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legalsuper

An Industry SuperFund

10 October 2016

Manager

Superannuation Tax Reform

Retirement Income Policy Division

The Treasury

Langton Crescent

PARKES ACT 2600

Dear Sir/Madam,

## Submission re Superannuation Reform Package – tranche two

### About legalsuper

legalsuper is the superannuation fund for Australia's legal community. It manages $2.9 billion for more than 43,000 members. The Australian legal services industry employs just over a 100,000 people[1].

legalsuper's members include the support staff and management of legal sector businesses and Judges, Solicitors and Barristers across Australia .

In number, 75% of our employed members are female, many of whom have or will experience breaks in employment to support their family. The average age of female members of legalsuper is thirty-nine years and the average balance is quite low, just over $30,000.

Our retired and soon to retire members have accumulated considerable balances in good faith under the current regime.

These two groups, in particular, are likely to be disadvantaged by the proposed changes.

[1] According to the Legal Services in Australia, IBIS World Industry Report, M6931, June 2016, 105,476 people were employed in the legal services industry at 30 June 2016.

**About this submission**

This submission is made on behalf of the Board of Legal Super Pty Ltd, the Trustee of legalsuper. The shareholders of Legal Super Pty Ltd, in equal proportion, are the Law Institute of Victoria and Law Society of New South Wales.

**Executive summary:**

In this submission, the Board makes the following five recommendations:

a) The period of consultation for submissions on this reform package be extended or, alternatively, the exposure draft legislation and explanatory material be referred to a Parliamentary Committee for further review and consultation.

b) A more realistic start date than 1 July 2017 be agreed for the proposed changes which will necessitate extensive and complex changes to administration systems, particularly as aspects of the changes will depend upon regulations yet to be released even in draft form.

c) We recommend that consideration be given to expanding the objective for the superannuation system.

d) Consideration be given to adopting some form of a fixed structured change program for future changes to the superannuation system so as to address the growing uncertainty in the community and resultant erosion of confidence in the superannuation system.

e) A review panel be established to provide advice in respect of reducing complexity of the rules as well as the associated implementation costs.

**The Board's overall position**

The Board is required by law to act in the best interests of its members. The Board is of the view that some of the proposed changes are not in the best interests of all of its members.

For example, the reduction of the contributions cap to $25,000 will reduce the capacity of some members to accumulate adequate superannuation savings.

Additionally, the reduction in the non-concessional contribution limit will further constrain the ability of some to accumulate superannuation savings.

Because the Superannuation Guarantee regime is relatively young, some of our older members have not accumulated sufficient superannuation through their full working life. As 75% of our members are female, most have also been restricted in their ability to build their superannuation balances by reason of breaks in employment for family reasons including to raise children.

Accordingly, on behalf of our members, we wish to convey our concern that the changes are not in the best interests of our members.

**Growing complexity and uncertainty is eroding the community's confidence in the super system.**

The Australian superannuation system has accumulated a very substantial pool of savings. According to APRA, Australian superannuation entities held just over $2.1 trillion as at 30 June 2016.

All working Australians have an interest in this very substantial pool of savings.

Over time, successive governments have made continual and wide-ranging changes to the superannuation system. These changes affect all members of superannuation funds as the associated implementation costs are ultimately funded by the retirement savings of members of superannuation funds. Changes to the rules thus have impacts for virtually everyone in the community.

Moreover, people accumulate superannuation savings over the course of their working life in good faith and in reliance upon the legislation, regulations and other rules that govern the superannuation system at the time they make important strategic decisions.

When changes are made to the rules, this requires people to review, and potentially change, their superannuation savings strategy. For some, these changes may mean their savings objectives need to be recast.

There are also often unintended consequences eventually identified that individuals need to address.

It has been a long-standing practice for changes to the rules that govern the superannuation system to be made prospectively, and for transitional rules to be made that recognise the difficulty that fund members who are close to retirement will have in adjusting their financial arrangements to accommodate changes. This approach recognised that when individuals made decisions and took actions based on the then prevailing rules, it would not be fair, particularly for members who are close to retirement, to apply new rules to arrangements that individuals had implemented on the basis of those rules. Many in the community were concerned that some of the superannuation changes announced in the 2016/17 Federal Government budget were retrospective. Notwithstanding, the recent modification of some of the proposals, the public debate in this regard has served to compound uncertainty in the community and has given rise to a concern that retrospective changes could be made in future.

More generally, feedback from our members indicates that the frequency with which changes are made to the superannuation rules, and the significant complexity that is to be added under the current reform package, adversely affect confidence in the system and the willingness of people to commit to funding their retirement through the superannuation system.

Recommendation:

To address the growing uncertainty in the community and resultant erosion of confidence in the superannuation system, we recommend as follows:

1. That consideration be given to adopting some form of a fixed structured change program for any future changes to the superannuation system.

   Such a system would involve changes to the superannuation system being 'batched' (say, every three years at 1 July) to reduce the number of changes during that period and implemented only prospectively at a future date (say, one year later, or longer where required for administration changes to be made) so that individuals can fully consider and adjust their superannuation saving's strategy. It would also include a proper consideration in each case of the need for transitional rules to protect the position of fund members who are in retirement or close to retirement.

2. That a review panel be established to provide advice in respect of reducing complexity of the rules as well as the associated implementation costs. The members of this panel should include a representative cross-section of practitioners from the superannuation industry and superannuants. In making this recommendation, we acknowledge that industry already has an opportunity to have such input by way of submissions. However, we believe the establishment of the proposed review panel would provide a forum to foster better industry-wide consensus on such matters.

   In this regard, we refer to the proposal made by the Gillard Government in April 2013 that a Charter of Superannuation Adequacy and Sustainability be established, and that a Council of Superannuation Custodians be created to serve as guardians of the Charter and ensure that any future changes to superannuation were consistent with the Charter. It was proposed that the Charter be developed against core principles of certainty, adequacy, fairness and sustainability, and that the Council should take the form of an Advisory Panel that would make assessments of proposed superannuation policy changes against the principles of the Charter. We urge the Government to revisit that proposal as part of these current reforms. legalsuper is of the view that such an initiative would help restore the confidence which has been eroded since the May budget. It would also provide a mechanism to progress proposals 1 and 2 above. legalsuper would be happy to assist in preparation of a Charter to be considered by Government.

**The period for consultation is unduly short.**

The consultation period for the second round of exposure draft legislation and explanatory material to implement the current proposed superannuation measures commenced on 27 September 2016 and will run until 10 October 2016.

Accordingly, the consultation period involves nine business days[2]. Further, the period fell during school holidays (in whole or in part, depending on the State or Territory), being a time when many people are away on leave or have restricted ability to take on additional responsibilities, by reason of child care commitments.

We note that the exposure draft legislation and explanation material is in excess of 200 pages and is extremely complex.

<u>Recommendation:</u>

3. We submit that as the period of consultation is unduly short to permit proper consultation, consideration should be given to extending the period of consultation. Alternatively, the exposure draft legislation and explanation material could be referred to a Parliamentary Committee for further review and consultation.

**Timing**

A number of the proposed changes will necessitate extensive and complex changes to administration systems. It will be very challenging for these changes to be made in time for a 1 July 2017 start date, particularly as it will take some time before the proposed changes can become law and aspects of the changes will depend upon regulations yet to be released even in draft form. Rushed systems changes cause unnecessary cost and risk for Trustees and administrators of superannuation funds. According to a recent study by Tria Investment Partners, $3 billion was spent by industry to implement 8 major regulatory change initiatives

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[2] There was a public holiday during the period in Victoria, New South Wales, South Australia, Queensland and the Australian Capital Territory.

(including FOFA, MySuper, APRA reporting, SuperStream, Life Industry Framework, Adviser Standards, FATCA/GACTA and other Strong Super changes).

Recommendation:

We submit that there should be consultation with the superannuation industry to determine a more realistic start date.

**Objective of the Australian superannuation system.**

We note the Federal Government has adopted the Financial Services Inquiry's proposed objective for the Australian superannuation system as follows:

*'To provide income in retirement to substitute or supplement the Age Pension'.*

We further note that the Association of Superannuation Funds of Australia, in their submission to Treasury (dated 22 September 2016) recommended that the following objective replace the objective in the Superannuation (Objective) Bill 2016:

*'The primary objective of the superannuation system is to provide an adequate income to ensure all Australians achieve a comfortable standard of living in retirement, supplementing or substituting the Age Pension.'*

Recommendation

We recommend that consideration be given to expanding the objective for the superannuation system.

If you wish to clarify any matter in this submission, please contact me directly on (03) 9602 0101 or aproebstl@legalsuper.com.au.

Yours faithfully,

**Andrew Proebstl**

**Chief Executive**