

08 August 2017

The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Sir/Madam

SUBMISSION ON TREASURY LAWS AMENDMENT (REDUCING PRESSURE ON HOUSING AFFORDABILITY) BILL 2017

This submission has been prepared by the Superannuation Committee of the Law Council's Legal Practice Section (**the Committee**).¹ The Committee's objectives are to ensure that the law relating to superannuation in Australia is sound, equitable and clear. The Committee makes submissions and provides comments on the legal aspects of the majority of all proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

Introduction

The Committee is pleased to have the opportunity to respond to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2017. The Committee is guided by its objectives identified above and has only made comments below where the Committee has identified issues within its remit.

The Superannuation Committee considers that the draft Bill is well drafted and will achieve the objectives set out in the Explanatory Memorandum. Our primary concerns go to matters that are not addressed in the draft Bill, being disclosure and advice.

Risks for Consumers

The initiatives in the draft Bill will not work unless they are known and understood. Superannuation fund trustees will need to consider whether they should update their product disclosure statements and send members significant event notices. In our opinion, the Corporations Regulations should be amended to ensure that product disclosure statements for superannuation include information about both schemes. Both might need to be expressly referred to in the form and content requirements for a product disclosure statement in Schedule 10D of the Corporations Regulations.

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

Given the potential tax penalties that will apply if a member who has had money released under the FHSS (First Home Super Saver) does not purchase a home, it will be very important that they understand the conditions that apply to the release. This information should be provided by the Commissioner at the time he issues a release authority. We also consider that it would be appropriate to send a reminder to the recipient prior to the expiry of the 12 months period if they have not notified the Commissioner that they have satisfied the conditions within that period.

In addition to disclosure obligations, the downsizing contributions regime as well as the first home saver regime raise a risk that real estate agents might encourage older home owners to sell their homes in order to contribute to superannuation or first home buyers to make voluntary contributions to superannuation. Mortgage brokers might also encourage customers to save their deposit in superannuation. In any of these cases there is a risk for exploitation and unconscionable conduct, as well as unauthorised financial product advice.

In our opinion these might be matters that could be addressed by ASIC (Australian Securities & Investment Commission) in advance by speaking at industry seminars and publishing information about the restrictions applying to the provision of financial product advice. Again, disclosure by superannuation trustees may help to mitigate these risks, and guidance from ASIC to assist trustees to give this advice would be helpful.

In addition, we have the following minor comments on the Bill:

1. The FHSS maximum release amount includes 'your associated earnings'. These are applied to the member's concessional and non-concessional contributions and are calculated using the formula in the Bill. The formula does not correspond to the actual earnings on the member's concessional and non-concessional contributions. We understand that this is intended to assist the ATO (Australian Taxation Office) to administer the legislation. However, we note that the amount payable under an FHSS release authority may be well be in excess of the actual return to the fund on the contributions and therefore may be funded from a member's mandated employer contributions, This is most likely in the first year when the associated earnings are applied to the amount of contributions on the assumption that those contributions were all made on 1 July 2017. It is in fact possible that the sole contribution was made on 30 June 2018.

However, we appreciate that this is a question of policy and that the maximum available release amount under the FHSS is the total amount of the member's superannuation lump sum benefit at that time. This will protect other members from having to subsidise a member's FHSS release amount.

2. We have no comments on the proposed terms of the 'contributing the proceeds of downsizing to superannuation', other than to note that it is possible that the name 'downsizer contributions' might be misleading. The legislation does not contain a condition that requires the contributor to 'down size'.

We also query why the legislation would exclude mobile homes or even caravans if in fact these have been a person's home for the previous 10 years. However, again we appreciate that this a matter of policy.

3. You have no doubt already picked this up, but in the event not, we note that the references in Division to the section 131-1 of the Taxation Administration Act should be to section 135-1.

Contact

The Committee would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact:

- Mr Luke Barrett, Chair, Superannuation Committee on (T) 03 9910 6145 or at (E) luke.barrett@unisuper.com.au; or
- Ms Lisa Butler Beatty, Deputy Chair, Superannuation Committee on (T) 0477 753 941 or at (E) BeattyLi@cba.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jonathan Smithers', with a long horizontal stroke extending to the right.

Jonathan Smithers
Chief Executive Officer