SUBMISSION

Submission to Treasury – Better targeted superannuation concessions

17 April 2023

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Director

Tax and Transfers Branch

Retirement, Advice and Investment Division

The Treasury

Via email: superannuation@treasury.gov.au

17 April 2023

Dear Sir/Madam

Better targeted superannuation concessions

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Consultation Paper: *Better targeted superannuation concessions* (Consultation Paper).

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 $3.4 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 in relation to the proposal

ASFA supports measures to improve the equity and long-term sustainability of the superannuation system.

While our superannuation system works to provide better retirement outcomes for the majority of Australians, ASFA has longstanding views regarding the need to ensure the tax concessions underpinning the system are distributed equitably. We have for many years called for reforms limiting the tax concessions that flow to those on high incomes and/or with very high superannuation balances and on that basis we support the intent of the Government's current proposal regarding total superannuation balances over $3 million.

We are pleased that the Consultation Paper recognises the importance of minimising the compliance burden and cost that may be imposed on funds – efficient and cost-effective administration of the proposed new tax is, in our view, critical. We acknowledge the difficulty in developing a model that prioritises simplicity (and therefore reduces complexity and cost) and accept that this involves some difficult compromises.

We welcome the commencement of the consultation process around the proposal and appreciate the opportunity to highlight areas of concern prior to the drafting of legislation. Our comments focus on the impacts of the proposed tax on APRA-regulated superannuation funds.

At a high level, ASFA wishes to highlight three key matters in relation to the proposal:

1. **Efficient and cost-effective administration of the proposed tax is critical**

   ASFA's feedback in relation to the consultation questions primarily relates to the need to ensure the proposed tax can be administered as efficiently as possible. This is critical to avoid imposing a cost burden on superannuation funds that would indirectly be borne by fund members whose total superannuation balances are below the threshold at which the proposed tax will apply.

   In the short term, the most appropriate and cost-effective method for collecting the required information would be for the ATO to make a preliminary assessment, on the basis of information it already holds, to identify whether an individual is potentially liable for the proposed tax. The ATO should then issue requests to the individual's superannuation fund(s), using an approved form (electronic or otherwise) and format, to obtain a comprehensive report of all data needed to finally determine the individual's tax liability.

   The form of this interim reporting should be settled using the existing 'co-design' process between the ATO and funds, in advance of the first determinations of liability being made. Given it is anticipated that – at least in the early years – some funds may have very few members who are subject to the tax, it is important that appropriate options are provided in relation to reporting channels.

   The need for any reforms to the scope of data proactively reported by all funds to the ATO should be considered as part of a post-implementation review of the proposed tax (see point 3 below) and – only if clearly warranted by the volume of data requests under the interim arrangements and the extent of the data not already covered by existing reporting channels – proceeded with as opportunities arise as part of the evolution of the fund reporting arrangements. Even at that time it may be prudent to adopt a multi-channel approach given some funds may have no, or very few, members potentially impacted by the proposed tax.

   Our response to the consultation questions, particularly questions 5 and 15, are focussed on issues relating to data reporting and administrative simplicity.

2. **Minor adjustments to the proposed model would mitigate potentially harsh and/or unintended impacts**

   The proposal for the proposed tax involves using a proxy calculation for 'earnings' which includes unrealised capital gains. While this is an unorthodox approach, in the context of general taxation arrangements, ASFA accepts the Government's stated intent is to avoid requiring precise calculations of 'earnings' in order to minimise the potential compliance burden and cost for superannuation funds and their members.

   That said, the proposed model does have the potential for some harsh and/or unintended impacts. As set out in our detailed response to the consultation questions, ASFA recommends these are mitigated, including by:

   - deducting from an individual's Total Superannuation Balance (TSB) any life insurance proceeds reflected in their superannuation interest, to ensure these do not trigger liability (or increase liability) for the proposed tax
   - allowing a refund of tax paid in prior years in instances where an individual has no future positive 'earnings' against which 'negative earnings' can be offset
   - using an individual's *average* TSB when determining the proportion of their 'earnings' subject to the proposed tax, to better reflect their 'earnings' over an income year.

3. **The tax should be subject to a post-implementation review**

While the proposed calculation method aims for simplicity, there are many aspects to be considered – including application of the tax to different fund and product types and the necessary data reporting flows.

ASFA considers the enabling legislation for the proposed tax should require a post-implementation review to be undertaken no more than two years after its commencement. This should specifically consider:

- whether the methods adopted have been effective at taking into account superannuation interests of all types, including defined benefit interests and interests in untaxed and constitutionally protected funds
- the efficiency and sustainability of the administration arrangements for the tax – including whether the volume and nature of data requests from the ATO under interim reporting arrangements is sufficient to warrant enhancing funds' general reporting obligations
- whether the threshold for imposition of the tax remains appropriate or should be indexed. It is important to review the threshold to ensure the tax remains appropriately targeted at *higher* superannuation balances.

Our more detailed comments directed at the questions raised in the Consultation Paper follow.

We note that the Government's proposal is designed to address one aspect of equity in the superannuation system – the tax concessions enjoyed by those with higher incomes and/or balances. ASFA believes equity should be further improved through measures that might more directly target those with lower incomes and/or balances, including through requiring Superannuation Guarantee support on paid parental leave and improving eligibility for the Low Income Superannuation Tax Offset.

We have provided alongside this submission a paper providing further consideration of equity and the superannuation system, including the impact of the proposed measure in relation to balances over $3 million.

Finally, we note that the Consultation Paper is quite high-level, with an extremely short period allowed for responses. This has constrained stakeholders' ability to provide feedback on the proposals, although we acknowledge that Treasury has conducted roundtable meetings with some stakeholders and has also received advice from 'Technical Working Groups' to inform the proposals. We look forward to the opportunity to provide further feedback as the proposals are developed, including on exposure drafts of the enabling legislation.

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If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, Senior Policy Advisor, on (02) 8079 0819 or jstannard@superannuation.asn.au.

Yours sincerely

Glen McCrea
Deputy Chief Executive Officer and Chief Policy Officer

Comments in response to the consultation questions

1. Method for calculating tax liability

Consultation Question 1: Do you consider any further modifications are required to the Total Superannuation Balance (TSB) calculation for the purposes of estimating earnings? If so, what modifications should be applied?

The calculation of an individual's TSB, as currently prescribed, is specifically modified to exclude a 'structured settlement contribution' made in respect of an individual.

A 'structured settlement contribution' is one arising from the settlement of a workers compensation claim or a claim for compensation or damages for personal injury that is made to a fund on behalf of an individual within a prescribed time and satisfies a number of prescribed conditions. The explanatory memorandum to the Bill which introduced the TSB concept into the tax law explains that the exclusion of these amounts from the TSB is to "recognise that these are usually large payments that can provide the funds for ongoing medical and care expenses resulting from serious injury and income loss".

ASFA considers that life insurance proceeds from a policy held within superannuation should be treated similarly to a structured settlement contribution. Where payable in relation to disability or terminal medical condition, such proceeds may, in many cases be related to an event that gave rise to a structured settlement contribution.

The Consultation Paper confirms that an adjustment is proposed to be made to ensure insurance proceeds are not treated as 'earnings' for the purposes of the proposed tax in the year in which they are received by the fund. This is welcome, however, while such proceeds remain within an individual's superannuation fund they will, under the current proposal, be relevant to determining whether the individual's TSB exceeds the $3 million cap for imposition of the proposed tax. Where an individual dies or has suffered a disability or illness of such an extent that insurance proceeds are payable and these proceeds are retained within superannuation for any length of time, ASFA does not consider it appropriate that this should cause their superannuation interest to incur additional tax. While we anticipate this would likely be an uncommon occurrence, we strongly recommend that any insurance proceeds in an individual's TSB should be deducted before liability for the proposed tax is determined.

While the current definition of TSB takes into account rollovers that are 'in transit' over financial year end, APRA-regulated superannuation funds are not currently required to report either the payment or the immediate receipt of a rollover to the ATO.

For example, for a rollover made on 29 June 2026 and not receipted by the receiving fund until 1 July 2026, the 30 June 2026 balance reported to the ATO by the transferor fund (due by 31 October 2026) will not reflect the amount rolled out. The rollover will not be reported as part of the individual's annual balance by the transferee fund until 31 October 2027 (in respect of the year ended 30 June 2027). We anticipate that the ATO will, at least in most cases, be able to identify where a reduction in an individual's balance warrants further investigation and seek information regarding any rollovers out as part of the proposed interim reporting arrangements.

Please see our combined response to questions 5 and 15 in relation to how data gaps might be addressed in the short and longer term. In particular, it is critical that any expansion of funds' proactive reporting to the ATO is carefully managed, to avoid creating a compliance burden and cost for all funds in relation to a tax that is anticipated to be payable based on the superannuation interests of only relatively few individuals.

Consultation Question 2: What types of outflows (withdrawals) should be adjusted for and how?

We understand from discussions with Treasury that the intention is **not** to adjust for outflows from accounts such as insurance premiums, fees charged by the fund (such as administration and investment fees) and advice fees. We accept that this decision has been made on the basis that such fees are part of the ordinary operation of superannuation and also that reporting this additional data to the ATO would increase the reporting and compliance burden on funds.

Outflows that should be adjusted for in determining an individual's liability for the proposed tax include:

- all benefit payments from the individual's interest, whether cash payments or in specie, lump sum or income stream, during the member's life or after their death and regardless of the benefit type or condition of release satisfied
- payment splits under the *Family Law Act 1975* from the individual's interest
- contribution splits to a spouse
- amounts paid out of the account under a release authority, including payments of Division 293 tax liability, excess contributions tax and liability under the proposed tax
- payments to foreign funds (for example, KiwiSaver transfers).

Consultation Question 3: What types of inflows (net contributions) should be adjusted for and how?

ASFA welcomes the confirmation in the Consultation Paper that "payments of insurance benefits for policies owned inside superannuation" will be treated as 'net contributions' for the relevant year of income. An adjustment will need to be made for these amounts to ensure they are not treated as 'earnings' for the purposes of the proposed tax.

Other inflow types that should be adjusted for, so they are not treated as 'earnings' in the year they are received, include:

- all contributions made by or for the individual, whether by the individual personally, their employer or another party
- death benefit rollovers
- payment splits into the superannuation interest under the *Family Law Act 1975*
- contribution splits into an individual's superannuation interest from a spouse
- transfers in from foreign funds (for example, KiwiSaver transfers).

Apart from in-transit rollovers, rollovers in and out of accounts will cancel out in the calculation of an individual's TSB and accordingly should not need to be specifically adjusted for the purposes of the proposed tax. These adjustments should be made by the ATO based on data reported by funds. APRA-regulated funds provide quite granular reporting of contribution types, on a gross basis.

It will be necessary for the ATO to adjust for the tax applicable to 'taxable' contribution types to arrive at a 'net contributions' figure. A number of contribution types are not subject to tax, but there are also limitations on non-concessional contributions by individuals with a TSB in excess of the Transfer Balance Cap.

It should be noted there will be timing differences in relation to taxation of contributions, for example where a personal contribution is made to a fund in one income year and the individual provides a notice of intent to claim a tax deduction – converting the contribution to 'taxable' – after the end of that income year. However, ASFA does not suggest that funds be required to report on the timing of such payments. A simple approach would be for the ATO to deduct a standard 15% tax amount when calculating net contributions for the purpose of adjusting the individual's TSB.

Consultation Question 4: Do you have an alternative to the proposed method of calculating earnings on balances above $3 million? What are the benefits and disadvantages of any alternatives proposed including a consideration of compliance costs, complexity and sector neutrality?

As has been widely discussed since the announcement of this measure, utilising a concept of 'earnings' that includes unrealised gains and losses is a substantial departure from the usual tax treatment of individuals under Australian tax law.

We acknowledge that the proposed concept of 'earnings' has been adopted as a proxy value with a view to minimising compliance costs for superannuation funds.

We agree that calculation and reporting of a more precise 'earnings' figure would substantially increase the compliance burden for many superannuation funds. Given the number of individuals likely to be subject to the proposed tax (at least in the early years of its application), it is in ASFA's view critical to avoid imposing an expensive compliance burden the cost of which will, indirectly, be borne by all fund members.

Accordingly, we do not propose an alternative, more complex, calculation method for 'earnings' – subject to our recommendations below in relation to the proportioning applied to 'earnings' in relation to an income year (see response to questions 6 and 7) and the treatment of negative earnings (see response to question 8).

However, given this treatment of unrealised gains has been adopted to address a particular issue identified in relation to the equity of the system currently, it is important there is a clear statement that this proposal does not set a precedent for superannuation or personal income tax system more broadly. Accordingly, we consider this may be more appropriately reflected as a 'levy' on higher superannuation balances rather than a 'tax'.

Consultation Question 6: Do you consider any modifications are required to the proposed proportioning method? If so, what modifications should be applied?
Consultation Question 7: Do you have an alternative to the proposed proportioning method? What are the benefits and disadvantages to any alternatives, including a consideration of compliance costs, complexity and sector neutrality?

ASFA members have noted that the proposed method arguably taxes some earnings referable to the TSB below $3 million.

By way of example, if the TSB increased from $3 million to $4 million, with no contributions or withdrawals, the tax as currently proposed will be applied to 25% of the earnings, being $1 million. However, in this example, 25% is only the proportion above $3 million that exists at the *end* of the income year - the proportion at the start of the year was 0%.

A more equitable method, which aligns to the proposed reforms and would not add significant complexity, would be to determine the proportion of 'earnings' that is subject to the proposed tax by reference to the *average* TSB for the year (that is, the opening balance plus the closing balance, divided by 2). In the above example, that proportion would be 14.3%, which better reflects that there would have been minimal earnings generated by the balance above $3 million during the early part of the income year.

As the prior year TSB information should be readily available to the ATO, this should not involve any additional complexity or compliance costs.

Consultation Question 8: Does the proposed methodology for determining the tax liability create any unintended consequences?

ASFA supports the proposal to allow carry forward of negative earnings to offset earnings in future periods.

However, the proposed methodology does not allow for any carry back or refund of tax already paid where there are no future 'positive earnings' against which 'negative earnings' can be offset. This has the potential to lead to outcomes for individuals which ASFA considers inequitable, especially where tax has been levied on unrealised gains.

There is clear potential for the proposed methodology to create sequencing risk. For example, assuming an individual has a TSB in years 1 and 2 and exits the superannuation system during year 3. The same individual could have a different outcome depending on whether the order in which their positive and negative earnings results occurred, as follows:

- if there are **negative** earnings in year 1 followed by **positive** earnings in year 2 – the negative earnings are offset against the positive earnings
- if there are **positive** earnings in year 1 and **negative** earnings in year 2 – no offset may be possible prior to the individual's exit from the superannuation system and they will have paid tax on unrealised gains that were never realised.

As a further example, an individual may have paid the additional tax on 'earnings' above $3 million for a number of years, however a downturn in investment performance may result in negative 'earnings' to be carried forward. If the individual's balance falls below $3 million (so they are no longer subject to the measure), or the individual cashes out their benefit, or they die, there is no opportunity to utilise the benefit of the negative 'earnings' carried forward. In such cases, individuals may pay additional tax under this measure when the retirement benefit or death benefit which is ultimately crystallised is below the proposed $3 million threshold.

ASFA considers it would be more equitable to provide the individual with a refund of tax to the extent that negative earnings reverse 'earnings' on which tax was paid in a prior year. While we accept that laws in relation to personal income tax currently allow for carry *forward* of losses in certain circumstances but not carry *back*, we note there is an existing precedent for a loss carry *back* tax offset of this nature in relation to corporations.

In the event that a loss carry back is not to be permitted in the year the loss occurs, at a minimum ASFA is of the view loss carry back should be allowed where an individual's TSB falls below $3 million or on their complete exit from the superannuation system.

The additional application of a loss carry back would be administered by the ATO and therefore would not increase compliance costs for funds. It would also be sector neutral in its application.

Consultation Question 9: Do the proposed options for paying liabilities create any unintended consequences?

We note that an individual will have the option to pay any liability under the proposed tax either from personal monies or by releasing monies from their superannuation interest(s). Where the monies are to be released by a superannuation fund, it is important that existing mechanisms are leveraged. Re-using existing Release Authority capabilities via SuperStream based on the Rollover Transaction Request (RTR) messages would be welcome.

Release authorities are typically provided by the ATO to APRA regulated funds via SuperStream messaging. We recommend that – at least in the short term – the ATO should use an existing release authority type (such as a Division 293 release authority) to cover releases under the proposed tax. Requiring a new and specific release authority type would involve an update to SuperStream messaging, which is likely to result in a significant and costly systems change for APRA-regulated funds for a measure which is expected to only impact a small number of members. If the ATO is unwilling to use an existing release authority type we recommend that manual/paper-based release authorities are initially used for this measure as most APRA-regulated funds would have existing processes in place to deal with these.

We do not anticipate any unintended consequences arising in relation to superannuation interests held in APRA-regulated funds, except in two instances:

- where an individual only holds a defined benefit (DB) interest and is unable to have the liability paid from the fund (and does not have sufficient monies outside the superannuation system to discharge the liability). This may be addressed by implementing a debt deferral mechanism for DB funds as currently applies in relation to Division 293 tax
- where an individual's superannuation interest(s) comprises of, or includes, an Innovative Retirement Income Stream. ASFA members have noted that the payment of liabilities from these products can create unintended consequences, particularly with the interaction of the Capital Access Schedule (CAS). By way of example, where an individual with an Innovative Retirement Income Stream has outlived their life expectancy, the maximum amount that can be commuted from their product is nil. If they commute an amount from their income stream in excess of the CAS, this could risk the whole pool losing the relevant tax and Centrelink concessions. To address this issue, ASFA members are of the view that Innovative Retirement Income Streams should be excluded from being an option from which individuals may choose to release monies to pay any liability under the proposed tax.

We acknowledge that cases might arise where an individual who is unable to access monies from a superannuation interest to discharge a liability under the new tax also has insufficient monies outside superannuation. We suggest that potential financial hardship might be reduced or avoided in such cases by providing an appropriate timeframe for payment of the tax liability.

2. Defined benefit interests, lifetime income streams/annuities, Innovative Retirement Income Streams

ASFA notes that the Consultation Paper provides very little detail in relation to how the proposed tax is proposed to apply to defined benefit (DB) interests and to some of the more complex income stream types. We understand that Treasury has received advice from industry experts on these matters through a Technical Working Group and we urge Treasury to ensure the approach adopted is not overly complex and costly for funds.

Consultation Question 10: Do the existing valuation methods for DB interests in the pre-pension phase (under the existing TSB definition) work appropriately for the purpose of calculating superannuation balances over $3 million?

In ASFA's view, the existing valuation methods for DB interests in the pre-pension phase are appropriate for the purposes of calculating superannuation balances over $3m.

Fully funded DB schemes already complete a calculation of vested benefits for the purposes of TSB reporting. As this is included in funds' existing reporting to the ATO through the Member Account Transaction Service, no additional compliance burden would be created.

We acknowledge that there may not be significant fluctuations in the balance of a member's vested benefits year on year (unless there is a change in salary). On this basis, use of this methodology may result in uneven movements in estimated earnings in certain periods. Nonetheless, consistent with the principles set out in the Consultation Paper, ASFA members are of the view this methodology provides a reasonable estimate without imposing an additional compliance burden on funds.

For some hybrid funds, DB interests form a small proportion of the total number of fund members. For active, or pre-pension phase members, the proportion is even smaller – as DB schemes close and DB members age, the large proportion of members are moving into pension phase. As a result, any alternative valuation methodology may result in additional compliance costs for funds to implement alternative valuations for a small and ever reducing proportion of fund members.

We acknowledge that the above methodology may not be suitable for partially funded or unfunded DB interests and it may be appropriate to apply an alternative methodology for such schemes. We consider it may be difficult to formulate a single methodology that can be applied to all DB schemes in an equitable way whilst also meeting the intent to minimise complexity and cost.

We understand it has been suggested that it might be appropriate to adopt a variation on the methodology used to calculate value for the purposes of the superannuation payment splitting arrangements under the *Family Law Act 1975*. ASFA does not support that approach – we consider it would introduce significant cost for very limited gain in terms of improving the valuation accuracy. It would require every DB scheme to undertake calculations for every DB member, regardless of whether a member was potentially within scope for the proposed tax. ASFA members indicate the cost would vary depending on the size and complexity of the scheme, but could well be substantial. Currently, family law valuations obtained by individuals can incur a professional fee of $500 - $800. While the cost per member would be lower for multiple valuations, the overall expense would be considerable. It should be noted that in hybrid funds, any such cost would effectively be borne by the accumulation members as the DB is, by definition, set.

Given that most DB fund members will be out of scope of the new measure, a possible approach would be for the ATO to only seek a family law type valuation in regard to an individual when other indicators, such as the vested value of their benefit together with any non-DB account balances, indicates a likelihood that the $3 million threshold might be exceeded.

Finally, we note that a debt deferral mechanism for the tax, similar to that applied to Division 293 tax, should be an option for DB members in the accumulation phase.

Consultation Question 11: Do the existing valuation methods for DB interests in the pension phase provide the appropriate value for calculating earnings under the proposed reforms?

One suggested rationale for the proposed tax is to reduce tax concessions where there is effectively an intergenerational transfer of wealth using superannuation (to the extent that very large balances in excess of what is required to support retirement are paid as death benefits). ASFA members have noted that DB pensions and lifetime annuities have little potential to create intergenerational wealth transfers, except in limited cases related to the early death of the pensioner/annuitant. Despite this, these products would be more heavily taxed if the proposed calculation is applied using the current TSB valuation, effectively discouraging their use.

ASFA is of the view that existing valuation methods for the pension phase, such as lifetime pensions, will not provide an appropriate value for the purpose of calculating earnings for DB pensions or lifetime annuities. This is because the value used for the TSB is the 'special value' (16 x the annual income stream entitlement) used for transfer balance cap purposes at entry into pension phase. This is a static value that does not change on an annual basis, whereas the effective value of a lifetime income stream will decline over time.

While an actuarial valuation of the value of DB interests could be undertaken annually, this would involve considerable cost.

For DB members in the pension phase, ASFA members have suggested the most appropriate method to value the interest would be based on the annual pension multiplied by a relevant factor which reduces with age. Options would include:

- a set of published factors applicable to all funds – this would minimise complexity but could potentially produce inequitable outcomes for some schemes, particularly if there are differences in indexation arrangements or reversionary pension entitlements
- a set of scheme-specific factors certified by an actuary – this would involve greater complexity and potentially additional reporting to the ATO, but would increase valuation accuracy and would be more equitable for members of different ages and across different scheme designs. As such, we suggest it might be made available on a case-by-case basis where a particular scheme is able to demonstrate application of the published factors would cause significant inequity due to particular demographics and/or features applicable to the scheme.

More broadly, ASFA members have suggested that for lifetime annuities and other lifetime income streams, an appropriate alternative may be to adopt the Complying Access Schedule (CAS) for Innovative Retirement Income Streams. Term annuities also use a fixed TSB valuation. ASFA members have indicated this will be appropriate for the large number of term annuities that provide for a return of capital at maturity, but not for term annuities that provide capital back over the term.

Determining an appropriate TSB valuation for lifetime and term annuities and other lifetime income streams will involve significant complexity. We anticipate these products will have been considered at length through Treasury's Technical Working Group process, but would be pleased to provide more detail on suggested treatment of these products if that would be of assistance.

In relation to Innovative Retirement Income Streams, some ASFA members consider these should be excluded from the measure. These income streams are designed to manage consumption and longevity risk in retirement and there are grounds for encouraging their take-up. Over the course of retirement such products lead to a running down of the amount held in superannuation. The amount that individuals are able to invest in such products is also limited by their Transfer Balance Cap. The exclusion of such products would also avoid the need for special valuation arrangements.

Consultation Question 12: Are there any alternative valuation methods that should be considered for either pre-pension or pension phase DB interests?

See our response to Consultation Questions 10 and 11 above.

Consultation Question 13: Are there any preferred options in providing commensurate treatment for DB interests?
Consultation Question 14: What are the benefits and disadvantages to any alternatives?

The formula proposed for accumulation (defined contribution) interests should be applied to DB interests, subject to appropriate valuations of TSB balances. That is, TSB balances should also consider adjustments for any notional contributions (without grandfathering) and/or withdrawals.

With respect to the payment of any liability, Government should consider a debt deferral mechanism (similar to that used for Division 293 tax) for DB members where no defined contribution interest is available to fund payment of liability for the proposed tax.

3. Reporting process for funds

Consultation Question 5: What changes to reporting requirements by funds would be required to support the proposed calculation or any alternative calculation methods?
Consultation Question 15: What would be the most effective method for collecting the required information? What are the benefits and disadvantages for the method identified, including a consideration of compliance costs, complexity and sector neutrality?

Given the proposed tax is intended to apply to only relatively few individuals with superannuation, it is critical that any necessary data collection is managed carefully, to avoid imposing a compliance burden for funds and imposing costs that might ultimately be borne by all fund members – not merely by those liable for the tax.

ASFA estimates that, initially, an APRA regulated fund with around 2 million members might expect to have around 1,000 members for whom the over $3 million TSB would be relevant – whether because the members' balances within the fund exceed $3 million or because they have interests in a number of funds which, in total, exceed $3 million. One ASFA member, a large superannuation provider, has preliminarily estimated they might have perhaps 350 members impacted by the proposed tax.

APRA-regulated superannuation funds currently report data in relation to members' superannuation interests to the ATO through a number of primary channels: Member Account Attribution Service, Member Account Transaction Service (on a 'real time' basis), Payment Summary Annual Report, Unclaimed Superannuation Money Statement, and Release Authority Statement. In addition, there will be ad hoc lodgements in relation to some specific low-volume transactions (for example, Covid-19 early release recontribution amounts) and responses to ATO data requests. We note that data reporting for SMSFs, untaxed funds and constitutionally protected funds will differ.

Through these existing channels, the ATO already receives extensive data about an individual's superannuation holdings. However, this would not include sufficient data about every potential inflow or outflow for the ATO to comprehensively determine an individual's liability to the proposed tax under the current proposal – the existing reporting might lack some granular detail or there may be timing issues.

We understand that Treasury and the ATO, with the Technical Working Groups, have undertaken work to identify all potential inflow and outflow types and whether these are currently reported by funds. ASFA would be pleased to provide further input into that process, if that would add value.

In terms of APRA-regulated funds, the major reporting gaps – where information would be required for the ATO to determine an individual's liability to the proposed tax that is not currently reported – include:

- benefit payments that do not contain a taxable element
- rollovers that are 'in transit' over the end of a financial year
- disability insurance proceeds received into a superannuation interest
- transfers in and out of an interest as payment splits under the *Family Law Act 1975*
- contribution splits to and from a spouse
- death benefit rollovers during the accumulation phase.

We acknowledge that the data reporting items, channels and timeframes may differ for self-managed superannuation funds, untaxed funds and constitutionally protected funds.

In the short term, the most appropriate and cost-effective method for collecting the required information would be for the ATO to make a preliminary assessment, on the basis of information it already holds, to identify whether an individual is potentially liable for the proposed tax. The ATO should then issue requests to the individual's superannuation fund(s), using an approved form and format, to obtain a comprehensive report of all data needed to finally determine the individual's tax liability.

The form and reporting channels for these interim reporting arrangements should be settled using the existing 'co-design' process between the ATO and funds, in advance of the first determinations of liability being made. Given it is anticipated that – at least in the early years – some funds may have very few members who are subject to the tax, it is important that a range of appropriate reporting channels are provided.

Reforms to the scope of data proactively reported by all funds to the ATO should **not** be imposed solely to assist with determining tax liability under the proposed measure. This would impose a significant cost and compliance burden on the superannuation industry including fund administrators, software providers, the ATO and gateways in addition to superannuation funds and, indirectly, fund members.

ASFA members have indicated that an uplift to current data reporting to require all APRA-regulated funds to proactively report, in relation to all fund members, the full data set necessary for the ATO to comprehensively determine liability under the proposed tax would be prohibitively expensive. In particular, ASFA members have suggested this:

- would be comparable to the cost and effort involved in the recent upgrade to the ATO's rollover messaging data standards (rollovers version 3)
- might cost a minimum of $0.5 million per fund administration system (noting that, as a result of industry consolidation, some providers are currently operating multiple legacy systems).

ASFA is strongly of the view that any uplift to reporting should not occur in the short term but should be integrated into future evolutions of the ATO reporting arrangements. The existing ‘co-design’ process between the ATO and industry should be utilised, with appropriate development and implementation timeframes factored into the rollout of any reforms. However, prior to any uplift occurring, there should first be an assessment, as part of the post-implementation review of the proposed tax, to determine whether this is warranted based on the volume of data requests from the ATO under the short-term reporting arrangements and the extent of the data not already covered by existing reporting channels.

An alternative might involve a multi-channel approach. Under this approach, the ATO would uplift its reporting framework to include the data elements needed under the new measure, but the uplift would not be mandatory for funds. This would allow funds to determine whether it is more efficient and/or cost-effective for them to adopt the uplifted reporting or continue to respond to data requests using what we have described as the interim reporting arrangements. We note that some funds may have no members falling within the demographic targeted by the proposed measure and may never receive a data request from the ATO.

Reporting in relation to DB interests will warrant particular consideration. We recommend that, once the treatment of DB interests has been settled, Treasury should reconvene its Technical Working Group to consider the most appropriate reporting solution.

Finally, we note that the threshold for imposition of the proposed tax will not be indexed, and as a result the number of Australians subject to the tax will increase over time. It is important that this is kept front of mind when designing the administration process for the proposed tax, to ensure the process will remain sustainable for superannuation funds and the ATO. For both our proposed interim reporting arrangements and any future enhanced reporting obligations, standardisation of the form and format, and utilisation of existing channels and processes, will be critical.