

# SUBMISSION

## Submission to Treasury — Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Military superannuation benefits

---

19 May 2023

**The Association of Superannuation  
Funds of Australia Limited**  
Level 11, 77 Castlereagh Street  
Sydney NSW 2000

PO Box 1485  
Sydney NSW 2001

**T** +61 2 9264 9300  
1800 812 798 (outside Sydney)

**F** 1300 926 484

**W** [www.superannuation.asn.au](http://www.superannuation.asn.au)

ABN 29 002 786 290 CAN 002 786 290

File: 2023/18

Director  
Tax and Compliance Unit  
Retirement, Advice and Investment Division  
Treasury

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

19 May 2023

Dear Sir/Madam

***Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Military superannuation benefits***

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: Military superannuation benefits*.

**About ASFA**

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

**General comments**

ASFA supports the amendments in Schedule 9 of the *Treasury Laws Amendment (2022 Measures No 4) Bill 2023* – and in these draft supporting regulations – to clarify the tax treatment applicable to defined benefit (DB) superannuation pensions impacted by the 2020 Full Federal Court decision in *Federal Commissioner of Taxation v Douglas*. That decision generated significant uncertainty about the correct tax treatment of impacted pensions for the recipients and the superannuation funds that pay them.

**Impact of the reforms on pensioners in non-military schemes**

Despite its title, the impact of Schedule 9, and the draft regulations, is not limited to *military* superannuation benefits – the amendments will also impact some DB pensions paid on permanent incapacity from some non-military schemes. Recipients of impacted DB pensions from non-military schemes may not yet appreciate that the tax treatment of their benefit may change upon passage of the Bill. Superannuation funds generally do not have awareness of the personal tax circumstances of their members, and this limits their ability to prepare pensioners for the impact.

## Need for transition period and facilitative compliance approach

ASFA members have not identified any concerns in relation to the *detail* of the draft regulations. We welcome proposed new sub-section 294-130.07, that will cause affected permanent incapacity DB pensions in non-military schemes to automatically satisfy capped DB income stream requirements when their lump sum payments revert to being treated as a superannuation income stream upon commencement of Schedule 9. That amendment will address a specific concern in relation to the transfer balance cap treatment of impacted pensions.

However, there are some significant concerns about how the *implementation* of Schedule 9, and these draft regulations, may impact upon affected invalidity pensioners in non-military schemes.

As outlined in our submission to the Senate Economics Legislation Committee during its consideration of the Bill, there are broadly two categories of funds affected by the amendments proposed in Schedule 9:

1. Some funds may not have changed their systems or otherwise addressed the issues raised in *Douglas* – that is, they may have continued to treat the relevant pensions as income streams for tax purposes. This may, for example, be as a result of obtaining a private ruling from the Australian Taxation Office (ATO).
2. Other funds may have changed their systems or incorporated other workarounds to address the issues in *Douglas* - that is, they may have ceased to treat the relevant pensions as income streams and instead treated them as a series of lump sums for tax purposes.

It is important that the legislation and supporting instruments appropriately accommodate both groups of affected funds and, critically, the recipients of the DB pensions they pay. The reforms relate to pensions paid due to invalidity or permanent incapacity, and it is important to recognise that recipients of these pensions may be vulnerable in terms of their health and financial position. It is critical to ensure the reforms can be implemented by funds in a measured way, to avoid causing further distress to impacted pensioners.

Both groups of funds will require an appropriate transition period. For the first group, there will be a need to review their treatment of impacted pensions against the amendments in their final form and to understand the interplay with any ruling received from the ATO. The second group will need a period during which treatment consistent with the *Douglas* decision continues to be available, to allow for implementation of any necessary systems and procedural changes, as well as to allow funds to appropriately support the recipients of the impacted pensions.

Schedule 9 contains, in proposed new section 301-105 of the *Income Tax (Transitional Provisions) Act 1997*, scope for the Minister to prescribe “matters of a transitional nature” for “either or both of the 2022-23 and 2023-24 income years”. ASFA welcomed this implicit acknowledgment, in the Bill, that transitional arrangements will be required. However, almost 11 months of that potential 24-month transition period have now elapsed, and the Bill has not yet been passed by the Parliament. ASFA considers the transition period should be extended by a further financial year to allow funds to implement the amendments in a measured way and provide appropriate support for members adversely impacted by the amendments.

There will also be a need for a facilitative compliance approach to ensure that, following the passage of the Bill and any associated legislative instruments, funds will not be required to go back and change the treatment of and documentation for benefits already paid. While proposed new sub-section 294-130.07 addresses concerns in relation to reporting for transfer balance cap purposes, ASFA members have queried whether there may be any further reporting requirements for the ATO as well as the potential impact for funds’ income stream reporting to Services Australia (Centrelink) and the reporting provided to APRA in relation to benefit types paid. We recommend that Treasury liaise with the ATO, Services Australia and APRA with a view to those agencies providing clarification.

Finally, we suggest there may be a need for the ATO, Centrelink and also the Australian Financial Complaints Authority (AFCA) to review their resourcing to ensure adequately informed staff are available to deal with queries and complaints from impacted pension recipients. We also suggest that each of these agencies considers preparation of resources to assist impacted pensioners, such as factsheets and frequently asked questions.

## Recommendations

- Schedule 9 of the Bill should be amended such that proposed new section 301-105 of the *Income Tax (Transitional Provisions) Act 1997* allows for the Minister to prescribe, in a legislative instrument, matters of a transitional nature for the financial years 2022-23, 2023-24 and 2024-25.
- Immediately following Royal Assent, the Minister should make a legislative instrument providing impacted funds with a transition period from commencement until the end of the 2024-25 financial year to implement any necessary changes arising from Schedule 9.
- Clarification should be provided as to any requirements for re-reporting of data to any regulator or agency, and a facilitative compliance approach should be adopted.
- The ATO, Services Australia (Centrelink) and AFCA should ensure they are appropriately resourced and prepared to assist impacted pensioners with queries and complaints.

\*\*\*\*\*

If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or by email [JStannard@superannuation.asn.au](mailto:JStannard@superannuation.asn.au).

Yours sincerely

Julian Cabarrus

Director – Policy Operations, Member Engagement & External Relations