SUBMISSION

Submission to Senate Economics Legislation Committee—*Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019*

15 August 2019

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Senate Standing Committees on Economics

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Parliament House

Canberra ACT 2600

Via online submission site and email: economics.sen@aph.gov.au

15 August 2019

Dear Mr Fitt

Inquiry into *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019*

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* ("*2019 Tax Integrity No 1 Bill*").

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $2.8 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

General comments

ASFA's submission relates to Schedule 7 of the *2019 Tax Integrity No 1 Bill*, which proposes amendments to improve the integrity of the Superannuation Guarantee ("SG") system.

ASFA is strongly committed to measures and polices that reflect the core role of the superannuation system in providing adequate retirement incomes for all Australians. As such, we welcome the amendments in Schedule 7, that are designed to prevent an employer using salary sacrificed contributions made by their employees to reduce their SG obligations.

The amendments in Schedule 7 were previously contained in Schedule 2 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017*, which lapsed at the conclusion of the 45th Parliament.

Under the *Superannuation Guarantee (Administration) Act 1992* (SGA Act) as currently drafted, there is no mechanism to prevent employers:

- counting salary sacrificed contributions made by employees toward discharging their SG obligations, and/or
- calculating those SG obligations on the employees' reduced earnings base, after deduction of the salary sacrificed contributions.

The making of salary sacrificed contributions necessarily involves an employee foregoing current disposable income, with a view to boosting their superannuation savings for use in their retirement. Ideally, the impacts on the level of SG contributions to be made by the employer is a matter that would be discussed during negotiation of the salary sacrifice arrangement, with the consequences clearly understood by the employee. However, this does not always occur, with the result that frequently the employee ends up with less superannuation, and therefore less total remuneration, than they had expected.

In effect, the employer's conduct, in taking advantage of the lack of an explicit prohibition on this behaviour, runs counter to efforts by their employees to boost their retirement savings by making additional contributions. This is, in ASFA's view, inappropriate.

We strongly welcome the proposed amendments to the SGA Act to ensure that an individual's salary sacrificed contributions cannot be used to reduce their employer's SG obligations.

As well as enhancing equity, the proposed amendments to the SGA Act are also timely, as they will improve consistency in the treatment of employees who make additional contributions to their superannuation.

Recent reforms to the taxation law have removed a restriction which allowed individuals to claim a tax deduction for personal contributions only where they derived less than 10 per cent of their income from employment sources. The proposed amendments to the SGA Act will ensure that those individuals who utilise salary sacrifice to make additional superannuation contributions are treated consistently, for SG purposes, with those who make contributions from after-tax monies and subsequently claim an income tax deduction.

Need to align commencement of Schedule 7 with employers' reporting requirements

In order to ensure that compliance with the amendments proposed by Schedule 7 can be effectively monitored, it is critical to ensure the Australian Taxation Office ("ATO") receives information clearly identifying salary sacrifice contributions.

The *Treasury Laws Amendment (2018 Measures No 4) Act 2019* ("*2018 Measures No 4 Act*"), which received Royal Assent on 1 March 2019, includes an amendment designed to require employers to report to the ATO salary sacrificed amounts paid to their employees' superannuation funds under the Single Touch Payroll regime (refer Part 2 of Schedule 3). The commencement of that amendment is expressly contingent on the "commencement of Schedule 2 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Act 2019*".

As noted above, the amendments in Schedule 7 to the *2019 Tax Integrity No 1 Bill* were previously contained in the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017.* However, as that Bill did not proceed to become law, we are concerned that the 'trigger' for commencement of those employer reporting requirements may not be effective.

To address this, and ensure that the ATO receives appropriate reporting of salary sacrificed contributions, ASFA notes that it may be necessary for the Government to amend the commencement provisions of the *2018 Measures No 4 Act*, to link the commencement of the employer reporting requirements to the commencement of Schedule 7 of the *2019 Tax Integrity No 1 Bill*.

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If you have any queries or comments in relation to the content of our submission, please contact me on [redacted] or [redacted], Senior Policy Adviser, on ([redacted] or by email [redacted]

Yours sincerely

Glen McCrea

Chief Policy Officer