COTA
For older Australians

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15 August 2019

Mr Mark Fitt
Committee Secretary
Senate Standing Committee on Economics
Parliament House
CANBERRA ACT 2600

*Submitted via email: economics.sen@aph.gov.au*

**Re: Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019**

Thank you for the opportunity to comment on the above Bill. COTA Australia proposes to restrict its comments to Schedule 7 'Salary Sacrifice Integrity', along with some additional comments on the Superannuation Guarantee more broadly for the Committee's future consideration.

COTA welcomes the changes that will see the 9.5% Superannuation Guarantee Employer Contributions calculated on an amount that is inclusive of any voluntary superannuation contributions made by an employee as part of salary sacrifice arrangements. COTA thanks the Government for the work of its Superannuation Guarantee Cross Agency Working Group in 2016/17 and acknowledges that this legislation will implement its Recommendation 8 and Recommendation 9.

Today, many mature age employees choose to direct their employer to make salary sacrifice contributions directly into their superannuation account on their behalf. This is particularly the case for employees who have commenced planning for their retirement over the age of 50 years, on whose behalf COTA Australia advocates.

The current law permits an inconsistent approach to the way employer contributions are calculated in relation to salary sacrifice contributions that can be detrimental to employees saving for their retirement. Specifically, it allows the employer to determine whether superannuation guarantee contributions are calculated inclusive or exclusive of the voluntary superannuation amount employees may elect to sacrifice towards their retirement. COTA believes that the vast majority of employees will have assumed that these voluntary superannuation contributions by employees, are to be contributions 'on top of' their 9.5% superannuation guarantee. It is deeply troubling that the current law permits an employer to elect to utilise these contributions towards the calculation of the employer's own required superannuation guarantee contribution.

The Bill proposes to amend the *Superannuation Guarantee (Administration) Act 1992* in relation to the way an Employer's Superannuation Guarantee contributions are calculated. The change will require that Superannuation Guarantee amounts (currently set at 9.5% of employee wages) are inclusive of any salary sacrificed amounts. That is, changes will be made so that the new definition of 'quarterly salary or wages base' will be calculated to include the total amount of Ordinary Time Earnings (OTE) (currently permitted to be exclusive of any superannuation salary sacrifice) and any amounts sacrificed salary or wage that would've been in the OTE calculation had it not been sacrificed into superannuation.

This change will prevent employers utilising an employee's voluntary contributions of salary sacrificed amounts towards the Employer's Superannuation Guarantee Contribution. That is all amounts of salary

sacrificed superannuation voluntarily chosen by an employee to be contributed towards their retirement will be in addition to the 9.5% Superannuation Guarantee component.

The fact the law to date has allowed employers to use additional retirement savings by employees to reduce their own contributions towards an employee's 9.5% superannuation guarantee is deeply concerning.

**Subject to the comments below on the 'excluded salary or wages' definition, we welcome these amendments as a good step forward and urge the Parliament to pass the Bill with our proposed amendment.**

**Ensuring all Australians receive a fair day's super for a fair day's work**

COTA strongly believes that a fair day's work deserves a fair day's pay, including a consistent equitable contribution by all employers of the current mandatory Superannuation Guarantee contribution of 9.5% of an employee's Ordinary Time Earnings. Simply put COTA believes that for every $1 an employee earns, they should also earn 9.5c in superannuation, regardless of the quantum or mode of employment or structure of employee/employer relationship that may exist.

We are troubled in particular by the law's current position that contributes to an inequitable reduction of retirement incomes available to individual Australians later in life. Specifically, we are troubled by proposed clause 15A (4) in the calculation in the Bill of 'quarterly salary or wages base' which will continue to exclude wages earnt by two specific cohorts:

1) All employees who earn less than $450 in one calendar month from one employer (as per section 27 (2) of the *Superannuation Guarantee (Administration) Act 1992*)

2) All part-time employees under the age of 18 who work less than 30 hours per week (as per section 28 of the *Superannuation Guarantee (Administration) Act 1992*)

COTA appreciates the historical rationale that a minimum amount earnt by an employee was necessary to avoid administrative burdens for employers when the Superannuation Contribution Guarantee was first introduced. However, the introduction of electronic and online tools to assist employers in calculating the payroll obligations and to streamline the payment of their SCG amounts negates this rationale.

COTA is hearing reports about employers restricting the hours of low paid employees so that their employees will not earn more than $450 per month so that the employer will not incur the additional 9.5c per dollar earnt by their employee in OTE wages. That is, the $450 provision creates a structural incentive for under-employment. When this applies to several employers for whom an employee works, the comparative injustice is clear. An employee earning say $2,690 per month on one part time job will earn over $3,000 per year in super; whereas an employee earning $2,690 per month in three jobs, all earning under $450, will receive no super.

Many have argued this is a particular issue for women's inequitable superannuation balances in retirement, and COTA agrees that there is a disproportionate gender impact because of the nature of who is employed under these terms. Indeed, your References Committee in its 2016 Report ''A husband is not a retirement plan: Achieving economic security for women in retirement" recommended the $450 rule be abolished (Recommendation 14).

COTA further notes this recommendation was 'noted' and not 'rejected' by the Australian Government's response to this report. However, the suggestion in the Australian Government's response that this represents 2.5% of the $18,200 tax free threshold is a miscalculation. $450 per month equates to $5400 per year. This is the amount of the tax free threshold in 1992 when the rule was introduced, which has since been raised to $18,200, or 29.7% of the current tax free threshold.

COTA submits that this discriminatory clause against one class of workers compared to another is broader than a gender issue. It is an issue of fairness and equity as we outlined above. Those many and increasing number of Australians who are employed holding down two or more part time jobs, each of them earning less than $450 a month, deserve to receive the same proportional retirement income that another Australian earning the same overall income from a single employer would receive. We would urge the Committee to once again recommend its removal and urge the Australian Government to accept the removal of this discriminatory piece of legislation.

In relation to part-time employees under the age of 18 working less than 30 hours per week not receiving equitable treatment in their super, COTA is aware of no public policy rationale for the position that such work should not be remunerated on the same basis as a person over the age of 18. COTA Australia finds this piece of legislation a deeply troubling form of age discrimination, which we strongly urge should also be amended.

**Accordingly, we propose that the Committee recommend Clause 27 (2) and Clause 28 of the *Superannuation Guarantee (Administration) Act 1992*) be removed and that proposed Clause 15A(4) be amended to only refer to the remaining components of Clause 27 (1) of the Act.**

Failing that, should the Committee feel this recommendation is outside its purview of reviewing this Bill, COTA notes it would be entirely within the Committee's purview to remove the reference to these clauses by amending proposed clause 15A (4) to read as:

*(4) For the purposes of this section, excluded salary or wages are salary or wages that, under section 27 (1) are not to be taken into account for the purpose of making a calculation under Section 19.*

While this is not an ideal situation to have a piece of legislation that is inconsistent, we believe that some 27 years after it was introduced it is high time that all Australians receive a fair day's superannuation towards retirement, for a fair day's work.

COTA welcomes the opportunity to discuss the Bill with members of the Committee should it seek to conduct hearings into the Bill.

Should you wish to discuss this submission further, please contact myself on [redacted] or [redacted] Senior Policy Officer on [redacted] or [redacted]

Yours sincerely,

[redacted]

Ian Yates AM
**Chief Executive**