



6 June 2018

Mr Mark Fitt
Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600
Uploaded via inquiry webpage

Dear Mr Fitt

Thank you for your email dated 4 June 2018, and the opportunity to comment on the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018.

We have confined our submission to Schedule 2, dealing with superannuation guarantee obligations affecting those with multiple employers.

These measures ostensibly deal with employees who are entitled to receive employer superannuation support at the level of, but no greater than, the rate of the superannuation guarantee (currently 9.5%). There are, however, a reasonably large number of members who receive superannuation support above-and-beyond the SG minimum, either as a result of being a member of a defined benefit scheme or as a result of an industrial agreement that stipulates a level of employer support above the SG.¹

The Bill is silent on how - or if - these measures will apply in these situations.

We note that the Bill includes a process whereby the Commissioner must consider whether it is *appropriate* to issue a "shortfall exemption certificate". The EM gives limited additional information about the matters that the Commissioner will consider relevant in exercising this discretion. We are concerned that this discretionary power, without further substance, will not create the certainty needed. We strongly urge creating a specific exemption process in the Act, and it should be made clear that shortfall exemption certificates will not be issued to an employer obliged to fund an employee's defined benefit. Equally, it should exempt circumstances where an employer is subject to another contractual obligation to contribute at a rate higher than the SG e.g. an industrial agreement.

¹ In a previous submission to this Committee (submission 29 September 2017 Inquiry into the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017) we highlighted the twin issues of our open defined benefit scheme and numerous enterprise agreements across the higher education sector many of which require employers to make contributions of up to 17%.

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If a defined benefit member were to apply and receive an employer shortfall exemption certificate relating to their defined benefit membership, there would be a number of inequitable consequences. If a defined benefit member were able to cease to receive “SG contributions”, without trust deed changes, that member would continue to accrue a defined benefit nevertheless, even though the employer would be contributing either nothing or, potentially, the difference between the standard funding rate (in our case 17%) and the SG rate. This would be an inequitable outcome for other members of the defined benefit scheme who would, in effect, be subsidising the benefits of those members with multiple employers and higher incomes.

We would also like to raise a technical issue from the EM. Paragraph 2.15 states that:

Individuals can choose to retain excess concessional contributions in superannuation as a non-concessional contribution or withdraw 85 per cent of the excess concessional contribution.

We suspect that this statement is highlighting the fact that “excess concessional contributions” that have not been withdrawn *count* towards a taxpayer’s non-concessional contributions (NCC) cap rather than *actually becoming* NCCs. If possible, we seek clarification of whether this is the case as this is not the current industry understanding.

Thank you for the opportunity to provide comments on the Bill. Should you wish to discuss these comments, in the first instance, please speak to Benedict Davies, Public Policy Manager on [REDACTED].

Yours sincerely

[REDACTED]

Kevin O’Sullivan
Chief Executive Officer