***Treasury Laws Amendment (2017 Measures No. 2) Bill 2017***

***Schedule 1: Amendments relating to superannuation reform package***

**SUMMARY OF CONSULTATION PROCESS**

The Government advised stakeholders via letter on 28 March 2017 that it would make changes to measures enacted through the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* to support the integrity of the measures and ensure the law operates as intended.

These changes were included in Treasury Laws Amendment (2017 Measures No. 2) Bill 2017, which was introduced into Parliament on 24 May 2017.

### Consultation process

Consultation on the minor and technical changes was conducted between 12 April 2017 and 24 April 2017. Sixteen submissions were received.

Consultation on the limited recourse borrowing arrangement (LRBA) changes was conducted between 27 April 2017 and 3 May 2017. Seventeen submissions were received.

Submissions can be viewed on the Treasury website www.treasury.gov.au.

### Summary of key issues

*LRBA Integrity Measures*

* The measures would have retrospective effect.
  + Response - the measures will only apply to LRBAs entered into on or after 1 July 2017.
  + Following stakeholder comments, the measures will also not apply to contracts entered into prior to 1 July 2017 or to the refinancing of the outstanding balance of an LRBA in place before 1 July 2017.
* The measures would impose substantial new administrative burdens on trustees.
  + Response - trustees will be required to report LRBA repayments as part of general event based transfer balance cap reporting. The ATO is continuing to work with industry on the administrative arrangements for reporting.
* The measures would effectively ban LRBAs.
  + Response - the measure does not prohibit the use of LRBAs by self-managed superannuation funds (SMSF). SMSFs will be able to continue to use LRBAs in a range of circumstances.
  + The ability of an SMSF to enter into an LRBA will only be affected where the member has already reached their transfer balance cap and wishes to finance the LRBA through a transfer of accumulation funds to the pension phase.
* The Government will consult further on the proposal to include the outstanding balance of an LRBA loan in a member’s total superannuation balance alongside the non-arms length arrangements integrity measure announced in the 2017-18 Budget.

*Minor and technical amendments*

* Transition to retirement income streams (TRIS) – concerns that the proposed change was complex, that it did not allow TRIS products to ‘morph’ into account based pensions and that there was no requirement for members to notify their superannuation provider when they satisfied a nil condition of release.
  + Response – no change to allowing morphing because this would be inconsistent with the TRIS framework; Bill was amended to require that members can obtain an earnings tax exemption when they notify their provider that they have satisfied a nil condition of release, or it will occur automatically when they reach age 65.
* Structured settlements – suggestions that the 2016 Superannuation Reform Package should be amended to ensure that existing structured settlements or personal injury holders are not taxed on earnings where they have more than $1.6 million in earnings.
  + Response – Bill was amended to provide a new transfer balance cap debit for existing structured settlement or personal injury holders to ensure they do not breach the transfer balance cap.
* Capital gains tax relief – suggestions that the 2016 Superannuation Reform Package should be amended to ensure that pooled superannuation trusts can access the capital gains tax relief provisions.
  + Response – Bill was amended to ensure that pooled superannuation trusts can access the capital gains tax relief provisions.
* Death benefits – suggestions that proceeding with the proposal to bring forward the start date for the death benefit changes in the 2016 Superannuation Reform Package would disadvantage a number of members and would be impossible to administer for providers as they do not have appropriate systems in place.
  + Response – Bill was amended to not proceed with the proposal to bring forward the start date of the death benefit changes.

### Feedback

Feedback on the consultation process for this measure can be forwarded to [consultation@treasury.gov.au](mailto:consultation@treasury.gov.au) . Alternatively, you can contact Michelle Dowdell on +61 2 6263 3071 or Laura Johnson on +61 2 6263 3551.

Thank you to all participants in the consultation process.

## *Treasury Laws Amendment (2017 Measures No. 2) Bill 2017*

## *SCHEDULE 2: Insolvency laws amendment*

## SUMMARY OF CONSULTATION PROCESS

The Government is refining amendments made to the *Corporations Act 2001* (Corporations Act) and the *Bankruptcy Act 1966* (Bankruptcy Act) by the *Insolvency Law Reform Act 2016* (Reform Act) in order to rectify certain technical issues identified in the Reform Act.

This measure was included in *Treasury Laws Amendment (2017 Measures No. 2) Bill 2017*, which was introduced into Parliament on 24 May 2017.

### Consultation process

Targeted consultation was conducted with relevant stakeholders and the states and territories were consulted through the Legislative and Governance Forum on Corporations.

Public consultation on the draft legislation was conducted between 3 May 2017 and 17 May 2017. No consultation meetings were held. TBA submissions were received.

### Summary of key issues

In response to certain issues raised by industry, regulators, and the Department of Employment, the Government identified required refinements to changes to corporate and personal insolvency law made by the Reform Act.

Industry stakeholders identified compliance costs as a key issue. The law prohibits insolvency practitioners deriving profits or advantages, except as allowed under the *Corporations Act 2001* (Corporations Act) and the *Bankruptcy Act 1966* (Bankruptcy Act). As drafted, the prohibition may be interpreted as requiring creditor approval each time a profit or advantage is on-paid to a related entity. For example, an external administrator would need to seek creditor approval to pay their employees, even where that payment comes from the external administrator’s own remuneration which has already received approval.

In consultation with industry stakeholders, the Government has developed amendments to address this issue. Schedule 2 clarifies the operation of the prohibition and removes the requirement for creditors to approve a single profit or advantage each time it is on-paid to a related entity of the practitioner. These amendments will reduce costs without weakening the prohibition’s intended protective purpose.

The Department of Employment also raised a concern that the commencement of a provision in the *Insolvency Law Reform Act 2016* might inhibit the operation of the Fair Entitlements Guarantee (FEG) Recovery Program. Schedule 2 repeals the provision which prevents public access to reports made by controllers appointed by creditors to manage their assets during liquidation.

The FEG Recovery Program relies on information contained in these reports to verify a controller’s compliance with their obligation to pay employees of the company out of the assets under their control. Repealing the provision ensures that the FEG Recovery Program can access the information it needs to reclaim funds paid out under FEG. The decision to repeal the provision was made in consultation with the Department of Employment, the Australian Investment and Securities Commission and industry stakeholders.

### Feedback

Feedback on the consultation process for this measure can be forwarded to [consultation@treasury.gov.au](mailto:consultation@treasury.gov.au). Alternatively, you can contact James Mason on (02) 6263 4405.

Thank you to all participants in the consultation process.