AUSTRALIAN INSTITUTE of SUPERANNUATION TRUSTEES

26 October 2018

Ms Rebecca McCallum
Manager
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Ms McCallum,

Re: Work test exemption for recent retirees – Draft legislation and regulations

In brief:
AIST supports this measure, however has reservations that the avoidance of conflict with the bring forward rule is designed to solve a problem which is likely to affect few members, and is very easily circumvented. We also have concerns about the imposition of excessive requirements on members and trustees to implement this measure, and have raised questions about spouse contributions and reporting.

AIST wishes to thank Treasury for the opportunity to comment on this package. AIST supports this measure which will allow members of superannuation funds an additional financial year to make additional contributions to their superannuation after having last met the work test. However, AIST is concerned that execution of this laudable measure will result in messy and expensive processes to achieve results that are met presently in relation to other contributions.

AIST supports the removal of the work test outright. We point out that this would obviate a great deal of the issues that we have identified in this submission. However, this submission will concern itself with comments which stay in line with the policy intention of this measure, specifically.

The conflict with the bring forward rule

AIST understands that use of the bring forward rule is not intended to be triggered by the operation of the work test exemption. Whilst we agree that in context, this is an undesirable outcome from a policy perspective, there are a number of limitations in the approach taken in this package:

1. The ability for members to access the work test exemption hinges upon a member having a Total Superannuation Balance of less than $300,000 as at 30 June in the previous financial year. The likelihood that at the point of reaching age 65, that a taxpayer with this amount in superannuation has the funds on call to make such an amount in contributions we would consider to be low.
2. In the unlikely event that members did have the funds available and had a Total Superannuation Balance of less than $300,000, we are not certain that prevention of such a contribution – limited to the full brought forward amount of only $300,000 – would, on the balance of probabilities, result in either a major financial detriment to government revenue or a significant enrichment to the member concerned.
3. The fact that ordinarily, the bring forward rule may only be accessed in the limited circumstances of the year that a member turns 65 and where this immediately follows a year where one would ordinarily meet the work test further limits the availability. We do not believe that there are a large number of superannuation fund members who will be impacted due to this very narrow window.
4. In the unlikely event that members had the funds available and fell into this set of circumstances, we believe that it will be comparatively straightforward for financial advisers to recommend that short-term employment be sought in order to exploit the ability to utilise the work test. For example, in the draft explanatory memorandum, in example 1.2, if Jake sought financial advice, on 10 August 2019, he would likely be advised to take some short-term employment in order to ensure that he was able to utilise the bring forward rule, as Boris has done in example 1.3.
5. In any event, standard practice amongst financial advisers presently considers age 65 as a milestone age where the last chance is available to utilise the bring forward rule, if it hasn't been already used in the preceding two years. This practice is not only unlikely to be discontinued, it is likely to hasten contributions where a financial adviser is aware that their client is discontinuing work before the financial year where they turn 65.

The combination of these limitations effectively renders the restriction on the use of the bring forward rule as only potentially preventing a few people from bringing forward contributions incorrectly. Whilst we cannot argue with the identification of this as an undesirable policy outcome, we do not believe that the measures enacted to prevent it being used in this way are in any way likely to be effective.

Excessive requirements for trustees and members

Members aged 65 to 74 (as at the start of the financial year) are unaffected by the bring forward rule, as they are subject to the ordinary annual contribution limits. Existing practice in relation to the work test is the signing of a declaration by the member upon making a contribution that they meet the work test.

In most other respects, the ability for a member to make the contribution is functionally identical:

Requirement	Work test compliant contribution	Work test exempt contribution
Work test requirement	Gainful employment on either a full or part-time basis during the financial year in which the contribution is made	Gainful employment on either a full or part-time basis during the previous financial year prior to the year in which the contribution is made
Affected age range	65-74	65-74
Contribution limit	Concessional: $25,000 Non-concessional: $100,000	Concessional: $25,000 Non-concessional: $100,000
Availability	Annually	Once
Total Superannuation Balance (TSB) limit	$1,600,000 (non-concessional contributions only)	$300,000 (concessional and non-concessional contributions only)
Verification of other contributions	No requirements	Funds may not accept contributions if other contributions made under the exemption in a previous financial year.

(Table does not consider additional available types of contribution, such as Government co-contributions, CGT-exempt contributions, or downsizer contributions)

It is important to note that the only substantive differences between the two methods of eligibility are whether the member meets the work test, or is eligible to utilise the exemption and the requirement for funds to decline contributions if the work test exemption was used in a previous financial year. However, the proposed regulation 7.04(1A)(c) would see that funds are not able to accept contributions in the instance that a member has a TSB of $300,000 or higher at the end of the previous financial year. No such requirement applies to other contributions, which are subject to the TSB equal to the general Transfer Balance Cap of $1.6 million, in the case of non-concessional contributions.

We do not understand why funds would need to make this assessment where they are under no obligation to assess ordinary TSB compliance prior to accepting a contribution. We recommend that paragraph (c) of the proposed subregulation 7.04(1A) be removed as it would require trustees to subject a class of member to extra scrutiny unnecessarily. In any event, if ATO data matching noted a mismatch between amounts contributed and the TSB, together with no personal exertion income paid to a member, this would be treated the same way as an excess contribution.

With regards to the requirement to not accept contributions in the instance that a member has utilised the exemption in a previous financial year, we are concerned that trustees may be required to police this. We take the opportunity to remind Treasury that there presently exists no way for trustees to know what contributions have been made at other funds which their member may also be a member of and emphasise that a declaration from the member must be sufficient to satisfy this requirement. Again, ATO data matching should identify second or subsequent attempts to contribute under the exemption.

AIST believes that all that should be required is a declaration that can be included with a member's contribution form (or analogous electronic process) where a member confirms that they are eligible and meet all conditions applicable to making a work test exempt contribution. We do not support verification steps being included which would effectively penalise comparatively disadvantaged members of funds compared to other members. We also do not support unnecessary steps which are likely to drive up administration costs for funds.

AIST believes that such a declaration may also ensure that funds are able to restrict contributions below the normal contribution caps, meaning that the bring forward limits are not inadvertently breached in the year that a member turns 65.

Uncertainty regarding the status of spouse contributions

The explanatory material does not discuss contributions made on behalf of members by eligible spouses. We have presumed for the purposes of this submission that the same requirements would apply from ages 65-69, however we believe that this should be specified in greater detail in the explanatory material to ensure that confusion does not arise.

Uncertainty regarding reporting

The explanatory material does not specify whether this process will result in changes to MAAS or MATS reporting. AIST does not support changes being made in respect from this.

The explanatory material also does not confirm whether the different types of voluntary contributions (work test exempt vs work test compliant) are to be separately identified. We believe that this also needs to be specified.

For further information regarding our submission, please contact Richard Webb, Policy & Regulatory Analyst at 03 8677 3835 or at rwebb@aist.asn.au .

Yours sincerely,

Eva Scheerlinck
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the $1.2 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.