

Response to the Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2025 and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2025

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Prepared by: Australian Shareholders' Association (ASA)

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1. Introduction

The Australian Shareholders' Association (ASA) appreciates the opportunity to provide feedback on the *Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2025* ("the Bills") and the corresponding *Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2025*.

Established in 1960, the ASA is Australia's peak independent body for retail shareholders. We advocate for fairness and transparency in the behaviour of ASX-listed companies, engage at AGMs, and contribute to public debate through the media.

Our members invest directly in shares, exchange-traded funds (ETFs), listed investment companies and trusts (LICs and LITs), managed funds, and through superannuation, with many relying on investment income to support retirement. ASA advocates for fair, transparent and consistent policy settings that protect retail investors, strengthen corporate governance, and promote long-term confidence in Australia's capital markets.

ASA is a national, member-based organisation independent of government and industry, dedicated exclusively to retail shareholders and investors.

Retail investors play a vital role in Australia's financial system by providing long-term capital, supporting domestic companies and contributing to market depth and resilience. According to the ASX Australian Investor Study 2023, more than 10.2 million Australians (51% of adults) hold investments beyond their home and superannuation, with 7.7 million holding on-exchange investments such as ASX-listed shares and ETFs. The ASA supports a fair, simple, and sustainable superannuation system that encourages self-reliance in retirement while maintaining confidence in the stability and integrity of tax settings.

The Bills implement a new Division 296 tax from 1 July 2026, applying an additional tax to a portion of an individual's superannuation "earnings" that corresponds to the extent their total superannuation balance exceeds the relevant thresholds. The Government has shifted the design to a realised earnings approach and proposed indexation of the \$3 million and \$10 million thresholds.

ASA acknowledges the Government's decision, in response to stakeholder feedback, to move away from taxing unrealised gains and to introduce indexation of the \$3 million and \$10 million thresholds. These changes address concerns raised by ASA and others about fairness, liquidity and confidence in long-term retirement savings policy settings.

While we recognise the Government's objective to improve the equity and fiscal sustainability of superannuation concessions, we have concerns regarding the complexity, fairness, and implementation implications of the proposed new tax under Division 296 of the *Income Tax Assessment Act 1997*.

2. Summary of Key Points

- 1. Support for a fair, simple and sustainable system:** ASA agrees in principle with progressive taxation settings within superannuation but emphasises the need to maintain confidence in the system, avoid retrospective or overly complex measures, and preserve stable settings that support retirement income planning (including franking credits and consistent capital gains tax treatment).
- 2. Implementation risk and regulations:** Implementation risk sits primarily in the supporting regulations. Earnings attribution, the small fund method, the defined benefit factor and transitional CGT settings must minimise compliance cost and avoid cost pass-through to members who are outside the scope of Division 296.
- 3. Threshold indexation welcomed:** Indexing the \$3 million and \$10 million thresholds is a positive step toward maintaining consistency with the transfer balance cap and ensuring the measure does not erode in real terms.
- 4. Administrative feasibility, transparency and accessibility:** The proposed model adds further compliance and reporting obligations to the ATO and fund trustees, which risk increasing costs for members. Guidance, examples and reporting should be timely, transparent and accessible to affected members and trustees.
- 5. Impact on investor confidence:** Frequent and retrospective changes to superannuation law undermine trust. Stability and clarity in superannuation policy are critical for long-term investment planning.

3. Specific Comments

3.1. The Additional 40% Tax on Balances Over \$10 million

The ASA notes that Division 296 introduces an additional tax on individuals with total super balances above \$3 million, with a higher tier for balances above \$10 million. In practice, this results in "headline" combined tax rates of 30% and 40% on earnings attributable to the relevant portion of the balance, when added to the existing 15% tax on fund earnings. This tiering increases complexity and warrants clear transparency on the number of affected individuals and the likely behavioural and cost impacts.

The ASA recommends the Government conduct distributional modelling of how many individuals are affected by the new threshold and publish this data for transparency.

The ASA requests that the regulations and ATO guidance ensure attribution methods do not require extensive system re-engineering and do not lead to costs being passed on to members who are outside the scope of Division 296.

3.2. Realised Earnings Approach

The ASA supports the move to a realised earnings approach as an improvement over the unrealised earnings model originally proposed in prior iterations of the policy. However, issues remain around:

- **Administration of realised earnings**, including clear rules for realisation events, cost-base tracking, interactions where individuals hold multiple interests, and treatment of timing mismatches across income years.
- **Valuation and reporting for threshold purposes**, particularly for SMSFs and defined benefit interests, with clear timing rules and consistent guidance.

We recommend Treasury provide clear administrative guidance and engagement with ATO systems to ensure consistent application and avoid double taxation of realised gains.

3.2A Supporting regulations and earnings attribution

The ASA notes that the practical operation of Division 296 will depend heavily on the supporting regulations, particularly the method for attributing fund earnings to individuals across different fund types.

The ASA recommends that Treasury:

- For small funds and SMSFs, adopt a simplified approach that minimises additional compliance costs (including any actuarial requirements) and provides practical, plain-English guidance.
- Publish worked examples covering common scenarios (multiple super interests, pension commencements and commutations, partial withdrawals, and members moving above or below thresholds across years).

3.3. Defined Benefit Scheme Treatment

ASA appreciates the commitment to apply a “commensurate” approach for defined benefit interests, ensuring fairness across fund types. However, transparency in calculation methodology remains essential. We urge that the valuation assumptions and formulas used for defined benefits be publicly disclosed and subject to consultation, given the potential implications for public sector scheme members.

3.4. Treatment of tax offsets and franking credits

ASA requests clarification and impact analysis on the treatment of tax offsets (including franking credits) in the Division 296 “earnings” calculation. Given the importance of franked dividends to Australian retail investors, Treasury should ensure the design does not unintentionally distort investment incentives or create outcomes that are perceived as inequitable.

3.5 Transitional and Retrospective Effects

The ASA welcomes the exclusion of capital gains accrued before the start of the policy. Retrospective taxation is fundamentally unfair and inconsistent with the reasonable expectations of long-term investors.

Nevertheless, we note that the policy’s introduction on 1 July 2026 requires clear transitional guidance, particularly on:

- How members and funds should determine cost bases and carry-over amounts.
- Interaction with prior year losses or capital gains tax events.
- Reporting requirements where individuals hold multiple super interests.

- Clear guidance on any elections, record-keeping expectations and worked examples for SMSFs and members with multiple interests, including transitional cost-base settings.

4. Broader Policy Observations

- Policy consistency and certainty must remain the cornerstone of superannuation legislation. Australians save for decades under a stable framework, and repeated amendments risk undermining confidence.
- The ASA encourages the Government to adopt a holistic approach to superannuation reform that enhances system fairness without eroding administrative simplicity or investment flexibility.
- We urge ongoing consultation with industry bodies, including shareholder and investor groups, to ensure new laws are practical, transparent, and perceived as equitable.

5. Recommendations

1. Keep the realised earnings approach (not unrealised).
2. Publish distributional and behavioural impact analysis (number affected, fund types, and cost impacts).
3. For small funds/SMSFs, provide a simplified compliance approach and clear ATO guidance with worked examples.
4. Make transitional arrangements (including any elections) simple, well communicated, and supported by practical examples.
5. Disclose the defined benefit methodology and prescribed factors and consult publicly on their calibration.
6. Clarify and justify the treatment of offsets (including franking credits) in the Division 296 earnings base.

6. Conclusion

The ASA supports the Government's objective to better target superannuation tax concessions, while urging that the Bills and supporting regulations strike an appropriate balance between fiscal sustainability, fairness and long-term confidence; ASA would welcome further consultation and the opportunity to meet with Treasury officials to discuss implementation.

Regards,



Rachel Waterhouse
CEO
Australian Shareholders' Association