Director
Superannuation Tax Unit
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: superannuation@treasury.gov.au

Re: Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023

My name is Sarah Burgess and I am employed as a specialist within Boyce. My qualifications and experience in traditional chartered accountancy and financial advice, alongside my experience pertaining to SMSFs and compliance allows me to provide people in rural and regional New South Wales with access to the highest quality investment and financial planning advice. I am extremely passionate about our unique superannuation system in Australia. At Boyce, our retirement planning clientele are investing in a brighter future for their loved ones, by contributing on behalf of generations to come. Boyce is Australia's largest regional professional services firm with offices in major NSW regional centres including Cooma, Dubbo, Goulburn, Moree, Orange, and Wagga Wagga with satellite offices in Bega, Tamworth, Canberra and Sydney. This unique market position allows Boyce to live and understand regional Australia as part of the community, playing a pivotal role supporting families, agriculture, regional business and infrastructure. We take pride in our commitment to support future generations to thrive in regional Australia, not just the big cities. Boyce welcomes the opportunity to provide a submission to Treasury on the Government's proposed Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill.

I wish to highlight three key areas that I believe should be considered further, noting that in making this submission, I also considered the *Legislating the objective of superannuation* consultation paper released in February 2023, which sought feedback on legislating the objective of superannuation. To draw directly from this paper, the guiding principles of Superannuation are to:

1. restrict access to superannuation and preserve savings for a person's retirement. The introduction of compulsory superannuation in 1992 was rationalised by increased self-provision for retirement;
2. provide income in retirement;
3. preserve dignity by maintaining financial security and wellbeing in retirement.

I believe that there are three elements of the proposed measure that contradict the spirit of these objectives, and indeed the intent of forced savings and tax legislation in Australia. I would like to thank you for this opportunity to provide feedback and would be happy to discuss the issues raised here further.

1. Preserve Savings

Issue: The proposed amendment would apply a $3mil tax threshold to all individuals regardless of their ability to access their superannuation balance. This measure would disadvantage individuals who currently have member balances in excess of $3mil and do not have access to their retirement savings as they would be unable to exercise discretion over which tax vehicle to employ to accumulate wealth. Acknowledging that superannuation in Australia has been thought to consist of three pillars, being Government pension, self-funded pensions and personal savings; this legislation would trap those that have made retrospective decisions to accumulate their retirement savings in super for future access, and this would negatively impact the preservation of these monies. This would also extend to individuals still in employment who would, due to the nature of continuing compound growth and mandated contributions, breach the current non-indexed threshold or equivalent discounted rate.

Recommendation: The Government explore the possibility of changing existing preservation rules for members who have a balance above $3m but are currently unable to withdraw as they do not meet a condition of release. This will allow individuals of all ages who would otherwise be subject to the additional tax to withdraw amounts in excess of the threshold. This concurs with other treasury submissions to date on this issue and so I have not elaborated further.

2. **Deliver Income**

Issue: The proposed amendment levies a tax on individuals for superannuation balances above the threshold. This tax may be paid by the individual personally or by way of release from their superannuation. While I don't disagree with the principle of applying a tax to higher member balances, I assert that the mechanism of applying this tax is contrary to the principles of forced retirement savings by way of the compulsory Super Guarantee. A tax on member balances i.e., the capital component of savings, directly contravenes the principle of providing income for retirement. Effectively it reduces a superannuation fund trustee's ability to meet the sole purpose test and furthermore reduces means that individuals can utilise for retirement/income needs. Pragmatically, trustees will now need to prioritise investments according to their distribution methods of cashflow rather than by overall investment return. This would couple with reduced capacity to spend and contribute to GDP by those who would use their discretionary monies held in a personal capacity to pay the tax liability. This would add recessionary elements to our economic environment.

Recommendation: To address genuine liquidity issues for impacted individuals having to pay tax on unrealised gains, I recommend Government provide impacted individuals with an additional option to pay their tax liability through a deferred debt account. This would replicate the current approach given to defined benefit members who are required to pay additional Division 293 tax on their concessional contributions. This concurs with other treasury submissions to date on this issue.

Given the unusual approach adopted by Government in the taxation of unrealised capital gains, I recommend Government permit impacted individuals to carry back of capital losses. This concurs with other treasury submissions to date on this issue.

In addition, I recommend the Government consider permitting a refund of unused tax credits upon death to the beneficiary (capped at the amount of additional tax paid). This concurs with other treasury submissions to date on this issue.

It should be noted that the structure of SMSFs allows for the determination of actual earnings on balances over the $3mil threshold. This mitigates the need for tax on unrealised gains in the interim. I recommend that for SMSFs, the $3mil tax is levied on realised gains and profits. In this way there is no contravention of the intent of the legislation – tax is levied on balances over the threshold, and there is a pragmatic application of the law for those vehicles that are already receiving personalised *administration and have the ability to make these calculations. This is in line with existing applications of current legislation, for example, the ability to reserve contributions. All notional tax would be re-couped at the point of realisation and there would be no contravention of the threshold, but a recognition of different tax timings which is consistent with current tax law and common law adoptions.*

3. Dignity

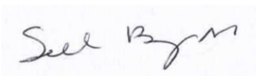
Issue: The $3mil threshold provided in the proposed amendment is not indexed, and no clarity has been provided in the calculation of this threshold. There are two concerns with this. Firstly, the proposed measure creates financial uncertainty for future retirement and disincentivises this investment vehicle. Secondly, it makes it impossible for tax practitioners, financial advisors, and those who practice law to understand the intent behind the legislation other than tax as an objective in and of itself. This is not dignified for the vendor or the consumer.

Recommendation: Allowing the withdrawal of balances above the $3m threshold as a one-off process (with appropriate relief provided to facilitate such a process) would mean the indexation of the threshold would no longer pose an issue for those currently impacted by this threshold (both currently and through prospective calculations based on current balances and Super Guarantee contributions). This concurs with other treasury submissions to date on this issue.

Another approach would be to mandate a prospective threshold whereby, upon access to retirement benefits, members who breach this threshold would be required to invest excess balances in investments designed by actuaries for drawdown (e.g., annuities).

If you would like to discuss this submission or have any questions, please contact myself in the first instance at s.burgess@boyceca.com

Yours sincerely,



Sarah Burgess

Financial Advisor and Superannuation Specialist

Boyce