ASSESSING THE TAXATION OF SUPERANNUATION IN TERMS OF HORIZONTAL AND VERTICAL EQUITY

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ABSTRACT

This paper discusses whether the taxation of the current superannuation system is equitable, by reference to the principles of horizontal and vertical equity and highlights that high-income earners are clearly advantaged. The research has reviewed the taxation treatment of more than 30 of the main taxing rules regarding superannuation. Although, the design of the taxation of superannuation has substantial horizontal and vertical equity, vertical inequity in the taxation of superannuation remains significant for various components of Australia's superannuation system, concerning taxation on contributions, fund income, and benefits. Age discrimination that is unfair in terms of horizontal equity remains restrictive in some components and should be abolished. Finally, the value of using horizontal and vertical equity concepts as lenses of fairness has deduced novel recommendations in particular regarding supporting lower income earners through increased levels of Superannuation Guarantee and fairer taxation treatment of benefits to all retirees (not favouring those over 60).

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I INTRODUCTION

This paper seeks to answer the question, 'Is the taxation of superannuation equitable by reference to taxation design principles of horizontal equity and vertical equity?' After consideration of these principles to more than 30 components in the superannuation system, this paper identifies that there remain important areas of reform that Parliament must address.

II TAXATION THEORIES REGARDING HORIZONTAL AND VERTICAL EQUITY

A *Horizontal and vertical equity*

The 1975 Asprey Taxation Review Committee identified three principles of a well-designed tax system that guide revenue-raising objectives; equity, efficiency and simplicity.[1] The Asprey Taxation Review Committee saw that equity meant fairness in the distribution of the tax burden.[2] Although one of its chapters focused on superannuation, that chapter did not discuss equity as an issue at all.

Similarly, the more recent and very comprehensive review of the taxation and superannuation systems (the Australia's Future Tax System, informally referred to as the Henry Review),[3] also did not address horizontal and vertical equity in the superannuation system. The Henry Review's objectives for the taxation system included horizontal and vertical equity as taxation design features, but when discussing the superannuation system, it outlined five objectives: broad and adequate, acceptable, robust, simple and approachable, and sustainable.[4] The objective of acceptable was on a foundation of equity, but this was on the basis of examining the superannuation system with respect to the broader retirement income system, taking into account the tax-transfer system and assessing impacts in terms of intergenerational equity. Therefore, both the Asprey and Henry reviews did not take the opportunity to review the superannuation system by specifically addressing horizontal and vertical equity.

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[1] Asprey Taxation Review Committee (Justice K W Asprey (Chairman), Sir Peter Lloyd, Ross Parsons and K Wood), *Full Committee Report 31 January 1975* (Treasury, Australian Government, 1975) paras 3.7–3.26 <http://adc.library.usyd.edu.au/view?docId=law/xml-main-texts/p00087.xml;collection=;database=;query=;brand=anderson>.

[2] Ibid 12–15.

[3] The Henry Review produced various published reports, including a preliminary paper on the architecture of Australia's future tax system (August 2008), a consultation paper on the taxation system (December 2008), a consultation paper on the retirement income system (December 2008), a strategic issues paper on the retirement income system (May 2009), and a final report in May 2010. See <https://taxreview.treasury.gov.au/content/Content.aspx?doc=html/pubs_reports.htm>.

[4] Ken Henry et al, Treasury, Australian Government, *Australia's Future Tax System: The Retirement Income System: Report on Strategic Issues* (May 2009) 23–34 <https://taxreview.treasury.gov.au/content/downloads/retirement_income_report_stategic_issues/retirement_income_report_20090515.pdf>.

Horizontal equity involves taxpayers in like economic circumstances being taxed the same or as Elkins puts it, 'similarly situated individuals face similar tax burdens'.[5] On the other hand, vertical equity is where higher income earners pay more tax in comparison to low-income earners because higher income earners have greater capacity to pay more to support the government.[6] Elkins expresses that, 'vertical equity is concerned with the distribution of the tax burden along society's economic spectrum'.[7] Accordingly, vertical equity is broadly inherent in the design of the progressive income taxation system, which provides for increasing rates of taxation as income levels rise, and 'has been a long-standing design feature of the Australian tax system'.[8]

Horizontal and vertical equity are therefore distinguished in their concepts as 'the notions that it is fair that persons in the same situation should be equally treated, and those in different situations being differently treated, with those more favourably placed being required to pay more.'[9] Given the inherent fairness of the progressive taxation system, it is possible to overlook the importance of horizontal equity.

However, Elkins strongly puts it that 'Violation of horizontal equity, while not necessarily fatal, is nevertheless considered a serious flaw in any proposed tax arrangement.'[10] He points out that theorists have taken for granted the notion of horizontal equity (that the tax system should tax similarly situated taxpayers), and have focused their attention on how to measure wellbeing or examine where horizontal equity has been violated. Elkins[11] advises there is a vast level of literature regarding vertical equity and economic efficiency in comparison to the literature regarding horizontal equity.

Musgrave[12] views that horizontal equity is not a subset of vertical equity and that both have standing as primary norms. Kaplow[13] disagrees and doesn't see that horizontal equity has any significant independence. After considering the Musgrave/Kaplow debate, it is interesting that Repetti and McDaniel refute the value of horizontal equity and vertical equity in evaluating changes in tax policy objectives.[14] However, this paper finds

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[5] David Elkins, 'Horizontal Equity as a Principle of Tax Theory' (2006) 24(3) *Yale Law & Policy Review* 43 <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1515&context=ylpr>.

[6] Ken Henry et al, Treasury, Australian Government, *Australia's Future Tax System: Part 2: Detailed Analysis* (December 2009) 11 <https://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_1_Consolidated.pdf>.

[7] Elkins, above n 5, 51.

[8] Miranda Stewart et al, 'A Stocktake of the Tax System and Directions for Reform, Five Years after the Henry Review' (Policy Research Paper, Tax and Transfer Policy Institute, February 2015) 7 <https://taxpolicy.crawford.anu.edu.au/files/uploads/taxstudies_crawford_anu_edu_au/2015-03/stocktake_report_27_feb_2015_final_web_version.pdf>.

[9] Asprey Taxation Review Committee, above n 1, para 3.7.

[10] Ibid.

[11] Elkins, above n 5, 44.

[12] Richard Musgrave, 'Horizontal Equity, Once More' (1990) 43(2) *National Tax Journal* 113–22 <https://www.ntanet.org/NTJ/43/2/ntj-v43n02p113-22-horizontal-equity-once-more.pdf>.

[13] Louis Kaplow, 'Horizontal Equity: Measures in Search of a Principle' (1989) 42(2) *National Tax Journal* 139–54 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.318.610&rep=rep1&type=pdf>.

[14] James Repetti and Paul McDaniel, 'Horizontal and Vertical Equity: The Musgrave/Kaplow Exchange' (1993) 1(10) *Florida Tax Review* 607–22

that relying on the notion of vertical equity alone in considering fairness is flawed because different findings resulted when applying horizontal equity (refer discussion following). Accordingly, the impacts of both horizontal and vertical equity are addressed.

Also, in assessing the equity of the superannuation system, this is better done by comparing those within the system, not by comparing superannuation members against taxpayers generally. For example, when a 61-year-old retiree receives a pension from a taxed fund, such earnings are tax-free. In comparison, a 61-year-old who works and receives the same level of earnings pays tax on that income. These two taxpayers are in similar or equivalent situations, not identical situations. Although gross income (essentially the economic circumstances or economic wellbeing) is the same, their circumstances are very different given the retiree's earnings flow from the superannuation system, and the worker's earnings do not. However, horizontal equity requires that equal tax burdens apply, despite these different circumstances, and regardless of whether they choose to consume or save.[15]

The above example, which relied upon income as the basis of 'economic wellbeing' in application to taxation, is considered defensible and has been adopted throughout the analysis in this paper, because, in a practical sense, it is the only feasible basis on which horizontal and vertical equity can be applied. The Asprey Taxation Review Committee commented that the best measure of a person's economic wellbeing was in regard to their income,[16] so when comparing both taxpayers with the same income, they would pay the same taxes.[17]

However, there are various other points of debate when applying horizontal and vertical equity. For example, in Australia, the taxation system taxes the individual while the welfare system assesses the family unit. This strikes the essential chord of what is fair in terms of the taxing unit. For example, if a single, middle-income earner receives AU$60 000, should the individual be taxed the same as a family of two adults and two children that has greater consumption needs but the same level of income? Further, what about the legal but arguably unfair practice of income splitting through partnerships (and trust arrangements). A plumber and his spouse in a family pay less tax because of income splitting in comparison to a single earner family of the same income level. Wouldn't it be fairer if all families were able to income split? Piggott and Whaley[18] argue the household unit should be the appropriate taxable unit contrary to the wider held belief that the individual is the appropriate taxable unit (largely on the basis of efficiency).

Another significant issue to consider is whether individuals should be taxed at a point in time (the income year) or over an entire lifetime that contemplates averaging or income

<https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1706&context=lsfp>.

[15] Elkins, above n 5, 45.

[16] Asprey Taxation Review Committee, above n 1, para 3.9.

[17] Ibid.

[18] John Piggott and John Whalley, 'The Tax Unit and Household Production' (April 1996) 104(2) *Journal of Political Economy* 398–418 <http://www.journals.uchicago.edu/doi/abs/10.1086/262028>.

smoothing. Kudrna and Woodland[19] explore the lifecycle framework as it applies to the superannuation system and use modelling to assess the impact of vertical equity on superannuation taxation concessions. This was researched pursuant to the Henry Review that reported in 2008 the top 5 per cent of income earners received 37 per cent of taxation concessions. Kudrna and Woodland's findings based on hypothetical tax reforms reveal, in the short, medium and long term, that lower income households improved in terms of vertical equity because of larger welfare gains and income improvements. The arbitrary notion of the income year can be a source of vertical inequity in comparison to the lifecycle framework.

Another important issue for equity concerns whether taxation should be imposed on an income base or consumption base, both of which can be viewed as a reflection of an individual's wellbeing. Currently, Australia adopts a 'hybrid' comprehensive income tax (a TTE design) in relation to superannuation where contributions are Taxed, fund income Taxed and earnings are Exempt. It is hybrid because the tax on contributions and fund income are low, and so in comparison has a ttE tax design. Prior to the Keating reforms of 1998 that introduced a concessional tax on both contributions and fund income, and subsequent Costello reforms that made benefits exempt, Australia had a cash flow expenditure or consumption taxation system on superannuation (EET design) where contributions were Exempt, fund income was Exempt, and benefits were Taxed. Today, the expenditure or consumption approach is the most commonly adopted tax regime taxing retirement income.[20]

In regard to horizontal equity, over a lifetime, an individual's total income would equate to their consumption (and net savings), so the issue becomes in terms of wellbeing – which is a fairer tax base: equal earners or equal consumers? Weisbach and Bankman[21] consider these opposing positions in terms of searching for an optimal tax theory, the focus of which is on reducing inefficiency. They dispute the arguments that a consumption tax is regressive to low-income earners and spares those who are savers given there is no tax on interest. After due consideration and basing their positions of ideal tax regimes, they conclude that a properly designed consumption or expenditure tax design (EET) is superior to a comprehensive income tax approach (TTE). Weisbach and Bankman admit the main 'Achilles heel' to their position lies with implementation.

[19] George Kudrna and Alan Woodland, 'Progressive Tax Changes to Private Pension in a Life-Cycle Framework' (Research Paper No CE110001029, Australian Research Council Centre of Excellence in Population Ageing and Research, April 2002) 1–27 <https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=CEF2012&paper_id=23>.

[20] OECD, 'Stocktaking of the Tax Treatment of Funded Private Pension Plans in OECD and EU Countries' (OECD Publishing, 2015) <http://www.oecd.org/daf/fin/private-pensions/Stocktaking-Tax-Treatment-Pensions-OECD-EU.pdf>.

[21] David Weisbach and Joseph Bankman, 'The Superiority of an Ideal Consumption Tax over an Ideal Income Tax' (2006) 58 *Stanford Law Review* 1413 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=3035&context=journal_articles>.

More recently, Ingles and Stewart[22] supported a prepaid consumption tax design (TEE) on the basis that they calculated it would save AU$10 billion in terms of Australian superannuation tax concessions. They argue this tax design would be fairer given that the comprehensive income system is a highly concessional system that favours the wealthy. In contrast, the Committee for Sustainable Retirement Incomes consider that the current superannuation system viewed against an EET benchmark may not be so concessional or unfair when taking into account the 2016 Turnbull government superannuation reforms. After modelling, their results showed that the post-2016 superannuation system is approximate in outcomes to an EET system.[23]

Changing from a comprehensive income tax system to an expenditure-based taxing system in superannuation may therefore be debatable on economic grounds, but given the length of time that Australia's tax design of superannuation (ttE) has been in place, Podger considers this is not 'feasible'.[24] It is submitted there would be a real reluctance by the major Australian political parties to tax pensioners on superannuation benefits. For example, this sensitivity was demonstrated by the Labor Party's recent policy backdown on its franking credit policy that pursuant to public sentiment exempted 300 000 pensioners.[25]

In light of the above discussion, the Asprey Taxation Review Committee also raised various considerations that complicated the meaning or measurement of horizontal and vertical equity and viewed these considerations could not be easily applied. For example, the Asprey Taxation Review Committee considered when assessing equity whether the appropriate unit should be the family or the individual, the health and size of the family, the arbitrary nature of the income year, the lifetime view of equity, the comparison of tax to consumption, and the issue of inflation, all of which the Asprey Taxation Review Committee concluded would be too difficult to administer.[26] It is asserted similar considerations are difficult to apply for this paper too.

Finally, it is unnecessary to evaluate the fairness of the superannuation system if it was only on the basis of a comparison of those in the superannuation system to those outside of the superannuation system. Under this comparison, the superannuation system is inherently inequitable to taxpayers not in the superannuation system and unable to

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[22] David Ingles and Miranda Stewart, 'Reforming Australia's Superannuation Tax System and the Age Pension to Improve Work and Savings Incentives' (2017) 4(3) *Asia & the Pacific Policy Studies* 417–36, 432 <https://onlinelibrary.wiley.com/doi/abs/10.1002/app5.184>.

[23] Committee for Sustainable Retirement Incomes, 'Encouraging Sustainability and Self-Provision in Retirement Incomes: Policy Conclusions' (CSRI Sustainability Policy Position Paper, CSRI Leadership Forum, 12–13 October 2016) <https://cfsri.files.wordpress.com/2015/09/csri-sustainability-and-self-provision-position-paper-final.pdf>.

[24] Andrew Podger, 'A Fair, Effective and Sustainable Retirement Income System' in Michael Keating and John Menadue (eds), *Fairness, Opportunity and Security Policy Series* (John Menadue: Pearls and Irritations, 23 May 2015) <https://johnmenadue.com/andrew-podger-a-fair-effective-and-sustainable-retirement-incomes-system>.

[25] Phillip Coorey, 'Labor Spares 300,000 Pensioners in AU$3.3bn Franking Policy Back Down', *Australian Financial Review* (online), 26 March 2018 <http://www.afr.com/news/labor-spares-300000-pensioners-in-33b-policy-backdown-20180325-h0xy8t>.

[26] Asprey Taxation Review Committee, above n 1, paras 3.10–3.16.

benefit from the tax concessions, because they are not part of the superannuation system. Accordingly, the appropriate point of evaluation in this paper is comparing the equitable relationship of members with other members within the superannuation system.

The focus of this paper is not on equity in the taxation system but whether taxation in the superannuation system is equitable. The measures discussed following are in relation to the taxing rules of the main components of the superannuation system, which are reviewed in terms of their horizontal and vertical equity.

These concepts of horizontal and vertical equity are relevant to the superannuation system where tax is levied – on contributions, on fund income and on benefits. It is shown in the following discussion and Appendix A, that many of the components of the superannuation system are equitable, but some components are inequitable, requiring further reform.

Given the breadth of issues in this paper, it is highly recommended that the reader turn now to the end of this paper and review 'Appendix A – Snapshot re Horizontal and Vertical Equity'. This appendix is a quick reference guide that neatly summarises the outcomes of the following discussion, in just two pages.

III Overview of the Taxation of Superannuation

A *How superannuation is complex*

Determining whether the taxation of Australia's superannuation system is equitable, is a complex issue because it takes many circumstances into account.[27] As an overview, these factors include:

- **Contributions** – whether a concessional or non-concessional contribution, differing cap levels or limits to contributing, income levels, whether employed or self-employed, the rate of Superannuation Guarantee (SG), the age of the member or member's spouse, or whether the contributions is paid by the member, the member's spouse, employer or government.
- **Fund income** – nature of the fund, nature of the income, whether the income is at the accumulation phase or retirement phase, whether the fund is taxed concessionally at 15 per cent or the penal rate of 45 per cent.
- **Taxation of benefits** – varies depending upon age and preservation age, the condition of release, whether a taxable component has been taxed or untaxed, whether benefit is from a taxed or untaxed fund, whether the benefit is in pension

[27] For an excellent summary of the taxation of superannuation rules, see CPA Australia, 'CPA Australia Superannuation Guide: 2017–18' (1 July 2017) <https://www.cpaaustralia.com.au/~/media/corporate/allfiles/document/professional-resources/financial-planning/superannuation-guide-2017-18.pdf?la=en>.

or lump sum form, or for minimum income stream percentages whether account based or non-account based, or paid to dependents because of death of a member.

For the purposes of this paper, only the main taxation issues in superannuation are discussed.

B *Horizontal and vertical equity regarding taxation of superannuation at a glance*

Appendix A provides a 'Snapshot of horizontal and vertical equity'; the details of which are discussed below. As discussed above, taxation of superannuation applies at the three stages and the main issues pertain to more than 30 components of the system where horizontal and vertical equity are reviewed. It can be seen at a glance that vertical inequity is the main concern with the taxation of superannuation, although there are some (lesser) concerns applying to horizontal equity.

IV Is the Taxation of Contributions Equitable?

Contributions to superannuation funds can be made by employers, the self-employed, employees, spouses and the government. Different rules apply to employer contributions, individual contributions and government contributions. Broadly the superannuation system is equitable in relation to contributions except where high-income earners benefit through tax deductions because of their high marginal tax rate and where there is unnecessary age-based discrimination in relation to various contributions. In addition, low-income earners could be favoured in terms of a higher SG rate.

A *Equity regarding employer contributions*

1 *A more equitable superannuation system because of universal SG*

The Keating Government established the SG scheme[28] of the superannuation system based on a platform of equity. In his second reading speech, the then Treasurer John Dawkins advised that the introduction of the SG would 'provide a coherent and equitable framework to progress retirement income objectives'.[29] In addition, Dawkins stated access to superannuation would now be much more equitable and the system would move from a concessionally taxed system for high-income earners to a national retirement savings for most Australians.[30] Accordingly, SG can be viewed as horizontally equitable in that the mandated minimum contributions paid by employers apply to all employees.

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[28] *Superannuation Guarantee (Administration) Act 1992* (Cth) and *Superannuation Guarantee Charge Act 1992* (Cth).

[29] Australian Government, *Parliamentary Debates*, House of Representatives, 2 April 1992, 1763 (John Dawkins, Treasurer) <http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/1992-04-02/toc_pdf/H per cent201992-04-02.pdf>.

[30] Ibid.

The SG system is broadly universal, although there are some exemptions. These exemptions were introduced mainly for compliance and administration reasons, including international considerations. For example, no SG applies to an employee paid less than AU$450 in a month,[31] or to part-time employees less than 18 years of age working 30 hours or less each week,[32] or for private arrangements for work paid for domestic duties such as nannies who work less than 30 hours each week.[33] Also, no SG is payable for various foreign executives under certain visas,[34] or for resident employees paid by non-resident employers when work is performed outside Australia,[35] or for foreign resident employees paid for work undertaken outside Australia.[36] The most objectionable equity concern regarding exemptions related to the age barrier, where employees were not paid if they were 70 or more years of age. The age limit for SG[37] was abolished from 1 July 2013 by the Gillard Government. The SG system is considered to be horizontally equitable.

2 *SG rate: vertical inequity*

However, middle-income earners have the best deal in terms of SG, and this leads to vertical inequity, given the flat rate of 9.5 per cent. For example, a wage earner who is paid AU$50 000 gets AU$4750 in SG compared to a wage earner receiving AU$150 000 that gets AU$14 250 SG, which is considerably more. One possible reform is the introduction of a higher rate of SG for lower income earners to promote vertical equity. It can also be noted that high-income earners still benefit from the SG system, although these benefits are subject to a maximum limit. The employer is only obligated to pay up to the maximum superannuation contribution base[38] limit. For the 2017/18 income year, the maximum contribution level is AU$52 760 for a quarter, equivalent to AU$211 040 a year (indexed annually).[39] This is fair in terms of vertical equity, given high-income earners have less need to rely upon SG for their retirement.

3 *Salary sacrifice contributions and additional contributions by employer*

Employers can make contributions beyond the minimum required under the SG regime through additional voluntary contributions or via salary sacrifice contributions[40] (on

[31] *Superannuation Guarantee Administration Act* (Cth) s 27(2).
[32] Ibid s 28.
[33] Ibid s 12(11).
[34] Ibid s 27(1)(d).
[35] Ibid s 27(1)(c).
[36] Ibid s 27(1)(b).
[37] Ibids 27(1)(a).
[38] Ibids 15.
[39] Australian Taxation Office, Australian Government, *Maximum Super Contribution Base* (24 July 2018) <https://www.ato.gov.au/rates/key-superannuation-rates-and-thresholds/?anchor=Maximumsupercontributionbase#Maximumsupercontributionbase>.
[40] Natasha Cortis and Christine Eastman, 'Salary Sacrificing in Australia: Are Patterns of Uptake and Benefit Different in the Not-For-Profit Sector?' (2015) 53(3) *Asia Pacific Journal of Human Resources* 311–30 <http://onlinelibrary.wiley.com/doi/10.1111/1744-7941.12054/abstract>. This paper advises that only

behalf of the employee using the employee's before-tax earnings), subject to certain limits.[41] Employment arrangements are a private matter, and additional contributions such as these is not really a matter of concern in regard to equity, and such amounts are simply considered as part of the SG contributions component.

4 *Conclusion regarding SG*

Overall, SG satisfies horizontal equity as it is a national employer-sponsored superannuation scheme, broadly accessible to all Australians. It significantly improves equity for low-income earners, and middle-income earners who fare very well, and it does not unduly favour high-income earners. However, a reform measure to redress the vertical inequity would be to increase the SG rate for low-income earners.

B *Individual contributions: concessional and non-concessional; excess contributions tax*

To further boost superannuation savings, individuals can make private contributions to their superannuation funds. In general, high-income earners have greater capacity to make contributions compared to low-income earners, given they have greater disposable income, and there is an inherent vertical inequity because of the differing income levels. This could be overcome by the government making contributions for low-income earners. Contributions are made during the accumulation phase where the member's account increases, not the retirement phase when a member has met a condition of release,[42] such as reaching retirement age, financial hardship, disability etc, and generally draws down on their accumulated savings.

There are two types of contributions; concessional and non-concessional. Broadly speaking, a concessional contribution[43] is one that can be claimed by an individual or employer as a tax deduction whereas a non-concessional contribution[44] is not tax deductible to the individual. Previously, these terms were referred to in the *Income Tax Assessment Act 1936* as 'deductible' and 'non-deductible' contributions.

Concessional contributions are limited to AU$25 000 for the 2017/18 income year.[45] These contributions are available to all Australians of all ages, and contributions above the cap are subject to an excess contributions tax. In contrast, non-concessional contributions (made from after-tax earnings) are limited to a maximum of AU$100 000[46]

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high-income earners take up salary sacrificing within the not-for-profit sector and across the workforce generally.

[41] Employers need to be careful with the total contributions made to an employee's superannuation account, as if there is an excess to the cap, then an excess concessional contributions tax is payable by the employee. The contributions cap for 2017 is AU$25 000 under *Income Tax Assessment Act 1997* (Cth) s 291-20(2).

[42] Superannuation Industry (Supervision) Regulations 1994 (Cth) sch 1 pt 6.

[43] Defined in *Income Tax Assessment Act 1997* (Cth) s 291-25.

[44] Defined in ibid s 292-90.

[45] Ibid s 292-20(2).

[46] Ibid ss 292-85(2)–(4).

per annum for the 2017/18 income year, or AU$300 000[47] using carry-forward provisions over a three-year period. Any excess above either of these limits is subject to an excess contributions tax.[48]

1 *Equity of excess contributions taxes (ECT): concessional and non-concessional*

As discussed, contributions made to superannuation funds are limited for both concessional and non-concessional contributions. These limits were primarily introduced to make the superannuation system sustainable for the government.

Excess concessional contributions are added to the assessable income and taxed at marginal rates of tax less 15 per cent tax offset for contributions. The rules were relaxed so that a taxpayer could withdraw their excess concessional contributions to pay the ECT.[49] Any excess concessional contributions not withdrawn count towards the non-concessional contributions cap, and excess non-concessional contributions are taxed as above. However, if the excess non-concessional contributions are not withdrawn from the fund, they will be subject to the top marginal rate of tax.[50] These rules apply equally to all superannuation, and there is horizontal equity in relation to the contribution limits and ECT.

C *Equity regarding concessional contributions*

1 *Concessional contributions by employers*

The contributions discussed above are available to the employer as a tax deduction, which is why they are a concessional deduction. There is horizontal equity in that all employers can claim a tax deduction for both SG payments made on time and other concessional superannuation contributions.[51] Some employers are companies and benefit from the tax deduction at only the company rate of 27.5 per cent for small companies and 30 per cent for other companies. Some employers are individuals and their benefit could be as high as the top marginal tax rates. However, this is not an example of horizontal inequity in the superannuation system, but horizontal inequity within the design of the taxation system itself, because different entities are taxed differently. This matter is considered by principals when setting up their business structure (eg, sole trader, trust, partnership or company).

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[47] Ibid ss 292-85(2)–(4).

[48] *Superannuation (Excess Concessional Contributions Charge) Act 2013* (Cth) and *Superannuation (Excess Non-Concessional Contributions Tax) Act 2007* (Cth).

[49] Kai Swoboda and Les Nielson, *Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 [and] Excess Exploration Credit Tax Bill 2014* (Bills Digest No 75 2014/15, Parliamentary Library, 23 February 2015) 14 <http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/3676055/upload_binary/3676055.pdf;fileType=application/pdf>.

[50] Ibid.

[51] *Income Tax Assessment Act 1997* (Cth) sub-div 290-B.

2 *Horizontal equity for self-employed, non-employed investors and employees: access to concessional contributions*

Until the November 2016 Turnbull Government reforms,[52] there was not horizontal equity for contributions made by non-employed investors, employees and the self-employed. All self-employed members could broadly claim a tax deduction as an appropriate business expense.[53] The self-employed were able to make deductible (before-tax) contributions since the Menzies Government,[54] and were financially advantaged compared to employees that were only able to make non-deductible (after-tax) contributions. This advantage remained also for self-employed and non-employed until the November 2016 Turnbull superannuation reforms.

Further, concessional contributions apply to employers who pay SG contributions, salary sacrifice and additional contributions, and these deductions historically have been seen as an appropriate business expense.[55] However, there was horizontal inequity given some employees were advantaged through salary sacrifice arrangements for superannuation from their employer. Employers that offered salary sacrifice arrangements benefitted their employees because the employer contributed to superannuation from their pre-tax income and their taxable income was reduced by that contribution. Employees that are offered salary sacrifice are advantaged in comparison to those employees not offered salary sacrifice arrangements. In comparison, the latter could only make non-concessional contributions from after-tax income and received no tax deduction.

The recent Turnbull reforms redressed the above inequities by abolishing the 10 per cent rule,[56] putting the self-employed, non-employed and employees on the same footing because now all Australian members of superannuation funds can claim the same levels of concessional and non-concessional contributions. The elimination of the 10 per cent rule means that concessional deductions can be accessed by a wider class of members. This results in an allowable deduction to those self-employed and non-employed whose earnings from wages are more than 10 per cent of their assessable income and for those employees whose employers do not offer salary sacrifice arrangements.

In summary, the superannuation system for contributions has removed the horizontal inequity allowing concessional deductions to employees unable to participate in salary

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[52] Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 (Cth) (Act 80 of 2016) and Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (Cth) (Act 81 of 2016).

[53] *Income Tax Assessment Act 1997* (Cth) s 290-150.

[54] The Menzies Government introduced a deduction for superannuation for the self-employed pursuant to the Ligertwood Committee's recommendation.

[55] Employers have been allowed deductions since 1915 for superannuation contributions for employees: *Income Tax Assessment Act 1915* (Cth) s 18(j).

[56] To enable a concessional contribution as a deduction, the 10 per cent rule required a self-employed person to be substantially self-employed by having less than 10 per cent of their income in wages. This applied similarly to non-employed persons (investors) to also have less than 10 per cent assessable income from wages. See *Income Tax Assessment Act 1997* (Cth) former s 290-160.

sacrificing privileges and also permitted further concessional deductions for self-employed and non-employed groups, by abolishing the 10 per cent rule.

3 *Vertical inequity for high-income earner concessional contributions and Div 293 Tax*

Vertical inequity remains an issue in relation to concessional contributions. For all concessional contributions within certain limits, the tax applied is a 15 per cent flat rate, and arguably, this tax imposition would appear to be fair. However, this arrangement is inequitable because individuals can subsequently claim a tax deduction for concessional contributions and the consequent benefit of the tax deduction applies at their marginal rate of tax. This means that higher income earners receive a greater tax benefit in reducing their tax burden in comparison to lower income earners. For example, a high-income earner that contributes AU$10 000, pays tax on the contribution of AU$1500, but given they also claim a tax deduction of AU$10 000, subsequently receive a tax reduction of their tax liability of AU$4500 assuming the highest marginal rate of tax applies. Essentially the government gives a generous 30 per cent return to high-income earners to encourage investment into superannuation when making a concessional contribution. Contrast this scenario to a low-income earner (who would be very fortunate indeed to be able to afford the same investment), but if they did, given their marginal rate of tax is only 19 per cent or 0 per cent, the reduction in tax is only AU$400 for 19 per cent marginal rate of tax, and for those below the tax-free threshold a very unfavourable increase of tax of AU$1500 if the marginal rate of tax is 0 per cent.

Essentially, on this basis, there is no motivation for low-income earners to invest in concessional contributions to superannuation funds, in comparison to high-income earners who are positively encouraged to invest if they have the means. Middle-income earners are also encouraged to invest but with a lower benefit in comparison to high-income earners, given their lower marginal rates of tax.

However, this inequity favouring high-income earners was addressed in part by the Gillard Government reforms that imposed an additional contributions tax of 15 per cent on those members with adjusted taxable incomes (including any employer SG contributions) that were above AU$300 000.[57] This threshold was reduced to AU$250 000[58] by the Turnbull Government as part of the November 2016 reforms. This additional 15 per cent tax under Division 293 of the *Income Tax Assessment Act 1997*, commonly known as Div 293 Tax, was introduced to ensure those on higher incomes who received the tax concessions would be aligned more closely to low- and middle-income earners.

In summary, vertical inequity remains given members with higher incomes receive larger tax deductions at marginal rates, although this benefit to high-income earners has been reduced by the Div 293 Tax (an additional 15 per cent tax). One reform measure that could be implemented to improve vertical equity, is to lower the threshold for the Div

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[57] *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* (Cth) and also *Superannuation (Sustaining the Superannuation Contributions Concession) Imposition Act 2013* (Cth).

[58] *Income Tax Assessment Act 1997* (Cth) div 293, and other sections.

293 Tax, say to AU$180 000. Alternatively, the taxation of contributions could be imposed at an individual's marginal rate of tax.

However, if contributions were taxed at an individual member's marginal rates of tax, the net effect of allowing the tax deduction, which would also be at the member's marginal rate of tax, is to effectively cancel the tax on contributions. It could be argued that a simple method therefore to promote vertical equity to individuals in the system would be to withdraw the tax on concessional contributions for individuals and subsequent tax deductions, and to deny salary sacrificing arrangements for superannuation. However, while this proposal may meet the objective of promoting equity, it would fail to meet the government's underlying policy to encourage Australians to invest in superannuation.[59]

Finally, another option could be to adopt the Greens approach campaigned in the last election, to apply a progressive contributions tax, so that concessional contributions would be taxed at marginal rates of tax, less 15 per cent. In this way greater vertical equity will result.[60]

4 *Concessional contributions on behalf of a spouse: contributions splitting*

In 2006, the Howard Government introduced spouse contributions splitting that may be made using concessional contributions (before tax).[61] Non-concessional contributions cannot be split but concessional contributions can be split between spouses, providing the superannuation fund of the spouse that splits their contributions permits the contributions splitting. The advantage of contributions splitting is that the higher-income-earning spouse salary sacrifices their contributions and receives the tax benefits, while the lower-income spouse receives a greater superannuation benefit. The main condition is that the receiving spouse must be under preservation age, or, if older, must be younger than 65 and not retired.[62] A spouse includes a partner of either a same-sex couple or heterosexual couple, and this similar treatment of couples promotes horizontal equity in the superannuation system.[63] It is considered contributions' splitting raises no major issues for horizontal equity as all couples have equal rights to make contributions. However, it could be argued that high-income earners will take up this option, and so favour the high-income earners. But, a counter argument is that the real benefit is to the lower-income spouse, and the other focus of the policy is an adequacy measure that promotes superannuation savings for low-income earners contributed from a higher taxed spouse. On balance it is considered that this policy achieves vertical equity.

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[59] Asprey Taxation Review Committee, above n 1, para 21.6. The Asprey Taxation Review Committee observed that the superannuation concessions were aimed to correct the bias against savings (that is the tax on savings) and also promote long-term savings in the private sector.

[60] Australian Greens, *Progressive Superannuation: Ending Unfair Tax Breaks and Booting Super for Low-Income Earners* (2016).

[61] Superannuation Industry (Supervision) Amendment Regulations 2005 (No.8) (Cth).

[62] Australian Taxation Office, Australian Government, *Contributions Splitting for Members* (8 September 2015) <https://www.ato.gov.au/Super/APRA-regulated-funds/Managing-member-benefits/Contributions-splitting-for-members>.

[63] *Same-sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* (Cth).

5 *Catch up concessional contributions: flexibility and equity measure*

The Turnbull Government's November 2016 reforms introduced catch-up concessional contributions allowed to members who have small superannuation fund account balances less than AU$500 000. Some members in the community have irregular work patterns, such as women who take time off from the workforce for family reasons, or because of only contract or casual work being available. For a period of up to five years and on a rolling basis, unused portions of the concessional cap can be carried forward.[64] This was reported as a flexibility measure, but it is also an equity measure that assists all Australians, but in particular low-income earners whose financial circumstances have improved. Although 90 per cent of Australians have low account balances, it is expected only 230 000 members will take up the opportunity to top up their superannuation when they can afford to.[65] This is considered a timing issue, that provides flexibility, and given it is accessible to all with less than AU$500 000 account balances, it achieves horizontal equity.

D *Equity regarding non-concessional contributions*

1 *Non-concessional contributions: general*

Individuals that make non-concessional contributions from post-tax income receive no tax deduction at the contributions stage, irrespective of the size of their contribution. There is no tax deduction advantage to individuals in relation to non-concessional contributions, and therefore no impact on vertical equity given differing marginal tax rates. Non-concessional contributions are equally available to all subject to limits discussed, and therefore there is no adverse impact on horizontal equity.

2 *Non-concessional contributions on behalf of a spouse: spouse tax offset*

Prior to the Turnbull Government superannuation reforms, a person who made non-concessional superannuation contributions to a complying superannuation fund of AU$3000 or more from after-tax income for their spouse received a maximum tax offset of AU$540,[66] providing both spouses were Australian residents, and the benefitting spouse's assessable income was less than AU$10 800 (including amounts from reportable fringe benefits and reportable superannuation contributions).[67] The tax offset was phased out altogether if the eligible spouse's income was greater than AU$13 800. The Turnbull Government 2016 reforms increased the income threshold of the spouse to

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[64] *Income Tax Assessment Act 1997* (Cth) sub-ss 291-20(3)–(7).

[65] Australian Government, *Parliamentary Debates*, House of Representatives, 9 November 2016, 3382 (Scott Morrison, Treasurer) <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2Fe089c8c3-75b7-4858-80ac-58b4e4c6e749%2F0161;query=Id%3A%22chamber%2Fhansardr%2Fe089c8c3-75b7-4858-80ac-58b4e4c6e749%2F0160%22>.

[66] *Income Tax Assessment Act 1997* (Cth) s 290-235.

[67] Ibid s 290-230.

AU$37 000, to phase out at AU$40 000.[68] This is a horizontal equity measure that again assists spouses of low-income earners to make contributions to support the other partner's retirement savings measure.[69]

3 *Non-concessional contributions over 65: work test requirements*

In order to make a non-concessional contribution, superannuation members must consider whether they are required to meet the 'work test'.[70] The work test essentially requires that members are working full time or part time, but the specified minimum is 40 hours in 30 days,[71] which is achieved working full time, and also fairly easily achieved working part time. In 2004, the Howard Government abolished the work test requirements for Australians under 65 years of age, but retained them for persons over 65 years of age.[72] Given the aged pension was available to all at 65, the objective of the work test was to ensure that senior Australians were still working for their future retirement needs. This test was intended to counter abuse of the superannuation system by senior Australians putting money into superannuation as an investment vehicle that attracted a low rate of earnings tax. However, this work test breaches horizontal equity and can be easily circumvented, and it is discriminating on the basis of age; it should simply be abolished. The Australian Law Reform Commission also supports removing age-based restrictions on accumulation, given these limits are not appropriate for today's retirement expectations. [73]

E *Equity regarding government contributions*

1 *Equity for low-income earners: LISC and LISTO*

The low-income super contribution (LISC) was a maximum of AU$500 co-contribution provided by the Gillard Government from the 2012/13 income year that applied to low-income earners whose adjusted taxable income was less than AU$37 000.[74] (The marginal rate of tax at that time was 15 per cent, but today is 19 per cent.) This co-contribution was paid by the government directly into an employee's superannuation account where concessional contributions had been made (by the employer through SG or through additional contributions by the employee) and then taxed at 15 per cent.[75] Essentially the LISC refunded the 15 per cent contributions tax. This was an example of an equity measure to support low-income earners, because low-income earners who did

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[68] Ibid para 290-230(2)(c).
[69] Australian Government, *Parliamentary Debates* (Morrison), above n 65.
[70] Contributions are prohibited by the Superannuation Industry (Supervision) Regulations 1994 (Cth) 7.01(3), from members aged 65–74, unless the member meets the work test.
[71] Ibid.
[72] Superannuation Industry (Supervision) Amendment Regulations 2004 (No.4) (Cth).
[73] Australian Law Reform Commission, Australian Government, *The Superannuation System – An Overview* para 8.1 <https://www.alrc.gov.au/publications/8-superannuation/superannuation-system>.
[74] *Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012* (Cth).
[75] Australian Taxation Office, Australian Government, *Low Income Super Contribution* (17 May 2017) <https://www.ato.gov.au/Individuals/Super/In-detail/Growing/Low-income-super-contribution>.

not pay tax on their income in the personal taxation system were penalised in the superannuation system when tax was levied on their superannuation contributions paid by their employers, and also when income tax was levied on their fund income. This measure promotes vertical equity in the system.

The LISC was abolished by the Abbott Government commencing from 1 July 2017. This added to the inequity in the superannuation system. However, the Turnbull Government November 2016 reforms subsequently introduced a low-income superannuation tax offset (LISTO) of up to AU$500[76] available to superannuation funds to replace the LISC, which results in the same outcome and supports vertical equity. The Treasurer stated this is to improve the fairness of the tax system because low-income earners lose 15 per cent of their contribution, which is higher than their marginal rate of tax.[77]

2 *Government co-contribution: equity for low- and middle-income earners*

In 2003, the Howard Government introduced government co-contributions,[78] to benefit low- and middle-income earners that made non-concessional contributions, and this was increased to AU$1500 in 2004.[79] This was a vertical equity measure that in particular, supported low-income earners. This was a generous motivation by the government of providing a dollar-for-dollar investment return that would be channeled into superannuation. This benefit was, however, reduced in the 2008/09 income year to AU$1000 by the Rudd Government on the basis of sustainable pension reform.[80] The Gillard Government subsequently reduced government co-contributions to AU$500[81] in the 2012/13 income year given the LISC was introduced, which also provided a maximum of AU$500 benefit.

The co-contributions scheme requires four tests to be met,[82] and for the 2017/18 income year these tests are:

- The **work test**, as discussed above, working full time or part time, but a minimum of 40 hours in 30 days.
- The **income test** is if an individual earns less than AU$36 813 they can receive support of 50 cents for every after-tax dollar the individual contributes to a superfund up to a maximum of AU$1000 contribution, resulting in a maximum of AU$500 government benefit that is tax-free and paid into the individual's superfund. This benefit shades out for individuals who earn more than AU$36 813, and the upper income threshold cuts out at AU$51 813.
- The **age test** is that the individual must be younger than 71 at the end of the financial year.

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[76] *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) pt 2A ss 12B–12G.
[77] Australian Government, *Parliamentary Debates* (Morrison), above n 65.
[78] *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth).
[79] Ibid.
[80] *Tax Laws Amendment (2009 Budget Measures No. 1) Act 2009* (Cth).
[81] *Tax Law Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012* (Cth).
[82] Australian Taxation Office, Australian Government, *Super Co-contribution* (1 June 2018) <https://www.ato.gov.au/individuals/super/in-detail/growing/super-co-contribution>.

- The **superannuation balance test** is that the individual must have less than AU$1.6 million in the balance of their account.

The tests are reasonable in terms of equity considerations. Individuals need to be working, have low incomes, and must have less than AU$1.6 million in their superannuation account. In a similar manner to the non-concessional contributions test for members aged over 65, the age test[83] for making co-contributions is inequitable in terms of horizontal equity and should be abolished. This is especially so given similar reforms abolished the age test for SG.[84] The Australian Law Reform Commission also questions whether such a test is appropriate to foster mature age workforce participation.[85]

V Is the Taxation of Fund Income Equitable?

The main issue with fund income is that its level of concession is unsurpassed by any other form of investment, given it is taxed at only 15 per cent, meaning that it becomes very attractive to high-income earners seeking tax advantages, and there is virtually no benefit to low-income earners. In addition, despite new laws setting a limit to the superannuation balance cap of AU$1.6 million, this cap is limited to new assets and grandfathering rules apply to existing assets prior to 1 July 2017. Grandfathering permits the excess superannuation balance to simply move to another account that is still concessionally taxed at 15 per cent, favouring high-income earners. Although non-concessional contributions cannot be added to an account once the AU$1.6 million balance cap has been reached, concessional contributions can still be added, again favouring high-income earners. In this regard, both horizontal and vertical inequity apply to taxation on fund income.

A *Horizontal and vertical inequity regarding tax on fund income*

Income of a superannuation fund was historically tax exempt.[86] The Hawke Government introduced a low concessionary 15 per cent tax[87] on fund income, and this rate has remained unchanged.[88] It was seen that abolishing the exemption and the taxation of superannuation funds would raise revenue and improve efficiency and equity in a growth market.[89]

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[83] *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth) s 6(1)(e).
[84] The Gillard Government originally proposed to increase the age from 70 to 75, and then decided to abolish the age test altogether. See *Superannuation Guarantee (Administration) Amendment Act 2012* (Cth).
[85] Australian Law Reform Commission, above n 73.
[86] *Income Tax Assessment Act 1915* (Cth) s 11(f) and *Income Tax Assessment Act 1936* (Cth) s 23F.
[87] *Taxation Laws Amendment Act (No 6) 1988* (Cth).
[88] Note that superfunds are eligible for a capital gains tax discount of 33 1/3 per cent (*Income Tax Assessment Act 1997* (Cth) s 115-100(b)), and therefore only pay tax of 10 per cent on a capital gain.
[89] Australian Government, *Parliamentary Debates*, House of Representatives, 30 November 1988, 3568 (Peter Morris) <http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/1988-11-30/toc_pdf/H per cent201988-11-30.pdf;fileType=application per cent2Fpdf#search= per cent221980s per cent201988 per cent2011 per cent2030 per cent22>.

1 *Complying vs non-complying fund: different tax rates*

The concessionary rate of 15 per cent tax[90] is available to complying funds[91] providing they comply with certain legal requirements.[92] When a fund registers, the complying status is awarded providing the fund meets certain minimum requirements. However, should the fund breach legal requirements it can be made a non-complying fund by the Australian Taxation Office or Australian Prudential Regulation Authority.

In the taxation system, income of a complying fund that is only taxed at 15 per cent is horizontally inequitable in comparison to tax paid by others, such as companies at 27.5 per cent or 30 per cent and individuals who are taxed at their marginal rate of tax ranging from 0 per cent to 45 per cent.

Within the superannuation system, this is vertical inequity, as high-income earners who have a 45 per cent tax rate are advantaged by investing into the fund in comparison to low- and middle-income earners. Low-income earner contributions that have a 0 per cent tax rate are significantly disadvantaged, and there is very little support for those on a 19 per cent tax rate. However, as discussed, this vertical inequity has been countered by the LISTO.

Middle-income earners remain disadvantaged in comparison to high-income earners. One reform measure that could address this inequity, is to apply an additional tax to high-income earners, or alternatively middle-income earners could receive something like the LISTO.

In contrast, if a fund is non-complying, then the taxation rate that applies to a non-complying fund[93] income is 45 per cent.[94] All non-complying funds are taxed at this rate, and this is considered to be horizontally equitable.

2 *Transfer of excess funds over the AU$1.6 million cap*

Pursuant to the November 2016 superannuation reforms, the maximum account balance of an accumulation account that receives concessional tax treatment on returns from investment is AU$1.6 million. Funds for retirement capped at AU$1.6 million are taxed at 15 per cent on fund income in the accumulation phase. With the new AU$1.6 million cap applying, existing pension accounts at the time in excess of that amount were required to transfer the excess, prior to 1 July 2017, to an accumulation account in the fund or withdraw the excess from the superannuation fund. The new account containing the excess over AU$1.6 million is treated as an accumulation account, and earnings are taxed

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[90] *Income Tax Rates Act 1986* (Cth) s 26(1)(a).

[91] For the definition of a complying and non-complying superannuation fund, see *Income Tax Assessment Act 1997* (Cth) s 995.

[92] There are many compliance requirements involving different superannuation laws. For example, to ensure a self-managed super fund is properly regulated, see Australian Taxation Office, Australian Government, *How Your SMSF is Regulated* (16 June 2015) <https://www.ato.gov.au/Super/Self-managed-super-funds/Administering-and-reporting/How-we-help-and-regulate-SMSFs/How-your-SMSF-is-regulated>.

[93] Defined in *Income Tax Assessment Act 1997* (Cth) s 995.

[94] *Income Tax Rates Act 1986* (Cth) s 26(2).

at 15 per cent.[95] This is because if the funds were withdrawn and subsequently reinvested to another investment, those funds would be taxed at the individual's marginal rate of tax, or if invested into a company, would be taxed at 27.5 per cent or 30 per cent. Accordingly, funds that remain in the superannuation fund above the AU$1.6 million are being generously treated for tax purposes.

3 *Accumulation phase (15 per cent tax) vs retirement phase (tax-free)*

(a) Accumulation phase

Superannuation funds that are in the accumulation phase are taxed at 15 per cent provided they meet the requirements of a complying regulated superannuation fund.

(b) Retirement phase

The earnings from pension asset accounts are tax-free when they are transferred from the accumulation phase into retirement phase, providing the assets are less than the AU$1.6 million cap.[96] This allocation occurs when a person meets a condition of release[97] and can therefore access their pension benefits. These earnings finance the pension income stream on retirement. This is not considered an example of horizontal inequity, despite other taxpayers who have not retired and who have their investments in a superfund pay 15 per cent tax on their investment returns. This is because the circumstances are not considered similar. The retired taxpayers use their balance to meet retirement needs, whereas the other members are accumulating their wealth for future retirement. Given earnings are tax-free from a retirement phase account and that this applies to all retirees, horizontal equity is achieved.

4 *Transition to retirement (TRIP): back to accumulation phase*

The Howard Government introduced transition to retirement pensions in 2005 to allow workers flexibility to gradually move to retirement.[98] Workers could work less but receive similar earnings from a combination of their job and pension. Under these provisions, members could access pensions early on and enable a gradual retirement. This meant members could access their retirement funds while still working, and also have the benefits of the superannuation system. Superannuation funds in a TRIP account were previously exempted from tax given the transition to retirement.

However, the main use of TRIP has been made by full-time workers as a tax minimisation strategy.[99] The problem with the TRIP provisions was that members could make contributions and withdrawals almost simultaneously and use the fund to create tax-free

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[95] Australian Government, *Parliamentary Debates* (Morrison), above n 65.
[96] *Income Tax Assessment Act 1997* (Cth) s 294-35.
[97] Superannuation Industry (Supervision) Regulations 1994 (Cth) sch 1 pt 6.
[98] Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 2) (Cth).
[99] Explanatory Memorandum, Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (Cth) 10.12.

benefits. The 2016 Turnbull Government reforms sought to curb this abuse and improve the integrity of transition to retirement pensions. TRIP accounts are no longer granted the tax exemption in the retirement phase and earnings will now be taxed at 15 per cent.[100] However, the taxation of individuals who are over 60 years of age that receive transition to retirement pensions remains unchanged, and so this will result in paying no tax or, if they have reached preservation age they will pay tax at their marginal rate albeit with a 15 per cent tax offset. This integrity measure is seeking to prevent abuse of the superannuation system. From a wider system perspective, and as with all superannuation accounts that are concessionally taxed at 15 per cent, this would appear to raise the issue of horizontal inequity. However, in focusing only on the superannuation system as the relevant measure, the tax treatment of TRIP accounts applies equally to all members, and is considered horizontally equitable.

5 *Non-arm's length income: self-managed superannuation funds*

Given the concessional taxation treatment of superfunds, taxpayers could be enticed to transfer income into the fund in order to save on taxation. Self-managed superannuation funds must operate on an arm's length basis,[101] and if found not to because of a scheme or arrangement between close parties that results in more income being transferred into the fund than would have been if they were operating at arm's length, then that income is taxed at the highest marginal rate of 45 per cent.[102] This is consistent with other anti-avoidance taxation penalties that apply the highest marginal rate of tax in the taxation system and is considered horizontally equitable. Given this measure applies equally to all superannuation members, it is considered horizontally equitable.

VI IS THE TAXATION OF BENEFITS EQUITABLE?

A *Superannuation benefits and taxation*

The policy to promote working longer in the work force is in itself not an issue of equity but one of sustainability for the government. Concessions are provided to motivate employees to retire at age 60 and there is vertical inequity in that high-income earners pay no tax (despite their capacity) just as middle-income earners and low-income earners pay no tax. In line with the policy of working longer in the workforce, greater concessions are provided to those who receive a benefit after age 60, in comparison to those between preservation age and age 60. The least concession is provided to those members who receive benefits before preservation age. The taxing of benefits is considered fair and

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[100] Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (Cth) (Act 81 of 2016) sch 8.

[101] Australian Taxation Office, Australian Government, *Non-Arm's Length Income* (16 June 2015) <https://www.ato.gov.au/Super/Self-managed-super-funds/Investing/Tax-on-income/Non-arm-s-length-income>.

[102] *Income Tax Rates Act 1986* (Cth) s 26(1)(b).

equitable in comparison between members of taxed and untaxed funds, for both pensions and lump sums.

1 *Taxing benefits is complex*

The taxation of benefits is a complex area but, fortunately for most Australians, the personnel section/superfund advises, calculates and withholds taxation obligations based on the various superannuation components.

There are many factors affecting how taxation impacts on superannuation benefits, but broadly these include age and preservation age, the condition of release, whether the amounts are tax-free or taxable and involve taxed elements or untaxed elements (based on type of contribution and whether tax has already been paid), whether paid as a lump sum or income, and the level of the balance of the account.

As a general approach, amounts paid to members over 60 years of age from taxed funds are tax-free, while amounts paid to members under 60 years of age involve some tax, and more tax if a benefit is received less than the preservation age. Monies received from a taxed fund are treated more concessionally in comparison to untaxed funds. Death benefits are tax-free when passed on to dependents and are concessionally taxed when passed on to adult non-dependents, although age considerations of both the deceased and dependents vary this somewhat.

Amounts are tax-free or taxable based on the type of contribution and whether tax has already been paid. Non-concessional contributions paid from after-tax income will be non-taxable when received as a benefit, whereas concessional contributions made from pre-tax income and where a tax deduction has been previously sought will be taxable. A tax-free component is always tax-free, while a taxable component from a taxed fund is tax-free and from an untaxed fund is taxed at 15 per cent.

2 *Conditions of release*

A condition of release[103] is the requirement that must be met under legislation before a member can access their superannuation entitlements. Superannuation benefits can be accessed when a member meets the following conditions of release:

- 65 years of age (regardless whether retired or not);[104]
- Preservation age and retired;[105]
- Preservation age[106] and takes a transition to retirement income stream while working.[107]

Accessing superannuation before a condition of release constitutes an illegal early release. Members need to be careful of unscrupulous scheme promoters that make

[103] Superannuation Industry (Supervision) Regulations 1994 (Cth) sch 1.
[104] Ibid sch 1 item 106.
[105] Ibid sch 1 items 101, 110.
[106] Ibid sch 1 item 110.
[107] Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 2) (Cth).

financial gain from encouraging early release. Promoters untruthfully advise members they can transfer their retirement funds into a newly created self-managed super fund and subsequently access them for personal purposes, which is illegal. In this process, the promoters receive a large commission.[108]

However, there are special circumstances or conditions of release where superannuation entitlements can be accessed, and are considered equitable, and apply to a minority of members. These exceptional circumstances involve conditions of release on compassionate grounds,[109] severe financial hardship,[110] permanent[111] or temporary incapacity,[112] and death benefits.[113] Entitlements can also be accessed if less than AU$200[114] for administrative expedience and also in relation to temporary residents departing Australia.[115]

3 *Preservation age*

Preservation age is the age at which a member can access their superannuation providing they meet a condition of release. This was initially 55 years of age under the Hawke Government[116] but was raised by the Howard Government incrementally to 60 years of age[117] and narrows the gap between preservation age and pension age (currently 65.5 years for the 2017/18 income year, increasing to 67 years of age in 2023/24). By 2024/25 the preservation age will be 60 years of age for all members.[118] Table 1 refers to preservation ages.

Table 1: Preservation ages

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57

108 Australian Taxation Office, Australian Government, *Illegal Super Schemes – Beware of Offers to Withdraw Your Super Early* (11 January 2016) <https://www.ato.gov.au/General/Other-languages/In-detail/Information-in-other-languages/Illegal-super-schemes---beware-of-offers-to-withdraw-your-super-early>.
109 Superannuation Industry (Supervision) Regulations 1994 (Cth) sch 1 item 107.
110 Ibid sch 1 item 105.
111 Ibid sch 1 item 103.
112 Ibid sch 1 item 109.
113 Ibid sch 1 item 102.
114 Ibid sch 1 item 104.
115 Ibid sch 1 item 103A.

116 *Occupational Superannuation Standards Act 1987* (Cth).
117 Superannuation Industry (Supervision) Regulations Amendment 1999 (Cth).
118 Mercer says Australia could improve its superannuation system if there were only five years between retirement age and pension age. However, in 2025 there is scheduled to be seven years difference. Mercer, *Melbourne Mercer Global Pension Index 2017* (Australian Centre for Financial Studies, October 2017) <https://australiancentre.com.au/projects/melbourne-mercer-global-pension-index>.

1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
From 1 July 1964	60

4 *Most concessional taxation: retiring after 60; taxed vs untaxed funds; income vs lump sums*

(a) Pensions: taxed funds

The SimplerSuper legislation[119] intended that the taxation of benefits from taxed funds for retirees who were over 60 years of age would be tax-free.[120] The then Treasurer, Peter Costello, announced, 'Cutting taxes will increase retirement incomes, improve incentives to save and strengthen incentives for older Australians to remain in the workforce'.[121] While these may be viewed as admirable objectives, the tax-free policy fails the test for vertical equity in regard to taxation of the superannuation system. Although high-income, middle-income and low-income earners all pay no tax on pensions and lump sums, this is vertically inequitable given that high-income earners have the capacity to pay more.

Further, equity about this tax-free policy at 60 years of age should also be compared to members who receive benefits from untaxed funds.

(b) Pensions: untaxed funds and 10 per cent tax offset

Members from untaxed funds also receive concessional treatment, but when comparing benefits from taxed and untaxed funds, there is horizontal equity.

Pensions received from untaxed funds (public service pensions) by those members who turn 60 years of age receive a 10 per cent tax offset based on the pension amount.[122] For a person who received a AU$100 000 pension, the tax payable[123] would be AU$26 632 in the 2017/18 income year, and reduced by a AU$10 000 tax offset (the maximum offset allowable), the tax would only be AU$16 632 or 17 per cent of the pension in round terms. For a person who receives AU$50 000, the tax payable is AU$7797 less a AU$5000 tax offset, leaving tax payable of only AU$2797 or 6 per cent in round terms. For a person who receives income of AU$25 000 from a pension, who would also receive an aged pension of approximately AU$13 000, a total taxable income of AU$38 000, the tax liability would be AU$5307 less a AU$2500 tax offset, leaving AU$2807 tax payable or 7

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[119] For further details regarding the SimplerSuper policy, see Treasury, Australian Government, *Simplified Superannuation* <https://simplersuper.treasury.gov.au/documents>.

[120] *Income Tax Assessment Act 1997* (Cth) ss 280-30(2) 301–10.

[121] Peter Costello (Treasurer), 'Simplified Superannuation Legislation Introduced into Parliament' (Press Release, Treasury, Australian Government, 7 December 2006) <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2006/131.htm&pageID=003&min=phc&Year=2006&DocType=0>.

[122] *Income Tax Assessment Act 1997* (Cth) ss 280-30(3), s 301-100.

[123] To calculate tax payable, see TaxCalc, *The Australian Tax Calculator* (2018/19) <https://www.taxcalc.com.au>.

per cent rounded. There is vertical equity in relation to public service pensions in that the higher income earner pensioners pay higher rates of tax in comparison to the lower income earners.

The above examples also show that lower income earners are very much supported by the aged pension in addition to their superannuation, and have increased benefits, which also assists in terms of vertical equity.

From a horizontal equity perspective, public servants over 60 years of age pay tax in comparison to those who receive a pension from taxed funds that pay no tax. However, with a closer view, this is not inequitable. Taxed fund members have paid tax of 15 per cent on the fund income every year – accordingly, there is a horizontal equity as the untaxed fund members above pay between 7 per cent and 17 per cent tax. Therefore, it is a roughly fair deal that the taxed fund members receive their pensions tax-free as they had already paid tax in deriving those pensions (15 per cent for concessional contributions and 15 per cent on fund income) in comparison to untaxed fund members who gave non-concessional contributions from after-tax monies but never paid tax on fund income, and therefore pay tax at the benefits stage on the taxable benefits after offsetting 10 per cent. This roughly achieves horizontal equity.

In addition, it should be noted that, in terms of equity, the tax offset of 10 per cent afforded to public servants of untaxed funds, cuts out at AU$100 000[124] so that it broadly and fairly equates to the AU$1.6 million cap limitations. This also is a fair measure in terms of both horizontal equity in comparing members of taxed and untaxed funds, and vertical equity in comparing high-income and low-income members of untaxed funds.

(c) Lump sums

Lump sums received from taxed funds paid to retirees over 60 years of age are tax-free.[125] Lump sums received from untaxed funds for retirees over 60 years of age still receive some concessional treatment. Tax is payable at the marginal rate of tax or 15 per cent, whichever is the lower, unless the lump sum exceeds the untaxed plan cap ($1.445m in the 2017/18 income year), whereby the excess is taxed at the highest marginal rate of tax (45 per cent).[126] For the same reasons as discussed above this is broadly equitable in terms of horizontal equity.

5 *Less concessional taxation: age between preservation age and 60; taxed vs untaxed funds; income vs lump sums*

If a member meets a condition of release and retires between their preservation age and 60 years of age, the taxation impact is more costly than if over the age of 60. This is an

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[124] *Income Tax Assessment Act 1997* (Cth) s 294-30(1). See also Australian Taxation Office, Australian Government, LCR 2017/1: *Superannuation Reform: Capped Defined Benefit Income Streams: Pensions or Annuities Paid from Non-Commutable, Life Expectancy or Market-Linked Products* (19 February 2018) s 32(c) <https://www.ato.gov.au/law/view/document?DocID=COG/LCR20171/NAT/ATO/00001>.

[125] *Income Tax Assessment Act 1997* (Cth) ss 280-30(2), s 301-10.

[126] Ibid s 301-95.

example of vertical inequity. This is a policy choice encouraging Australians to work until 60 years of age, and provides a less concessional arrangement than those who retire at 60 years of age onwards. The rules apply commonly to all who choose to leave the workforce prior to age 60 and therefore there is horizontal equity. As discussed above, greater concessions are applied to those from taxed funds compared to untaxed funds and this is equitable as discussed above because taxed fund members paid tax on their fund income, while untaxed members did not.

However, these arrangements are vertically inequitable in comparison to the tax-free income and lump sums if paid out after 60 years of age.

No tax is paid on the tax-free component.[127]

(a) Pensions

In taxed funds, members under 60 years of age as retirees from taxed funds pay tax on their marginal rates of tax, and receive a 15 per cent tax offset to compensate them for earlier years where they paid 15 per cent tax on their contributions.[128] In contrast, those public servants who are less than 60 years of age pay marginal rates of tax on pension income, until they reach age 60 and then are eligible for the 10 per cent tax offset.[129] This is broadly fair in terms of horizontal equity given that there is no tax paid on income of the public service fund.

(b) Lump sums

For a taxed fund member, the tax payable for a lump sum from a taxed fund is tax-free unless the low rate cap (AU$200 000 in the 2017/18 income year) has been exceeded and, if so, only the excess above the cap will be taxed at the marginal rate of tax or 15 per cent, whichever is lower.[130]

For an untaxed fund member, the tax is more costly. The tax on the lump sum will be the marginal rate or 15 per cent, whichever is lower. If the lump sum is above the low rate cap (AU$200 000 in the 2017/18 income year) the excess above the cap will be taxed at the marginal rate of tax or 30 per cent, whichever is the lower. If the lump sum is above the untaxed plan cap ($1.445m in the 2017/18 income year), the excess will be taxed at the top marginal rate of 45 per cent.[131]

6 *Least concessional taxation: age below preservation age; taxed vs untaxed funds; income vs lump sums*

If a member meets a condition of release and retires before their preservation age, the taxation impact is the most costly option to the member. This is a policy choice around encouraging members to retire at age 60. However, these arrangements are vertically

[127] Ibid s 301-15.
[128] Ibid s 301-25.
[129] Ibid s 301-100.
[130] Ibid s 301-20.
[131] Ibid s 301-105.

inequitable in comparison to tax-free income and lump sums paid out after 60 years of age.

No tax is paid on the tax-free component.[132]

(a) Pensions

In relation to the taxable component, the income stream will be taxed at the member's marginal rate of tax, whether received from a taxed fund or untaxed fund.[133] This is horizontal equity as no tax concession has been provided. These arrangements are vertically inequitable in comparison to the tax-free benefits at age 60.

(b) Lump sums

In relation to a taxed fund, the lump sum will be taxed at 20 per cent or at the marginal rate, whichever is the lower.[134] In relation to an untaxed fund, the lump sum will be taxed at 30 per cent or at the marginal rate, whichever is the lower, unless the lump sum is more than the untaxed plan cap ($1.445m in the 2017/18 income year), in which case the excess is taxed at the top marginal tax rate. [135] This is broadly equitable in terms of horizontal equity. These arrangements are vertically inequitable in comparison to tax-free benefits at age 60.

7 *Death benefits paid to family members and AU$1.6 million cap*

All death benefits paid to dependents in a lump sum are tax-free. [136]

Benefits paid in a pension depend on age of the deceased and dependents. Dependents include spouse, children under 18 or those children financially dependent upon the member, or any persons who are interdependent in their relationship with the member, or any permanently disabled child regardless of age.[137]

The tax-free component of a death pension is tax-free. [138] This applies whether from a taxed or untaxed fund.

Where a death pension is paid from a taxed fund and either the deceased or dependent were 60 years of age or over, the income is tax-free. [139] Where in a taxed fund both the deceased and the dependent were under 60 years of age, the income is taxed at marginal rates less a 15 per cent tax offset.[140]

[132] Ibid s 301-30.
[133] General rates of tax apply.
[134] *Income Tax Assessment Act 1997* (Cth) s 301-30.
[135] Ibid s 301-115.
[136] Ibid s 302-60.
[137] Ibid ss 302-195–200.
[138] Ibid ss 302-70–80.
[139] Ibid s 302-65.
[140] Ibid s 302-70.

Where a death pension is paid from an untaxed fund and either the deceased or dependent were 60 years of age or over, the dependent is entitled to a 10 per cent tax offset.[141] Where in an untaxed fund both the deceased and the dependent were under 60 years of age, the income is included in assessable income and taxed at marginal rates.[142]

Death benefits paid to non-dependents can only be in the form of a lump sum and involve a benefits tax. Non-dependents include adult children, who are not dependents and have no dependency relationship.[143] No tax is paid on the tax-free component.[144] A tax of 15 per cent is payable from taxed funds and a tax of 30 per cent from untaxed funds applies.[145]

The AU$1.6 million balance cap needs to be considered in situations with death of a member. If one partner dies, and if their balance is transferred to the surviving partner, this amount will be included in the surviving partner's new balance. If this results in the surviving partner's cap being exceeded, the excess will need to be transferred to an accumulation account.[146]

The policy regarding death benefits is broadly consistent with the taxation of benefits above that highlights vertical inequity, but is considered equitable from a compassionate perspective.

B *Other benefits*

As previously mentioned various benefits are provided in other exceptional circumstances. Different taxing rates apply in relation to different conditions of release such as medical condition, permanent incapacity, temporary residents, etc – but these uncommon cases are not discussed here.

VII Future Reform

A *Summarising horizontal and vertical equity*

In reviewing the components of the taxation of superannuation contributions, fund income and benefits, a summary of the findings concerning horizontal and vertical equity are summarised in Appendix A.

Appendix A identifies that the majority of the taxing components are broadly equitable in terms of horizontal and vertical equity, and the Turnbull Government November 2016 reforms have assisted in improving the equity in the taxation system.

However, there remains vertical inequity across the superannuation system:

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[141] Ibid s 302-85.
[142] Ibid s 302-90.
[143] Non-dependents are those who are not dependents nor have a dependency relationship.
[144] *Income Tax Assessment Act 1997* (Cth) s 302-140.
[145] Ibid s 302-145.
[146] Ibid s 294-35.

- SG advantages high- and middle-income earners compared to low-income earners, because of its flat rate.
- Concessional contributions give high-income earners an advantage compared to middle and low-income earners. This remains so despite the additional tax of 15 per cent under the Div 293 Tax.
- The low taxation of funds (15 per cent) advantages high-income earners.
- High-income earners aged 60 and over are advantaged significantly as they pay no tax but have the capacity to pay compared to middle and lower income earners. In addition, high-income earners over 60 years of age are advantaged compared to those who have retired after their preservation age but before 60 years of age, or have retired prior to their preservation age.

In terms of horizontal equity, the grandfathering of assets that are excess to the AU$1.6 million cap, which are taxed at 15 per cent only, should be taxed at the marginal rate of tax. Finally, there is horizontal inequity given various age discriminations in the concessional contributions work test over 65 years of age, and the government co-contributions to those over 71 years of age. Both requirements should be removed.

B *Future reform options*

Based on the preceding discussion and as outlined in Attachment A, the following reforms address horizontal and vertical inequity in the taxation of superannuation.

1 *Contributions*

1. Introduce a higher rate of SG for low-income earners.

2. Lower the threshold for the Div 293 Tax (say to AU$180 000) to promote further equity or, alternatively, impose the taxation of concessional contributions at an individual's marginal rate of tax less 15 per cent.

3. Abolish the work test for people over 65 making contributions.

4. Abolish the age test in relation to government co-contributions.

2 *Fund income*

5. For fund accounts less than AU$1.6 million, increase the tax for high-income earners say to 27.5 per cent (the lowest tax paid by small business companies). Alternatively, to match the benefits of high-income earners regarding fund income, provide middle-income earners with something akin to the LISTO afforded to low-income earners.

6. Also, for fund accounts that existed prior to 1 July 2017 and were greater than AU$1.6 million, increase the tax to 27.5 per cent.

3 *Benefits*

7. To put all retirees at the same level as those who turn 60 years of age, provide all retirees from a taxed fund who have met a condition of release with benefits tax-free. (Being less than 60 years of age and less than preservation age should be disregarded.) To promote horizontal equity under this arrangement, subject retirees benefits from an untaxed fund to a 10 per cent tax, or marginal tax, whichever is the lower.

VIII CONCLUSION

The taxation of superannuation has most components that are equitable in terms of horizontal and vertical equity.

However, some are inequitable, in particular regarding vertical equity in the contributions stage, fund income stage and benefits stage. The grandfathering of accounts in excess of AU$1.6 million breaches horizontal equity as does the work test for concessional contributions and the age test for government co-contributions.

In addition, by using the perspective of horizontal and vertical equity as a filter of fairness, novel recommendations have been deduced such as increasing the SG rate for low-income earners and proposing similar tax treatment on benefits for all retirees, regardless of conditions such as age 60.

Accordingly, further legislative reform should be made to make the treatment of these concessional taxation advantages fairer to all Australians.

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APPENDIX A: SNAPSHOT REGARDING HORIZONTAL AND VERTICAL EQUITY

Contribution, fund income or benefits	Specific component issue	Horizontal	Vertical	Equitable (yes/no)
4.1 Employer contributions for employees				
	SG – almost universal access	Horizontal		Yes
	SG – flat rate		Vertical	No
4.3 Concessional contributions				
	Employer	Horizontal		Yes
	Self-employed, non-employed and employees – equally claim	Horizontal		Yes
	Higher income earners (compared to low-income earners), redressed in part by Div 293 Tax		Vertical	No
	Contributions splitting – equal rights	Horizontal	Vertical	Yes
	Catch up – flexibility	Horizontal		Yes
4.2 ECT	Excess contributions tax	Horizontal		Yes
4.4 Non-concessional contributions				
	Individuals – high–low income	Horizontal	Vertical	Yes
	Spouse tax offset	Horizontal		Yes
	Work test for over 65	Horizontal		No
4.2 ECT	Excess contributions tax	Horizontal		Yes
4.5 Government contributions				
	LISC/LISTO		Vertical	Yes
	Government co-contributions – age test	Horizontal		No

	Government co-contributions		Vertical	Yes

5.1 Fund income				
	Complying fund income < AU$1.6 million cap		Vertical	No
	Non-complying fund	Horizontal		Yes
	Grandfathered accounts > AU$1.6 million cap	Horizontal		No
	Retirement phase – income tax-free	Horizontal		Yes
	Transition to retirement pensions	Horizontal		Yes
	Non-arm's length income for self-managed super funds	Horizontal		Yes

6.1 Taxing of benefits				
	Retiring after 60 – income – taxed fund is tax-free and untaxed fund receives 10 per cent tax offset applied to income – greatest advantage to over 60 – unfair as high-income earners benefit more than low-income earner		Vertical	No
	AU$100 000 cap for untaxed fund receive 10 per cent tax offset – high-income pensions pay more tax than middle and low-income pensions	Horizontal	Vertical	Yes
	Retiring after 60 – income – taxed funds vs untaxed funds – comparing taxing benefits of income	Horizontal		Yes
	Retiring after 60 – lump sums – tax-free for taxed funds compared to untaxed funds, lump sums incur 15 per cent tax or marginal tax rate (whichever is lower) and excess over untaxed plan cap is taxed at 45 per cent	Horizontal		Yes

	Retiring after preservation age but before 60 – compared to retiring after 60 – middle disadvantage		Vertical	No
	Retiring after preservation age but before 60 – income – taxed fund taxed at marginal rates less 15 per cent offset, untaxed funds taxed at marginal rates	Horizontal		Yes
	Retiring after preservation age but before 60 – lump sums – taxed fund lump sum tax-free unless exceeded the low rate cap (AU$200 000), excess only taxed at marginal rate or 15 per cent, whichever is lower, and untaxed fund lump sums are taxed at marginal rate or 15 per cent, whichever is lower, excess above low rate cap is taxed at marginal rate or 30 per cent, whichever is lower	Horizontal		Yes
	Retiring before preservation age – compared to retiring after 60 – greatest disadvantage		Vertical	No
	Retiring before preservation age – income – taxed at marginal rate whether received from taxed fund or untaxed fund	Horizontal		Yes
	Retiring before preservation age – lump sums – taxed fund lump sums are taxed at 20 per cent or marginal rate whichever is the lower – untaxed fund lump sums taxed at 30 per cent or marginal rate, whichever is the lower, unless lump sum exceeds the untaxed plan cap where the excess is taxed at marginal rates.	Horizontal		Yes
	Death benefits – complex – broadly similar to above concessions – but on compassionate grounds considered fair	Horizontal		Yes