Law Council
OF AUSTRALIA

Sustaining the Superannuation Contribution Concession

The Treasury

Submission by the Superannuation Committee of the Legal Practice Section of the Law Council of Australia

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1. About the Law Council of Australia's Superannuation Committee

1.2 This submission has 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 Law Council of Australia is the peak national representative body of the Australian legal profession; it represents some 60,000 legal practitioners nationwide. **Attachment A** outlines further details in this regard.

1.3 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.

2. Executive Summary

2.1 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.[1]

2.2 While the Committee supports the approach of issuing assessments to individuals rather than to funds, it is concerned about some aspects of the proposed legislation:

- There is a significant element of retrospectivity to the legislation which the Committee considers to be unacceptable.
- As the Division 293 tax will be payable by the estate of a deceased member, circumstances will arise where the beneficiaries of the death benefit are not the same persons who will benefit from the estate. This will create perceived unfairness, and will create difficulties for trustees, which may need to take these tax issues into account when deciding how to allocate death benefits, but will not have full details of tax liabilities.
- The interaction with family law legislation requires clarification.
- The requirement for the whole of a deferred Division 293 tax debt to be paid on first receipt of a defined benefit payment may create difficulties where the tax payable exceeds the amount of the payment. Part commutation of the income stream may not be a practical solution in all cases, or might create significant disadvantage.
- The proposals do not appear to deal adequately with situations where superannuation interests change over time.
- There are technical difficulties with draft s293–30 of the *Income Tax Assessment Act 1997* (Cth) (ITAA) which may lead to double taxation.
- The term 'employer-financed component' appears not to be defined.
- Constitutional issues and uncertainties arise in relation to state higher office holders, the treatment of salary packaging and the treatment of federal judges.

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1 Law Council of Australia, *Policy Statement: Rule of Law Principles* (2011) <http://www.lawcouncil.asn.au/programs/international/rule-of-law.cfm>; Melissa Castan and Sarah Joseph, *Federal Constitutional Law, a Contemporary View* (2nd ed, 2006) 5; J Raz, "The Rule of Law and its Virtue" (1977) 93 *Law Quarterly Review* 195, 198-202

- The rules should allow for taxpayers to have Division 293 tax paid directly from the fund, and they should not be placed at risk of having first to pay such tax from their own resources because of a mismatch between the timeframe for payment of the tax and for release of amounts by a fund in receipt of a release authority.
- Because of the uncertainties to be faced by taxpayers with defined benefit interests, consideration should be given to allowing certain contributions attracting Division 293 tax to be withdrawn.

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

3. Issues arising in connection with death benefits

3.1 Paragraph 3.139 of the Explanatory Memorandum notes that no special rules will be made to address payment of Division 293 tax following the death of an individual and, as such, liability to pay the tax will generally pass to the estate of the deceased individual. This gives rise to several issues.

3.2 Following the death of a member, a death benefit may become payable directly to one or more beneficiaries. The recipients of the death benefit may be different from the persons who stand to receive a distribution from the estate.

3.3 As such, there is potential for the tax debt to be borne by persons who did not receive any benefit from the concessionally taxed contributions that gave rise to the Division 293 tax. To compound the situation, given the manner in which Division 293 tax is to be administered, it would appear that the anti-detriment rules will have no application and provide no relief vis a vis the Division 293 taxes that were paid by the member during their lifetime.

3.4 Depending on the size of the Division 293 tax debt relative to the other assets comprising the estate, it is conceivable that the Division 293 tax may substantially or entirely exhaust all assets comprising the estate, such that beneficiaries of the estate receive little or no distribution from the estate. It is also conceivable that that there may be insufficient assets in the estate for the Commissioner to recover the Division 293 tax debt. The Committee notes that many individuals structure their affairs such that assets are held within vehicles such as family trusts, companies and superannuation funds, and have very little in the way of personally held assets. Further, in cases where the estate comprises few or low value assets, there may be no formally appointed legal personal representative.

3.3 The Committee acknowledges that the question of where liability for the Division 293 tax should lie raises issues of public policy, and that these are issues for the Government to determine. The Committee suggests, however, that it would be perceived by the community generally to be unfair if beneficiaries of an estate were to be liable for a Division 293 tax debt in circumstances where the relevant superannuation benefit was paid to other persons. It is not difficult to construct scenarios where such an approach might create 'hard cases'. For example, it is common for fund members to direct that their superannuation benefits to be paid to a spouse on their death (noting that a spouse will receive a death benefit free of tax). Other family members, such as children, may then be provided for through the member's estate. In such a scenario, the children might receive significantly less provision than the deceased member had intended, while the spouse would receive a higher benefit.

3.4 There is also a very real impact on trustees of superannuation funds that should not be overlooked. In many cases, the task of determining which beneficiaries should receive a death benefit (and the amount to be received by each) is a matter for the trustee to determine at its discretion. There are numerous considerations that may be taken into account in determining how to allocate a death benefit, but the tax debts of the estate are not typically one of those considerations.

3.5 The exposure draft would appear to create a situation where a decision by a trustee concerning the distribution of death benefits could trigger a tax liability for the estate and thereby disadvantage beneficiaries of the estate who did not receive a death benefit. It is also apparent from the exposure draft and the explanatory memorandum that trustees would never the know the amount of the deferred Division 293 tax pertaining to the deceased member (although the trustee would be on notice that there was a deferred Division 293 tax debt, but just not the amount).

3.6 This would potentially place trustees in a difficult position. On the one hand, trustees may be placed under pressure not to release death benefits to the estate (for example, where the persons potentially entitled to receive the death benefit are the same as the persons who stand to receive a distribution from the estate). On the other hand, where the persons who stand to receive a distribution from the estate are different from those to whom the trustee is considering paying a death benefit, trustees would have to exercise their discretion without a clear understanding of the potential financial impact on the estate of the deceased member.

3.7 Finally, draft section 134-115 of the *Tax Administration Act 1953* (TAA) sets out the circumstances in which a superannuation provider must notify the Commissioner of certain events that may trigger a liability to pay a deferred Division 293 tax debt. The obligation to notify the Commissioner is triggered when the individual (i.e. the member) requests the payment of a benefit. This overlooks the fact that there are cases when a member may not specifically make a request - or need to make a request – in order for a benefit to become payable. This is most acute in the context of death benefits, where the member is deceased and all communications regarding the death benefits necessarily originate from other persons. In these cases, there would be no requirement to notify the Commissioner and no justification for the trustee to communicate what would otherwise be sensitive information about the member.

4. Interaction with family law legislation

4.1 Under family law legislation, a payment flag may be applied to a member's account that operates as a caveat and precludes the trustee from dealing with the member's account without first notifying the relevant (former) relationship partner.

4.2 It is unclear from the exposure draft and the explanatory memorandum whether a release authority given to a trustee is intended to override a payment flag under the family law legislation, or whether the obligation to release moneys under the release authority overrides the restriction under the family law legislation.

4.3 It will be important for this interaction (and the intended priority) to be clarified so that trustees understand what their obligations are.

4.4 Along similar lines, it is unclear whether splitting a defined benefit interest following the dissolution of a relationship pursuant to the family law legislation is intended to be a dealing that would require notification to the Commissioner and that would trigger payment of deferred Division 293 tax. This should also be clarified.

5. Repayment of tax debt triggered by first benefit paid from DB interest

5.1 Under draft section 134-60 of the TAA, the full amount of a member's deferred Division 293 tax benefit becomes payable when the Division 293 end benefit becomes payable.

5.2 The "Division 293 end benefit" is not an end benefit at all. In fact, it is the first benefit to become payable from a defined benefit interest.

5.3 As such, it is conceivable that the first benefit paid from the defined benefit interest may be of an amount that is far less than the deferred Division 293 tax debt. (Even though the amount of the deferred Division 293 tax debt will be capped at the end benefit cap, it is equally conceivable that the first benefit payment will be of an amount that is far less than the end benefit cap.)

5.4 This gives rise to issues of public policy as to whether or not is desirable for a person who has become entitled to receive a small payment to be liable to pay the entirety of what might be a significant tax debt (relative to the benefit payment) and where the amount of the benefit falls well short of what would be required to discharge the debt. Further, the Committee queries whether the Government's broader policy objectives are met by including as a payment trigger the payment of an income replacement benefit payable on the member's total and temporary disablement.

5.5 Paragraph 3.123 of the explanatory memorandum foreshadows that there may be regulations that would allow a trustee to commute a defined benefit income stream for the purposes of complying with a release authority (where this is permitted by the relevant governing rules).

5.6 It should be borne in mind that the consequences of commuting an income stream may be especially costly and disadvantageous for the affected member – for example, a disabled member could lose their entitlement to receive a life pension.

5.7 It will also be important to clarify what the obligations of a trustee would be in circumstances where a release authority is given to the trustee of a defined benefit fund and the governing rules do not permit an early commutation for the purposes of paying the release amount. Draft section 135-105(2) of the TAA would seem to suggest that defined benefit interests are not ring-fenced when the relevant release authority relates to a deferred Division 293 tax debt.

5.8 Finally, it should be borne in mind that there are circumstances under some governing rules where a defined benefit interest may be converted into a different category of interest. For example, employers which are contributing in respect of defined benefit entitlements for their employees will often have a right under the relevant governing rules to terminate such contributions, In such circumstances, the governing rules will generally provide for the trustee to adjust the benefits of affected members on actuarial advice, and in turn this will often result in a crystallisation of benefits. The affected members may therefore, upon crystallisation, commence to hold an accumulation rather than a defined benefit interest within the fund. Such a conversion would appear not to trigger an obligation for the trustee to notify the Commissioner nor the liability to repay the deferred Division 293 tax debt. Similarly, the payment of a benefit from out of the new interest would not be a Division 293 end benefit because it would not be a payment with regard to an interest to which a deferred Division 293 tax debt relates. The Committee queries whether this is intended.

6. Limit on release amount from accumulation interests

6.1 Under draft sections 135-95(1)(c) and 135-95(2) of the TAA, the release amount would be limited to the amount of all “lump sums that *could be payable* from the interest at that time (emphasis added)”. The meaning of “could be payable” should be clarified. In the ordinary case, where a member has not satisfied a condition of release, no amount could be paid at that point in time, yet the intention seems to be for a trustee to comply with a release notice nevertheless.

7. Possible timing issue leading to double-taxation

7.1 Draft section 293-30 of the ITAA would potentially give rise to double-taxation in particular circumstances.

7.2 Double-taxation could potentially arise in circumstances where a contribution is made during one financial year (say, around June towards the end of the financial year) but where the trustee only allocates the contribution in the following financial year (say, around early July in the following financial year).

7.3 In this circumstance, the effect of draft section 293-30(2) of the ITAA is that the contribution will be included in the calculation of the low tax contributed amounts for the first financial year; but draft section 293-30(5) potentially suggests that the contribution must also be included in the calculation of the low tax contributed amounts for the second financial year, this being the financial year in which the allocation occurs.

7.4 Draft section 293-30(5) should be clarified so as to ensure that there is no overlap with draft section 293-30(2). At a minimum, the drafting should clarify that section 293-30(5) is not concerned with the year in which the allocation occurs, but rather with the year to which the trustee allocates the contribution.

8. Obligation to calculate and report end benefit cap

8.1 Draft section 134-115 of the TAA would require trustees to notify the Commissioner of the amount of the end benefit cap.

8.2 This in turn would require trustees to know the amount of “the employer-financed component of any part of the value of the superannuation interest that accrued after 1 July 2012”, as foreshadowed by draft section 134-65(1)(b).

8.2 However, this term does not appear to be defined in the exposure draft.

8.4 Also, the exposure draft is silent as to the exchange of information (and associated reliance that may occur) in cases where amounts are transferred or rolled over from one superannuation provider to another. This should be clarified so that trustees can understand what their obligations are when accepting transfers and rollovers from other funds (and equally when transferring amounts to other funds).

9. Constitutional issues

State higher office holders

9.1 In order to address potential constitutional limitations on the powers of the Commonwealth in respect of legislation that might otherwise be found to interfere with the manner in which a State governs itself, it is proposed that there be an exemption such that the Division 293 tax is not imposed on low tax contributions to constitutionally protected funds for taxpayers who are State higher level office holders provided that those contributions are not part of a salary packaging arrangement.

9.2 The ambit of the exemption is proposed to be defined pursuant to subsection 293-145(1) of ITAA 1997 which provides for a “class of individuals” to be declared by regulations. At paragraph 2.78 of the draft Explanatory Memorandum it is stated that such mechanism ensures any issues that may arise in the future can be readily addressed in the regulations.

9.3 Clearly Treasury is of the view that the Division 293 tax is capable of being found to apply to curtail the ability of a State to engage employees and officers at the higher levels of government, particularly given that the legislation would only affect so called, “high income earners”. The Committee agrees with this supposition.

9.4 However, the Committee is concerned that the proposed mechanism for ensuring validity of the Division 293 tax in its potential application to this cohort produces uncertainty and will thereby cause taxpayers to have to bear the burden of significant legal expenses in order to achieve clarity around the operation of the provisions. There are many examples of such challenges having been brought with respect to the superannuation surcharge legislation, with some of those challenges not proceeding beyond an initial determination of the Administrative Appeals Tribunal – principally due to the cost of appealing beyond that jurisdiction.

9.5 Whilst it is likely that the legislature will be able to identify certain office holders who clearly fall into this category (and meet the constitutional threshold), there will nevertheless remain doubt and scope for challenge to the legislation on constitutional grounds from:

(a) taxpayers who have not been covered by the description to be set out in the regulations; or

(b) taxpayers who may claim they fall within the description contained in the regulations, but whom the Commissioner considers are not caught within the description.

9.6 This area of law is uncertain and the Committee anticipate that if the proposed draft legislation is passed in this form there will be challenges to it on grounds similar to those which were pursued or otherwise contemplated with respect to the superannuation surcharge. Many grounds upon which challenges were brought in respect of the surcharge legislation have never been finally determined by a court. Thus, we expect that there will be difficulty in providing certainty on this exemption. For example, whether a State magistrate holds a State higher level office was a question in *Clark v Commissioner of Taxation* [2008] FCAFC 51, but in the end that question was not addressed because it was found that the taxpayer was a “judge” because he was a magistrate. Therefore the question remains unanswered as to whether State magistrates are State higher level office holders.

9.7 The Committee notes the reasoning of the High Court in *Re Australian Education Union; Ex parte Victoria* (1995) 184 CLR 188 (**AEU decision**) involved two propositions:

(a) first, it is "critical to a State's capacity to function as a government" that it retain the ability to determine "the terms and conditions" on which it engages employees and officers "at the higher levels of government"; and

(b) secondly, "Ministers, ministerial assistants and advisers, heads of department and high level statutory office holders, parliamentary officers and judges" would clearly fall within this group.

9.8 In view of these matters the Committee would expect that the proposed regulations to determine an appropriate "class of individuals" would, at the outset (and as a minimum), articulate those officers and employees mentioned in the AEU decision. In any event, the Committee remains concerned about the significant doubt that would still remain for some State employed taxpayers (and for the States) given the proposed mechanism for dealing with this issue.

9.9 To the extent that funds may have to also address the issue of whether a member falls within the class of individuals described by the proposed regulations the mechanism would also be burdensome for the funds. This may be relevant, for example, with respect to what information is provided by the funds to the ATO in respect of low tax contributions for members.

Salary packaging

9.10 Draft section 293-150 of ITAA 1997 provides that amounts of low tax contributions made to a constitutionally protected fund for taxpayers who are State higher level office holders would be included in the low tax contributions to the extent they relate to "salary packaged contributions". Subsection 293-160(1) defines a "salary packaged contribution" to be a contribution made because the taxpayer agrees with an entity (or its associate) for the contribution to be made in return for a reduction in their remuneration.

9.11 The Committee is concerned that the imposition of the Division 293 tax could also interfere with the ability of a State to determine the terms and conditions upon which it engages its higher level office holders to the extent that salary packaging arrangements for superannuation may have been made prior to the commencement of the Division 293 tax (i.e. before 1 July 2012). If the Division 293 tax is imposed upon contributions that were part of a remuneration package which a State agreed prior to 1 July 2012 with employees holding higher levels of office then it may be necessary for the State to re-negotiate those packaging arrangements to ensure suitable ongoing remuneration arrangements in a manner similar to the introduction of commutation arrangements by the State that was relevant in the decision of *Clarke v Federal Commissioner of Taxation* (2009) 83 ALJR 1044.

9.12 Accordingly, the Committee suggests that consideration be given to extending the exemption to any salary packaged superannuation contributions for State high office holders made pursuant to an agreement or arrangement entered into before 1 July 2012.

Other constitutional and legislative process issues

9.13 The Committee queries whether the constitutional protection afforded to Federal judges should also be provided to State judges on the basis that there is a constitutional convention that limits legislation applying in a manner that reduces the remuneration of judicial officers. The convention stems from the requirement for an independent judiciary that, in part, ensures that the legislature cannot decrease the remuneration of judges during their tenure. In view of the time-frame for responding to the exposure draft the Committee has not had sufficient time to investigate this issue further, but recommends that it be examined prior to finalisation of the bill.

9.14 The Committee notes that the proposed Division 293 tax will apply in relation to contributions made or received by taxpayers (who satisfy the relevant threshold tests) on or after 1 July 2012. Hence the imposition of the tax will have a retrospective application and may to that extent and for that reason constitute what is referred to as “an arbitrary exaction” outside the taxing powers of the Commonwealth.

9.15 To be valid under the Constitution, a tax law must be imposed by reference to ascertainable criteria of sufficiently general application and capable of being known in advance by taxpayers. In this way a tax law should enable a taxpayer to assess the relevant criteria and legitimately order their affairs accordingly. There is a risk that retrospective tax laws that treat taxpayers differently depending upon the way in which they ordered their affairs prior to the imposition of the tax will be found to be invalid because they are “arbitrary exactions”.

9.16 The Committee accepts that there may be rare circumstances where it is appropriate to introduce retrospective legislation, for example, for correction of an unintended consequence of a provision where taxpayers have applied the law as intended, or in order to address a significant tax avoidance issue. However, given the nature of the proposed Division 293 tax the Committee doubts that any such circumstances are present.

9.17 Further, the Committee submits that industry consultation on these measures, which constitute the introduction of a retrospective tax, has been inadequate. Submissions were due within five working days of the release of the exposure draft legislation. This has not allowed sufficient time for the complexities of the proposal to be properly considered, and for necessary research to be carried out. In this regard the Committee also notes Senate Standing Order 24 which provides as follows:

> 24. (1)(a) ….the Scrutiny of Bills Committee shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise:
>
> i) trespass unduly on personal rights and liberties…

9.18 The Committee understands that in the past the Senate Standing Committee for the Scrutiny of Bills has drawn attention to bills which have retrospective application in a way that detrimentally affects individuals. These issues may be particularly relevant to taxpayers who throughout 2012-13 organised their salary packaging and superannuation affairs without knowledge that they would be adversely affected by the Division 293 tax in the manner in which it has been imposed. For instance, a taxpayer who decided to salary sacrifice their member contributions to a defined benefit fund may have had a more favourable outcome if he or she had not salary sacrificed those member contributions. Taxpayers who have undertaken estate planning during the year may have also made arrangements which will now be adversely impacted by the Division 293 tax.

9.19 For these reasons the Committee recommends that further consideration be given to whether the Division 293 tax should be introduced on a retrospective basis.

10. Timing issues- payment of Division 293 tax

10.1 The Committee is concerned that there is a mis-match as between the timeframe within which a fund that receives a release authority in accordance with Subdivision 135-B TAA must pay the release amount (draft section 135-85 TAA - 30 days), and the timeframe within which assessed Division 293 tax is due and payable (21 days after the Commissioner gives the taxpayer notice of the assessment - draft section 293-65 ITAA; draft section 134-70 TAA)). While the taxpayer is allowed a period of 120 days in which to give a release authority to their fund (draft section 135-50 TAA), some taxpayers will wish to have the Division 293 tax paid to the Commissioner directly from the fund, either for reasons of convenience or because they do not have other readily available resources with which to pay the tax. The Committee considers that such taxpayers would have a reasonable expectation that the rules will facilitate payment of the release amount to the Commissioner by the date on which the Division 293 tax is due and payable, where the release authority has been lodged promptly with the fund,

10.2 The Committee acknowledges that the 21 day payment period for payment of Division 293 tax is consistent with the time allowed for payment of other taxes, and that 30 days may be a reasonable period to allow for funds to administer payment pursuant to a release authority. Nonetheless, the Committee considers that the rules should allow those taxpayers who wish to have the Division 293 tax paid directly from the fund to arrange for this, and that taxpayers should not be put at risk of having to make payment from non-superannuation resources. This is particularly the case given the announcement of the new tax as being a reduction in the tax concession for contributions of very high income earners, rather than a new personal tax.

11. End benefit cap

11.1 The 'end benefit cap' is defined as being 15% of the employer-financed component of any part of the value of a superannuation interest that accrued after 1 July 2012 (draft section 134-65(1)(b) TAA). The cap would apply so as to reduce the deferred Division 293 tax debt where this calculation gave a lesser amount than the amount by which the Division 293 debt account was in debit at the relevant time. The value of the superannuation interest is worked out at the end of the financial year before the financial year in which the Division 293 end benefit becomes payable (section 134-65(2) TAA). (As noted above, the term 'employer-financed component' does not appear to be defined in the exposure draft.) The full amount of the deferred Division 293 tax becomes payable within 21 days after the issue of an assessment, and the assessment is issued upon the first superannuation benefit becoming payable from the relevant superannuation interest.

11.2 Consequently, taxpayers will be required to pay deferred Division 239 tax based on a range of actuarial assumptions. There appears to be no provision to address circumstances where the tax paid is grossly in excess of the amount that would have been payable had it been calculated according to some form of wait and see approach. For example, a taxpayer who commenced a non-reversionary lifetime pension would pay tax calculated by reference to underlying assumptions regarding life expectancy. Should that taxpayer die shortly after the tax assessment was issued, the actual tax payable would be significantly out of proportion to the actual benefit received by the taxpayer arising from the defined benefit contributions made in respect of him or her (and the extent to which actual employer contributions were applied in paying the benefit). The Committee submits that this is inequitable, and not consistent with the purpose of the legislation.

12. Uncertainty

12.1 The Committee is concerned that taxpayers who have defined benefit interests may not be in a position to know during the course of an income year the amount of the defined benefit contributions to be reported in respect of them by their fund. Accordingly, those taxpayers may not be able to determine whether or not they will have Division 293 taxable contributions for a year, and will therefore not know, when deciding whether or not to make additional contributions to an accumulation interest, whether such contributions would attract Division 293 tax. The Committee acknowledges that the complexity of the Division 293 regime, and in particular the difficulties inherent in applying these concepts in a defined benefit context, may not allow a ready solution to this issue. In these circumstances, then, the Committee queries whether it would be appropriate to allow taxpayers who have defined benefit interests and who incur Division 293 tax, to withdraw contributions made to an accumulation interest to the extent that these subsequently prove to attract Division 293 tax.

13. Drafting issues

13.1 The Committee queries whether the middle box in the table 2.1 on page 12 of the Explanatory Memorandum is correctly expressed.

13.2 In a number of provisions, the exposure draft uses the terms 'superannuation interest' and 'defined benefit interest'. There are still areas of uncertainty as to how an 'interest' in a superannuation fund is to be identified. In some circumstances, a member's interest in a superannuation fund may change over time. For example, a member may have a defined benefit interest that crystallises during the course of a year and becomes an accumulation interest, possibly in a different division of the superannuation fund. The Committee queries whether it is always clear that the language used will be effective to achieve the intended outcomes. For example, to pick up on a point made in paragraph 5.8 above, draft section 134-120(1) TAA provides that 'If the Division 293 end benefit becomes payable from a superannuation interest for which the Commissioner keeps a debt account for you, the Commissioner must give you a notice under this section.' If the taxpayer's defined benefit interest had crystallised as outlined above, and a benefit amount subsequently became payable, would it be clear that the debt account was kept by the Commissioner for this new interest?

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's constituent bodies. The Law Council's constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Joe Catanzariti, President
- Mr Michael Colbran QC, President-elect
- Mr Duncan McConnel, Treasurer
- Ms Fiona McLeod SC, Member
- Mr Justin Dowd, Member
- Ms Leanne Topfer, Member

The Secretariat serves the Law Council nationally and is based in Canberra.