

15 January 2016

Mr Tom Reid
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Tom

RE : EXPOSURE DRAFT LEGISLATION: COMMISSIONER'S POWER TO MODIFY LAW

The Financial Services Council (FSC) has over 115 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than \$2.6 trillion on behalf of 11.5 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC welcomes the proposed measure as it goes some way to addressing the need to maintain the taxation legislation. A deficiency of our current tax system is that considerable effort is put into reforms but the same level of focus is not given to legislative updates for small amendments and technical changes. Over time this increase the complexity and decreases the effectiveness of the taxation law.

The ability for the Commissioner to produce instruments that allow for small concessions is a good innovation and the FSC fully supports this initiative.

The exposure draft provides that the ability to make an instrument requires the satisfaction of three prerequisites:

1. The modification must be consistent with the purpose or object of the provision [this can be based upon consideration of any material; 370-10(a)];
2. The reasonable cost of complying with the existing provision is disproportionate [370 – 5]; and
3. The cost of the modification to the Federal Budget is negligible.

Identifying the purpose or object is relatively straightforward, as is demonstrating excessive compliance cost. What constitutes 'negligible cost' to the Budget however, is relatively uncertain. The FSC suggests that the explanatory material include some examples of 'negligible cost', perhaps by reference to some of the items in the current Tax Issues Entry System (TIES).

We note that if this power had existed some years ago, we believe many of the challenges with inadvertent breaches of the non-concessional contributions cap would have been relatively easily overcome. Therefore it is also suggested that the explanatory material should expressly indicate that superannuation matters are an appropriate matter for exercise of the discretion.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carla Hoorweg', with a stylized flourish at the end.

CARLA HOORWEG

Senior Policy Manager – Investment, Global Markets & Tax