Manager
Retirement Benefits Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Email: superannuation@treasury.gov.au

Dear Manager

#### Superannuation Reform Package - Exposure Draft – Minor and Technical Amendments Bill

IOOF Investment Management Limited (ABN 53 006 695 021 AFS Licence No. 230524) welcomes the opportunity to provide feedback to the Government on the exposure draft of the superannuation reform package amending provisions.

IOOF supports the reforms to superannuation. We welcome the opportunity to provide feedback on the proposed Treasury Laws Amendment (2017 Measures No. 2) Bill 2017. Overall we are supportive of the intention behind the changes, particularly the change to Transition to Retirement Income Streams (TRIS).

However we are concerned that, in its current form, there may be technical difficulties with certain provisions of the draft legislation.

Our submission is attached,

Yours sincerely



Frank Lombardo

**General Manager – Client & Process**

# Submission to Treasury: IOOF feedback on exposure draft legislation

We welcome the opportunity to provide feedback on the proposed Treasury Laws Amendment (2017 Measures No. 2) Bill 2017.

Overall we are supportive of the intention behind the changes, particularly the change to transition to retirement income streams (TRIS), however in their current form there may prove further technical difficulty which we have discussed below.

## **Transition to retirement income streams (TRIS)**

#  TRIS and meeting nil cashing restrictions condition of release.

We support the change clarifying that a TRIS ceases to be excluded from the definition of a retirement phase income stream upon meeting a nil cashing restriction condition of release. Whilst there may be some practical considerations which could cause unintentional excess transfer balance amounts – such as an individual reaching age 65 with a TRIS balance in excess of their transfer balance cap – the transfer balance system allows for these issues to be rectified before the ATO issues a determination crystallising the excess. Although this will not stop the excesses from occurring, members should not be disproportionately penalised for small breaches which are corrected within a short timeframe.

1. TRIS eligibility for CGT relief.

Overall we support the intention of the amendments to provide TRIS members in segregated funds with CGT relief should they choose to continue to hold their pension past the end of 30 June 2017. However, the wording of the amendment does not clarify the scenario where a superannuation fund is segregated by virtue of wholly holding pension interests, where those interests are currently a combination of TRIS and standard retirement phase income streams.

Given the wording of amended relief, such a fund would potentially not qualify for CGT relief on any assets as no asset specifically supports a TRIS as defined under subsection 307-80(3) of the *Income Tax Assessment Act 1997.* Effectively the fund ceases to be a segregated fund because of the TRIS interest rather than specific assets of the fund becoming assets no longer meeting the definition of a segregated current pension asset.

An alternative to the proposed wording would be to consider removing the nexus between an asset and the TRIS interest as for most members their segregation is either based on assets backing pension interests, or is a result of the fund holding only pension interests and thus being deemed a segregated fund. Whilst this could potentially allow all pension assets of the fund to be relieved, this is no different to how the segregated CGT relief provisions interact with other transactions, (such as rollovers back to accumulation phase for funds currently wholly in pension phase) and Treasury has already confirmed that Part IVA could be used where explicit tax avoidance is being practiced.

## **Death benefit taxation changes**

Whilst we agree with the intention behind bringing forward the commencement of the death benefit provisions to assist those who may be required to commute a pension which was cashed as a death benefit outside the prescribed period, we believe the flow-on effects of such a change may cause issues with superannuation rollovers post the introduction of the amending Bill to parliament.

Under current tax law, since only a member benefit can be rolled over, the rollover benefits systems (such as SuperStream or the Rollover Benefits Statement), do not state whether a rollover is sourced from a death benefit, or whether it is the member’s own funds. As such the receiving fund is not able to discern whether to treat the incoming funds as a death benefit or a member benefit. Additionally, the departing fund may not have information presently available to confirm whether a pension interest is a member benefit or a death benefit.

Given the change was scheduled to apply from the 2017-18 financial year onwards, superannuation funds have been preparing to meet this requirement from 1 July 2017. The proposed amendment introduces ambiguity as to *when* funds would be required to identify whether a rollover is a death benefit, and as a result understand the super cashing consequences of the rolled funds as there is a period of time between the introduction of the Bill to parliament and it becoming law. This would provide a potential obstacle for retail funds during what is anticipated to be one of the busiest periods for rollovers as members prepare for the upcoming 1 July 2017 changes.

To achieve the tax outcome without these timing or workflow issues, it could be possible to amend the *Income Tax (Transitional Provisions) Act 1997* with a section which allows superannuation benefits paid to a member as superannuation lump sum commuted from a death benefit income stream to be treated as being paid as though subsections 307-5 (3), (3A) and (3B) did not apply, if the payment was made between a certain start date and the end of the 2016-17 financial year. This achieves the intention of the amendment as per the Explanatory Memoranda issued with the exposure draft, without impacting the standard operation of rollovers in the interim.

## **Proposed amendments to limited recourse borrowing arrangements (LRBAs)**

As a member of the Association of Superannuation Funds Australia (ASFA), we have been advised of two proposed measures in relation to limited recourse borrowing arrangements (LRBAs) as per the letter issued from the Minister for Revenue and Financial Services dated 28 March 2017.

1. Certain LRBA repayments give rise to a transfer balance credit

The intention appears to ensure a transfer balance credit is created should an LRBA repayment be allocated solely to an accumulation interest, rather than being applied proportionately across all member interests the LRBA supports. We support this approach in theory however careful legislative drafting will be needed to ensure unexpected and unnecessary credits do not arise when a fund is separating the investment pools for different member interests – even if segregation is not available for the calculation of exempt current pension income. In such cases the repayment of the LRBA would not impact the value of the pension interest within the fund, so it may not be equitable to give rise to a credit in all scenarios.

1. Counting LRBAs towards total superannuation balances

From the statement in the above-mentioned letter it is not clear the specific concerns the Government have with the use of LRBAs for members in accumulation phase, however counting the gross value of a geared asset towards a member’s total superannuation balance does not appear to achieve an equitable outcome for those who have legitimate LRBA strategies in place.

Additionally, it is difficult to conceive of a strategy which would allow a member to significantly manipulate their total super balance using an LRBA as at a high level the total capital a has to discharge a member’s superannuation interest is determined by the net value of the investments. If a member with $1,000,000 in superannuation borrows $500,000 to purchase a $1,200,000 property, that member only has $1,000,000 to use towards funding their retirement. LRBAs are already highly regulated and can only be used to purchase a single acquirable asset which limits the ability to create debt simply for the sake of artificially reducing a member’s total super balance.

LRBAs are also expected to be repaid over time. This is particularly evident within Practical Compliance Guideline 2016/5 issued by the ATO on the interaction between related party borrowings and non-arm’s length income generated from non-commercial borrowing terms. Under this proposal it would be expected to see a member’s total super balance reduce over time, despite no change in their ability to fund their retirement.

If there is significant concern over the use of LRBAs to artificially deflate the value of a person’s total super balance, the specifics of such concerns should be explained and the industry provided with a chance to consult on proposed solutions.

It has been prepared on behalf of IOOF Investment Management Limited (ABN 53 006 695 021, AFSL 230524) based on information that is believed to be accurate and reliable at the time of publication.