# superannuation – integrity of limited recourse borrowing arrangements and minor and technical amendments

## 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 25 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.
  + However, 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.
  + However, following stakeholder comments, the Government will consult further on the measure to include a member’s share of an outstanding LRBA in their total superannuation balance, alongside the non-arm’s length income arrangements integrity measure that was 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.