FOI 3331
Document 1

From: s 47F [redacted]
To: s 22 [redacted]
Subject: Stamp Duty and Fee Disclosure - Briefing Note pt 2
Date: Monday, 6 February 2023 2:12:59 PM
Attachments: Stamp Duty and Fee Disclosure - Briefing Note for Treasurers Office - pt 2.docx

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Hi s 22 [redacted]

Please find attached a further briefing note on stamp duty addressing the matters we discussed – frequency, materiality and a tangible example of its inclusion in the RG 97 disclosure regime.

Looking forward to seeing you both tomorrow.

s 47F [redacted]

cbus
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An Industry SuperFund

s 47F [redacted]

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From: s 47F [redacted]
To: s 22 [redacted]@finance.gov.au
Subject: Cbus cover letter and submission - Housing Legislative Package - Public Consultation
Date: Friday, 13 January 2023 5:24:06 PM
Attachments: Cbus Cover Letter - HAFF consultation.pdf
Cbus Submission - Consultation on Housing Australia Future Fund and the National Housing Supply and Affordability Council legislative package.pdf

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Hi s 22 [redacted]

Please find attached, for your information, Cbus' submission to the Government's consultation on the Housing Legislative Package, including a short cover letter. As predicted, we missed the deadline by a couple of days, so very glad we had a chance to discuss it with you in some detail.

Cbus' CEO Justin Arter and I will be up in Canberra attending the Master Builders BBQ & Summit on the Monday and Tuesday of the first sitting week (6^{th} & 7^{th} Feb). It would be great to catch each of you to make an introduction. Would it be possible to each set aside 10 mins for us on the Tuesday morning for a quick hello?

Kind regards,

s 47F [redacted]

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Document 4

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13 January 2023

Housing Branch
Personal and Indirect Tax, Charities and Housing
Revenue, Small Business & Housing Group
The Treasury, Langton Crescent, Parkes ACT 2600

By email: housing@treasury.gov.au

Dear Sir / Madam

Re: Review of the draft Housing Australia Future Fund (HAFF) Bill 2023; National Housing Supply and Affordability Council Bill 2023; Treasury Laws Amendment (Housing Measure No.1) Bill 2023 ('the draft Bills') and the Exposure Draft Explanatory Materials

Cbus welcomes the opportunity to provide feedback on the draft Bills.

Background

Established in 1984, Cbus is the industry superannuation fund for the built environment. Cbus invests back into the construction and building industry, which not only provides strong long-term investment returns, but helps boost our economy and create jobs within the industry.

As of 30 June 2022, Cbus has over

- 850,000 members
- 210,000 employers
- $70 billion in funds under management.

Housing

As we have consistently indicated throughout recent Treasury consultation processes, most recently in the review of the National Housing Finance and Investment Corporation (NHFIC) in January 2021, Cbus believes that access to secure and affordable housing is an important part of ensuring a dignified and comfortable retirement. Superannuation funds can, and should, play a role in helping to improve the supply of affordable housing for Australians by investing in this area while simultaneously achieving an appropriate risk adjusted return for members. This is consistent with our mission to put members' best financial interests first.

Super funds can provide an important source of capital to partner with government to help resolve this longstanding policy issue which affects so many Australians.

In our view, addressing housing affordability requires intervention to tackle issues around supply, and as the Australian population increases, we need to build more dwellings and more infrastructure. The proposed introduction of the HAFF is a very welcome and positive initiative to assist in solving the supply shortfall.

As a large-scale investor, Cbus is interested in playing a role in helping to deliver positive housing outcomes for Australians. Cbus is a patient provider of capital with a strong focus on the

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sustainability and innovation of the investments we make, with a particular emphasis on the built environment.

Cbus has been active in discussions around affordable housing area for many years and was a strong advocate for the establishment of NHFIC and the bond aggregator concept. Since the inception of the bond aggregator in 2019, Cbus has invested approximately $150M in NHFIC issued bonds.

More recently, Cbus has participated in a consultative group of investors in discussions with NHFIC and other stakeholders around how the earnings from the HAFF (preserving the capital for future generations), can be best utilised to fund the development of new social and affordable housing.

Our feedback in relation to the Draft Bills, attached, relates predominantly to independent analysis we have undertaken, and the understanding we have gained through this consultative process, in terms of the likely capital investment to be sought and attracted from institutional investors to meet the Government's objective of constructing 30,000 new social and affordable homes in the first five years from the establishment of the HAFF.

Please contact s 47F [redacted] if you have any queries in relation to our submission.

Yours faithfully,

Justin Arter
Chief Executive Officer

Cbus submission in response to the draft Bills and supporting explanatory materials released on 19 December in relation to the establishment of the Housing Australia Future Fund and the National Housing Supply and Affordability Council, and an Amendment Bill to support the new legislation.

Executive summary

The establishment of the HAFF is a welcomed and positive initiative to assist in addressing the shortfall in the supply of social and affordable housing.

Over the past few months members of our internal investment team have participated in a consultative group of investors and the National Housing Finance and Investment Corporation (NHFIC) in relation to the expected investment by institutional investors in the HAFF initiative. This work has predominantly focused the proposal that an institution would provide upfront funding (capital investment) as part of a funding arrangement to meet the Government's objective to support the construction of 30,000 new social and affordable dwellings in the first five years of the HAFF. It is with this insight and experience that we provide our feedback on the exposure drafts.

Our understanding of the key proposition is that investors who provide upfront capital would be repaid the amount invested, plus a promised return (interest) over an agreed period of time from the earnings of the HAFF. We have participated in discussions around funding structures and have noted the requirements of other investors when looking at all parts of the capital / funding stack that is required to deliver the new dwellings.

Our comments below go to the program design, and our view of the capacity of the legislation as drafted to meet the stated policy intention of attracting funding from institutional investors.

1. Ability to raise capital from external investors

We understand that under the Bills as drafted, disbursements from the HAFF will require formal government approval, with approval envisaged to occur as part of the annual budget process, and with a limit on the amount available annually.

Feedback

It is our view that no investor would provide capital upfront unless the source of full repayment over the term of that investment was clearly identified, was linked to the HAFF income and was available at the time expected. **Having to rely on annual government approval is likely to significantly impact the appetite of investors to provide upfront capital.**

To address this problem, the legislation should enable commitments for future periods to be available and / or some other form of contractual support provided to the entity that is used to raise (borrow) the funds from the institutional investors. Contractual arrangements are likely to require:

- Clear linkage back to the availability of the HAFF income and that income being sufficient over the agreed investment period to fully repay investors.
- Clear assurance that the borrowing entity has full recourse to the HAFF income and that there is no risk of legislative change of access to that income for funding that has already been contractually committed.

2. Amount of capital that can be raised from external investors

As currently drafted, there is a $500M annual cap on disbursement that can be made from the HAFF. This cap also includes other grants that are expected to be available and funded from income of the HAFF.

Feedback

Superannuation funds have an obligation to achieve an appropriate risk adjusted return for members, but we at Cbus also see the significant societal benefit of relieving the cost of housing pressures on many of those same members and other Australians who are struggling.

Based on the financial forecasts that Cbus sighted during the consultation process and the independently modelling we have undertaken, we believe that a limit of $500M per annum will limit the amount of capital that will be able to be raised from what is effectively the sale of the rights to that income, posing a risk to Government meeting its objective of funding 30,000 new dwellings in the first five years of the establishment of the HAFF.

We offer this feedback as an institutional investor with credentials in this space, and with a view to giving the scheme the best chance at success in fund raising to support new builds.

3. Other matters – extension of NHFIC (Housing Australia) liability cap and guarantee

We note that the proposed initiative for the construction of 30,000 new social and affordable dwellings over the first five years of the HAFF is likely to require NHFIC to also provide senior debt to Community Housing Providers (CHPs) as part of those projects. NHFIC currently has a cap on loans it can provide of $5.5B. As of 30 June 2022, NHFIC had provided loans of $3B.

We also note that NHFIC currently issues Government Guaranteed bonds to fund the loans it makes to CHPs. Comfort around the ongoing guarantee of NHFIC bond issuances is likely to be important to any lenders or investors either in debt or equity who also participate in the capital stack providing funding to CHPs, including those who borrow to develop housing associated with the HAFF.

Uncertainty over the ability of NHFIC to continue to raise funding using a Government Guarantee will increase rollover risk for other lenders and investors, and could again limit the appetite of those parties. We have seen the benefits and savings that have flowed through to the CHP sector from the bond aggregator model and note that the CHPs are well placed to not only meet the Government's objective of the first 30,000 to 40,000 new social and affordable dwellings under the HAFF proposal, but to expand their business-as-usual model which remains focused on growing supply to meet the clear shortfall in dwellings.

Feedback

We believe consideration should be given to increasing the NHFIC liability cap from $5.5B. If external investors / lenders are being sought to crowd in as outlined in the 2021 Review of NHFIC, we believe consideration should also be given to ensuring NHFIC is in a position to access funding using a Government Guarantee during the full proposed financing period for any projects it funds.

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From: s 47F
To: s 22
Subject: Re: HAFF exposure draft legislation - hoping to catch you for a brief chat [SEC=OFFICIAL]
Date: Friday, 23 December 2022 1:34:09 PM

Thanks very much s 22

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From: s 22 @TREASURY.GOV.AU>
Sent: Friday, December 23, 2022 12:38:03 PM
To: s 47F @cbussuper.com.au>; s 22
s 22 @TREASURY.GOV.AU>
Subject: RE: HAFF exposure draft legislation - hoping to catch you for a brief chat [SEC=OFFICIAL]

OFFICIAL

Hi s 47F – I've been discussing this with s 22 in Julie Collins office who has the lead on the HAFF.
s 22 will reach out to you later today to discuss options/best way forward.
s 22

OFFICIAL

From: s 47F @cbussuper.com.au>
Sent: Tuesday, 20 December 2022 12:28 PM
To: s 22 @TREASURY.GOV.AU>
Subject: HAFF exposure draft legislation - hoping to catch you for a brief chat

Hi s 22

Hope you're well!

Could you please give me a quick call if you've got a minute today? I didn't get your mobile number when we last spoke. (If you're already on leave then ignore this, it can wait!)

Our Head of Debt has identified some issues in the HAFF exposure draft legislation which have the potential to jeopardise our ability as institutional investors to get involved. I'd like to flag them with you before we put them into a submission, and could do that today if you've got a few minutes.

We're also going to request an extension from Treasury as the very short timeframe is unworkable at this time of year. I'll reach out to them now.

Thanks,
s 47F

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From: s 22
To: s 47F
Cc: s 22
Subject: RE: Stamp Duty and Fee Disclosure - Briefing Note for Treasurer [SEC=OFFICIAL]
Date: Thursday, 24 November 2022 3:55:00 PM

OFFICIAL

Thanks s 47F I've passed this onto s 22 on our office who has taken over from s 22 n our office and is the lead on superannuation.

I'll continue to be the contact on housing (so this issue relevant to both of us).

s 22

OFFICIAL

From: s 47F @cbussuper.com.au>
Sent: Thursday, 24 November 2022 3:02 PM
To: s 22 @TREASURY.GOV.AU>
Subject: Stamp Duty and Fee Disclosure - Briefing Note for Treasurer

Hi s 22

Good to chat earlier. I'm often in Canberra during siting weeks so will pop my head in next time I'm up.

Please find attached a short briefing note on the impact of including stamp duty in fees and costs disclosure - a potential barrier to institutional investment in Australian Property and Infrastructure, and a proposed solution.

Looking forward to having a more detailed discussion about this with your office post-roundtable. Our s 47F can set out some compelling real world examples of this problem playing out.

Of course, if you need any further detail ahead of tomorrow we can certainly assist.

Kind regards,

s 47F

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Briefing Note

Impact of including stamp duty in fees and costs disclosure - a potential barrier to institutional investment in Australian Property and Infrastructure

- Superannuation funds are required to disclose fees and costs in line with *ASIC Regulatory Guide 97 Disclosure of fees and costs in PDSs and periodic statements (RG97)*. This disclosure then informs the fund's fee and cost rating on APRA's MySuper Product Heatmap, a tool which assesses funds relative to their peers.
- The requirement to disclose stamp duty as part of fees and costs is emerging as a disincentive to invest in Australian property and certain infrastructure. Anecdotally we are aware that funds have decided against property investments because of concerns about the impact disclosing stamp duty has on their fees and costs template and what it would means for their APRA Fees and Costs Heatmap ranking.
- Under the current regime, unlisted property investments look more expensive in contrast to listed property investments, as the burden of reporting stamp duty is applicable to unlisted, but not to listed, property investments. There are also differences in how stamp duty is disclosed for different types of investment structures and between asset classes. These differences undermine the purpose of fee and cost disclosure requirements.
- Property investment is an opportunity for funds to support the economy and deepen member connection with the super system by giving them a stake in airports, shopping centres, affordable housing developments etc.
- Under the existing disclosure regime, funds may be incentivised to change the way they in which they invest, and indirect investment structures may be preferred. These structures are typically less transparent than direct investment is. Off-shore property, which typically does not attract stamp duty, may also be preferred.
- Whereas many transaction costs can be reduced by the investor e.g., brokerage and legal fees, stamp duty is a tax imposed by Government for certain transactions and cannot be negotiated, avoided or reduced by the investor. Additionally, it is subject to change at any time.
- If superannuation funds wind back investment in property it cannot be assumed that other investors e.g., private equity, will step in because big property transactions are typically syndicated, relying on participation by funds.
- We propose that stamp duty should be excluded from fee and cost reporting entirely. This would:
    - Ensure consistency between unlisted property investments, listed property investments and other asset classes
    - Be simple to implement
    - Be consistent with other 'excluded transaction and operational costs' which includes borrowing costs and property operating costs
- Under this proposal all fees and costs (including stamp duty) would <u>continue</u> to be taken into account when reporting <u>net investment returns</u> – which is ultimately what matters most to members.
