

File Number: 200811

General Manager
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: homesaver@treasury.gov.au

7 March 2008

Dear General Manager

FIRST HOME SAVER ACCOUNT

Outline of proposed arrangements

The Association of Superannuation Funds of Australia (ASFA) would like to provide the comments in the attached submission in relation to the Government's proposed arrangements for First Home Saver Accounts (FHSA).

ASFA believes the FHSA initiative has two broad, but equally important purposes; assisting non-home owners to accumulate a deposit for their first home and encouraging and promoting a saving habit among Australians.

ASFA recognises the importance of both home ownership and voluntary savings in determining a person's standard of living in retirement.

While supporting the fundamental policy of FHSAs, the ASFA submission recommends a number of changes that would encourage both the product to be offered by superannuation funds, and improve the delivery and administration of the product.

Should you seek further information on any aspect of this submission please contact Robert Hodge, Principal Policy Adviser, on (02) 9264 9300 or by email at rhodge@superannuation.asn.au.

Yours Sincerely,

Dr Brad Pragnell
Director Policy and Best Practice

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

FIRST HOME SAVER ACCOUNT

GENERAL COMMENTS

ASFA notes that the outlined arrangements differ from the original announcement made during the election campaign. The proposal that “existing superannuation funds will be free to offer these accounts” led the superannuation industry to understand that an RSE licensee would be able to offer an FHSA through its existing superannuation trust structure. The announcement recognised that “significant administrative efficiencies and easier access to higher rates of return will result from mirroring the framework that applies to superannuation”.

The Government had recognised that enabling superannuation funds to offer these accounts took advantage of existing processes, thus constraining costs and increasing the likelihood of an FHSA being delivered as a low cost account within existing prudential regulation.

The FHSA arrangements as outlined in the discussion paper, have departed from the original announcement. ASFA members have indicated that offering an FHSA under the current proposal would pose significant commercial and operational risks/costs for an RSE licensee. This may result in very few RSE licensees offering the product. Such an outcome would limit consumer choice of investment options and product providers and could significantly impact on the delivery of the Government’s FHSA policy.

To ensure robust supply of FHSAs ASFA suggests that the regulatory framework be modelled on the existing product offerings in the various market segments with referencing to an overarching set of ‘rules’ for the actual account (such as contribution limits, reporting to the ATO, accessing money etc.). Many of the following comments have this objective in mind.

SPECIFIC COMMENTS

For ease of reference, the structure and numbering of this document follows the structure of the consultation paper.

2. ACCOUNT PROVIDERS

2.1 ACCOUNT PROVIDERS

ASFA does not object to the expansion of the range of FHSA product providers.

2.1.1 Public-Offer Licensees

ASFA disagrees with the proposal that the superannuation sector may only issue an FHSA where it is issued by a Public-Offer Licensee through an FHSA trust.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

As previously mentioned, such a proposal poses additional risks for the trustee and the trust and may result in few RSE licensees offering an FHSA.

The difficulties that ASFA sees for the trustee are as follows:

- The establishment of a separate trust is not cost free. In addition to the cost of the trust deed, separate accounting, account administration, compliance, investment and risk management processes must be established for and ultimately funded by the trust and its beneficiaries (FHSA holders).
- The trustee must make a commercial decision on the likelihood that the establishment and ongoing costs can be recovered from the likely pool of investors. The significant expansion of the potential pool of product issuers, combined with the high establishment cost associated with a stand-alone trust, increases the risk of sub-optimal business outcomes.
- Building the product from a base of zero depositors increases the cost of investment and reduces the potential return to investors. This puts the trust at an immediate commercial disadvantage to its competitors: banks, building societies and credit unions that are able to mingle FHSA monies with existing deposits.
- Any new trust would face an increased liquidity risk during the early years of operation. Prudently addressing these risks may require the adoption of investment strategies that further suppress investment returns. This, when combined with the member benefit protection requirement (section 6.4), further increases the product cost and therefore the commercial risk.

ASFA's strong preference would be to expand the range of delivery methods so as to permit any RSE licensee to offer an FHSA under its existing superannuation trust structure, subject to meeting certain prudential requirements.

An alternative proposal

ASFA proposes that a superannuation trust be permitted to offer an FHSA. The method of offering would be a decision for the trustee but subject to APRA authorisation. Funds may decide to manage the FHSA through a separate sub plan of the superannuation trust or as a sub-account of an existing member account or through some other arrangement. The sole restriction on how the account is managed should be that the trustee is able to separately identify the FHSA monies.

The advantages of adopting this method of delivery are:

- Minimal capital costs are involved. The product development would require adjustments to existing processes and programs. These costs are incremental and thus significantly less than the capital costs associated with the establishment of a new business and unique administrative arrangements.

The capacity to leverage off the processes currently used by funds to administer the superannuation trust would lead to a lower cost product, a key objective of the Government.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

- By merging, for investment purposes, the FHSA monies, with existing trust monies, investment costs may be significantly reduced and liquidity risks better managed, thus providing enhanced investment outcomes for the FHSA holder.
- The timeframe for delivery of the product would be reduced, permitting the accounts to be offered sooner.
- Lower regulatory costs for both the trustee and the regulator. The regulatory review of FHSA issuers could be undertaken as part of the existing institutional review processes, rather than as a separate, and new, review of an additional institution. The trustee can expand existing processes and procedures to include the FHSA product (rather than separately develop a distinct range of processes for the stand alone FHSA trust).
- Efficient use of existing infrastructure. Employers would be able to use existing processes to deliver employee's post tax contributions to a superannuation fund. Minimal changes would be required to distinguish an FHSA contribution from a superannuation contribution resulting in a lower cost of delivery. This would also promote a culture of regular saving, another Government objective.

ASFA acknowledges that, due to the shorter investment horizon of an FHSA holder, a product issuer would need to give separate consideration to what constitutes an appropriate investment strategy for an FHSA holder. This would be considered as an additional risk to be managed within the superannuation trust, just as all RSE licensees have recently done with respect to the requirement to manage AML/CTF risks.

ASFA cannot see how undertaking this risk analysis separately in respect of a single purpose trust would achieve a better outcome for the account holder.

In summary, since 1 July 2006 all superannuation funds have been required to have an RSE licence. All RSE licensees are subject to similar licensing requirements in respect of risk management plans and risk management strategies and the Australian Prudential Regulation Authority (APRA), in issuing an RSE licence to a trustee, have assessed the capacity of the licence applicant to meet the obligations imposed on it as a trustee of a superannuation entity.

Recommendation 1

In addition to the proposed arrangements, any registerable superannuation entity should be permitted to issue an FHSA, subject to meeting prudential regulation requirements.

Recommendation 2

The method by which the FHSA is administered should not be prescribed. The sole requirement should be that the product issuer is able to separately identify the FHSA monies.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

The sole purpose test

Should RSE licensees be permitted to offer the FHSA product under an existing superannuation trust structure, this may require modification of the sole purpose test.

Any change to the sole purpose test must be carefully considered and implemented. The sole purpose test could permit a fund to offer an FHSA product but would not permit superannuation money to be used for housing. That is, any release of money from the fund should not be viewed as a release of superannuation money for housing but rather a release of an individual's separate housing savings for a housing purpose. To this extent the integrity of the superannuation system would be maintained. The FHSA contributions would be separately recorded with access subject to FHSA specific prudential rules.

Significantly, while superannuation money could not be used for other than superannuation purposes, the discussion proposes that any money not used, or unable to be used, for first home ownership purposes is to be transferred to a superannuation fund. Additionally, should release of the money be sought for other than a housing purpose this may only be done through the superannuation system.

Given the above, there appears to be a degree of logic in permitting a superannuation fund to hold FHSA money in the first instance.

In a further link of FHSA to retirement incomes policy, ASFA research shows that homeowners generally have a higher standard of living in retirement than non-homeowners.

Recommendation 3

That Section 62 of SIS be amended to include as an ancillary purpose the provision of money for first-home ownership through a first home saver account product.

Section 62 of SIS could also include a clear reference to the first home saver product being administered in a manner that is consistent with the relevant FHSA legislation. This may reduce the need for significant amendments to the SIS Act and facilitate the provision of an omnibus set of operating standards/rules to be met by all FHSA providers and which sit outside the banking/superannuation/life insurance legislation relevant to the 'normal activity' of the product issuer.

2.2 AUTHORISATION OF ENTITIES

ASFA recognises that, in the non-ADI sector it is prudent that the regulator, APRA, determine the suitability of an entity to offer an FHSA.

ASFA would also support an RSE licensee being required to seek APRA authorisation to offer an FHSA and in doing so provide APRA with:

- Evidence that the trustee has risk management plans and strategies in place to address the specific risks associated with the product.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

- Details of strategies in place to ensure that non-FHSA account holders will not be cost-subsidising FHSA holders.
- Evidence that FHSA investment options are appropriate given the nature of the account, the investment objective and investment horizon of account holders, and liquidity requirements.

Recommendation 4

That an RSE Licensee seeking to offer an FHSA through a superannuation fund be required to seek authorisation under its existing licence from APRA.

2.4 PORTABILITY OF ACCOUNTS

ASFA accepts portability of FHSAs.

ASFA considers that there are merits in the adoption of a standard form for the transfer of account balances. However, the process should operate in the same way as with superannuation account transfers: where the minimum prescribed data is provided by the account holder the transfer rules are triggered. Product issuers should have the flexibility as to how the required information can be provided. The transfer process is discussed in more detail in 3.1.1.

Recommendation 5

That, rather than a prescribed form, a minimum set of data be prescribed for the purpose of triggering the transfer rules.

3. OPENING AND MAKING CONTRIBUTIONS INTO AN ACCOUNT

3.1 OPENING AN ACCOUNT

3.1.1 Eligibility criteria

ASFA questions the need for an applicant to be “an Australian resident for income taxation purposes”. This requirement would appear to disbar an Australian citizen who is temporarily overseas from benefiting from the FHSA regime, but permit a temporary resident to access the Government contribution.

ASFA’s preference would be for the eligibility criteria to be driven initially by a person’s citizenship status and then, for non-citizens, their immigration status. An Australian citizen should not be discriminated against simply because they are not a current tax resident. All Australian’s who have never purchased or built a home in Australia should be eligible to open an account and receive the Government contribution irrespective of whether they are residing in Australia or overseas.

It is also our understanding that current eligibility for First Home Owners Grants depends on citizenship residency, rather than tax residency, status.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

Recommendation 6

Eligibility to open an account should be consistent with FHOG requirements and ideally open to Australian Citizens and permanent residents (in addition to the other criteria).

ASFA has some concerns about the eligibility requirement that the applicant “must never have previously purchased or built a first home in Australia to live in”. It seems at odds with a policy of ‘assisting those that have never owned a home’ to grant assistance to a person who may have previously owned a home in another country, or who owns residential property in Australia but who has never lived in it.

Recommendation 7

Eligibility to open an FHSA should be restricted to a person who has never owned a residential dwelling.

ASFA considers that, rather than prescribing a minimum contribution requirement for opening an account, an FHSA product issuer should be permitted to set a minimum contribution requirement for account opening purposes. In determining minimum account opening contribution requirements a product issuer will make a commercial decision based on many factors including the requirement to protect small account balances.

For example, where an account is opened as a sub-account of a member’s superannuation account, a fund may be willing to accept regular after tax contributions through an employer’s payroll system in the expectation that the account will quickly achieve a desirable minimum balance. The FHSA holder may prefer to contribute in this manner. Making small regular contributions is consistent with a policy object of creating a savings culture among Australians.

Recommendation 8

A product issuer should be permitted, but not required, to accept a minimum deposit requirement prior to establishing an FHSA.

ASFA accepts the requirement for product issuers to hold TFNs as well as certain personal information such as full name, residential address and date of birth before an FHSA can be opened on their behalf.

Due to the proposal for a formal application to withdraw benefits, and the requirement to provide account details to the ATO for compliance checking, ASFA is not convinced of the need to provide up-front proof of identity (POI). However, obtaining POI before the account holder is first able to access the money would speed up the withdrawal process.

This issue is dealt with in further detail in 6.5 which looks at AML/CTF requirements.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2001

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

Should the POI requirement on establishment be retained for all FHSA issuers, there should be an exemption where the applicant is already an account holder with the product issuer and POI has been provided in association with that other account.

Recommendation 9

An FHSA issuer should be able to rely on previously provided POI when processing an FHSA application.

To ensure uniformity in the account opening process and reduce unnecessary compliance costs for product issuers, it is suggested that a standard set of words for the 'declaration of eligibility' be prescribed. The words so prescribed would be included by the FHSA product issuer with any other declarations that the applicant is required to sign.

Recommendation 10

The 'declaration of eligibility' to open an FHSA should be prescribed.

Recommendation 11

Where the declaration is appropriately completed the account issuer may open the account.

Consideration should be given to permitting forms to be completed and lodged electronically. Although not a widespread practice at the moment, the regulatory framework should provide for the adoption of new identity authentication technology.

Recommendation 12

The regulatory framework should recognise the use of technology that would permit forms to be submitted electronically.

TFN quotation arrangements

ASFA supports the proposal to mirror the requirements for collection, storage and use of TFNs on those currently operating in the superannuation system.

Individuals who transfer their account to another provider

The Discussion Paper foresees some difficulties where an account holder has two accounts open at the same time. To overcome complications associated with opening an account and then having to close the account due to a failure to complete the transfer within 30 days it is suggested that consideration be given to mandating the following process where an account holder wishes to change provider.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

- The account holder completes an application form and a standard transfer form and submits them to the proposed new provider.
- Where the application is accepted, the new provider forwards the standard transfer form to the current provider.
- The current provider transfers the account balance to the new provider who then opens the account (based on the information in the application form).

The above process leverages off the mandatory requirement to provide a TFN and proof of identity when opening an account, reinforces the policy position that a person may only ever be the holder of a single FHSA account and reduces the possibility that the proposed new account holder has not, will not, or cannot, accept the person as an account holder.

Recommendation 13

That a person seeking to transfer an account be required to initiate the transaction through the proposed new account issuer.

3.2 PROCESS FOR OPENING AN ACCOUNT

3.2.1 Individuals

ASFA accepts the need for standard information when completing an FHSA application form. Generally, to ensure adequate disclosure, the application form is included as part of the product disclosure statement. Any standard application form would need to include a declaration that the applicant was aware of any special features in the specific product.

Rather than prescribing the form, ASFA proposes that the law prescribe a minimum set of information that the application form must include and permit the product issuer to seek further information or declarations as are required to meet specific business requirements.

Recommendation 14

That a minimum set of information be prescribed for the application form, but that product issuers be able to tailor the delivery of the application form and the declarations to meet the specific needs of the product and the product issuer.

3.2.2 Account Providers

Process of opening an account

As noted above any application form standards would likely need to address the requirement that the applicant acknowledge the special features of the product.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

THE ASSOCIATION OF SUPERANNUATION FUNDS OF AUSTRALIA
LIMITED

www.superannuation.asn.au

ACN 002 786 290 ABN 29 002 786 290

Reporting to the ATO when an account is opened

ASFA has some concerns over both the process of, and the necessity for, electronically reporting to the ATO within 30 days of an account being opened.

Both the industry and the ATO require time to develop the systems necessary to do so. The lead times involved in achieving this requirement may result in only a few funds being in a position to offer these product from 1 July 2008.

Additionally, design features of the product negate the need for the ATO to undertake urgent compliance activity.

Specifically, ASFA would argue that the proposed restrictions on withdrawals (generally a minimum of 2 years and 2 days) would provide sufficient time for the ATO to undertake compliance activity should new accounts only be notified annually. Under current proposals an account holder opening an account in 2008/2009 is first entitled to withdraw the money post 1 July 2011 (subject to a \$1,000 deposit being made on 1 July 2011).

This mandated delay between opening an account and withdrawal of benefits should provide the ATO with sufficient time to undertake compliance activity, with the added comfort of knowing that any government contribution would still be within the account and recoverable.

Further, as a government contribution cannot be paid until the provider has reported the contributions and the account holder has lodged their income tax return, the ATO process for determining the government contribution entitlement should be used to detect multiple accounts, confirm TFN ownership and to undertake other basic compliance checks.

Recommendation 15

ASFA recommends that the opening of an account be reported to the ATO annually as part of the contributions reporting process.

3.3 CONTRIBUTIONS

3.3.1 Contribution Rules

Contribution limit

The requirement for account providers to maintain a running balance of contributions received during a year increases complexity of administration and will add to processing costs.

A preferred method is that, should there be an annual contribution limit (see discussion below and recommendation 17) the provider should be permitted to assess the contributions made in a year as part of their 'end of year' process and to either repay any

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

excess contributions to the account holder at this time, or where the FHSA is issued by a superfund, transfer the excess contributions to the FHSA holder's superannuation account.

Providers should be able to charge a processing fee for returning excessive contributions where such fee has been disclosed to the member as part of the account opening process.

Recommendation 16

FHSA providers should be permitted to assess and deal with excessive contributions on an annual basis.

Contribution cap

The paper invites comment on whether there should be an overall contributions cap. While the notion of an overall cap appeals, ASFA foresees difficulties where, in some real estate markets, the cap amount may fall well short of what is required as a deposit. This needs to be balanced with concerns about whether the absence of a cap may provide open-ended access to government contributions and facilitate undesirable outcomes.

ASFA proposes that the contributions cap question be addressed from two perspectives:

- Set an absolute cap on the account balance. Contributions could only be made to the extent that the account balance following the contribution did not exceed the cap. Once the account cap was reached no more contributions could be made and the account balance could only increase through the crediting of interest/investment earnings. ASFA suggests an account cap of \$100,000.
- Set an absolute on the amount of government contribution a person could receive. This could be capped at say \$10,000. Should the ASFA recommendation of a flat rate 20% government contribution be adopted (see recommendation 28), achieving a \$10,000 government contribution would represent after tax savings of \$50,000 by an individual. When combined with a maximum annual government contribution amount of say \$1,500 such an approach may encourage the target group to start saving earlier and to save consistently over a longer period of time.

Such caps would be easier to administer from both the product issuer and the ATO's perspective.

Recommendation 17

Consideration should be given to removing the annual contributions ceiling and replacing it with:

- **A cap on the account balance: and**
- **A cap on the total amount of government contributions that may be received by an individual.**

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

Minimum contributions

See recommendation 8 regarding the capacity of the product issuer to set both higher and lower minimum contribution amounts.

3.3.2 Account providers accepting contributions

Acceptance of contributions

As discussed above and advocated in Recommendation 16, ASFA considers that, should there be an annual cap, an annual testing of contributed amounts should be permitted. The only restriction on contributions should be that a provider cannot accept a single contribution that exceeds the annual cap amount.

Where excessive contributions are received, these should be returnable to the account holder. ASFA sees difficulties in returning contributions to a contributor who is not the account holder. Where contributions are made electronically it may not be possible to identify the contributor. The fact that the contributions are all 'post tax' simplifies this process in respect of contributions forwarded through a payroll system.

Recommendation 18

Contributions that exceed the annual contribution limit should be returned to the account holder.

Reporting of annual contributions

Should recommendation 15 be adopted, the annual report to the ATO should be of net contributions received in respect of a financial year. That is, recognition is needed that a contribution received in one financial year may have been refunded in the following financial year.

Recommendation 19

The annual report to the ATO should be of net contributions received in respect of a financial year.

4. WITHDRAWALS

4.1 Withdrawals for purchasing or building a first home

ASFA supports the proposal that funds not used for a first home are to be transferred into superannuation.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

4.1.1 Process

ASFA supports the development of form standards, mandated data and a prescribed declaration for withdrawals. It is important that the obligation is on the account holders to satisfy themselves that they are entitled to the withdrawal and to provide a declaration to the product provider to that effect.

The responsibility of the account provider should be limited to confirming that the application for withdrawal has been appropriately completed and that any minimum contribution requirement has been met.

Recommendation 20

When processing an application for withdrawal, there should be no liability on an account provider for fraudulent claims where the application form has been appropriately completed and any minimum-deposit-years requirement has been met.

4.1.2 Determining eligibility for withdrawal

ASFA considers that the minimum four year contribution rule will disadvantage those persons who are currently saving for a first home and who, prior to the policy announcement, were contemplating a first home purchase within the next four years. These people receive no recognition for their current savings and are discouraged by the application of the four-contribution-years rule from participating in the FHSAs scheme.

The four-year rule may also inhibit take-up of the product on an on-going basis.

ASFA strongly suggests that consideration be given to removing the requirement. Should that not be acceptable then consideration should be given to or modifying the requirement.

A suggested method of modification to encourage take up of FHSAs is to implement a phased implementation of the withdrawal rule as follows:

Year account opened	Minimum contribution years before withdrawal
2008/2009	1
2009/2010	2
2011/2012	3
2012/2013	4

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

THE ASSOCIATION OF SUPERANNUATION FUNDS OF AUSTRALIA

www.superannuation.asn.au

ACN 002 786 290 ABN 29 002 786 290

Recommendation 21

That strong consideration is given to removing the ‘minimum contribution years’ rule, or, as a minimum, that consideration is given to modifying the rule in the early years of operation.

ASFA also suggests that research be undertaken to determine whether the four contributions year rule would implement take-up with a view to modifying or abolishing the rule if this is deemed necessary to improve the attractiveness of the scheme.

Recommendation 22

That research is undertaken to determine the effect of the four-contribution years rule on the likely take-up of the product.

4.2 TRANSFER TO SUPERANNUATION

Given the link between home ownership and standards of living in retirement, the concessional tax treatment on these accounts and the government contribution, ASFA supports the requirement to transfer an FHSA account balance to a super fund where the accounts balance is not used for a first home.

4.2.1 Early release provisions

While the proposal to use the superannuation system for the early release of funds strengthens the argument that superannuation funds be allowed to issue these products (as the proposal is a de facto use of a superannuation fund for the ancillary purpose of the processing of early release of FHSA savings) ASFA considers that it overcomplicates the product.

ASFA would prefer a situation whereby non-superannuation fund FHSA providers released the money direct to the account holder, withheld tax at the appropriate rate and advised the ATO as part of the annual reporting process of the withdrawal and the amount. This process would speed up the release of money in urgent cases while (subject to legislative change) still permitting the ATO to count the released money towards the individual’s non-concessional contributions cap. It would also minimise the prospect of the FHSA holder being charged processing fees by both the product issuer and the superannuation fund.

Recommendation 23

That non-superannuation fund FHSA holders be able to release money directly to the account holder, subject to withholding tax at the appropriate rate and advising the ATO of the release.

The Senate Select Committee on superannuation has previously recommended that the function of approving early release of superannuation money be placed with a central

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

government authority such as Centrelink. ASFA supported the recommendation. With the proposed expansion of 'early release' provisions beyond superannuation, now might be an appropriate time to revisit the Committee's recommendation.

Recommendation 24

That consideration is given to the establishment of a central Government authority to consider and authorise early release of FHSA and superannuation benefits.

4.4 CLOSING OF ACCOUNTS

ASFA supports the requirement that any request to withdraw money from an account, or transfer the account balance to a superannuation fund, should result in all of the monies being transferred or withdrawn and the account closed.

4.4.1 Reaching age 65

It is possible that an FHSA holder who attains age 65 may not have a current superannuation account into which the FHSA balance may be transferred. Consideration will need to be given to the difficulties that an ADI or life company may have in opening the superannuation account on behalf of the FHSA holder.

4.5 OTHER CIRCUMSTANCES

4.5.1 Death

Due to the complexities surrounding the processing of superannuation death benefits and the complex legal and administration issues that may need to be overcome when transferring such a benefit, ASFA recommends that the treatment of a death benefit be determined by the general status of an asset held with the account provider.

That is, for an FHSA held within a superannuation fund the death benefit would be a non-estate asset and the benefit processed in the same manner as a superannuation death benefit. For non-superannuation fund FHSA providers the FHSA amount would be an estate asset. The tax treatment of both benefits should be equivalent.

To maintain flexibility, a non-FHSA provider should be permitted to pay the death benefit to a superannuation fund.

Recommendation 25

That:

- **An FHSA account be treated as an estate asset, or a non-estate asset based on the standard treatment of funds held by the provider; and**
- **Death benefits be taxed at the applicable superannuation rates.**

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

4.5.2 Bankruptcy

It would assist administration if the law made it explicit that an FHSA is treated as an ordinary asset of a bankrupt.

Recommendation 26

That the law deal specifically with the status of the account for bankruptcy purposes.

4.5.3 Relationship Breakdown

The treatment of an FHSA account in the same way as superannuation in the event of a relationship breakdown adds a further layer of complexity to what is supposed to be a simple, basic account. Clarity will be required as to how the interest of the non-account holder is to be created and whether the 'contributions years' are split or mirrored. That is if the account holder has 2 'contribution years' in a 50/50 split does each party get credited with 1 or 2 contribution years?

Recommendation 27

That clarity be given to the proposed operation of the rules in the event of marriage breakdown.

5. GOVERNMENT CONTRIBUTION AND TAXATION TREATMENT

5.1.2 Amount of the contribution

The government contribution is skewed towards those on higher incomes to compensate for the inability to salary sacrifice into an FHSA. To better target the product at those in most need of financial assistance with home ownership, ASFA recommends that the Government contribution be a flat rate, say 20%. This would provide an increased benefit to individuals on incomes of less than \$80,000 and a reduced benefit to those on greater incomes.

Higher income earners, though receiving a lesser Government contribution, would be at least partly compensated through their greater capacity to contribute up to the \$10,000 maximum with earnings on these contributions being taxed at 15% rather than their marginal tax rate.

Recommendation 28

That the Government contribution be paid at a flat rate of 20%.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

THE ASSOCIATION OF SUPERANNUATION FUNDS OF AUSTRALIA

www.superannuation.asn.au

ACN 002 786 290 ABN 29 002 786 290

6 OTHER REGULATORY ISSUES

6.1 Prudential regulation requirements

ASFA strongly supports the need for separate regulatory arrangements for ADIs (banks, building societies and credit unions) life companies, superannuation funds, and RSE licensees. The requirements should reflect the existing environment in which they operate so as to minimise the cost of maintaining and operating FHSA accounts.

As stated in 2.2 above, a superannuation fund trustee seeking to offer an FHSA product either through a superannuation fund or a separate trust should be required to seek authorisation from APRA. The authorisation process, whilst it would consider how the investment, liquidity and other risks are managed, would not 'approve' specific investment strategies.

Recommendation 29

That APRA restrict its involvement in the setting of investment strategies to the authorisation process.

6.2 Financial Services licensing requirements

ASFA considers that licensing requirements should vary depending on who is issuing the product and whether financial product advice is also being provided.

ASFA strongly argues that, a superannuation fund should be able to issue an FHSA under existing arrangements. No additional licensing requirements should apply unless the product issuer wishes to provide financial advice in relation to the product.

Recommendation 30

A superannuation trust should be able to issue an FHSA under their existing authorisations. An RSE licence should only be required where the trustee proposes to provide financial advice in relation to the FHSA.

6.2.1 Dispute resolution arrangements

In line with the recommendation that separate regulatory arrangements should apply depending on the entity offering the FHSA, ASFA considers that an FHSA offered through a superannuation trust should be subject to the jurisdiction of the Superannuation Complaints Tribunal.

For consumers dealing with a superannuation fund, the message that disputes are dealt with by the SCT is a simpler message than requiring them to analyse their product and then determine where to take the dispute.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798

THE ASSOCIATION OF SUPERANNUATION FUNDS OF AUSTRALIA
LIMITED

www.superannuation.asn.au

ACN 002 786 290 ABN 29 002 786 290

For the fund, having access to the SCT would simplify administration, permit a more consistent service to be provided to all product holders and result in lower costs to the fund and lower administration fees to the FHSA holder.

Recommendation 31

That a holder of an FHSA issued by a superannuation fund is able to access the SCT for the resolution of disputes.

6.5 Anti-money laundering and counter-terrorism financing (AML/CTF)

In line with the recommendation that separate regulatory arrangements should apply depending on the entity offering the FHSA, ASFA proposes that the AML/CTF identification requirements be consistent with the current AML/CTF requirements faced by the entity issuing the product.

ASFA considers that where an FHSA is offered through a superannuation trust verification of the customer's identification should only be required at the point where the money leaves the superannuation fund. That is, for post commencement customers the FHSA holders identity should be verified prior to paying out the benefit, or transferring the account to another FHSA product provider. FHSA providers may decide for various reasons to verify the account holder's identity at some earlier point in time.

In putting forward this recommendation, ASFA notes the mandatory requirement for an applicant for an FHSA to provide their TFN, full name and date of birth to the account provider and for this information to be provided to the ATO for compliance purposes.

Consistent with existing AML/CTF law, where the FHSA product is issued to a person who was a customer of the entity on 12 December 2007, that person is considered to be a pre-commencement customer. That is, there is no AML/CTF requirement to verify the identity of the FHSA holder, but the account holder will be subject to the AML/CTF customer due diligence obligation.

Recommendation 32

That, for AML/CTF purposes, a superannuation fund offering an FHSA account only be required to undertake verification of the FHSA holders identity prior to the money exiting the superannuation fund.

SECRETARIAT

Piccadilly Tower
Level 19
133 Castlereagh St
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T + 61 2 9264 9300

F + 61 2 9264 8824

outside Sydney
1800 812 798