Chapter 2

Views on the bills

2.1 As outlined in the previous chapter, the combined measures contained in the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the TLA Bill) and the Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 form part of the Government's superannuation reform package announced in the 2016–17 Budget.

2.2 The Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the TLA Bill) contains 10 measures. The Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 contains one measure to impose an excess transfer balance tax for a person who has a balance in excess of the transfer balance cap.

2.3 This chapter provides detailed explanations of each measure contained in the TLA Bill and considers views expressed in submissions. No submissions were received in relation to the Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016. This chapter will therefore focus on the measures outlined in the TLA Bill.

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016

General comments

2.4 A number of submissions noted the complexity of the proposed measures in the TLA Bill, and highlighted some of the difficulties that individuals, organisations and superannuation funds might encounter when implementing some of these changes. Given the complexity of a number of measures contained in the TLA Bill, many submitters suggested that the timeframe for implementation by 1 July 2017 would be difficult. Some of these submitters suggested grandfathering the changes in order to ensure that individuals who have already planned their retirement within the existing laws are not financially disadvantaged.[1]

2.5 Overall, submitters agreed that the superannuation reform package and the measures outlined in the TLA Bill would contribute to a superannuation system that is more flexible and sustainable. In its submission, Industry Super Australia (ISA) provided the committee with a distributional analysis of the impacts of the reform package. This analysis showed that the measures included in the TLA Bill would overall result in a better targeting of superannuation concessions than is currently the case. According to the ISA's analysis, 'the policy savings measures taken together are

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1 For example, see: Mr Andrew Freeman, *Submission 2*, p. 1; Pat and Kay Kelly, *Submission 4*, p. 1; Dr Maureen Burke, *Submission 5*, p. 1; AMP, *Submission 28*, p. 4; UniSuper, *Submission 29*, p. 2; The Tax Institute, *Submission 34*, p. 5; Save our Super, *Submission 36*, p. 6.

broadly sound and respond to concerns about the equity, efficiency and sustainability of super tax contributions'.[2]

Schedule 1: Transfer balance cap

2.6 The principal measure set out in schedule 1 of the TLA Bill is the introduction of a transfer cap balance of $1.6 million (the transfer balance cap) on the amount of capital that can be transferred to the tax free earnings retirement phase of superannuation in respect of an individual. Under the current law, there is no limit to the amount of capital that an individual can place into a retirement phase account.[3]

2.7 The transfer balance cap of $1.6 million will be subject to proportional indexation in $100,000 increments, in line with the Consumer Price Index (CPI). This means that by 2020–21, the transfer balance cap will likely have increased to $1.7 million.[4]

2.8 The transfer balance cap is an individual cap and cannot be combined or extended to include the transfer cap balance of a spouse or dependent. Schedule 1 of the TLA Bill also has taxation implications for certain defined benefit income streams, including taxed and untaxed defined benefit arrangements and death benefit superannuation income streams.[5]

2.9 For example, in taxed defined benefit arrangements, half of the capped defined benefit income stream payments are included in the recipient's assessable income and taxed at the individual's marginal rates to the extent they exceed a cap of $100,000. Whereas if the defined benefit is untaxed, the tax offset is limited to the first $100,000 of benefit that the individual receives.[6]

2.10 As noted above, the transfer balance cap is an individual cap. Where an individual is the beneficiary of a death benefit, they may choose to accept this benefit either as a lump sum or as a superannuation income stream.

2.11 In circumstances where an individual becomes the recipient of a death benefit income stream, that individual must ensure that they do not exceed the cap. Where a death benefit income stream would cause an individual to exceed their cap, they can comply with the cap by taking a lump sum death benefit or commuting (partially or in full) another income stream. It is important to note that a 'superannuation death benefit cannot be held in an accumulation interest as this contravenes the requirement to cash the benefit out of the system as soon as practicable'.[7]A special cap applies to individuals that receive a death benefit income stream as a dependent child beneficiary.

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2 Industry Super Australia, *Submission 41*, p. 3.

3 Explanatory Memorandum, p. 39.

4 Explanatory Memorandum, p. 37 and p. 45.

5 Explanatory Memorandum, p. 35.

6 Explanatory Memorandum, p. 39.

7 Explanatory Memorandum, p. 53.

2.12 The introduction of the transfer balance cap is estimated to increase the underlying cash balance by $1.8 billion over the forward estimates.[8]

Views on schedule 1

2.13 A number of submitters highlighted the complexity of the changes proposed in schedule 1 to the TLA Bill. For example, the Institute of Public Accountants (IPA) noted in their submission that although only a relatively small number of Australians will be affected by the introduction of the transfer balance cap, the proposed new system is complex and will require ongoing administration.[9]

2.14 The Law Council of Australia also commented that given the complexity of the proposed transfer balance cap system, many individuals will have difficulty in avoiding inadvertent breaches of the transfer balance cap as they attempt to track their total superannuation balance across multiple funds and interests.[10]

2.15 A number of submitters, including the Australian Institute of Superannuation Trustees (AIST), UniSuper, Association of Superannuation Funds of Australia (ASFA), ARC Centre of Excellence in Population Ageing Research and the SMSF Owners' Alliance commented that the indexation of the $1.6 million transfer balance cap should be linked to Average Weekly Ordinary Time Earnings (AWOTE) instead of linked to CPI as proposed.[11] The SMSF Owners' Alliance also noted that AWOTE is used to index other measures proposed in the TLA Bill.[12]

2.16 Several submitters, including a number of affected individuals and superannuation bodies, commented on the way in which defined benefit schemes are going to be assessed in relation to the transfer balance cap.[13]

2.17 The Australian Council of Public Sector Retiree Organisations Inc. (ACPSRO) argued that a defined benefit scheme should not be included in an individual's transfer cap balance. This is due to the fact that defined benefit pensions cannot be commuted outside of the superannuation system in order to reduce an individual's transfer balance cap, leaving those individuals who receive defined benefit pensions with less space available in their cap.[14]

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8 Explanatory Memorandum, p. 12.

9 Institute of Public Accountants, *Submission 6*, pp. 2–3.

10 Law Council of Australia, *Submission 24*, p. 5.

11 Australian Institute of Superannuation Trustees, *Submission 7*, p. 16;
SMSF Owners' Alliance, Submission 19, p. 6; UniSuper, *Submission 29*, p. 12;
Association of Superannuation Funds of Australia, *Submission 31*, p. 5;
ARC Centre of Excellence in Population Ageing Research, *Submission 37*, p. 5.

12 SMSF Owners' Alliance, Submission 19, p. 6.

13 Dixon Advisory, *Submission 32*, p. 4; SMSF Association, *Submission 39*, p. 4;
UniSuper, *Submission 29*, p. 3;
Superannuated Commonwealth Officers' Association, Submission 20, p. 1.

14 Australian Council of Public Sector Retiree Organisations Inc., *Submission 10,* p. 2.

2.18 Submitters noted that the method of calculation in order to determine the 'special value'[15] and debit value of the defined benefit pension did not take into account factors such as the age and life expectancy of the pension recipient. The calculation means that younger pension recipients with greater life expectancies will have a greater debit value on their pension and therefore a smaller amount of their transfer balance cap remaining.[16]

2.19 AIST explained the relationship between defined benefit pensions and the transfer balance cap and suggested an alternative method for calculation of the 'special value':

> The Bill sets the valuation of defined benefit interests for the general transfer balance cap at a value of 16. In contrast, the valuation of these interests for total superannuation balance is set according to the age based factor in schedule 1B of the *Income Tax Assessment Regulations 1997*. In order to avoid confusion and the possibility of distorted decision-making as a result of these different valuation methods, it is recommended that the valuation methods be aligned. Alignment could be achieved by using actuarially determined commutation factors for both the general transfer balance cap and the total superannuation balance for defined benefit members.[17]

2.20 ACPSRO also suggested a different method for calculating the 'special value' of defined benefit pensions which is summarised in the table below.

Table 2.1: Suggested 'special value' factor distribution by age[18]

Age on 1 July 2017 or when the pension commences, if later	***Factor***
Under age 70	16
70-74	14
75-79	12
80-84	10
85-89	8
90 and over	6

15 The 'special value' of a defined benefit scheme that is a lifetime pension or annuity will be calculated using the annual entitlement amount multiplied by 16. The debit value that is then applied to an individual's transfer balance cap if the income stream is commuted in full is the 'special value' less any previous debits of the pension or annuity. For more information on special and debit values, please refer to table 3.3 of the Explanatory Memorandum (p. 92).

16 Australian Institute of Superannuation Trustees, *Submission 7*, p. 12.

17 Australian Institute of Superannuation Trustees, *Submission 7*, p. 16.

18 Australian Council of Public Sector Retiree Organisations Inc., *Submission 10,* p. 1.

Schedule 2: Concessional superannuation contributions

2.21 The cap on concessional (pre-tax) contributions for a financial year is currently $30,000 for individuals under 49 years of age at the end of the last financial year, and $35,000 for individuals aged 49 years and over. The $30,000 cap is indexed in increments of $5,000 in line with the annual rate of full-time AWOTE.[19]

2.22 Under existing law, an individual is liable to pay Division 293 tax[20] if their combined income for surcharge purposes and concessionally taxed contributions exceeds the threshold amount of $300,000.[21]

2.23 Schedule 2 to the TLA Bill:

- reduces the annual concessional contributions cap to $25,000 for all individuals, regardless of age;
- reduces the threshold at which high-income earners pay Division 293 tax on their concessionally taxed contributions to superannuation to $250,000; and
- amends how concessional contributions are determined to ensure that contributions and amounts included in concessional contributions in respect of constitutionally protected funds and unfunded defined benefit superannuation schemes count towards an individual's concessional contributions cap.[22]

2.24 In addition, schedule 2 to the TLA Bill changes the indexation of the annual concessional contributions cap to increase in increments of $2,500 in line with AWOTE.

2.25 These measures are estimated to increase the underlying cash balance by approximately $2.3 billion over the forward estimates.[23]

Views on schedule 2

2.26 The Australian Council of Social Service (ACOSS) expressed their general support for the $25,000 concessional contributions cap, noting that they welcome 'the government's budget proposals to cap superannuation concessions for those who least need them'.[24]

2.27 The National Foundation for Australian Women (NFAW) also voiced their support for the measure, commenting that 'the reduction in the concessional

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19 Explanatory Memorandum, pp. 136–137.

20 Division 293 tax is payable by the individual at a rate of 15 per cent on the amount by which their income for surcharge purposes plus concessional contributions exceeds $300,000; or the individual's low tax contributions—whichever is lower. Explanatory Memorandum, p. 134.

21 Explanatory Memorandum, p. 133.

22 Explanatory Memorandum, p. 132.

23 Explanatory Memorandum, pp. 9–10.

24 Australian Council of Social Service, *Submission 13*, p. 2.

contribution cap to $25,000 is consistent with the proposed primary objective of the superannuation system to ensure retirement income'.[25]

2.28 ISA explained that the proposed reduction to concessional cap would only affect 2.5 per cent of individuals with superannuation, also noting that:

> The most likely group affected are high income earners. They of course can continue to contribute by way of non-concessional contributions. Although they will pay more tax the subsequent earnings on the contribution will be highly concessional – certainly more concessional than any other alternative.[26]

2.29 Some submitters raised concerns that the proposed concessional cap would be inadequate, particularly for individuals over 50 years of age.[27] For example, the IPA argued that 'people over 50 should be encouraged to make further superannuation contributions especially when they have the capacity to do so to address any super balance shortfall'.[28]

2.30 Pitcher Partners described the proposed reduction of the concessional cap to $25,000 as being 'unnecessarily restrictive' and recommended that 'as a minimum, the Government should retain the higher concessional cap of $35,000 for people over age 50'.[29]

2.31 However, the NFAW suggested that the need for older workers to make higher concessional contributions will diminish as the superannuation system matures:

> Arguably, as the superannuation system matures there is less need to allow higher contribution caps for older workers as they will have been paying a higher rate of contributions for more of their working life: a person relying on the SG who was 50 in 2007 had only 5 years of contributions at the rate of 9% of ordinary income, compared to a person who is 50 in 2016 who will have had 14 years at 9% or higher.[30]

2.32 A number of submitters voiced disappointment that there are no transitional measures in relation to the reduction in the concessional contributions cap.[31]

2.33 The IPA argued that this concern is exacerbated by 'the deferral of the proposed catch up measure until 1 July 2018, which effectively means the first catch up will not be available until the 2019-20 financial year'.[32]

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25 National Foundation for Australian Women, *Submission 15*, p. 3.

26 Industry Super Australia, *Submission 41*, p. 9.

27 See, for example, Institute of Public Accountants, *Submission 6*, p. 4; SMSF Association, *Submission 39*, pp. 5–7.

28 Institute of Public Accountants, *Submission 6*, p. 4.

29 Pitcher Partners, *Submission 21*, p. 2.

30 National Foundation for Australian Women, *Submission 15*, p. 3.

31 Financial Planning Association of Australia, *Submission 33*, p. 6.

32 Institute of Public Accountants, *Submission 6*, p. 4.

2.34 Some submitters expressed concern that, unlike the contribution cap measures, the Division 293 tax threshold is not indexed. These submitters pointed out that wages growth would consequently push a greater share of taxpayers above the threshold.[33]

Schedule 3: Non-concessional contributions

2.35 When the Government's superannuation reform package was initially announced as part of the 2016-17 Budget, it was proposed that a $500,000 lifetime cap on non-concessional (post-tax) contributions be introduced.[34] On 15 September 2016, the Treasurer advised that the lifetime cap would be 'replaced by a new measure to reduce the existing annual non-concessional contributions cap from $180,000 per year to $100,000 per year'.[35]

2.36 The annual cap on non-concessional contributions is currently $180,000—six times the annual concessional contributions cap—and is indexed as the concessional cap is indexed ($5,000 increments in line with AWOTE).[36]

2.37 Under existing superannuation arrangements, an individual under 65 years of age can access a three year bring forward period for their non-concessional contributions cap of three times the annual cap (that is, $540,000). Currently, there is no total superannuation balance test to determine whether an individual is eligible for the non-concessional contributions cap.[37]

2.38 Schedule 3 to the TLA Bill:

- reduces the annual non-concessional contributions cap from $180,000 to $100,000 (four times the proposed annual concessional contributions cap of $25,000);
- introduces an eligibility requirement that an individual must have a total superannuation balance at 30 June of the previous financial year of less than the general transfer balance cap (discussed in detail above) in the relevant year to be eligible for the non-concessional contributions cap;
- prevents payment of the government co-contribution in respect of an individual who is not eligible to make non-concessional contributions; and
- makes other minor amendments in respect of the non-concessional contributions rules.[38]

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33 See, for example, Pitcher Partners, *Submission 21*, p. 3; Industry Super Australia, *Submission 41*, p. 9.

34 Commonwealth of Australia, *2016-17 Federal Budget Overview*, 3 May 2016, p. 20.

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

36 Explanatory Memorandum, p. 151.

37 Explanatory Memorandum, p. 152.

38 Explanatory Memorandum, p. 151.

2.39 The proposed annual non-concessional cap will be indexed as the new concessional cap is indexed ($2,500 increments in line with AWOTE).

2.40 Individuals under 65 years of age may still be able to access a three year bring forward period for their non-concessional contributions cap of three times the proposed annual cap (that is, $300,000). However, this will be limited depending on their total superannuation balance.[39] Specifically, the amount of the cap an individual can bring forward will be limited if their total superannuation balance is close to the general transfer balance cap. See Table 2.2 for more detail.

Table 2.2: Superannuation balance and bring forward available[40]

Superannuation balance	*Contribution and bring forward available*
Less than $1.3 million	**3 years ($300,000)**
$1.3 – < $1.4 million	**3 years ($300,000)**
$1.4 – < $1.5 million	**2 years ($200,000)**
$1.5 – < $1.6 million	**1 year ($100,000)**
$1.6 million	**Nil**

2.41 Additionally, under the proposed legislation, individuals will not be eligible for the government co-contribution in an income year if:

- their non-concessional contributions exceed their non-concessional contributions cap for that year; or
- if, at 30 June of the previous year, their total superannuation balance equals or exceeds the general transfer balance cap.[41]

2.42 These measures are estimated to increase the underlying cash balance by approximately $200 million over the forward estimates.[42]

Views on schedule 3

2.43 A number of submitters expressed their support for the proposed non-concessional contribution cap over the previously proposed $500,000 lifetime

39 Explanatory Memorandum, p. 152.

40 Budget 2016-17, *Superannuation Reform: Annual non-concessional contributions cap*, http://budget.gov.au/2016-17/content/glossies/tax_super/html/tax_super-fs-07.htm (accessed 15 November 2016).

41 Explanatory Memorandum, p. 153.

42 Explanatory Memorandum, pp. 9–10.

cap.[43] AIST commented that the operation of the measure is similar to the existing non-concessional cap and that 'its implementation is much simpler that the original Budget proposal'.[44]

2.44 ISA estimated that, of those individuals with superannuation, 53 000 (22 200 female, 30 800 male) would be affected by the proposed measure to reduce the non-concessional contribution cap. ISA also commented:

> These estimated numbers impacted for the $100,000 non-concessional contribution (NCC) limit are more equal by gender than other savings, suggesting that the use of very high non-concessional contributions could be for family wealth management, rather than individual saving.[45]

2.45 The NFAW submitted that lower non-concessional contributions caps will improve the distributional equity of the retirement system and also noted the significant role that access to non-concessional contributions play in regard to tax planning arrangements:

> Concessional contributions have always been more limited in scope, so it is the ability to inject additional funds into superannuation that has allowed some individuals to build very large superannuation account balances.[46]

2.46 The Self-Managed Independent Superannuation Funds Association (SISFA) argued that the proposed bring forward measure with regard to account balances between $1.4 and $1.6 million is too complex. Moreover, SISFA submitted that 'it will be difficult for many members to know with certainty what their benefits are at the previous 30 June', and that this is likely to result in individuals inadvertently breaching the transfer balance cap.[47]

2.47 AIST noted the different indexation methods proposed for the transfer balance cap and concessional/non-concessional contributions, commenting that:

> This will result in the relationship between the general transfer balance cap and the contributions cap changing over time. Given that the rate of change in AWOTE tends to be historically higher than that of CPI, one consequence of this is that there will be reducing capacity for individuals to use the carry-forward mechanism over time.[48]

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43 See, for example, Australian Institute of Superannuation Trustees, *Submission 7*, p.14; SMSF Association, *Submission 39*, p. 7.

44 Australian Institute of Superannuation Trustees, *Submission 7*, p. 14.

45 Industry Super Australia, *Submission 41.1*, p. 8.

46 National Foundation for Australian Women, *Submission 15*, p. 4.

47 Self-Managed Independent Superannuation Funds Association, *Submission 22*, pp. 2–3. See also SMSF Association, *Submission 39*, p. 8.

48 Australian Institute of Superannuation Trustees, *Submission 7*, p. 15.

Schedule 4: Low income superannuation tax offset

2.48 The low income superannuation tax offset (LISTO) will replace the Low Income Superannuation Contribution (LISC) and will be available to individuals who earn an adjusted taxable income of $37,000 or less.

2.49 Concessional contributions to superannuation are currently taxed at a rate of 15 per cent, no matter an individual's marginal income tax rate. Individuals earning $37,000 or less may have a marginal income tax rate that is lower than 15 per cent, and would therefore be paying more tax on their concessional contributions than on their income.

2.50 The LISTO effectively refunds the tax paid on concessional contributions by individuals with a taxable income of up to $37,000 (up to a cap of $500). This amount will be paid directly into the individual's superannuation account.

Views on schedule 4

2.51 The introduction of the LISTO is a well-supported measure of the TLA Bill. In particular, the NFAW expressed support for schedule 4 of the TLA Bill, noting that women make up a significant proportion of low income earners in Australia. The NFAW also noted, however, that any transactions associated with the LISTO should not attract any fees charged to the eligible member's superannuation account. The NFAW believes that overall the LISTO will contribute to the improvement of superannuation outcomes for women.[49]

2.52 Overall, submitters were supportive of the introduction of the LISTO as outlined in schedule 4 to the TLA Bill.

Schedule 5: Deducting personal contributions

2.53 Schedule 5 to the TLA Bill removes the requirement in income tax law that an individual must earn less than 10 per cent of their income from salary or wages in order to be eligible to make concessional contributions to their superannuation.

2.54 Under the new law, individuals will therefore be able to deduct personal superannuation contributions, making them concessional.

2.55 However, some personal contributions to certain superannuation funds will not be deductible, including contributions made to Commonwealth public sector superannuation schemes and other funds that are not included in the income of the superannuation fund.[50]

2.56 This reform will particularly benefit individuals who are partially self-employed and partially salary/wage earners.

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49 National Foundation for Australian Women, *Submission 15*, p. 4.

50 Explanatory Memorandum, p. 186.

Views on schedule 5

2.57 ACOSS considered that schedule 5 to the TLA Bill would disproportionately benefit high income earners; given the tax deduction is greatest for those on the highest marginal tax rates.[51]

2.58 However, Pitcher Partners suggested that the measure would 'increase[s] flexibility in the superannuation system'.[52] A number of other submitters, including AIST, Superannuated Commonwealth Officers' Association (SCOA), SISFA and the SMSF Association, also wrote in support of schedule 5 to the TLA Bill.[53]

Schedule 6: Unused concessional cap carry forward

2.59 Under existing law, there is an annual cap on the amount of concessional contributions that an individual can make per financial year. Any unused proportion of the cap expires at the end of each financial year.

2.60 Schedule 6 to the bill would allow individuals with a superannuation balance of less than $500,000 to increase their concessional contributions cap by accessing any unused cap amounts from the five previous financial years. In effect, an individual can carry forward unused cap balances in order to make greater contributions to their superannuation.

2.61 The change proposed by schedule 6 to the TLA Bill will come into effect from 1 July 2018. In practice, only unused amounts of the concessional cap from the 2018-19 and later income years can be carried forward.[54]

Views on schedule 6

2.62 The Institute of Public Affairs, the SMSF Association and Save our Super each commented that the provision that an individual must have less than $500,000 in superannuation funds in order to be eligible to carry over their concessional contributions is not justified, arguing that $500,000 cannot guarantee a comfortable retirement.[55] They argued for an increase in the $500,000 threshold, with the SMSF Association suggesting $750,000 as an appropriate threshold.[56]

2.63 A number of submitters to the committee's inquiry including AIST, the Superannuated Commonwealth Officers' Association (SCOA) and Women in Social and Economic Research (WiSER) argued in support of schedule 6 to the TLA Bill.[57]

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51 Australian Council of Social Service, *Submission 13*, p. 5.

52 Pitcher Partners, *Submission 21*, p. 4.

53 Superannuated Commonwealth Officers' Association, *Submission 20*, p. 2.

54 Explanatory Memorandum, p. 194.

55 Institute of Public Affairs, *Submission 18*, p. 47.

56 SMSF Association, *Submission 39*, p. 9.

57 Australian Institute of Superannuation Trustees, *Submission 7*, p.18;
Superannuated Commonwealth Officers' Association, *Submission 20*, p. 3;
Women in Social and Economic Research, *Submission 27*, p. 5.

Schedule 7: Tax offsets for spouse contributions

2.64 As noted in chapter 1, 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. Currently, the threshold for the low income spouse's income is set at $13,800. The proposed change will increase this amount to $40,000.

2.65 The tax offset available to individuals who make contributions on their spouse's behalf will now be calculated as 18 per cent of the lesser of:

- $3,000 less the amount by which total spouse income exceeds $37,000 (previously $10,800); and
- the sum of the spouse contributions made by the individual in the income year.

Views on schedule 7

2.66 ACOSS submitted that spouse contributions to superannuation are an 'outdated way to support retirement savings for women' as they rely mainly on men with high incomes making contributions on behalf of their female partners.[58]

2.67 WiSER pointed out that the male who is making contributions to their spouse's superannuation will be the one to benefit from the tax cut as set out in schedule 7 to the TLA Bill.[59]

2.68 The NFAW noted that whilst this amendment to the TLA Bill is an improvement on the current scheme, it does not support the general principle of income splitting, which the current and new systems both promote.[60]

2.69 AIST, SCOA, the Institute of Public Accountants and the Tax Institute each supported this measure of the TLA Bill.[61]

Schedule 8: Innovative income streams and integrity

2.70 Schedule 8 to the TLA Bill amends the earnings tax exemptions for complying superannuation funds, retirement savings accounts providers and life insurance companies in the *Income Tax Assessment Act 1997* (ITAA 1997) to:

- extend the earnings tax exemption to new lifetime products such as deferred products and group self-annuities;
- remove the earnings tax exemption in respect of transition to retirement income streams (TRISs); and

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58 Australian Council of Social Service, *Submission 13*, p. 7.

59 Women in Social and Economic Research, *Submission 27*, p. 5.

60 National Foundation for Australian Women, *Submission 15*, p. 6.

61 Australian Institute of Superannuation Trustees, *Submission 7*, p.18;
Institute of Public Accountants, *Submission 6*, p. 10; The Tax Institute, *Submission 34*, p. 5.

- introduce an integrity measure that will apply to self-managed superannuation funds (SMSFs) and small Australian Prudential Regulation Authority (APRA) funds to support the operation of the transfer balance cap measure.

2.71 Under existing law, the earnings tax exemption applies to all income streams that are currently payable.[62] Going forward, the earnings tax exemption will only apply to income streams that are in the 'retirement phase'. TRISs will not be considered to be in the retirement phase, however, all other income streams will, regardless of whether they are currently payable. That is, the earnings tax exemption will now apply to deferred income streams from the point that a holder enters the retirement phase.[63]

2.72 The tax exempt status of income from assets supporting TRIS will be removed and the income from these assets will be taxed at 15 per cent. As TRISs will no longer attract the earnings tax exemption they will not count towards the transfer balance cap.[64]

2.73 The tax treatment of TRISs in the hands of the individual will not be changed. For most individuals this will mean they are tax free, or taxed at the individual’s marginal tax rate less a 15 per cent offset. Around 110,000 people will be affected by these changes in 2017–18.[65]

2.74 This measure is estimated to increase the underlying cash balance by approximately $470 million over the forward estimates. [66]

Views on schedule 8

2.75 A number of stakeholders noted the timing of the changes outlined in the schedule. AMP expressed concern about the timing of the changes proposed in schedules, especially as they relate to members with a Transition to Retirement Income Stream (TRIS). The changes are due to come into effect from 1 July 2017. AMP advised that this would leave members with insufficient time to seek financial advice.[67]

2.76 The Financial Services Council (FSC) also commented on the timeframe proposed for members to seek appropriate financial advice and proposed that the measures outlined in schedule 8 be applied to all new and existing transition to retirement superannuants from 1 July 2017.[68]

2.77 Mercer also agreed that the transition date of 1 July 2017 is too close.

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62 Explanatory Memorandum, p. 213.

63 Explanatory Memorandum, p. 212.

64 Explanatory Memorandum, p. 318.

65 Explanatory Memorandum, p. 318.

66 Explanatory Memorandum, p. 10.

67 AMP, *Submission 28*, p. 2.

68 Financial Service Council, *Submission 30*, p. 2.

Schedule 9: Anti-detriment provisions

2.78 Schedule 9 to the TLA Bill repeals the anti-detriment provisions in section 295-485 of the *Income Tax Assessment Act 1997* (ITAA 1997). This amendment 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.

2.79 The repeal will come into effect for lump sums that are paid in relation to a death on or after 1 July 2017. Further, from 1 July 2019, this repeal will extend to all benefits paid after this time, regardless of whether the death was before or after 1 July 2017.

Views on schedule 9

2.80 In its submission to the committee, the Corporate Superannuation Association expressed concern regarding the timing of the removal of the anti-detriment provisions.[69]

2.81 FPA noted that a number of superannuation fund members would have factored the anti-detriment payment into their plans. The FPA proposes that this measure be grandfathered as it relates to existing benefits.[70]

Schedule 10: Administrative streamlining

2.82 As noted in Chapter 1 of this report, schedule 10 to the TLA Bill seeks to streamline the existing administrative processes as they relate to schedules 1 to 9 of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016.

2.83 AIST supported the streamlining provisions.[71]

Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016

2.84 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.

2.85 No specific issues were raised by stakeholders in relation to the proposed excess transfer balance cap.

Committee view

2.86 The committee acknowledges concerns raised by submitters in relation to the complexity of the proposed measures in the TLA Bill. However, the committee notes that significant reforms are, by nature, inherently complex, and is satisfied the government has carefully considered and allowed for this in its extensive policy development and consultation process.

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69 Corporate Superannuation Association, *Submission 1*, p. 2.

70 Financial Planning Association of Australia, *Submission 33*, p. 8.

71 Australian Institute of Superannuation Trustees, *Submission 7*, p. 19.

2.87 The committee further notes that the measures in the bills will increase the underlying cash balance by $2.8 billion over the forward estimates.[72] More importantly, the committee considers the measures will have a significant and lasting effect in strengthening Australia's superannuation system. In particular, the committee is satisfied the reform measures will better target tax concessions to ensure the superannuation system is equitable, sustainable and fit for purpose.

Recommendation 1

2.88 The committee recommends that the Senate pass the bill.

Senator Jane Hume
Chair

72 Explanatory Memorandum, pp. 9–10.