



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

4 August 2017

Manager
Accumulation and Savings Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

Re: Housing related superannuation measures

In brief:

In response to this exposure draft, AIST points out that the First Home Super Savers Scheme has serious administrative issues that require resolving before implementation could be considered. We also note significant problems associated with the policy intention of the measure. AIST also points out that the downsizing measure is not well targeted.

AIST thanks Treasury for the opportunity to make a submission on this Exposure Draft (ED). AIST supports measures to assist with the problem of housing affordability, however we have significant reservations about these measures, including how they will be efficiently and effectively implemented.

First Home Savers Super Scheme (FHSSS)

AIST has a number of significant reservations about this measure. The sole purpose test generally requires that superannuation funds be required to maintain benefits for members' retirement, or for insurance related purposes. The FHSSS is not consistent with this objective, nor is it consistent with the Bill (currently before Parliament) which proposes to enshrine an objective of superannuation. The objective will see super's purpose explicitly stated to provide income in retirement.

The use of a superannuation fund for a deposit on a first home does not satisfy either of these. The FHSSS will see superannuation funds needing to change their operations to accommodate money that is not intended to be used in retirement. The issues around accommodating such monies are many, and appears to provide a far more complex solution for first home savers than methods employed previously, most notably the First Home Saver Accounts scheme.

AIST has supported a version of the objective which ensures adequacy in relation to the retirement income. We believe that given the possibility that in periods of low returns, amounts from mandated contributions will be available as First Home Super Saver (FHSS) amounts, this could also reduce retirement incomes for Australians.

We also note that there appears to be little discussion of equity issues related to this measure. In particular, we note that members drawing money out for a home loan are taxed far more leniently than an equivalent member taking a financial hardship amount.

Finally, we consider that that the impact on housing affordability or administration issues associated with this measure does not appear to have been subject to a cost-benefit analysis. The remainder of our discussion on this measure will consider this matter.

AIST support for housing affordability measures

AIST supports measures to improve housing affordability. However, we also note that such measures must:

- Be specifically targeted to first-home buyers, and meet equity requirements;
- Have sufficient scale to provide a meaningful benefit to a significant number of first home buyers;
- Not result in higher costs for housing than would otherwise occur;
- Be easy for consumers to access and understand; and
- Not result in an increase in the administrative burden on providers, and be justifiable on a cost-benefit basis.

AIST submits that the FHSS only meets the first of these criteria. Our responses on the other requirements of this measure are below.

Have sufficient scale to provide a meaningful benefit to a significant number of first home buyers

The FHSS is similar in many respects to the First Home Saver Accounts (FHSA) established by the Rudd Government from 1 October 2008 (and which continued until 2015). The primary differences are that:

- The FHSA required the establishment of a separate account by an individual with either a bank, insurer or a superannuation fund, while the FHSS requires no separate account, and will operate in relation to superannuation savings only;
- The separate balance immediately available and updated daily in a FHSA allowed a greater appreciation of saving for a house, compared to the FHSS data which may still in the long term still be subject to delays in reporting of FHSS contributions;

- The FHSA offered a government contribution of up to 17% on the first \$6,000 deposited in each financial year (\$1,020 in 2013/14), while the FHSSS offer no government contribution;
- Interest paid on FHSA balances was only taxed at a rate of 15%, whereas the FHSSS will credit earnings at the rate of the shortfall interest charge, with a tax offset of 30% to apply to the taxable component of money withdrawn;
- FHSA required four financial years (not necessarily consecutive) where contributions totalled \$1,000 or more before one could access one's savings. There are no restrictions on timeframes under the FHSSS, although withdrawals will not be permitted until the 2018-19 financial year or later.
- FHSA balances were capped at \$90,000 after which no further contributions were allowed. The FHSSS will limit contributions to \$30,000 in total, or \$15,000 per year.

Despite the offer of a government contribution, the take up of the FHSA was limited. As at the December 2013 quarter, after five years of operation of FHSAs, APRA stated there are 46,000 FHSAs containing \$521.5m. This was a tiny fraction of the money (less than 0.3%) used to purchase residential property in that period, with \$193 billion in new owner-occupied loan approvals during the 2013-14 financial year¹.

One advantage of an FHSA account was that accountholders knew with certainty what was available to them: They would simply be able to check their balance to see what was available to them. The FHSSS creates an amorphous, difficult to conceptualise amount payable that is hard for consumers to follow and, at least in the medium term, could be up to twelve months behind.

AIST submits that the take up rate is likely to be low. This is confirmed by the budget figures themselves – expected to cost \$250m over the forward estimates.

Not result in higher costs for housing than would otherwise occur

We note that a number of schemes over the past few years have had the effect of inflating demand. Most obviously, the First Home Owner's Grant served to stimulate demand and further drive up prices so much that Steve Keen, currently Professor of Economics and Head of Economics, History and Politics at Kingston University London, often described it as the "First Home Vendor's Grant"².

¹ APRA (Australian Prudential Regulation Authority) (2017). *Quarterly Authorised Deposit-taking Institution Property Exposures*. March 2017 (released 30 May 2017). [online] Sydney: Australian Prudential Regulation Authority, Table 1c. Available at: <https://tinyurl.com/ybw9ewvu> [Accessed 2 Aug. 2017].

² Keen, S. (2013). Let the First Home Vendors Grant die. [Blog] *Steve Keen's Debtwatch*. Available at: <http://tinyurl.com/y7x5tneh> [Accessed 1 Aug. 2017].

Similar concerns have been aired in relation to the cutting of stamp duty, including the comments of Saul Eslake³ in relation to the recent decision to cut the stamp duty for first home buyers in Victoria where he criticised the effects of the decision in relation to how much first home buyers might spend. Eslake also noted, in a report released by AIST in April⁴, the increasing tendency for retirees to use funds from super at retirement to retire mortgage debt at the expense of their retirement income needs. Eslake noted separately that shifting this use of superannuation from retirement to the purchase of a first home would not only have no impact on housing affordability, but also:

It will also of course mean that those people save less through superannuation over their working lives and a result, because of the impact of compound interest, will end up poorer in retirement than they otherwise would have been.⁵

Some commentators have noted other measures inflating demand for homes, including negative gearing which has also had a potential crowding-out effect on young families who are looking at buying homes by property speculators⁶.

We note that one of the effects of this policy should see non-super savings move into the superannuation environment. We believe that the tax incentives in the super environment will assist people to save for a deposit faster, however we also note that the availability of more money for a deposit necessarily has the flow-on effects of access to more funds through borrowings, as well as increased comfort in paying more for property. This may not be consistent with the policy intention which is to assist with housing affordability.

Be easy for consumers to access and understand

We agree that contributions through existing processes outside of minimum mandated amounts will assist taxpayers to note how much they have contributed towards the scheme. However, as we have discussed later on in this submission, the notion of “mandated amounts” is, we consider, to be complex.

We do not believe that this complexity is helped by commentary such as Example 1.1 in the EM, which we believe is confusing. In the first part of this example, we are told that Alex’ eligible

³ Bleby, M. and Coorey, P. (2017). Victoria's stamp duty cut a 'transfer of wealth' to vendors. *The Australian Financial Review*. [online] Available at: <http://tinyurl.com/y6vb3nf6> [Accessed 1 Aug. 2017].

⁴ Eslake, S. (2017). *No place like home: The impact of declining home ownership on retirement*. March 2017. [online] Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/y8uxm33t> [Accessed 2 Aug. 2017].

⁵ Janda, M. (2017). Negative gearing reform 'essential' to improve housing affordability: Saul Eslake. *ABC News*. [online] Available at: <http://tinyurl.com/kz2e2ov> [Accessed 2 Aug. 2017].

⁶ Owens, J. (2016). John Alexander warns negative gearing is blocking first time buyers. *The Australian*. [online] Available at: <http://tinyurl.com/yda8yqqb> [Accessed 1 Aug. 2017].

FHSS concessional contributions total \$15,000 – a figure equal to her mandated employer contributions which are ineligible. However, later on, an alternate scenario sees Alex contributing \$27,000 on top of \$3,000 in mandated employer contributions. We are told that \$2,000 is unable to be released, because this is the amount by which the excess concessional contributions were greater than her ineligible contributions.

Yet, in both cases, the limit to FHSS contributions of \$15,000 has been reached rendering both points moot. We strongly recommend that this example being re-written or removed entirely.

We also note that there may be substantial difficulty in being able to identify what part of a contribution is mandated, and which part is the extra contribution. Some employers, when remitting via Superstream (or other channels), do not distinguish between SG contributions (which are not eligible for this scheme) and voluntary additional employer contributions, with all such contributions classified as SG, as the ability to generically label concessional contributions is available to employers. This could work to the disadvantage of any individuals seeking to utilise this scheme, as none of the SG classified contributions would be able to be withdrawn, whereas in reality, if additional employer contributions were classified appropriately, that component should be eligible for withdrawal under this scheme.

AIST notes that the intention of this measure is that people who are buying a first home would apply to the ATO and declare their eligibility upon which they would pay it to the taxpayer for using in buying the house.

In the instance that the taxpayer is unable to buy a house, the money would then need to be returned to the fund. Should this not be returned in a timely fashion, a penalty rate of tax would apply of 20%.

We submit that this is a convoluted process, and may be open to misuse. Although it should be re-iterated that AIST has significant reservations about this measure we suggest that, given processes used in the past as part of the conveyancing process, together with existing processes used at the ATO, a far better solution would be the following:

1. Member makes inquiry of ATO notifying their intention to use FHSS amounts for purchasing a first home. This request would be verified with the assistance of the taxpayer's conveyancing professional. In most instances, this would take place after the purchase, and after instances where the purchase was unconditional: That is, where cooling off periods had elapsed and where conditions of sale such as finance or pest checks had been completed.
2. After making an FHSS determination, the ATO would then advance a portion to the conveyancer who would retain this for settlement. Depending on buyer's needs, this could also be immediately forwarded as part of the deposit.

3. Upon receipt of request to access FHSS amounts (similar process to First Home Buyer's Grant application), the ATO would issue a release authority to the fund. The payment instructions for the payment would contain the details of the conveyancer.
4. Payment at settlement, including FHSS amounts would be made directly by the conveyancer to the vendor.
5. In the instance that settlement did not occur, FHSS amounts would be returned to the ATO, who would forward these back to funds. Conveyancers would follow up with their clients for unpaid amounts.

Such a process would ensure that following benefits:

- No need for taxpayers to re-contribute back into super in the event that they didn't buy a home; and
- No need for the ATO to track purchases of homes, nor pursue taxpayers for the backpayment of tax associated with released funds.

Another issue relates to the contributions which would be caught by this scheme. We note that the policy intention is only for voluntary contributions to be included as part of FHSS amounts, yet we are aware of a number of situations where amounts are contributed to superannuation in excess of minimum SG amounts. As we discuss later in this submission, it may be difficult assessing what is the "voluntary" part of the contribution, or even if the payment is actually voluntary for the purpose of the FHSS. These amounts can include:

- Over-SG amounts contributed by an employer;
- Award mandated amounts contributed in excess of SG amounts;
- Mandatory salary sacrifice arrangements; and
- Employer voluntary contributions in excess of SG amounts which employees have no control over.

We are concerned that these amounts may be counted towards FHSS amounts despite the clear policy intention that they are not included. This is due to a technical issue where "mandated employer contributions" only count up to the superannuation guarantee charge as specified in the *Superannuation Industry (Supervision) Regulations 1993* at regulation 5.01(i) (outlined at paragraph 1.85 of the EM). As there does not appear to be a viable way to ensure that amounts aren't inappropriately counted, we would suggest that the Reportable Employer Superannuation Contribution (RESC) regime be used instead. RESC amounts are determined on the basis that they do not arise unless an employee has an ability to influence amounts (the "capacity to influence test"). Importantly, however, they meet the policy objectives of this measure, and that is to only include amounts which are voluntary.

An issue arises where members who are in receipt of contributions detailed above (and no other) may find that FHSS amounts may still arise in respect of their superannuation. This is the case under certain enterprise agreements where over-SG amounts are mandated in addition to mandated salary sacrifice amounts, such as is the case in employees working in the higher education sector.

RESC amounts are presently captured annually as part of PAYG statements, and could feasibly be captured as part of Single Touch Payroll. Utilising the RESC regime to capture voluntary amounts will ensure that a situation will not arise where mandated contributions count towards FHSS amounts.

A related issue arises in defined benefit schemes. The proposed section 130-30(2)(c) of the exposure draft would see contributions to defined benefit funds excluded from the regime and thus ineligible to purchase a home, yet paragraph 1.24 of the EM makes it clear that defined benefit funds may voluntarily pay amounts in release authorities. This is clearly absurd. We believe that it is possible that a defined benefit fund may be able to structure its benefit to take FHSS contributions and to pay FHSS amounts, however to be able to do one without the other would be a failure of policy.

Finally, the decision to use a deemed earnings figure (the Shortfall Interest Charge in this case) will necessarily result in this measure breaching its policy intention to not access mandated employer contributions. For example, where the fund's earnings were less than the deemed earnings rate, this means that additional funds will need to be found to pay the earnings assessed by the ATO as part of an FHSS determination. This effect will be particularly pronounced during periods of negative returns by the fund.

Not result in an increase in the administrative burden on providers, and be justifiable on a cost-benefit basis

We note that most of the burden of administering the FHSS will be borne by the ATO. However there are a number of uncertainties in relation to the administration of this measure:

1. Recontribution of unused FHSS amounts

Paragraph 1.182 of the draft Explanatory Memorandum (EM) states that unused amounts are to be re-contributed as a normal non-concessional contribution into the fund (via MCS or MATS reporting) and count towards the non-concessional contributions cap hence no additional reporting data element. Therefore, there is no way for it to be identified as a FHSS re-contribution. However, due to this feature, it would still be possible to claim a personal super contribution deduction for it and change it from a non-concessional contribution to a concessional contribution as part of the deductible contribution process.

Paragraph 1.187 of the EM states that this should not be available, however there is no way for funds to know this and therefore means that funds will be unable to disallow a member from claiming a personal deduction for the contribution where one is applied for under section 290-170 of the *Income Tax Assessment Act 1997*.

We note additionally that there is no obligation on members to notify the fund of a FHSS recontribution. Will members be able to take their recontribution to another fund? This may appear to create an opportunity for “sharp” financial planning strategies designed to quarantine tax components separately where one may wish to separate out taxable from tax-free amounts.

One last observation is that there does not appear to be a requirement that FHSS amounts are released from the same fund where contributions arose. This may mean that potentially, where contributions to a fund receiving a release authority solely consists of SG amounts, this fund could be required to comply. Aside from the issue related to defined benefit funds which may possibly pay FHSS amounts without being allowed to receive contributions, obtaining the proceeds of the Superannuation Guarantee would appear to be outside the policy intention of this measure.

1. Where a member transfers their benefit to another fund

When a member transfers from one fund to another, there is no breakdown of contributions. Unfortunately, this means that, due to the annual cycle in MCS reporting and that MATS reporting is unlikely to be implemented for another 18 months there will be no visibility as to how the ATO will assess the value of FHSS amounts, except for year-end amounts. It should also be noted that MCS reporting does not distinguish between different types of contributions, meaning that, in addition to even if (as discussed earlier) employers are correctly reporting different types of concessional contributions, there remains the issue that these will not be reported separately to the ATO.

2. Associated earnings on contributions

We note in passing that the different calculation bases for earnings will apply from the start of the month for future years, but will be calculated on an annual basis for the 2017-18 financial year in the interim. This will lead to perverse outcomes, such as, for example, where a member makes a contribution on the 29 June 2018 and is “rewarded” for the purposes of their FHSS determination with a full year’s worth of deemed earnings, which will be funded from their other superannuation. We will discuss this issue in more detail below.

We also note that the transition timeline onto the new MATS reporting framework has not been fully worked out between industry and the ATO. This potentially means that the annual calculation may have to stay in place until such time as this is finalised.

Contributing the proceeds of downsizing to superannuation

While the downsizing proposal does provide an additional superannuation benefit to some people, it is not well targeted and as such is not good policy. This measure benefits home-owning Australians aged 65 and over who probably won't be eligible to receive the age pension (because they have too many assets) and who are able to put \$300,000 of the proceeds (\$600,000 for a couple) into super.

The measure raises a number of issues.

Firstly, we note that the measure is exempt from the upper balance limit on non-concessional contributions, currently \$1.6 million, as well as the annual limit of \$100,000. This limit is designed to ensure that the concessional-taxed environment of superannuation is not misused by Australians. Allowing an additional \$300,000 on top of this is contrary to this policy.

Secondly, we note that this is exempt from the work test. Although AIST would welcome the removal of the work test as a relic of times where Australians retired earlier, this is in contrast to other Australians aged over 65 who need to satisfy the work test in order to contribute. We believe that this distinction is arbitrary and call once again for the work test's removal.

It also means that Australians aged 75 and over could conceivably make an additional contribution. Again, we note the restrictions on Australians aged 75 and over who are prevented from making voluntary contributions, and point to the arbitrary nature of this difference.

Finally, we note that there is very little discussion on the social security implications of this measure. The policy intention is to make it attractive for members to downsize to a smaller residence, which would free up housing supply. Unfortunately, it also means that the proceeds from selling a larger residence would almost immediately become subject to age pension means testing. The proposal would be better targeted if the downsizing assets weren't included in the age pension assets test.

Should you wish to discuss our submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eva Scheerlinck', with a horizontal line underneath.

Eva Scheerlinck
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.



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