



22 February 2024

Alan Raine
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Alan Raine

RE: Senate Economics Legislation Committee Inquiry - Treasury Laws Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023

The Financial Services Council (FSC) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (the Committee) on the *Treasury Laws Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023* (the Bill), which aims to impose a new tax on individuals with a total superannuation balance exceeding \$3 million as well as include an array of other measures.

The FSC has previously voiced concerns to the Government, including on the initial proposal and the exposure draft of the current Bill, highlighting several considerations that would improve the administrative efficiency of the proposed regime and provide certainty for individual taxpayers. The considerations flagged in the previous consultation on the exposure draft (see [Attachment A](#)) remain and therefore the FSC cannot support the Bill in its current form. The FSC implore the Committee to recommend changes to the Bill to reflect the flagged concerns to ensure the proposed regime can be efficiently implemented by FSC members and address the uncertainty that exists for taxpayers impacted by the Bill as it stands.

The FSC also notes the 'Other Measures' in the bill and particularly would like to highlight the changes proposed to weaken the Financial Regular Assessment Authority (FRAA) put in place on recommendation of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission).¹ With the changes proposed, the FRAA would not be able to hold the regulators to account nor assess their capability to the levels recommended by the Royal Commission. The FSC would also like to address the update to the payments system regulatory framework component of the Bill, to ensure updates to the payments framework have the appropriate safeguards in place before being legislated.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full

¹ [The Royal Commission \[Vol. 1\] - Final Report](#)

Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Key considerations for the *Better Targeted Superannuation Concessions* measure

On 18 October 2023, the FSC made a submission to the Treasury requesting several considerations on the exposure draft version of the Bill. The current version of the Bill does not address these concerns and therefore, the FSC would not support the legislation in its current form. Please see the full submission at [Attachment A](#) which details the FSC's concerns with the Bill.

The key considerations the FSC requests that the Committee address are:

1. The lack of indexation of the \$3 million threshold as this is intergenerationally unfair. Leaving the decision of when and if changes are made to the \$3 million threshold to a future Government does not provide superannuation consumers and the industry with sufficient certainty.
2. The current calculation approach, involving taxation of unrealised capital gains, which we believe is bad policy that will impact a range of individuals with illiquid assets. The legislation should be amended so that a deemed rate of return is applied – this would be administratively simpler, avoid the taxation of unrealised capital gains, and ensure equal treatment across all superannuation fund structures and investment portfolios.
3. The change being retrospective, which applies a new tax to superannuation balances that were built up under previous tax settings. We believe it would be appropriate and fair to provide impacted individuals the option of transferring their assets outside of the superannuation system without incurring any tax impacts via a condition of release.

Recommendation 1

The FSC does not support the Bill in its current form and recommends that the Bill only be supported if the key issues identified above as well as the detailed considerations in [Attachment A](#) are addressed. This would improve the administrative efficiency of the regime and provide certainty for individual taxpayers.

The FRAA is not able to achieve its core purpose set out in the Royal Commission

The FRAA was established in response to recommendations of the Royal Commission to ensure the regulators are working as intended and are fit for purpose. The recommendations include having the FRAA report biannually for both APRA and ASIC to the Minister, and through the Minister to Parliament to raise any concerns discovered in the oversight of:

- the effectiveness of each regulator in discharging its functions and meeting its statutory obligations;
- the performance of the leaders and decision-makers within the regulators; and
- how the regulator exercises its statutory powers.

Moving the review frequency from two to five years is a considerable watering down on the recommendations of the Royal Commission which flagged several concerns about the conduct of regulators. The FSC holds concern with this extreme reduction in scrutiny and accountability for the

regulators and does not support the weakening of the oversight.

Further options should be considered such as a lesser reduction in frequency to triennial reviews, this would still see a reduction of resources, but also apply a high level of scrutiny to the regulators which was stressed as an important recommendation of the Royal Commission.

Recommendation 2

The FSC does not support moving the frequency of the reviews of APRA and ASIC to every five years. The FSC recommends that the FRAA legislation component of the Bill be removed to maintain the frequency of the reviews on APRA and ASIC or, at most, be altered to reduce the frequency of reviews to triennial.

Update the payments system regulatory framework to address risks posed by new and emerging technologies

On 19 July 2023, the FSC made a submission to the Treasury on their *Payments System Modernisation* consultation². The FSC sought further clarity with regard to the extension of designation powers to the responsible Minister, in this case the Treasurer, in relation to matters of national interest. Specifically, the FSC's concerns relate to the fact that there appears to be no positive obligation to consult on the use of these powers and no parameters around what considerations will be made by the Minister in utilising these powers.

The Bill, as it stands, does not provide any additional clarity or provide avenues for a positive duty to consult with industry and affected parties and as such the FSC recommends that the committee consider the inclusion of a list of considerations the Treasurer should make in the process of making a designation and a positive duty to consult be included in the legislation.

The addition of these components would ensure that any designation made by the Treasurer in relation to payments system regulation is carefully considered and includes the input of industry, who can provide insights into the practicality of how these changes would impact their business and ultimately consumers.

Recommendation 3

The legislation can be enhanced through the addition of a list of considerations that the Treasurer should make, as well as a positive duty to consult prior to the Treasurer exercising their designation powers.

If you would like to discuss this submission or have any questions, please contact Aidan Johnson in the first instance at [REDACTED].

Yours sincerely,

Spiro Premetis

Executive Director, Policy and Advocacy

ATTACHMENT A: FSC Submission to Treasury – Better targeted superannuation concessions (ED)

² [FSC Submission - Payments System Modernisation](#)