



28 June 2021

Tax and Compliance Unit
Retirement Income Policy Division
Treasury

By email: superannuation@treasury.gov.au

Dear Treasury,

Support for Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation information for family law proceedings

We welcome the opportunity to make this joint submission on the exposure draft *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation information for family law proceedings* (the “Bill”) and congratulate the Government for moving to implement the ATO information sharing measure outlined in the Bill.

We support the Bill without amendment and emphasise the need for its swift passage through Parliament and urgent implementation.

The information-sharing measure in the Bill will allow information about superannuation assets to be provided directly to the Family Court by the ATO during property settlement. This will have a significant positive impact by removing the cost, administration and time barriers which currently make it difficult for applicants to gain full visibility of superannuation assets, and cause many to walk away from their entitlement.

In particular, the measure will improve economic security for women across Australia, who overwhelmingly have lower superannuation balances than their former spouses. It will be of significant benefit to women who are leaving situations of financial abuse and domestic violence, where perpetrators actively seek to hide assets.

Background

The ATO information-sharing measure contained in the Bill was first recommended by Women’s Legal Service Victoria in their [Small Claims Large Battles](#) report (‘the report’) in 2018. The report highlighted, for the first time, the barriers to fair financial outcomes for disadvantaged women in the family law system. Superannuation splitting during property settlement was identified as an area in need of urgent reform, especially for vulnerable women who had experienced family violence or economic abuse. The project found that one of the major barriers that women faced to obtaining equitable settlement was not being able to access information about their former partner’s superannuation assets.

As stated in the report: *“Project findings demonstrated that the process for obtaining a superannuation split proved to be too complex to navigate for women experiencing relationship breakdown and family violence. Without a former spouse voluntarily disclosing the name of their superannuation fund(s), there are no other mechanisms by which an individual can find the fund of their former partner. This is despite the legal obligation on parties, in family law matters, to make full and frank disclosure of their financial position. There are few effective disincentives for nondisclosure and alternative information finding processes, such as issuing subpoenas are costly and not guaranteed to return the required information.”*¹

For low-income households in particular, superannuation is often the largest or only financial asset. For more than 1 in 5 of the women represented in the report, superannuation was the only significant asset. However, the outcomes for women in obtaining equitable settlement of superannuation assets are currently poor. Women who cannot afford legal fees and only have super to claim find the process too complicated, so have no choice but to walk away from claiming their entitlement.

In order to remedy this, a commitment to implement an information-sharing measure was announced by the Government on 20 November 2018 as part of the Women’s Economic Security Package. The announcement was supported by \$3.3 million in Government funding for the ATO to develop the information-sharing measure. The scheme was initially announced with a start date of 1 July 2020. We have since seen a spike in family violence and economic abuse coinciding with the COVID-19 pandemic.² This brings new urgency to the need for this measure.

The information-sharing measure

The information-sharing measure will work effectively to remove one of the major barriers victims of economic abuse face where perpetrators of economic abuse refuse to co-operate and disclose their superannuation assets. This will be achieved by enabling a party to a family law property settlement proceeding to apply to a Senior Registry official for the superannuation information of their former partner, for the purposes of the proceeding. The Senior Registry official will then be able to exercise the discretion to request the superannuation information from the Commissioner of Taxation who will in turn be legally able to share this information with the official.

The information-sharing measure will also work to incentivise the disclosure of superannuation assets by former partners, pre-court application, because the cost and complexity associated with obtaining the information for the purpose of the proceedings will be significantly reduced, rectifying a current power imbalance. Perpetrators of economic abuse are more likely to commit abuse where there is a power imbalance.

The gender super gap

The Retirement Income Review found an average gender super gap of 22 percent between men and women at retirement age.³ The Review found that the gender super gap is greater for those with lower balances and reduces for those with higher balances. This is because the gender super gap is the result of a number of lifetime factors that compound economic disadvantage for women. These include limited work force participation, relationship breakdown, family violence and over-representation in low-paid and insecure employment.

¹ Women’s Legal Service Victoria (2018), ‘Small Claims, Large Battles Briefing Paper’

² See for example, Australian Institute of Criminology, *The prevalence of domestic violence among women during the COVID-19 pandemic*, 04-06-2021

³ Retirement Income Review Final Report p. 43

In reviewing the impact of changes to policy settings on women's retirement outcomes and submissions about them, the Retirement Income Review noted:

*"The process of discovering a former partner's superannuation assets can be costly and time consuming. Simplifying this process would deliver better superannuation splitting outcomes, particularly for vulnerable women."*⁴

We urge Treasury to recommend to the Government that the bill be presented to Parliament in its current form. We note that the Bill is non-controversial and a broad range of stakeholders are supporting the bill.

Yours faithfully,



Eva Scheerlinck

Chief Executive Officer

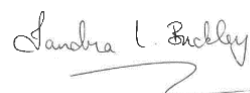
Australian Institute of
Superannuation Trustees



Serina McDuff

Chief Executive Officer

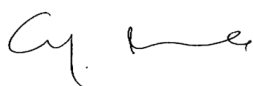
Women's Legal Service Victoria



Sandra Buckley

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Women in Super



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Economic Abuse Reference Group



Fiona Guthrie

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Financial Counselling Australia



Debby Blakey

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HESTA

Our organisations:

- **Women's Legal Service Victoria (WLSV)** is a not-for-profit organisation that provides free socio-legal services to women experiencing disadvantage and advocates for law and policy that respects and promotes the rights of women
- **Australian Institute of Superannuation Trustees (AIST)** is the not-for-profit peak body for Australia's \$1.5 trillion profit-to-member superannuation sector
- **Women in Super** is a not-for-profit organisation that works to improve women's retirement outcomes by advocating for a super system void of gender-based inequality
- **Economic Abuse Reference Group (EARG)** assists industry and government reduce the financial impacts of family violence on customers and the public
- **Financial Counselling Australia** is the peak body for financial counsellors in Australia
- **HESTA** is the national industry superannuation fund for people working in health and community services, investing \$60 billion in savings for more than 880,000 Australians

⁴ Retirement Income Review Final Report p. 285