



SUBMISSION

Submission to Senate
Economics Legislation
Committee — *Treasury
Laws Amendment (2020
Measures No 4) Bill 2020*

10 November 2020

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File: 2020/29

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee

Via email: economics.sen@aph.gov.au

10 November 2020

Dear Mr Fitt

Inquiry into *Treasury Laws Amendment (2020 Measures No 4) Bill 2020*

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into the *Treasury Laws Amendment (2020 Measures No 4) Bill 2020* ("the Bill").

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

The amendments proposed by Schedule 2

ASFA's submission relates solely to Schedule 2 of the Bill, which proposes important amendments relevant to the closure of the Superannuation Complaints Tribunal (SCT). These include transitional arrangements associated with the replacement of the SCT by the Australian Financial Complaints Authority (AFCA).

ASFA supports the amendments proposed by Schedule 2.

On 1 November, it will be two years since AFCA replaced the SCT as the external dispute resolution (EDR) body for new superannuation complaints. While the SCT has made strong progress in finalising its remaining caseload, we understand a small number of complaints — likely to be up to twenty — will not have been finalised when the SCT is due to cease its work on 31 December. We also understand there are around seven¹ matters currently before the Court that relate to SCT determinations and may potentially require remittal back for redetermination or finalisation in accordance with the Court's directions.

Given the small number of matters — both SCT and Federal Court — likely to be outstanding as at 31 December, we do not consider it appropriate for the SCT to be continued in operation beyond that date. We recently lodged a submission² in support of proposed amendments to AFCA's Rules to allow it to deal with outstanding matter related to the SCT.

It is critical that all necessary arrangements are made to ensure the closure of the SCT, and its replacement by AFCA, occurs smoothly and that any disruption to consumers and superannuation trustees is minimised. In particular, all efforts must be made to avoid further delaying the resolution of the complaints that will be transferred to AFCA or the SCT-related matters before the Federal Court.

In this respect, the mechanism proposed in Schedule 2 of the Bill to ensure appropriate access by AFCA and the Federal Court to records and documents of the SCT is of vital importance. We note the SCT's inability to share with AFCA information in relation to active or resolved complaints was considered a substantial legal and practical issue during the initial transition from the SCT to AFCA as the EDR body for superannuation.

Where matters remain before the SCT or are before the Federal Court on appeal from an SCT determination, these relate to complaints lodged with the SCT before 1 November 2018 and involve conduct or decisions that occurred prior to that date. The consumers who made those complaints have already faced a lengthy wait for resolution, and any further delays must be avoided to the extent possible. It is vital that AFCA is able to utilise the SCT's 'case files' on transferred complaints, so it does not need to begin its consideration from a blank slate. Similarly, it is critical that the Federal Court is able access any records necessary to complete its consideration of matters appealed from determinations of the SCT. A lack of access to the SCT's case files or other documents or records would involve unacceptable delays for consumers and additional cost for trustees.

ASFA also notes there is a need to ensure that affected consumers receive clear notification about the impacts of the transition arrangements. This should include notification by the SCT and AFCA (as appropriate) about the transfer of unresolved SCT complaints and about AFCA's future role in addressing matters remitted back by the Federal Court in relation to SCT determinations.

Recommendations

ASFA considers the amendments proposed in Schedule 2 to be non-controversial. We recommend they are passed as a matter of urgency, to ensure that AFCA and the Federal Court are not prevented from efficiently and effectively dealing with the outstanding SCT complaints and appeals.

ASFA also considers it important that affected consumers receive clear notification from the SCT and AFCA about the impacts of the transition arrangements.

If you have any queries or comments in relation to the content of our submission, please contact me on [REDACTED], or Julia Stannard, Senior Policy Advisor, on [REDACTED].

Yours sincerely

Glen McCrea

Deputy Chief Executive Officer and Chief Policy Officer

¹ This number may increase (given appeals may be lodged within 28 days after an SCT determination is given to the parties) or decrease (if matters before the Court are resolved or discontinued). However, given the current low volume of actual and potential Federal Court matters we would not expect any significant change.

² ASFA, [Submission to Australian Financial Complaints Authority — AFCA Rules change consultation: transfer of remaining SCT complaints to AFCA](#), 16 October 2020