

6 October 2016

Dear Committee

## **FAIR AND SUSTAINABLE SUPERANNUATION BILL - TRANSFER BALANCE CAPS**

I am making a submission on the above bill of legislation in the hope that you will change some unfair aspects of the legislation.

The concept of the legislation is to prevent excessive tax free amounts in retirement and tax minimisation through estate planning and I agree with the aims. However, not all people receiving income streams are retirees (over 60 or doing part time work and getting pensions).

As way of background I am a woman in my forties and have 3 dependent children. My husband was 50 and he passed away last year after suffering Motor Neurone Disease.

We had little other superannuation as we started our own businesses only 2 years after the introduction of the Superannuation Guarantee system. We ran the businesses up until my husband's illness and due to the rapid onset of the illness they had to be shut down almost immediately as being in a rural area it is extremely difficult and slow to sell a small business. This left us with nothing except his Total Permanent Disability and a Life insurance policy. The amount of insurance was calculated by projecting the money required to educate our children, pay the mortgage and a moderate lifestyle and then discounting that amount to take into account investment earnings in a tax free environment and not allowing for any excess or capital remaining. This was taken as a pension from our superannuation fund.

After his passing, the pension automatically reverted to me and the pension balance exceeds the proposed cap of \$1.6 million.

### **KEY ISSUES**

- The application of this legislation to pensions that arose because of the death of the member of the superannuation fund prior to the announcement of the legislation has the effect of rewriting the will of my husband and is in direct conflict with the terms of the pension agreement, and the binding death nomination that he signed and his superannuation fund has acted in accordance with, that he entered into prior to his death.
- The legislation seeks to penalise me by applying my husbands pension cap to me. I will never have a pension cap of my own and will not be ever able to accumulate any superannuation.

- The legislation allows child dependants to receive a death benefit pension and then have a pension cap of their own.
- The Budget announced that it requires the commutation of pensions in excess of the cap to accumulation but in the case of reversionary death pensions the legislation does not allow the money to remain in accumulation.
- The legislation exempts personal injury court settlements from the legislation but not Total Permanent Disability insurance payments.

### **DISCUSSION OF THE ISSUES**

Governments should not be allowed to enact legislation that overrides contractual obligations entered into in good faith and in accordance with the law that applied at the time. Governments especially should not be allowed to do so in the case of a deceased person. Previously the objective of superannuation was the sole purpose of providing retirement benefits or benefits to a dependant on the members death. There is nothing wrong with superannuation providing death benefits. If there was then why are insurance funds forcing members to take out life insurance? Isnt this one aspect of the evil “estate planning” the government is referring to and saying that superannuation shouldn’t be used for? This seems like a contradiction! The government is saying that every person who has taken out life insurance in superannuation doing the wrong thing.

When legislation is changed, people who are still alive have the opportunity, albeit a costly one, to alter their wills so that their affairs are structured in such a way that their wishes for the well being of their family is catered for in accordance with the legislation at the time. In addition, the payout values of life insurance can be adjusted in line with changes as well.

This is what was done in our case but the retrospective application of this legislation puts undue financial pressure on me and my family as the value of the insurance was based on the amount required for the upkeep of the family, education costs and mortgage repayments, not allowing for any amount of capital sum and then discounting the value to take into account investment earnings and that the pension was tax free.

The legislation now has changed all of that and the amount is now inadequate. I will be forced to take any amount in excess of the cap out of the superannuation system altogether and not be allowed to stay in an accumulation account, as the Budget announcements stated. As a result the investment earnings will be subject to marginal tax rates to me leaving a large shortfall in my family budget.

In addition, should I have a partner at some stage there is now a risk that in a divorce or split in the relationship then half of the money will be lost to my children.

However, I am pleased this legislation has allowed a death benefit pension commutation to retain its status as a death benefit, as previously any commutation of the excess over the caps of this death benefit would have turned the death benefit into an accumulation in my name and meant that would have been inaccessible to me to support my kids until I am eligible to retire, which is likely another 25 years. In addition it would have been taxed at up to 45% on any withdrawals as the money was from the insurance.

It seems to conflict with treatment of retirees who can each maintain their balances both up to \$1.6 million in superannuation.

**Therefore, pensions in existence before the Budget announcements or 30 June 2017 should be exempted from this legislation.**

The legislation transfers my husband's transfer balance cap to me as I am in receipt of the reversionary pension and there are 2 major problems with this.

I will never be allowed to contribute any money to superannuation for myself or by any future employer will not be able to contribute to superannuation on my behalf because I will already be treated as having used my pension cap even though it is my husbands cap that's been used and his pension will be exhausted from paying the kids expenses, mortgage and living expenses until they are independent. Yet it allows a child to receive a death pension up to the caps and to have an accumulation account. This is unfair.

The government seems to recognise this and says in the Explanatory material

“ The modifications generally allow the child to receive their share of the deceased's retirement assets without prejudice to the child's future retirement. “

The legislation will effectively ignore the death benefit pension if paid directly to the children and not count it towards their pension cap. Thus allowing the child the full benefit of their own pension cap later in life but it will not allow a spouse who is managing the money on behalf of the children to receive the same benefit. This is unfair as people who are still alive can change their affairs and wills to take account of this, but I cannot rewrite my husbands will!

It is also not fair that because of my tragedy I only will have a pension which will be wholly used up supporting and educating my children and then not be allowed to contribute to superannuation for my own retirement. But if my children got the pensions directly they could each have a full pension cap each and still their own \$1.6million when they retire as well (\$3.2 million each over their lifetime) and a retired couple get \$3.2 million as well as a generous tax free income on assets outside of retirement and I get nothing! In both situations it is money they have to freely spend on themselves. In my case I have to spend it on each of the kids and will have nothing for myself in retirement only Centrelink pension.

Furthermore, if my husband in his will left his pension equally to myself and the 3 kids the tax free pension account could be a total of \$6.4 million between the 4 of us. It is just wrong and im sure some people will be changing their wills to do this.

It seems the government thinks that the situation is different because children have to take any remainder out as a lump sum when they turn 25. Well I can assure you there is not any difference because there will be nothing left by the time the youngest of my children turn 25.

The legislation states in the Summary of the Regulation Impact Statement that the objective of these superannuation measures is to improve fairness and the "flexibility of the measures are aimed to support broken work patterns" and encourage people to save for their retirement. Well it is not at all fair in my situation.

**A fair solution to this is to allow reversionary death pensions that were in place before the introduction of these measures at Budget Night or some other time, to be exempted from these rules possibly by excluding such pensions from the definition. This could be done by grandfathering or by having my husband's pension as a debit to my balance so it doesn't affect my future transfer balance cap. Alternatively, increase my transfer cap for each child to have the same effect the pension would have received had they got it directly. Also a person in receipt of these pensions should not be prohibited from contributing to super either themselves or by employers up to their own cap.**

My final issue is that whilst the legislation has exempted pensions for personal injury settlements and lump sum workers compensation payments from the caps, it has not allowed an exemption for insurance settlements for total permanent disability and terminal illness. To be eligible to receive either of these insurance payments these claims also require "two medical practitioners to certify that the individual is unlikely to ever be able to be gainfully employed in a capacity for which they are reasonably qualified as a result of the injury" or that they have less than 12 months to live. These people require just as much care and costly maintenance. They should be treated the same as court and workers compensation settlements it makes no difference, injury or illness, whether it happened at home or at work.

Total Permanent Disablement and Life Insurance Payments should be treated the same as Structured Settlement Payments under the legislation

I hope you will amend the legislation to bring some fairness into it for people who are in my situation and similar.

Regards