

SUBMISSION

Submission to Senate
Economics Legislation
Committee — *Treasury
Laws Amendment (2021
Measures No 7) Bill 2021*

9 September 2021

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Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee

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

9 September 2021

Dear Mr Fitt

Inquiry into *Treasury Laws Amendment (2021 Measures No 7) Bill 2021*

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into the *Treasury Laws Amendment (2021 Measures No 7) Bill 2021* (2021 Measures No 7 Bill).

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$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 16.5 million Australians with superannuation.

The amendments proposed by Schedule 2

ASFA's submission relates solely to Schedule 2 of the Bill, which proposes important amendments addressing the impacts of the closure of the Superannuation Complaints Tribunal (SCT) in December 2020. These include transitional arrangements associated with the replacement of the SCT by the Australian Financial Complaints Authority (AFCA) as the external dispute resolution (EDR) body for superannuation complaints.

We note that identical amendments were previously introduced into Parliament via *Treasury Laws Amendment (2020 Measures No 4) Bill 2020* (2020 Measures No 4 Bill; subsequently retitled to *Treasury Laws Amendment (2020 Measures No 4) Bill 2021*), however that Bill remains before the Senate.

ASFA made a submission to this Committee dated 10 November 2020 in support of the amendments in the 2020 Measures No 4 Bill, and similarly we support the amendments proposed by Schedule 2 of the 2021 Measures No 7 Bill.

On 1 November, it will be three years since AFCA replaced the SCT as the EDR body for superannuation complaints. We understand AFCA has now largely dealt with the unresolved complaints transferred from the SCT prior to its cessation on 31 December 2020 and we commend AFCA's efforts to promptly resolve those matters. We also understand it is anticipated that only a very small number of matters relating to SCT determinations may potentially require remittal back from the Federal Court to AFCA for redetermination or finalisation in accordance with the Court's directions.

Where matters are before the Federal Court on appeal from an SCT determination, these relate to complaints lodged with the SCT before 1 November 2018. The consumers who made those complaints have already faced a lengthy wait for resolution, and any further delays must be avoided to the extent possible. In this respect, the mechanism proposed in Schedule 2 to ensure appropriate access by AFCA and the Federal Court to records and documents collected and created by the SCT is of vital importance.

In addition to material specific to particular complaints (case files), we note that the SCT had compiled an extensive 'library' of more general documents submitted by fund trustees. This included historic versions of important fund materials including primary and amending trust deeds, insurance policies and (non-member specific) fund disclosure materials such as annual reports. The SCT was able to draw upon this library when considering complaints, without the need for trustees to repeatedly re-submit the same material. That library was and continues to be physically held by ASIC (given the SCT was staffed by members of the staff of ASIC who had been made available to the SCT). The amendments in Schedule 2 formalise ASIC's legal responsibility in relation to the documents held in the library.

It is critical that the Federal Court is able access any and all records necessary to complete its consideration of matters appealed from determinations of the SCT. It is also vital that AFCA is able to utilise any and all relevant materials compiled by the SCT should any of these matters be remitted to AFCA by the Court. A lack of access to the SCT's case files or other documents or records would involve unacceptable delays for consumers and additional cost for trustees.

ASFA also considers it important that AFCA is able to access the more general fund documents held in the SCT library where they are relevant to a complaint that was lodged directly with AFCA. This will enhance efficiency for both AFCA and the relevant trustee, therefore optimising the EDR experience for consumers, and would simply represent utilisation of documents already collected for EDR purposes by the SCT and held by ASIC.

Recommendation

ASFA considers the amendments proposed in Schedule 2 to be non-controversial. We recommend they are passed as a matter of urgency.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 9879 0815 or by email jcabarrus@superannuation.asn.au, or Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or by email jstannard@superannuation.asn.au.

Yours sincerely

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