Chapter 1

Introduction and overview of the bills

1.1 On 10 November 2016, the Senate referred the provisions of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the TLA Bill) and the Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 to the Senate Economics Legislation Committee for inquiry and report by 23 November 2016.

1.2 These two bills form part of the government's superannuation reform package announced in the 2016–17 Budget on 3 May 2016. The Senate has referred a third bill that is part of the package, the Superannuation (Objective) Bill 2016, separately to the committee for inquiry and report by 14 February 2017.[1]

1.3 In his second reading speech, the Treasurer, the Hon Scott Morrison MP, explained that this package of superannuation tax reforms, in particular the TLA Bill, 'implements the government's election commitment to improve the fairness, sustainability, flexibility and integrity of [the] superannuation system'.[2] The Treasurer also stated that the package of measures will allow many Australians to better prepare for retirement, by improving their superannuation savings and ultimately, increasing their income in retirement. These measures, the Treasurer argued, would also reduce the capacity of the superannuation system to be used as a means for tax minimisation and estate planning.[3]

1.4 The TLA Bill contains 10 measures. The first and principal measure of the TLA Bill establishes a transfer balance cap of $1.6 million on the amount of capital that can be transferred to the tax-free earnings retirement phase of superannuation.

1.5 The nine subsequent schedules amend superannuation tax laws to allow for the better targeting of tax concessions and the introduction of flexibility and system integrity measures. The majority of these schedules are due to come into effect or apply from 1 July 2017.

1.6 The Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 seeks to impose a 15 per cent tax on any notional earnings of capital in a retirement phase superannuation account that is greater than the transfer balance cap of $1.6 million (outlined in Schedule 1 of the TLA Bill). This tax would come into effect from 1 July 2017.

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1 The Superannuation (Objective) Bill 2016 seeks to enshrine in law that the primary objective of the superannuation system is to provide income in retirement to substitute or supplement the age pension. It will also require new bills and regulations relating to superannuation to be accompanied by a statement of compatibility with the objective of the superannuation system.

2 TLA Bill, Second Reading Speech, HoR Hansard, 9 November 2016, p. 78.

3 TLA Bill, Second Reading Speech, HoR Hansard, 9 November 2016, p. 78.

Conduct of the inquiry

1.7 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions by 17 November 2016. The committee received 44 submissions, which are listed at Appendix 1.

1.8 The committee did not hold any public hearings.

Background and consultation

1.9 The November 2014 Financial System Inquiry (FSI) report, led by Mr David Murray AO, noted that the Australian population is ageing and this phenomenon was placing increased fiscal pressure on government in terms of the provision of the age pension. The report emphasised that 'a well-functioning superannuation system will be important in alleviating these pressures and ensuring good outcomes for retirees'.[4]

1.10 Following the government's announcement of the superannuation reform package in the 2016–17 Budget, Treasury commenced a consultation process in relation to the draft legislation.

1.11 On 15 September 2016, the government announced amendments to the package intended to reduce the potential for the superannuation system to be used as an estate planning[5] vehicle, while still supporting Australians to invest in their superannuation. Most notable of these amendments was the replacement of the proposed $500,000 lifetime cap on non-concessional contributions. This initial proposal was 'replaced by a new measure to reduce the existing annual non-concessional contributions cap from $180,000 per year to $100,000 per year'.[6]

1.12 Between 7 September to 23 October 2016, Treasury conducted a three-tranche consultation process in relation to the draft legislation that constitutes the superannuation reform package. Treasury received 156 submissions (60, 69 and 27 for tranches 1, 2, and 3 respectively). Three consultation roundtables were also held during this period in Melbourne (5 October 2016), Sydney (6 October 2016) and Canberra (18 October 2016).

1.13 Treasury received feedback on the draft legislation from individuals as well as key industry stakeholders, including:

- the Association of Financial Advisers (AFA);
- the Association of Superannuation Funds of Australia (ASFA);

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4 Financial System Inquiry report, p. 2.

5 Estate planning involves developing a strategy to deal with an individual's assets in the event of their incapacitation or death – the legal instruments and structures, such as a will or the transfer an individual's assets in the event of death. The Australian Taxation Office noted on its website that tax is a major consideration in estate planning. For more information, see https://www.ato.gov.au/Business/Privately-owned-and-wealthy-groups/Tax-governance/Estate-planning/

6 The Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia, 'Even fairer, more flexible and sustainable superannuation', *Media Release*, 15 September 2016.

- the Australian Institute of Superannuation Trustees (AIST);
- Ernst & Young (EY);
- Industry Super Australia (ISA);
- the Self-managed Superannuation Funds Australia (SMSFA); and
- the Tax Institute.

1.14 A number of stakeholders raised concerns about the short timeframe provided for consideration of the draft legislation. However, Treasury has noted that 'early passage of the legislation will provide individuals and industry with certainty and the maximum amount of time to implement the changes ahead of 1 July 2017'.[7]

Financial impact

1.15 As set out in Table 1.1 below, the measures contained in the bills are estimated to increase the underlying cash balance by approximately $2.8 billion over the forward estimates.[8]

Table 1.1: Financial impact of the measures ($m)

$m	***2016-17***	***2017-18***	***2018-19***	***2019-20***	***Total***
Objective of the superannuation system	-	-	-	-	-
Transfer Balance Cap	-4.4	500.0	650.0	700.0	1,845.6
Concessional superannuation contributions	-2.8	499.1	797.8	1,048.9	2,343.0
Annual non-concessional contributions	..	..	50.0	150.0	200.0
Low income superannuation tax offset	-	-2.8	-651.1	-801.1	-1,455.0
Deducting personal contributions	-	350.0	-500.0	-700.0	-850.0
Unused concessional cap carry forward	-	-	-	-100.0	-100.0
Tax offsets for spouse	-	-	-5.0	-5.0	-10.0

7 Treasury Consultation Summary, 11 November 2016, p. 12.

8 Explanatory Memorandum, pp. 9–10.

$m	*2016-17*	*2017-18*	*2018-19*	*2019-20*	*Total*
contributions					
Innovative income streams and integrity	..	130.0	160.0	180.0	470.0
Anti-detriment provisions	-	-	105.0	245.0	350.0
Administration and consequential amendments	-	*	*	*	*
Total	**-7.2**	**1,476.3**	**606.7**	**717.8**	**2,793.6**

Source: Explanatory Memorandum, pp. 9-10.

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016

1.16 The next part of this chapter provides a basic summary of the measures in the bill. More detailed explanations of each measure are provided in Chapter Two, which also considers views expressed in submissions.

Schedule 1: Transfer balance cap

1.17 Schedule 1 to the TLA Bill imposes a $1.6 million cap (the transfer balance cap) on the amount of capital that can be transferred to the tax free earnings retirement phase of superannuation.

Schedule 2: Concessional superannuation contributions

1.18 Schedule 2 to the TLA Bill:

- reduces the annual concessional contributions cap to $25,000 for all individuals (from $30,000 for those aged under 49 at the end of the previous financial year and $35,000 otherwise);
- reduces the threshold at which high-income earners pay Division 293 tax on concessionally taxed contributions to $250,000 (from $300,000); and
- amends how concessional contributions are determined in respect of constitutionally protected funds and unfunded defined benefit superannuation schemes.[9]

Schedule 3: Non-concessional contributions

1.19 Schedule 3 to the TLA Bill amends the annual non-concessional contributions cap from $180,000 to $100,000, introduces criteria for an individual to be eligible for

9 Explanatory Memorandum, p. 12.

the non-concessional contributions cap and makes other minor amendments in respect of the non-concessional contributions rules.[10]

Schedule 4: Low income superannuation tax offset

1.20 Schedule 4 to the TLA Bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to enable eligible low income (less than $37,000 per annum) earners to receive the low income superannuation tax offset.

Schedule 5: Deducting personal contributions

1.21 Schedule 5 to the TLA Bill removes the requirement in the income tax law that an individual must earn less than 10 per cent of their income from their employment related activities to be able to deduct a personal contribution to superannuation and make it a concessional contribution.

Schedule 6: Unused concessional cap carry forward

1.22 Schedule 6 to the TLA Bill introduces provisions to allow catch-up concessional contributions. This will allow individuals with a total superannuation balance of less than $500,000 to make additional concessional superannuation contributions in a financial year by utilising unused concessional contribution cap amounts from up to five previous financial years.

Schedule 7: Tax offsets for spouse contributions

1.23 Schedule 7 to the TLA Bill amends the tax law to encourage individuals to make superannuation contributions for their low income spouses. This is achieved by increasing the amount of income an individual's spouse can earn before the individual ceases to be entitled to a tax offset for making superannuation contributions on behalf of their spouse.

Schedule 8: Innovative income streams and integrity

1.24 Schedule 8 to the TLA Bill extends the tax exemption on earnings in the retirement phase to products such as deferred lifetime annuities and group self-annuitisation products.

Schedule 9: Anti-detriment provisions

1.25 Schedule 9 to the TLA Bill removes the income tax deduction which allows superannuation funds to claim a tax deduction for a portion of the death benefits paid to eligible dependants.

Schedule 10: Administrative streamlining

1.26 Schedule 10 to the TLA Bill is designed to streamline some of the administrative processes of the Australian Taxation Office. In particular:

10 Explanatory Memorandum, p. 13.

- Part 1 of schedule 10 to the TLA Bill 2016 amends the tax law to simplify and consolidate the range of existing processes for the release of amounts from individuals' superannuation using a release authority.
- Part 2 of schedule 10 to the TLA Bill 2016 simplifies the taxation law to assist in streamlining the administration of the Division 293 tax regime. The amendments reduce compliance costs for superannuation providers and individuals where superannuation benefits become payable from defined benefit interests by removing the requirements in the taxation law relating to superannuation interests for which a Division 293 tax debt account is being kept for:
    - superannuation providers to notify the Commissioner of Taxation (Commissioner) of the amount of end benefit caps for their members in some circumstances; and
    - individuals to notify the Commissioner in any circumstance when their superannuation benefits from such interests first become payable.
- Part 3 of schedule 10 to the TLA Bill 2016 clarifies that the Commissioner can provide a single notice that includes two or more separate notices that are required to be provided.
- Part 4 of schedule 10 to the TLA Bill makes consequential amendments to the *Superannuation Act 1976* that sets out the rules that govern the Commonwealth Superannuation Scheme (CSS) in relation to release authorities issued by the Commissioner. The amendments take account of changes made by other parts of the Superannuation Reform Package.

Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016

1.27 The Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 proposes to impose a tax on the notional earnings of capital moved into a retirement phase superannuation account that is in excess of the $1.6 million transfer balance cap established in Schedule 1 of the TLA Bill. From 1 July 2017, any notional earning of the excess capital would be taxed at a rate of 15 per cent.

1.28 The Treasurer has emphasised that the establishment of the transfer balance cap of $1.6 million is the 'foundation of sustainability measures in the superannuation reform package'.[11]

Scope and structure of this report

1.29 Submissions received by the committee commented on all schedules to the TLA Bill. A significant majority of the submissions received commented specifically in relation to the introduction of the transfer balance cap (schedule 1 of the TLA Bill). The next chapter of the committee's report considers each schedule in detail, focusing

11 Excess Transfer Balance Tax Bill, Second Reading Speech, HoR Hansard, 9 November 2016, p. 84.

particularly on those commented on by submitters. The Explanatory Memorandum that accompanied the bills sets out all of the proposed amendments in detail.