in the market. Future 'innovative' products have not been developed, pending the retirement incomes framework being fully developed by Government.[11]

2.14 AustralianSuper argued for the removal of this schedule of the bill so that it can be more fully considered after the CIPR framework has been legislated and implemented:

> Given the lack of clarity on key aspects of the CIPR framework, we recommend that the retirement income framework and CIPRs design be progressed first, agnostic of social security treatment, and that the means testing approach be later designed and applied to retirement products on a holistic basis.[12]

2.15 That said, ASFA noted that changes to the means testing rules are required before new products can come to market:

> Current means testing rules are unclear in regard to their application to a range of innovative products with certain existing and potential new product types appearing to fall outside the scope of current means test rules.[13]

2.16 Industry Super Australia called for a considered review of the retirement income system to determine:

> …what regulatory regimes need to be in place *before* government uses new means testing rules to incentivise the sale of products that may not be in the best interests of retirees.[14] [italics in original]

2.17 Similar sentiments for a holistic review of retirement income policy were echoed by the Australian Institute of Superannuation Trustees.[15]

10 Australian Institute of Superannuation Trustees, *Submission 7*, p. 4.

11 AustralianSuper, *Submission 1*, p. 2.

12 AustralianSuper, *Submission 1*, p. 2.

13 Association of Superannuation Funds of Australia, *Submission 4*, [p. 2].

14 Industry Super Australia, *Submission 6*, [p. 5].

15 Australian Institute of Superannuation Trustees, *Submission 7*, p. 4.

Pension Loans Scheme

2.18 Most submissions on this schedule supported the proposed changes to the Pension Loans Scheme. ASFA indicated that it would provide greater flexibility in the availability of benefits for retirees,[16] while COTA Australia emphasised that the changes would substantially broaden eligibility and increase the pension or allowance payable.[17]

2.19 In relation to the change from a 'guaranteed' amount to a 'nominated' amount, COTA Australia commented that:

> We note that is legally possible that the Commonwealth could recover funds owed it under this scheme from the "Nominated Amount". However after detailed discussion with the government we accept that this is very unlikely to occur in practice because of the conservative manner in which loan amounts will be calculated, and the government's control over all the variables, such as interest rate; and the provision in the Scheme that if advancing further sums would exceed the "age based table" limits in the Act, calculated fortnightly, then the borrower would be informed and the loan would not be allowed to further grow (unless the borrower then applied to change the terms, such as by reducing the Nominated Amount).[18]

2.20 National Seniors Australia supported the proposals to expand the Pension Loan Scheme and increase the amount that can be received:

> It will enable retirees to maintain a significantly higher standard of living and make use of the productive wealth tied up in the family home.[19]

2.21 However, National Seniors Australia also contended that Centrelink's Financial Information Service officers will need to:

> …have systems in place to support them in identifying applicants who may be at risk of elder abuse. This should include adequate training, so they are competent in identifying and reporting suspected cases of financial elder abuse.[20]

2.22 Reverse Mortgage Finance Solutions questioned whether the potential demand for the revised Pension Loans Scheme would be greater than that forecast:

> The Budget Papers estimates 6000 loans over the forward estimates. This forecast seems exceptionally low.
>
> …

16 Association of Superannuation Funds of Australia, *Submission 4*, [p. 1].

17 COTA Australia, *Submission 2*, p. 5.

18 COTA Australia, *Submission 2*, p. 7.

19 National Seniors Australia, *Submission 10*, [p. 2].

20 National Seniors Australia, *Submission 10*, [p. 3].

> If the take up is similar to the private reverse mortgage market, it would be 30,000 to 35,000 applications.[21]

2.23 Reverse Mortgage Finance Solutions also raised concerns regarding the application process and need for borrowers to understand the potential implications of participating in the Pension Loans Scheme on later life medical costs and aged care.[22]

Work Bonus

2.24 COTA Australia supported the changes to the Work Bonus:

> The proposed changes help to contribute to an improvement in older Australians' incomes by enabling them to retrain more of their income from the Age Pension or Service Pension when they receive other income from their work. The extension to other income earners is equitable and sensible in light of the many retirees who do operate as self-employed.[23]

2.25 COTA Australia also considered that the Pension Work Bonus should be more frequently adjusted given that amount has not been increased since it was introduced.[24]

2.26 ASFA supported the changes to the Pension Work Bonus which will open up additional opportunities for retirees and have no adverse impact on those who do not take it up.[25]

2.27 National Seniors Australia noted that it has received consistent feedback from members and supporters calling for an increase to the Work Bonus limit. It also supports the move to expand eligibility to include those who are self-employed, contractors or consultants. Further, they agree that only gainful work should be eligible for the expanded Pension Work Bonus.[26]

Committee view

2.28 The committee notes that the bill contains measures that will enhance the standard of living for older Australians by giving retirees greater choice and flexibility when it comes to managing their finances in retirement.

2.29 The committee acknowledges concerns about having an appropriate disclosure and regulatory framework for retirement income products in place before making changes to means testing rules. Without the new means testing rules, however, it is likely that innovative products, such as lifetime income streams, will not be readily developed and brought to market.

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21 Reverse Mortgage Finance Solutions, *Submission 11*, [p. 1].

22 Reverse Mortgage Finance Solutions, *Submission 11*, [p. 3].

23 COTA Australia, *Submission 2*, p. 7.

24 COTA Australia, *Submission 2*, p. 7.

25 Association of Superannuation Funds of Australia, *Submission 4*, [p. 1].

26 National Seniors Australia, *Submission 10*, [pp. 1–2].

2.30 The committee welcomes the relative simplicity of the new means testing rules for lifetime income products which will be more readily understood by older Australians.

2.31 The changes to the Pension Loans Scheme will enable more Australians to access the equity in their home to support their standard of living in retirement. The committee notes that demand for the new Pension Loans Scheme may be higher than anticipated and, should that eventuate, the government should devote adequate resources to ensuring that older Australians are not unduly delayed in accessing it.

2.32 The reforms to the Pension Work Bonus limit will further encourage Age Pensioners to supplement their income through gainful employment and allow more older Australians to access the Age Pension.

2.33 The committee welcomes the support from groups representing older Australians for the proposed changes and considers that the bill should be passed.

Recommendation 1

2.34 The committee recommends that the bill be passed.

Senator Jane Hume

Chair

Additional Comments from Labor Senators

1.1 Labor Senators support Schedules 2, 3 and 4 of the bill, which relate to the work bonus, the pension loans scheme and other technical amendments.

1.2 Labor Senators do have concerns about the consideration of Schedule 1, relating to new means test rules for lifetime income streams. Given the recent publication of both the Productivity Commission report *Superannuation: Assessing Efficiency and Competitiveness* and the publication of the Royal Commission final report into Misconduct in the Banking, Superannuation and Financial Services Industry, it is important that disclosure frameworks, trustee obligations, financial advice frameworks and behavioural impacts are well understood and improved alongside any changes to means testing.

1.3 The concerns in question are outlined below.

Inquiry Process

1.4 The submission by AustralianSuper makes it clear that the Government has not completed complementary work regarding the framework for Comprehensive Income Products for Retirement (CIPRs):

> In summary, Schedule 1 to this Bill is but one of a series of measures supporting the Government's developing retirement income framework.
>
> This framework envisages the development of Comprehensive Income Products for Retirement (CIPRs). The CIPRs framework is still being developed with the following outstanding items yet to be actioned by the executive government to complete this framework for implementation by industry:
>
> - The passing of legislation for retirement income covenant designed to protect member interests in the development of retirement products.
> - The disclosure regime for such products which is presently under consultation.
> - The creation of a framework that enables trustees to offer a CIPR product, which is inherently complex, without personal advice, and include measures to protect consumers at the same time.[1]

1.5 In a similar way, the Australian Institute of Superannuation Trustees indicated that insufficient context and preparatory work has been completed for the passage of Schedule 1:

> Taken out of context, the measure proposed in schedule 1 of the Bill appears to go a considerable way to satisfying one of the aims of the Government, being the goal to remove regulatory barriers to the use of

1 AustralianSuper, Submission 1, p. 1-2

innovative (in this case, lifetime) income streams. However, viewing this in context is problematic, since we do not have a context to view this in.

…

In any event, as Treasury indicated in their Retirement Income Disclosure Consultation Paper, there are remaining parts to the proposed Retirement Income Framework that remain before "consumers are supported to make informed decisions about the income, risk and flexibility associated with different retirement income products", including retirement income projections and changes to the regulatory framework.

…

We are also concerned that, in the absence of basic consumer protections which, at the very least, must include sufficient consumer disclosure to enable fund members to have informed consent when selecting these products, social security incentives commencing on 1 July 2019 are badly timed and inappropriate.

Whilst we are aware that the industry requires certainty in relation to the new rules, we believe that these are being implemented in the wrong order, and the unintended consequences of incentivising Australians to potentially choose the wrong retirement income product at this early stage are too great.[2]

1.6 Industry Super Australia also outlined concerns about other unresolved "moving parts" relevant to implementing the Government's CIPRs-based framework:

a) The introduction of a retirement income covenant to the Superannuation Industry (Supervision) Act 1993 that will include a requirement that trustees develop and offer CIPRs to their members.

b) The design and implementation of a disclosure framework that will provide consumers who wish to purchase a retirement income product with a factsheet for each product containing simplified metrics that will enable meaningful comparisons to be made prior to purchase.

c) Proposed new means testing rules

…

In short, the proposed rules [means testing rules] are intended to promote the sale of complex retirement income products before implementing measures that would help to protect consumers from buying products that may not be in their best interests.

In particular, many of the products that will be sold from July 2019 are likely to comprise annuities that purchasers may not be able to exit from should they later conclude (perhaps when a disclosure regime is in place) that a different product is better.[3]

2 Australian Institute of Superannuation Trustees, Submission 7, p. 85

3 Industry Super Australia, Submission 6, p. 2-3

1.7 Labor Senators agree that the Government has failed to provide the supporting architecture necessary to properly support the take-up of lifetime income products and guarantee that pensioners will be protected.

1.8 Finally, submissions make it clear that there are concerns about the obligations these products will place on superannuation trustees:

> Further, as a superannuation trustee, we have concerns about the operation of the means testing rules and the need for a consumer to understand that they are entering into a long-term trade-off for means testing purposes (see Appendix A). AustralianSuper as a fiduciary is concerned as to application of these rules to new CIPR products which are designed to be offered by superannuation trustees to their members without personal advice. Traditionally, these types of products have been sold to customers directly not through the fiduciary overlay of superannuation. A higher duty is owed by superannuation trustees as fiduciaries than applies under contract law.[4]

Productivity Commission Report

1.9 A number of submissions outlined findings from the recent Productivity Commission final report into superannuation. Labor Senators understand that the Government is considering its response to this report and as yet has not made public its final position on recommendations.

1.10 A number of findings were made with regard to retirement income products.

1.11 The most pertinent is Recommendation 10:

> The Australian Government should reassess the benefits, costs and detailed design of the Retirement Income Covenant — including the roles of information, guidance and financial advice — and only introduce the Covenant if design imperfections (including equity impacts) can be sufficiently remediated.
>
> In conjunction with this reassessment, the Australian Government should also:
>
> - consider cost-effective options, including possibly extending the Financial Information Service to provide retirees with access to a one-off, impartial information session to help them navigate complex retirement income decisions
> - explore the business case for investing in digital technology that assists people's financial decision making.[5]

1.12 Supporting this recommendation was the finding that lower-income households might be worse off with an annuity in terms of total benefits and access to the Age Pension when compared to an account based pension (ABP):

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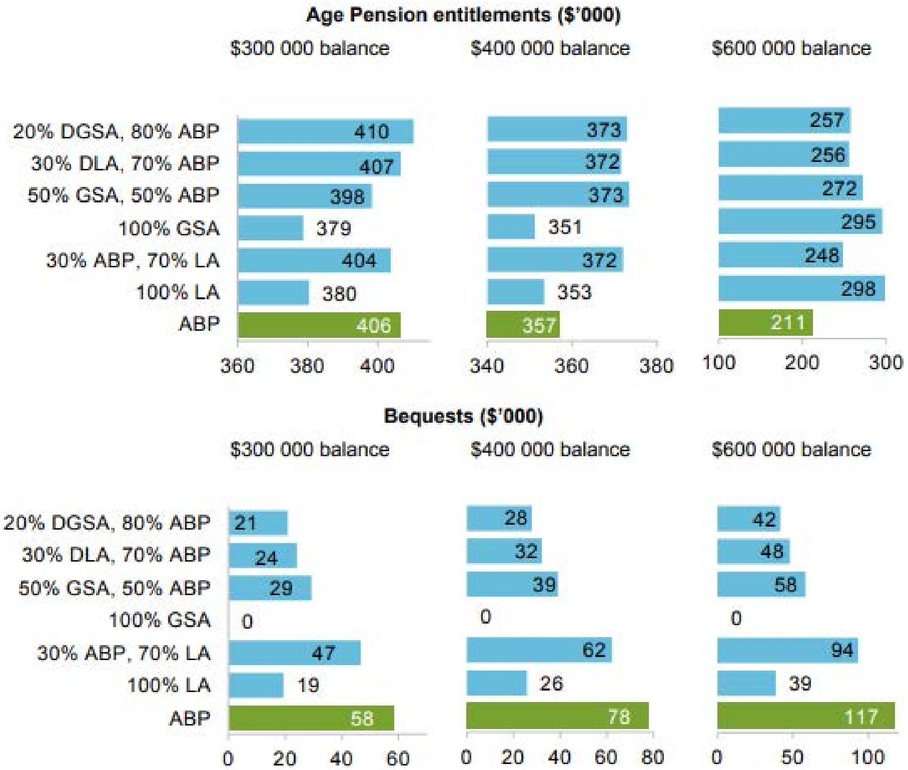
4 AustralianSuper, Submission 1, p. 2

5 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, No. 91, 21 December 2018, p. 69

The opposite pattern applies to lower-income households, where most annuity types reduce total benefits and decrease access to the Age Pension compared with an ABP. These contrasting outcomes appear inconsistent with any income distributional function of the Age Pension, and imply that choosing an annuity may not be favourable for households with lower net superannuation assets. Given that lower educational qualifications tend to reduce earnings and ultimately retirement balances, low-balance households will have fewer sophisticated investors able to make an informed decision about the desirability of CIPRs — especially given their complex variants (as shown in figure 4.10). This would become more problematic if the proposed Retirement Income Covenant nudges people into such products. The same equity concern would arise for groups with systematically lower life expectancy for whom longevity insurance is less valuable.[6]

Figure 4.10 **CIPRs obtain more generous Age Pensions than account-based pensions for wealthier households and reduce retirement income bequests for all**[a]



[a] The outcomes relate to a single homeowner with varying retirement balances. The different retirement income products are account-based pensions (ABP), life annuities (LA), group self-annuities (GSA), deferred lifetime annuities (DLA) and deferred group self-annuities (DGSA). Their definitions are provided in the relevant paper cited below.

Source: DSS (2018).

6 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, No. 91, 21 December 2018, p. 232-233

1.13 The second supporting issue that Labor Senators wish to raise is that there is currently limited competition in the offering of lifetime income products. As noted by the Productivity Commission:

> Putting aside the practical issues of implementing the Covenant, government-sponsored nudging should demonstrably be for people's good. As discussed in the previous section, CIPRs almost certainly suit some people, especially those who do not value bequests or will benefit from the more favourable access to the Age Pension.
>
> …
>
> On the practical front, there are also several concerns.
>
> - Requiring funds that are unable to develop pooled products in-house to still offer a third party product may provide some degree of market power to the few current incumbent providers.[7]

Royal Commission Report

1.14 The Royal Commission Final Report has expressed concerns about the ability of the financial services industry to provide independent advice to the public:

> Second is poor advice – which, too often, is the result of the conflicts of interest that continue to characterise the financial advice industry. Other professions are not so pervaded by conflicts of interest and do not have such a high tolerance for the continued existence of conflicts of interest. Other professions do not have such faith in the notion that conflicts of interest and conflicts between duty and interest can be effectively managed. Until something is done to address these conflicts, the financial advice industry will not be a profession.[8]

1.15 Industry Super Australia has expressed concerns that the current state of the financial advice regime is inadequate to support retirement income products:

> In short, the current financial advice regime cannot be relied upon to protect consumers.
>
> Until appropriate regimes for retirement income products, disclosure and financial advice are in place, legislating concessional means testing rules for retirement income products amounts to 'putting the cart before horse.'
>
> It risks exposing consumers to significant, and unnecessary, financial harm.[9]

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7 Productivity Commission, Superannuation: Assessing Efficiency and Competitiveness, No. 91, 21 December 2018, p. 234

8 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, p. 135

9 Industry Super Australia, Submission 6, p. 4

Conclusion

1.16 Labor Senators are supportive of efforts to improve the superannuation system, particularly as people move to the retirement phase. It is important that there be a suitable suite of retirement income products available to people in retirement and that older Australians and pensioners are properly protected.

1.17 Labor Senators also note that COTA Australia is supportive of the proposed changes to the pension means testing of pooled lifetime income stream products.[10]

1.18 Labor Senators recognise that there are potential risks associated with Schedule 1 of the Bill, as noted above. Labor Senators believe it would be preferable for disclosure frameworks, trustee obligations, financial advice frameworks and behavioural impacts to be well understood and improved alongside any changes to pension means testing.

1.19 That said, Labor Senators do not believe that these risks warrant delaying passage of this Bill. Accordingly, Labor will carefully monitor the implementation and impacts of Schedule 1 of the Bill and the regulation of related financial services products to ensure they operate fairly and that older Australians and pensioners are protected.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

[10] COTA Australia, Submission 2, p. 5

Appendix 1

Submissions

Submissions

1 AustralianSuper
2 COTA Australia
3 Mercer
    3.1 Supplementary submission
4 Association of Superannuation Funds of Australia (ASFA)
5 Department of Social Services
6 Industry Super Australia
7 Australian Institute of Superannuation Trustees
8 Challenger Limited
9 Financial Services Council
10 National Seniors Australia
11 Reverse Mortgage Finance Solutions