

About the Law Council of Australia's Superannuation Committee

The Law Council of Australia is the peak national representative body of the Australian legal profession; it represents some 60,000 legal practitioners nationwide. These observations have been prepared by the Law Council of Australia's Superannuation Committee (the Committee), which is a committee of the Legal Practice Section of the Law Council of Australia.

The Committee's objectives are to ensure that the law relating to superannuation in Australia is sound, equitable and demonstrably clear. The Committee makes submissions and provides comments on the legal aspects of virtually all proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

The Committee has approached its comments from the point of view that certainty in the law is fundamental to the rule of law. Australian law should be clear, easily accessible, comprehensible, prospective rather than retrospective and relatively stable. The Committee re-iterates the comments previously made, in relation to the Division 293 Tax arrangements involved, in its submission dated 8 May 2013.

The draft regulations

The draft regulations are narrow in focus and intended to prescribe the methodology for determining defined benefit contributions for Division 293 Tax Purposes in respect of the 2013-14 financial year, and subsequent years.

In the time available, the Committee has not been able to carry out a thorough technical review of the exposure draft.

The methodology proposed to apply for the 2013-14 financial year and subsequent years departs from the interim methodology that has already been prescribed in relation to the 2012-13 year. In particular, the draft regulation methodology still applies the concept of notional concessional contribution rules, without the application of any "grandfathered" cap in respect of calculation and reporting of applicable defined benefit contributions for the purposes of Division 293 Tax.

It is noted that much of the regulation provisions represent a "carry-over" of the existing provisions for calculation of notional concessional contributions for the purposes of ordinary concessional cap reporting and calculation of any excess tax.

To the extent to which the provisions of the draft regulations:

- have been replicated and adjusted to remove any reference to "grandfathering" arrangements consistent with normal actuarial practice and in accordance with the Government's policy for application of the Division 293 Tax; and
- otherwise use the same methodology as for existing notional concessional contribution calculation and reporting in respect of defined benefit interests— rather than a new methodology for Division 293 Tax reporting purposes

those regulations appear workable.

However, we note that some of our previous concerns expressed in relation to the operations of Division 293 generally remain unresolved, recognising that those matters would require reconsideration of aspects of the provisions of the Act and could not all be ameliorated through amending regulations.

The Committee would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact:

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