

The Senate

Economics
Legislation Committee

Treasury Laws Amendment (2019 Measures
No. 1) Bill 2019 [Provisions]

Excise Tariff Amendment (Supporting Craft
Brewers) Bill 2019 [Provisions]

March 2019

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Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics Legislation Committee

Committee members

Senator Jane Hume (*Chair*)

Senator Chris Ketter (*Deputy Chair*)

Senator Jenny McAllister

Senator the Hon. Arthur Sinodinos AO

Senator Amanda Stoker

Senator Peter Whish-Wilson

Victoria, LP

Queensland, ALP

New South Wales, ALP

New South Wales, LP

Queensland, LP

Tasmania, AG

Secretariat

Mr Mark Fitt, Secretary

Ms Ashlee Hill, Senior Research Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3540
Fax: 02 6277 5719

E-mail: economics.sen@aph.gov.au

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Chapter 1

Introduction

1.1 On 14 February 2019, the Senate referred the provisions of the Treasury Laws Amendment (2019 Measures No. 1) Bill 2019 (TLA Bill) and the Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019 (Excise Tariff Bill) to the Economics Legislation Committee (the committee) for inquiry and report by 26 March 2019.¹

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions. The committee received one submission, which is listed at Appendix 1.

1.3 The committee thanks all stakeholders who assisted with the inquiry.

Overview of the bills

1.4 The TLA Bill contains four schedules. The Excise Tariff Bill contains one schedule which is intended to operate in conjunction with the amendments made by Schedule 2 to the TLA Bill.

1.5 For the remainder of this Chapter, references to 'the bill' relate to amendments proposed in the TLA Bill, whereas references to 'the bills' relate to amendments proposed in the Excise Tariff Bill in conjunction with those in Schedule 2 of the TLA Bill.

Self managed superannuation fund membership limit (TLA Bill—Schedule 1)

1.6 The primary definition of a 'self managed superannuation fund' (SMSF) is set out under section 17A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Under this definition, SMSFs are required to have 'fewer than five members'. As such, the maximum number of allowable members in SMSFs is currently four members.²

1.7 The SIS Act also contains provisions dealing with small superannuation funds, including some provisions that are limited to small funds that are not SMSFs. Small funds that are not SMSFs are regulated by the Australian Prudential Regulation Authority (APRA) and are generally referred to as 'small APRA funds'. The threshold for small APRA funds is set at the same level as the member limit for SMSFs; that is, fewer than five members.³

1.8 As outlined in the Explanatory Memorandum (EM), provisions in income tax and superannuation laws that apply to SMSFs refer directly to the 'self managed

1 *Journals of the Senate*, No. 140, 14 February 2019, pp. 4667–4670.

2 *Explanatory Memorandum*, p. 7.

3 *Explanatory Memorandum*, pp. 7–8.

superannuation fund' definition set out in the SIS Act. Provisions that apply to small APRA funds generally mirror the approach taken in the SIS Act by referring to funds that have fewer than five members and that are not SMSFs.⁴

1.9 Schedule 1 (Parts 1 and 2) to the bill seeks to amend the SIS Act, *Income Tax Assessment Act 1997* and *Superannuation (Unclaimed Money and Lost Members) Act 1999* to increase the maximum number of allowable members in SMSFs from four to six (that is, fewer than seven members). To ensure continued alignment with the increased maximum number of members for SMSFs, Schedule 1 also amends provisions in the above Acts that relate to SMSFs and small APRA funds.⁵

1.10 Presently, where an SMSF has more than one director member, its accounts and statements for each income year must be signed by at least two members in their capacity as an individual trustee or as a director of a corporate trustee.⁶ For SMSFs with three or four members, this requirement means that, under the current definition of a 'self managed superannuation fund', at least half of the SMSFs members must sign its accounts.⁷

1.11 To ensure that these requirements continue to apply correctly following the increase to the maximum number of allowable members in SMSFs from four to six, Schedule 1 also seeks to amend the sign off requirements under the SIS Act relating to the accounts and statements that must be prepared by the trustees of an SMSF each income year. Under the updated requirements, for SMSFs with between three and six directors or trustees, at least half of the members must sign its accounts and statements for an income year.⁸

1.12 By allowing groups of five or six people to establish an SMSF, Schedule 1 is aimed at supporting greater consumer choice and underpins the government's plan for ensuring all Australians get a fair go, especially in retirement. As the Assistant Treasurer, the Hon. Stuart Robert MP, explained in his second reading speech:

Self-managed superannuation funds are often used by families as a vehicle for managing their own superannuation savings and investment strategies. For families with more than four members, currently the only real options are to create two self-managed superannuation funds (which would incur extra costs) or place their superannuation in a large fund. This limits their choice and flexibility.⁹

4 *Explanatory Memorandum*, p. 8.

5 *Explanatory Memorandum*, p. 7.

6 As there cannot be more than four members of an SMSF under the current rules, these requirements ensure that all members sign the accounts and statements of SMSFs with one or two members.

7 *Explanatory Memorandum*, p. 9.

8 *Explanatory Memorandum*, p. 9.

9 The Hon. Stuart Robert MP, Assistant Treasurer, *House of Representatives Hansard*, 13 February 2019, p. 12.

Contingent amendments

1.13 The EM notes that several bills currently before the Parliament also contain amendments that introduce or amend provisions that refer to small superannuation funds.¹⁰ Schedule 1 (Part 3) to the bill includes amendments that are contingent upon the passage of those other Bills.

1.14 These bills currently before the Parliament include the:

- Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017;
- Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018; and
- Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018.

1.15 The amendments in Schedule 1 (Part 3) seek to ensure continued alignment between the increased member threshold in the definition of a 'self managed superannuation fund' and the proposed provisions in the above bills.¹¹

Commencement

1.16 Schedule 1 (Parts 1 and 2) commence on the later of:

- 1 July 2019; and
- The first 1 January, 1 April, 1 July or 1 October to occur after the day amendments receive Royal Assent.¹²

1.17 The contingent amendments in Schedule 1 (Part 3) commence immediately after the later of the time that Parts 1 and 2 in Schedule 1 to the bill commence and the time that the relevant schedule in the other bill commences. However, each of the contingent amendments do not commence at all if the relevant schedule to the other bill does not commence.¹³

Extending support for craft brewers (TLA Bill—Schedule 2 and Excise Tariff Bill—Schedule 1)

1.18 Excise duty applies to beer that is manufactured in Australia and is payable at the time of entry for home consumption. Concessional excise duty rates currently apply to draught beer entered for home consumption in containers (typically kegs) with a capacity of greater than 48 litres. Given the size of containers presently required to qualify for the concession, this concessional duty rate normally only applies to draught beer dispensed for sale from commercial premises.¹⁴

10 *Explanatory Memorandum*, p. 12.

11 *Explanatory Memorandum*, p. 13.

12 *Explanatory Memorandum*, pp. 13–14.

13 *Explanatory Memorandum*, p. 14.

14 *Explanatory Memorandum*, p. 15.

1.19 Further, any beer that is entered for home consumption in individual containers exceeding 48 litres and that is subsequently repackaged into containers with a smaller capacity, is considered to have been subject to further manufacturing and is therefore currently subject to non-concessional rates of excise duty.¹⁵

1.20 Schedule 2 to the TLA Bill and Schedule 1 of the Excise Tariff Bill (hereafter referred to as 'the bills') seek to amend the *Excise Act 1901* (Excise Act) and the *Excise Tariff Act 1921* (Excise Tariff Act) to extend concessional excise duty rates to brewers that supply draught beer in kegs or other containers that have a capacity of 8 litres or greater.¹⁶

1.21 The Assistant Treasurer outlined how the measure will support craft brewers:

Extending the concessional draught beer excise rates to kegs of eight litres or more will support craft brewers, which prefer to distribute beer from smaller kegs. This measure levels the playing field between small and large breweries.¹⁷

1.22 Under the proposed amendments, the concessional excise duty rates apply to draught beer packaged in containers if the containers:

- are designed to be connected to a pressurised gas delivery system, pump delivery system or other system prescribed by regulations; and
- have a capacity of between 8 litres and 48 litres (inclusive).¹⁸

1.23 The EM notes that the requirement that the containers must be designed to connect to a pressurised gas or pump delivery system is an integrity rule to ensure that concessional duty rates do not apply to containers primarily targeted for sale to consumers for personal consumption. This integrity rule also seeks to ensure that the support provided by this measure is targeted for the draught beer produced by craft brewers in containers purpose built for dispensing at licenced commercial premises.¹⁹

1.24 To ensure that a similar integrity rule applies to repackaged beer, the bills also propose consequential amendments to the Excise Act. Under the proposed amendments, non-concessional excise duty rates apply to the repackaging of beer into individual containers:

- of less than 8 litres; or

15 *Explanatory Memorandum*, p. 17.

16 *Explanatory Memorandum*, pp. 15–16.

17 The Hon. Stuart Robert MP, Assistant Treasurer, *House of Representatives Hansard*, 13 February 2019, p. 12.

18 *Explanatory Memorandum*, p. 16. The proposed amendments do not change the excise duty rate that applies to draught beer that is entered for home consumption in containers exceeding 48 litres.

19 *Explanatory Memorandum*, p. 16.

-
- of at least 8 litres but not exceeding 48 litres and not designed to be connected to a pressurised gas delivery system, pump delivery system or other system prescribed by regulations.²⁰

Commencement

1.25 The amendments to the Excise Act and Excise Tariff Act proposed by the bills apply to goods entered for home consumption on or after 1 July 2019.²¹

Global Infrastructure Hub Ltd (TLA Bill—Schedule 3)

1.26 The Global Infrastructure Hub Ltd (the Hub) was established by G20 Leaders at the 2014 Brisbane Summit. It was initially given a four-year mandate to December 2018 to advance international efforts to lift infrastructure investment.²²

1.27 The Hub is funded by contributions from the Australian Government and other G20 members. To avoid these funding contributions being subject to income tax, the Hub was granted tax exempt status under Division 50 of the ITAA 1997. This exemption will expire on 1 July 2019.²³

1.28 In July 2018, the G20 Finance Ministers agreed to extend the mandate of the Hub for an additional four years to December 2022.²⁴

1.29 Schedule 3 to the bill amends Division 50 of ITAA 1997 to extend the Hub's listing as an income tax exempt entity until 30 June 2023.²⁵

Commencement

1.30 The amendments in Schedule 3 apply from the first 1 January, 1 April, 1 July or 1 October after the bill receives Royal Assent.²⁶

Miscellaneous amendments (TLA Bill—Schedule 4)

1.31 Schedule 4 to the bill seeks to make a number of miscellaneous amendments to legislation in the Treasury portfolio. As summarised in the EM, these amendments make minor technical changes to correct spelling errors, bring provisions in line with drafting conventions and repeal inoperative provisions. The schedule also makes minor technical amendments to remove administrative inefficiencies and clarifies the law to ensure that it operates in accordance with policy intent.²⁷

20 *Explanatory Memorandum*, p. 16. See proposed paragraph 77FC(b).

21 *Explanatory Memorandum*, p. 18.

22 *Explanatory Memorandum*, p. 19.

23 *Explanatory Memorandum*, p. 19.

24 *Explanatory Memorandum*, p. 19.

25 *Explanatory Memorandum*, p. 19.

26 *Explanatory Memorandum*, p. 20.

27 *Explanatory Memorandum*, p. 21.

1.32 Progression of such amendments is intended to give priority to the care and maintenance of legislation in the Treasury Portfolio. The Assistant Treasurer elaborated on this point in his second reading speech, noting that:

By clarifying the laws and repealing unnecessary provisions, these amendments also reduce the regulatory burden and make it easier for Australians to access current laws.²⁸

Commencement

1.33 Schedule 4 contains four Parts, with the amendments under each Part commencing as follows:

- Part 1—Amendments commencing on the day after Royal Assent;
- Part 2—Amendments commencing on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent;
- Part 3—Amendments commencing 28 days after Royal Assent; and
- Part 4—Amendments commencing on 1 January 2019.²⁹

Financial impact

1.34 The EM states that the amendments in Schedules 1 and 3 of the TLA Bill are estimated to have no revenue impact; and the amendments in Schedule 4 a negligible financial impact, over the forward estimates period.³⁰

1.35 As at the 2018–19 Budget, the *Alcohol Taxation—extending support for craft brewers and distillers* measure is estimated to have a cost to revenue of \$85 million over the forward estimates period.³¹

Table 1: Financial impact of the 2018–19 Budget measure *Alcohol Taxation—extending support for craft brewers and distillers*³²

<i>2017–18</i>	<i>2018–19</i>	<i>2019–20</i>	<i>2020–21</i>	<i>2021–22</i>
-	-	-\$25m	-\$30m	-\$30m

Compatibility with Human Rights

1.36 As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, the government has assessed the bills' compatibility with the human rights and freedoms

28 The Hon. Stuart Robert MP, Assistant Treasurer, *House of Representatives Hansard*, 13 February 2019, pp. 12–13.

29 *Explanatory Memorandum*, pp. 21–22.

30 *Explanatory Memorandum*, pp. 3–5.

31 *Explanatory Memorandum*, p. 4. See also Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2018–19*, pp. 19–20.

32 The bills partially implement 2018–19 Budget measure: *Alcohol Taxation—extending support for craft brewers and distillers*. *Explanatory Memorandum*, pp. 3–4.

recognised or declared in the international instruments listed in Section 3 of that Act. The government considers that the bills are compatible.³³

33 *Explanatory Memorandum*, pp. 39–42.

Chapter 2

Views on the bill

2.1 The committee received one submission from the SMSF Association (SMSFA) in relation to the proposed amendments to the self managed superannuation fund membership limit, as set out in Schedule 1 of the Treasury Laws Amendment (2019 Measures No. 1) Bill 2019 (TLA Bill).

2.2 The committee received no commentary on Schedules 2–4 of the TLA Bill or on the Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019 (Excise Tariff Bill). Consequently, comments in this chapter are restricted to those received on Schedule 1 of the TLA Bill.

Comments on Schedule 1—SMSF membership limit

2.3 As noted in Chapter 1, Schedule 1 to the TLA Bill seeks to increase the maximum number of allowable members in a self managed superannuation fund (SMSF) or small Australian Prudential Regulation Authority (APRA) fund from four to six (that is, fewer than seven members).

2.4 The SMSFA expressed its general support for increasing the SMSF membership limit, submitting that it believes this 'will provide additional flexibility and choice in the superannuation system'.¹

2.5 The SMSFA commented on how increasing the maximum number of SMSF members will expand the options available to larger families. The SMSFA elaborated that:

From an intergenerational perspective, if children have knowledge about and are part of how their parents' affairs, finances and superannuation are being managed, this familiarity can facilitate improved and more timely estate planning across generations of families. For example, including adult children in their ageing parents' SMSF could help when making administration and investment decisions for the fund.²

2.6 In relation to SMSF fees, the SMSFA submitted that increasing the maximum number of members is unlikely to have a real effect 'because SMSF fees are typically charged on a fixed administration basis regardless of the number of members and without consideration to the balance of the superannuation account'.³

2.7 The SMSFA continued that:

Pooling superannuation balances in one SMSF can therefore avoid the costs of running separate SMSFs. Furthermore, if the pool of assets is increased in an SMSF through including more members, then the SMSF will become

1 SMSF Association, *Submission 1*, p. 1.

2 SMSF Association, *Submission 1*, p. 1.

3 SMSF Association, *Submission 1*, p. 1.

more cost-efficient as the fees reduce as a percentage of the total assets of the fund. Another benefit from this spreading of fees across members is that lower income earning members could potentially have lower fees than they would in APRA-regulated superannuation funds.⁴

2.8 Further, with regards to pooling superannuation balances, the SMSFA noted that an increase in the SMSF membership limit 'means individuals can enjoy the benefits of consolidating assets, increased investment opportunities and flexibility to diversify'.⁵

2.9 Noting that, currently, 93 per cent of SMSFs have only one or two members, the SMSFA considered that increasing the SMSF membership limit 'should be regarded as a non-controversial change to the SMSF sector' and that it 'does not pose any significant integrity issues'.⁶

Committee view

2.10 The measures in the TLA Bill, together with the Excise Tariff Bill, aim to increase consumer choice and support the government's plan to ensure that all Australians get a fair go.

2.11 By allowing groups of five or six people to establish an SMSF or small APRA fund, the proposed amendments in Schedule 1 to the TLA Bill provide increased flexibility for Australians, particularly those with larger families, to manage their retirement savings. The committee notes and agrees with the views of the SMSF Association in support of this measure.

2.12 The Excise Tariff Bill, along with Schedule 2 to the TLA Bill, seeks to extend concessional draught beer excise rates to containers of eight litres or more. The committee is confident that this measure will support craft brewers by helping to level the playing field between small and large breweries.

2.13 By extending its income tax exempt status for a further four years, the committee considers that Schedule 3 to the TLA Bill will enable the Global Infrastructure Hub to continue to pursue its important aim of facilitating private investment in much needed public infrastructure.

2.14 Finally, by clarifying Treasury laws and repealing unnecessary provisions, the committee is of the view that the miscellaneous amendments proposed in Schedule 4 to the TLA Bill successfully further the government's commitment to restoring simplicity and fairness to the Australian tax system and to the care and maintenance of the law.

4 SMSF Association, *Submission 1*, pp. 1–2.

5 SMSF Association, *Submission 1*, p. 2.

6 SMSF Association, *Submission 1*, pp. 2–3.

Recommendation 1

2.15 The committee recommends that the Treasury Laws Amendment (2019 Measures No. 1) Bill 2019 and the Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019 be passed.

**Senator Jane Hume
Chair**

Additional Comments from Labor Senators

1.1 Labor Senators do not support Schedule 1 of the Treasury Laws Amendment (2019 Measures No. 1) Bill 2019, relating to increasing the membership limit of self managed superannuation funds (SMSFs).

1.2 Labor Senators support the remaining schedules of that legislation, as well as the Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019.

Schedule 1—Self Managed Superannuation Fund Membership Limit

1.3 The government has not provided an adequate or compelling policy rationale for increasing the membership limit of self managed superannuation funds from four to six.

1.4 No detailed analysis has been provided by the government, nor has any formal public consultation been conducted by Treasury on this measure as far as Labor Senators are aware.

1.5 Labor Senators note that the Minister at the time stated that the measure was intended to make SMSFs more attractive:

The change will allow for greater flexibility and, given the growth in the sector to date, will ensure SMSFs remain compelling retirement savings vehicles into the future.¹

1.6 Labor Senators also note the unnecessarily partisan nature of the Minister's remarks, which are unfortunately consistent with the ideological approach the government has chosen in relation to superannuation during their two terms of government:

SMSFs and their members can rest assured that unlike the Labor Party and Bill Shorten, who continue to unfairly target SMSFs through policies like their regressive retiree tax, the Government recognises the valuable role SMSFs play in providing competition in the superannuation sector and providing Australians with an opportunity to exert more control over their own retirement.²

1.7 However, the Productivity Commission raised significant concerns about the performance of SMSFs with balances less than \$500,000:

SMSFs with under \$500,000 in assets have relatively high expense ratios (on average), and this remains the case once recently established SMSFs are excluded from the sample—suggesting that initial establishment costs are not driving the results. Many SMSFs (42 per cent) with under \$500,000 in

1 The Hon. Kelly O'Dwyer MP, 'Greater flexibility for self-managed super funds', *Media Release*, 27 April 2018, <http://kmo.ministers.treasury.gov.au/media-release/042-2018/> (accessed 26 March 2019).

2 The Hon. Kelly O'Dwyer MP, 'Greater flexibility for self-managed super funds', *Media Release*, 27 April 2018, <http://kmo.ministers.treasury.gov.au/media-release/042-2018/> (accessed 26 March 2019).

assets have been in existence for two or more years, and thus are likely to have persisted with high average expenses and low net returns (chapter 3).

...

FINDING 2.6

The SMSF segment has delivered broadly comparable investment performance to the APRA-regulated segment, but many smaller SMSFs (those with balances under \$500,000) have delivered materially lower returns on average than larger SMSFs.³

1.8 Labor Senators also note that the Productivity Commission did not make a finding in relation to SMSF membership limits.

1.9 As no cogent policy rationale for the change has been provided by the government, and in the absence of a Productivity Commission recommendation about membership, Labor Senators believe that this schedule should be removed from an otherwise non-controversial package of bills.

Recommendation 1

1.10 That Schedule 1, relating to the self managed superannuation fund membership limit, be removed from the Treasury Laws Amendment (2019 Measures No. 1) Bill 2019.

Recommendation 2

1.11 Subject to Recommendation 1, that the bills be passed.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

3 Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, 21 December 2018, p. 151, <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf> (accessed 26 March 2019).

Appendix 1

Submissions

Submissions

1 SMSF Association

