



# SUBMISSION

Submission to Senate  
Economics Legislation  
Committee — *Treasury  
Laws Amendment (2022  
Measures No 4) Bill 2022:*  
Schedules 6 and 9

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30 January 2023

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Senate Economics Legislation Committee  
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Canberra ACT 2600

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30 January 2023

Dear Sir/Madam

### **Treasury Laws Amendment (2022 Measures No 4) Bill 2022**

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 (2022 Measures No 4) Bill 2022* (the Bill). This submission focusses on Schedule 6, with respect to financial reporting and auditing requirements for superannuation entities, and Schedule 9, which contains amendments to the taxation treatment of military (and certain other) superannuation benefits, to reverse the impact of the 2020 decision of the Full Federal Court in *Federal Commissioner of Taxation v Douglas*.

### **About ASFA**

ASFA is a non-profit, non-partisan 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 \$3.3 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 17 million Australians with superannuation.

### **Comments in relation to Schedule 6 – Financial reporting and auditing requirements for super entities**

ASFA supports transparency of financial information with respect to superannuation funds, including ensuring compliance with financial reporting requirements.

The former government consulted on an exposure draft of the Bill in August 2021. ASFA member organisations are pleased that, reflecting ASFA's advocacy, the proposed requirements to prepare financial reports for each sub-fund, and to lodge financial reports (including directors' reports and financial statements) for the fund for each half year (as well as for each financial year) have been removed. This will significantly reduce the costs involved and serve to keep members' fees as low as possible.

Superannuation funds report a considerable volume of detailed financial data to APRA under its various Superannuation Reporting Standards (SRS), including with respect to expenses. One important matter to note in this context is that some of the definitions of expenses utilised in the SRS are not the same as those used in the funds' financial statements, prepared in accordance with the accounting standards, and accordingly when data reported under the SRS is compared with the financial statements some expense items may not reconcile.

We note in this context that the Assistant Treasurer and Minister for Financial Services has announced that the Government will introduce a 'Super Transparency Report'. While the Government has not yet released any detail with respect to the report, it has been reported in the media that it will involve APRA publishing an annual report bringing fund-level expense information into a single document that will include details of donations, directors' fees, executive remuneration, property fees, investment management costs and marketing expenditure, as well as dividends paid to related parties.

Given the potential for differences in expenses reported by a fund to APRA under the SRS and the fund's financial statements, it will be important for APRA to acknowledge those differences on the public record.

### **Comments in relation to Schedule 9 – Taxation of military superannuation benefits: Reversing the *Douglas* decision**

ASFA supports efforts to clarify the tax treatment applicable to defined benefit (DB) superannuation pensions impacted by the 2020 decision of the Full Federal Court in *Federal Commissioner of Taxation v Douglas*. That decision generated significant uncertainty about the correct tax treatment of impacted pensions for the recipients and the superannuation funds that pay them.

The reforms relate to pensions paid due to invalidity or permanent incapacity, and it is therefore important to recognise that many recipients of these pensions may be vulnerable in terms of their health and financial position. It is critical to ensure the reforms can be implemented by funds in a measured way, so as to not cause further distress to impacted pensioners.

Despite its title, the impact of Schedule 9 is not limited to military superannuation benefits - the amendments will also impact some DB pensions paid on permanent incapacity from some non-military schemes. Recipients of impacted DB pensions from non-military schemes may not yet appreciate that the tax treatment of their benefit may change, should this Bill be passed. Superannuation funds generally do not have awareness of the personal tax circumstances of their members, and this limits their ability to prepare pensioners for the impact.

There are broadly two categories of funds affected by the amendments proposed in Schedule 9:

1. Some funds may not have changed their systems or otherwise addressed the issues raised in *Douglas* – that is, they may have continued to treat the relevant pensions as income streams for tax purposes. This may, for example, be as a result of obtaining a private ruling from the Australian Taxation Office (ATO).
2. Other funds may have changed their systems or incorporated other workarounds to address the issues in *Douglas* - that is, they may have ceased to treat the relevant pensions as income streams and instead treated them as a series of lump sums for tax purposes.

It is important that the legislation and any supporting instruments appropriately accommodate both these groups of affected funds and, critically, the recipients of the DB pensions they pay. Both groups of funds require certainty that, following the passage of the legislation and any associated legislative instruments, there will be no need to go back and change the treatment and documentation for benefits already paid.

Further, both groups of funds will require an appropriate transition period. For the first group, there will be a need to review their treatment of impacted pensions against the amendments in their final form and to understand the interplay with any ruling received from the ATO. The second group will need a period during which treatment consistent with the *Douglas* decision continues to be available, to allow for implementation of any necessary systems and procedural changes, as well as to allow funds to appropriately support the recipients of the impacted pensions.

Schedule 9 contains, in proposed new section 301-105 of the *Income Tax (Transitional Provisions) Act 1997*, scope for the Minister to prescribe “matters of a transitional nature” for “either or both of the 2022-23 and 2023-24 income years”.

We welcome this implicit acknowledgment that transitional arrangements will be required. However, given passage of the Bill will not occur before the first quarter of calendar year 2023 *at the earliest*, it is likely almost half of the implicit transition period provided for in Schedule 9 will have elapsed before the final form of the amendments is confirmed. ASFA considers the available transition period should be extended by a further financial year to allow funds to implement the amendments in a measured way and provide appropriate support for members adversely impacted by the amendments.

## Recommendation

### Extension of transitional period

- Schedule 9 of the Bill should be amended such that proposed new section 301-105 of the *Income Tax (Transitional Provisions) Act 1997* allows for the Minister to prescribe, in a legislative instrument, matters of a transitional nature for the financial years 2022-23, 2023-24 and 2024-25.
- Immediately following Royal Assent, the Minister should make a legislative instrument providing impacted funds with a transition period from commencement until the end of the 2024-25 financial year to implement any necessary changes arising from Schedule 9.

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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 Julia Stannard, Senior Policy Advisor, [REDACTED].

Yours sincerely

[REDACTED]  
Fiona Galbraith  
Director, Policy