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Ms Belinda Black
Senior Advisor
Individuals Tax Unit
Individuals and Indirect Tax Division
Treasury
Langton Cres, Parkes ACT 2600

Online: genuineredundancies@treasury.gov.au

Dear Ms Black,

Exposure draft genuine redundancy and early retirement scheme payments

CPA Australia represents the diverse interests of 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

The exposure draft *Treasury Laws Amendment (2019 Measures No. 2) Bill 2019* seeks to align the age requirements for genuine redundancy to the age at which an individual qualifies for an age pension. CPA Australia supports measures that reduce discrimination against older Australians and improve consistency between the tax and transfer systems, and so are concerned that the exposure draft retains the age limit rather than repeals it.

Simply put, there should not be differential treatment of genuine redundancy payments simply because of age. The Productivity Commission paper, An Ageing Australia: Preparing for the Future, identified the shift for Australians to work to a higher age, self-manage their retirement and reduce reliance on the aged pension, which the proposed provisions arguably undermine. Notions of the 'traditional working age' are outdated and Treasury's own Intergenerational Report shows that by 2024-25 almost 30 per cent of females and more than 40 per cent of males between 65-69, and around 10 per cent of males aged 70 and over will remain in the work force[1]. This change is part of a global trend with the United States Department of Labor estimating that the 65 and older labour force will be the fastest growing in the US in the next five years[2].

Australia does not have a statutory retirement age meaning workers are not forced out of their jobs once they reach a particular age. However, these provisions effectively create a retirement age within statute using the legislated age requirement for the age pension. For those who continue working beyond that age, these laws can cost them significant amounts in tax if they become redundant or wish to participate in an early retirement scheme, relative to those of a lower age. Redundancy is already a challenging and confronting experience and the prospects of re-employment at that age are significantly lower than other workers[3]. Also, they are less likely to achieve a wage

[1] p.141, Appendix D: Age specific participation rates, 2015 Intergenerational Report, The Treasury, 2015
[2] Toossi, M. and Torpey, E., Older workers: labor force trends and career options, Bureau of Labor Statistics, United States Department of Labour, 2017
[3] Johnson, R.W. and Butrica, B., Age disparities in unemployment and reemployment durnig the great recession and recovery, Urban Institute, 2012

commensurate with their pre-redundancy employment[4]. The tax treatment of redundancy payments for those over the age pension age effectively punishes them even further at a difficult time in their working lives.

Additional Background Information

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* amended the *Income Tax Assessment Act 1997 (ITAA)* to include the genuine redundancy and early retirement scheme payments provisions, including those related to the age limit, effective 1 July 2007. No mention of the reasoning behind the age limit was included in the Explanatory Memorandum, nor in the second reading speeches. The earlier Treasury consultation and Final decisions report also do not provide clarity.

The provision has been unsuccessfully challenged in court. In HARSTE v FC of T 2013 ATC . The Tribunal found that despite, but for age, the payment would have been a genuine redundancy, Section 40 of the *Age Discrimination Act 2004 (ADA)* provides that anything done in direct compliance with taxation laws was not unlawful under the *ADA*.

The Australian Human Rights Commission Working past our 60s report identified certain age limits or age caps limiting older worker entitlements throughout government and industry policy. The report considered the superannuation age cut-offs a structural barrier and CPA Australia views the genuine redundancy age cap in a similar vein.

The age cap creates an incentive for the employer to exit employees before they qualify for the age pension and for the employee to accept any offer due to the loss of tax savings once they are of pension age. As an example, for a separation payment of $100,000, tax savings of up to $40,000 and further tax benefits on leave payouts and superannuation contributions are available for a genuine redundancy compared to an employment termination payment[5].

A CPA Australia post on the Board of Taxation's Sounding Board elicited the following comments:

- "*A client will pay an additional $100,000 in tax as a result of this"*
- "*Agree that this is a discriminatory practice…it encourages people to accept a redundancy before they might really be ready."*

The benefits for both employers and employees of the removal of the age limit include:

- Greater flexibility in the management of genuine redundancy and early retirement schemes
- No age-based distortion of decisions relating to offering and accepting redundacy offers
- No incentive to discriminate against workers eligible for the age pension as a result of tax policy
- Consistent treatment of taxpayers who have been made redundant regardless of age.

For a contrasting policy approach, in the United Kingdom, the *Employment Equality (Age) Regulations 2006* removed the 65 year upper age limit for statutory redundancy payments. These regulations were introduced to comply with the UK's obligations under European Council Directive 2000/78/EC. From a taxation perspective, this

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[4] Quintini, G. and Venn, D., Back to work: re-employment, earnings and skill use after job displacement, OECD, 2013
[5] BDO Australia, Genuine redundancy and early retirement scheme payments - finally some good tax news, Super News newsletter, 14 February 2019

enabled statutory redundancy payment recipients aged above 65 to access the £30,000 tax free threshold available in section 403 of the *Income Tax (Earnings and Pensions) Act 2003*.

CPA Australia submits that all individuals should be able to receive a tax-free component on payments received through genuine redundancies or early retirement schemes and that subparagraphs 83-175(2)(a)(i) and 83-180(2)(a)(i)of the *ITAA* should be repealed.

The removal of the age limit provides equitable outcomes for all employees subject to genuine redundancy or early retirement schemes. It aligns tax law with the realities of the modern employment environment, the ageing population and supports older workers to maintain their participation in the workforce.

If you have any queries do not hesitate to contact Gavan Ord, Manager Business and Investment Policy at CPA Australia on gavan.ord@cpaaustralia.com.au or 03 9606 9695.

Yours sincerely

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Dr Gary Pflugrath CPA

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