ACPSRO
Australian Council of Public Sector Retiree Organisations

April 2024

THE UNFAIR TREATMENT OF DEFINED BENEFIT PENSION RECIPIENTS

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023

At the time the Committee was seeking submissions with respect to this Bill, the regulations relating to how the Bill would apply to defined benefit pensions were not available. They were not made available by the Treasury until 15 March 2024. ACPSRO did, however, make an earlier submission to the Government in respect of the Bill (April 2023). .

Having now studied the proposed regulations, our view is that Defined Benefit (DB) pensions are not in receipt of the several concessions that apply to funds accumulated under the Superannuation Guarantee (SG) arrangements and therefore should not be included within the ambit of the proposed legislation for the following reasons:

- SG pensioners can readily escape Div 296 tax by moving some of their SG assets to other places. DB pensioners are unable to access any of the virtual asset ascribed to them in the Div 296 regulations and are unable to take any actions to limit the impact of any Div 296 tax which may be applied;

- In retirement mode, the earnings of the first $1.9m of SG assets are tax exempt for a SG pensioner. They are excluded from the SG pensioner's tax assessment. Every cent of a DB pension contributes to a DB pensioner's tax assessment;

- Earnings from SG assets between $1.9m and $3.0m will continue to be taxed at only 15%, and will continue not to be added to any personal income tax assessment. A DB pension, on the other hand, which is assessed under the proposed regulations to be derived from a fund valued towards the top of this range, is likely to have the marginal income taxed at the top marginal rate of 45%;

- Earnings from SG assets in excess of $3.0m will attract a Div 296 loading of 15% taking the marginal tax rate to 30%. DB pensioners who are assessed to incur the Div 296 loading of 15% will have that loading applied on top of the 45% marginal rate they will almost certainly be facing already; and

- While there are tax exempt elements to some defined benefit income streams, these elements represent the return of a members after tax contributions to the fund during the accumulation phase and do not represent concessional tax arrangements of the kind currently provided by the SG arrangements.

The stated purpose of the Government's Div 296 measures is to ensure **the better targeting of superannuation tax concessions**. Given the current tax treatment of DB pensions, it is clear they are not subject to the tax concessions covered by this legislation. Consequently, we consider that DB pensions should not be included within a scheme designed to recover only a small part of the currently open ended tax concessions that apply **only** to the income derived from the SG system.