

Institute of Financial Professionals Australia – Supplementary Submission

- As noted by the other witnesses, the industry's issues are not necessarily with the proposed legislation but rather with the 2019 amendments that inserted the non-arm's length expenses (NALE) rules
- Industry is not saying that there should not be an integrity rule, but rather a disproportionate taxing provision (ie NALE) is not the appropriate way to do it.
- As discussed, industry recommends that the integrity measure be contained in the *Superannuation Industry (Supervision) Act 1993* (specifically section 109) and the contribution rules (as per the ATO's ruling [TR 2020/1](#))
- While the committee could take the view that if super fund trustees act in arm's length way, then the NALE rules won't apply, I note that it is not that simple
 - The NALE rules result in a significant administrative cost across the sector
 - With the need to bench mark or provide evidence for any related party dealings
 - The difficulty of identifying what is in the trustee/director role (which are not charged for) and what is in a service provider role (which is charged for) – see [LCR 2021/2](#)
 - The non-arm's length income (NALI) and NALE rules are disproportionate
 - While the proposed legislative changes will cap general expense NALI at 2 times the expense, that is still an effective tax rate of 90%
 - Meanwhile specific expense NALE and the general NALI rules do not have any cap
 - For example, example 9 in LCR 2021/2 refers to a trustee doing a renovation to an SMSF's property and not charging for those works. The ATO's view is that the income and capital gains from the future sale of that property will be taxed at the NALI rates (45%). Let's say the value of those works that were not charged is \$10K. Let's also say the future income and capital gains from that property was \$1 million. The SMSF will receive a tax bill on that \$1 million of \$450K. That's an effective tax rate of 4,500%.
 - As you can see from the above example, the tax consequences of NALE (and NALI) is disproportionate.
- For these reasons, we seek that the proposed legislation be withdrawn and the NALE/NALI rules be remedied as proposed by the industry groups.