FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

5 February 2016

Budget Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

By email: prebudgetsubs@treasury.gov.au

Dear Sir/Madam

Federal Budget 2016-17: FPA submission

The Financial Planning Association of Australia (FPA)[1] welcomes the opportunity to provide input to the 2016-17 Federal Budget. This Budget is an opportunity to make positive steps towards a stronger, more efficient, and fairer financial system that addresses the needs of all users of the system.

With respect to particular policy measures, the FPA strongly recommends that Government introduces budget measures which; improve the accessibility of financial advice; improve integrity and fairness of the Australian superannuation system; improve retirement outcomes for women; address technical issues in the law which affect the financial services sector; and enable financial planners to participate on an equal playing field to other professions.

We welcome the opportunity to discuss our submission with the Government. If you would like further information about our submission, please contact me on (02) 9220 4500 or email: dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
General Manager Policy and Conduct

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[1] The Financial Planning Association (FPA) represents 12,000 members and affiliates of whom 9,000 are practicing financial planners and more than 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- We banned commissions and conflicted remuneration on investments and superannuation for our members in 2009 – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. All new members of the FPA are required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board

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FPA Submission to the Department of the Treasury

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FPA SUBMISSION: FEDERAL BUDGET 2016-17 | DATE: 05.02.2016

INTRODUCTION

The Federal Budget presents a valuable opportunity for Government to exercise prudent economic management, as well as to review and improve on existing public policy positions for the benefit of the Australian people and the nation as a whole. To this end, the FPA supports policy that is in the best interests of Australians in the long term, and we do not support policy that is short sighted and detrimental to the long term interests of the nation.

The FPA's recommendations to the Government address the following key policy issues as priorities for the 2016-17 Budget;

- encouraging a savings culture and improving Australians' retirement preparedness to reduce reliance on the social security system;
- improving access to financial advice for those Australians who are most in need of assistance in managing their financial affairs, and;
- removing inconsistencies in the tax system.

Our view is that improving the retirement preparedness of Australians and maintaining the integrity of the superannuation system should be a high budget priority for 2016-17. The introduction of superannuation represented all that is good about long term public policy planning, and this was evident during the GFC when the strength of the superannuation system played a significant role in keeping Australia out of a recession. Our superannuation system has also contributed to Australia's position of being the fourth largest funds management industry in the world and the largest in the Asia Pacific region.

With an ageing population and the additional pressure this will add to future budgets, the FPA strongly recommends that the Budget reflect policy decisions that are designed to support and encourage today's working Australians to become self-funded in their retirement. Increasing the number of self-funded retirees will greatly assist the Australian economy in many ways, including reducing the reliance and pressure on the Government's Age Pension. We particularly note the issue of gender inequality in funding retirement outcomes for women.

The Government should also address access to financial advice a priority for the 2016-17 Budget. Only one in five Australians access financial advice, despite the fact that financial advice contributes positively to financial literacy, social inclusion, and economic outcomes for Australians of all walks of life. The FPA is making every effort to encourage Australians to get financial advice by promoting higher education standards and greater professionalism in the financial planning sector. The Federal Government can help by including Budget measures which improve affordability and access to financial advice – particularly for the young, those of modest means, and others who are at greater risk of financial exclusion.

Finally, the 2016-17 Budget should include recommendations from the Financial System Inquiry Final Report, as well as other technical reforms, which will improve the efficiency of the financial services sector in Australia, as well as promote professionalism and accountability.

ACCESS TO FINANCIAL ADVICE

Tax deductibility of advice fees

The precedent of tax deductibility of professional fees is already set and allows consumers to deduct fees paid to registered tax agents, BAS agents and lawyers. There is now an opportunity to amend a current anomaly in respect to the tax deductibility of financial planning fees. This is consistent with the Coalition's election commitment to reduce costs for consumers who access financial advice[2].

Since July 2014, financial planners have been required to progressively register with the Tax Practitioners Board as tax (financial) advisers, and adhere to the requirements of the Tax Agent Services Act along with their tax agent peers. The amendment to the Tax Agent Services Act in 2013 defines a tax (financial) advice service as a type of tax agent service.

Including financial planners in the Tax Agent Services regime, and the banning of commissions on financial advice through the Future of Financial Advice reforms, has set the right environment to introduce tax deductibility of financial advice fees.

Currently, a fee for service arrangement for the preparation of an initial financial plan is stated by the Australian Taxation Office[3] to be not tax deductible under section 8-1 of the *Income Tax Assessment Act 1997*.

Tax Determination TD 95/60 differentiates between a fee for drawing up a financial plan and a management fee or annual retainer fee. The determination states that the ATO is of the opinion that the expense incurred in drawing up a plan is not deductible for income tax purposes because the expenditure is not incurred in the course of gaining or producing assessable income, but rather is an expense that is associated with putting the income earning investments in place.

Taxation Ruling IT39 states that where expenditure is incurred in 'servicing an investment portfolio' it should properly be regarded as being incurred in relation to the management of income producing investments and thus as having an intrinsically revenue character.

Consumers are paying for personal financial advice in varying ways that result in different taxation treatments for no apparent public benefit. This variety of treatment appears to be contrary to the ATO's obligation under the Taxpayers Charter it adopted in November 2003 to treat tax payers consistently.

The inability to claim a tax deduction for the fees associated with an initial financial plan acts as a disincentive for people to take the first step towards organising their finances on a strategic basis. This has widespread cost implications, both for the individuals and the community as a whole. Encouraging the use of professional financial planning advice results in a more financially literate community, and benefits society overall.

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[2] The Hon Senator Arthur Sinodinos AO, Delivering affordable and accessible advice (20 December 2013), available at < http://axs.ministers.treasury.gov.au/media-release/011-2013/>

[3] Refer to ATO Taxation Determination TD 95/60

This is also complicated further with the ability for consumers to pay premiums for insurance through salary sacrificing to super. The Government, ASIC and industry have been working on the Life Insurance Framework to in part encourage financial advice to be paid for by fee for service, however, allowing insurance premiums to be paid for via salary sacrifice encourages the payment of commissions due to the more tax effective nature via super.

Quality financial advice can;

- reduce financial and social exclusion for consumers and help them navigate the financial marketplace and learn how to better manage their finances providing them with dignity and peace of mind throughout their life;
- deliver significant consumer benefits including changes in savings behaviour, setting proper budgets, following a plan for paying off debt, and organising finances and building wealth[4];
- change people's behaviour and habits of managing their financial affairs by teaching them sensible and simple practices that can be used in their everyday lives to prepare for their future financial needs;
- improve the financial capability of consumers, enabling them to make informed judgments and effective decisions about the use and management of money throughout their lives.

Research commissioned by the FPA has found that 30% of those who have not used financial advice and do not intend to seek advice in future have stated that the high cost of advice is a key reason for why they have not sought the advice.[5] Public policy initiatives to improve access to affordable advice for all Australians, particularly those most in need of assistance in managing their finances, will reduce the cost of advice for consumers while maintaining consumer protections and advice quality.

Making financial advice more affordable for consumers supports the Coalition's superannuation policy "[t]o encourage as many Australians as possible to actively plan and save for their retirement, to take full advantage of the benefits the superannuation system provides and to work toward a self-funded retirement."[6]

It also assists Government to fulfil its obligation to address the substantial issues of financial and social exclusion by helping consumers gain access to expertise to help them navigate the financial marketplace and learn how to better manage their finances.

Rice Warner research[7] identified clear societal benefits of financial advice;

- reduced debt - increases disposable income for more productive purposes;
- higher rates of return on investments over long periods - building wealth;
- insurance protection - prevents people from relying on welfare;
- higher levels of savings – reduces reliance on government benefits during and after retirement;
- a financially literate and conscientious society that would make better long-term decisions.

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[4] FPA Value of Advice Research, Rice Warner Actuaries, February 2008.
[5] Investment Trends, 'FPA Member Satisfaction Report' (December 2014)
[6] Brian Loughnane, 'The Coalition's Policy for Superannuation' (September 2013), available at < http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/2717533/upload_binary/2717533.pdf;fileType=application%2Fpdf#search=%22library/partypol/2717533%22>
[7] Above n 4.

Financial planners provide valuable advice that is important for the long-term economic welfare of Australians. The financial planning profession is uniquely positioned to help Australians build their wealth and plan for a financially independent retirement.

Specifically legislating for initial advice fees to be tax deductible would greatly assist consumers' access to affordable financial advice that is beyond filing income tax returns or concerning their superannuation. While this would involve some additional costs to Government, these costs would be significantly outweighed by the long-term benefits. To control the cost to revenue, the Government could include caps on either the size of the tax deduction or an income cap on those able to receive a deduction.

Recommendation 1:

The FPA recommends the preparation of an initial financial plan, and ongoing management fees or annual retainer fees, be expressly stated to be tax deductible.

To support this proposal, the FPA recommends that the Government engage the Productivity Commission to examine the short-term and long-term position of the Budget if the preparation of an initial financial plan and ongoing fees were tax deductible. This report should be robust to a variety of different solutions, such as means-tested or capped tax deductions.

SUPERANNUATION

The current superannuation system is highly complex, and that complexity generates significant inequality. This complexity and inequality hinders the ability of many Australians to participate in the system, as well as their desire to make voluntary contributions to build their retirement savings and achieve a self-funded retirement.

The FPA recommends several changes in order to simplify the system, remove current anomalies in the system, achieve greater equity between employees and self-employed persons, and introduce greater incentives to build retirement savings. These policy measures include;

- set the objectives of the superannuation system;
- removing restrictions on the superannuation contribution age;
- removing superannuation guarantee contributions from the concessional contributions cap;
- reinstating the levels of the concessional contribution caps to allow flexibility at older ages when the capacity to contribute is higher, and;
- allowing personal contributions to become tax deductible.

Objectives of the superannuation system

As recommended in the final Financial System Inquiry (FSI) report, the FPA supports the establishment of broad political objectives for the superannuation system, as we recognise the Australian financial system as inherently political and social in nature. This is particularly true of the superannuation system, which has direct impacts on the quality of life that older Australians experience.

Building public trust in superannuation

Australia's superannuation policy settings are a reflection of far more than budgetary concerns with the Age Pension, or the tax concessions afforded at various stages of the superannuation cycle; it is a political and social statement about the standard of living which Australians can expect in their final years, as well as the means by which Australians agree to maintain that standard of living.

Part of the project of building a successful retirement income system for Australians, and integrating that system into the Australian financial services system, is to engender public confidence in the efficiency, resilience, and fairness of that system. Another critical part of this project is to encourage public confidence that the various financial intermediaries which interact with the financial system to produce results for the end users of the system (i.e. members of superannuation funds in this case).

The FPA believes that the particular objectives enshrined in the FSI Final Report are laudable goals for the Australian superannuation system, and for the most part the FPA endorses their content. We are concerned about the predominance of financial product solutions to problems in the superannuation system which can better be solved through financial advice once the superannuation system has reached a mature stage.

The FPA also endorses the view that superannuation funds should not be diverted to infrastructure funding and other projects for which the use of superannuation assets is tempting but not justified by the sole purpose test. Any benefit to the Australian economy – whether the benefit is directed to the real economy or not – should be incidental to the functioning of the Australian superannuation system. However, a serious and rapid review of policy settings would be required if the Australian superannuation system (or a part of that system) were to function to the detriment of the real economy.

It is important to note that engendering public trust in the Australian superannuation system relies not only on the superannuation system itself, but improving trust in the various other aspects of the financial system with which the superannuation system operates. For example, building public confidence in the efficacy of the superannuation system as a retirement income strategy involves building public confidence in the financial planning profession, whereas building public confidence in the legitimacy of direct leverage inside superannuation requires public trust in the credit and accounting sectors at a minimum.

Statutory oversight body for superannuation

Our concern with the approach taken in the FSI final report is that the recommendation does not include a vision for how to promote these objectives as the cultural and ethical framework of the Australian superannuation system. Enshrining these goals in legislation will not necessarily bind Governments, federal regulatory bodies, or financial intermediaries who operate in this space. Legislation can be changed, and principles-based legislation which lacks a concerted effort to embody the principles on a structural level – including regulatory strategies for guidance and enforcement – simply will not succeed in solving the policy issues at stake.

In our view, these objectives require the political will to build social, political, and economic institutions on a non-partisan basis. At a minimum, establishing an independent statutory body to monitor and implement these objectives would be a worthwhile result of the Financial System Inquiry. This statutory body would provide advice to the Government and make recommendations around policy settings. However, this body's work will be hotly contested on a partisan basis, especially if that body's work extends to recommendations to federal regulatory agencies.

However, an alternative is to establish or co-opt a body like the Corporations and Markets Advisory Committee to provide this advice to Government. The CAMAC has provided excellent non-partisan advice to the Government on highly complicated financial sector issues. A similar body could evaluate existing and proposed policy settings against the enshrined objectives of the superannuation system.

There are also questions about how these objectives will inform more granular processes, such as the sole purpose test. However, our view is that the objectives are to be aligned with the systemic processes, and inform the actions of trustees through regulators, professional bodies, and other entities acknowledging and endorsing those objectives through their actions and guidance.

Superannuation and social security

It is important to recognise that the three pillars of Australia's retirement income strategy – voluntary savings, compulsory superannuation, and the Age Pension – are all fundamentally tied to each other and to the inherent values of the system itself. Changes to the superannuation system will affect how individuals make decisions with respect to their voluntary savings as well as their access to the Age pension.

The interaction between compulsory savings and the Age Pension is quite complicated based on our current policy settings, primarily as a result of two factors; the current means testing settings for Age Pension eligibility and the tax implications of holding assets inside superannuation in the pension phase.

A more ambitious project than that attempted by the Financial System Inquiry's Final Report would be to align the goals and operation of the Australian retirement income strategy, with a view to non-partisan political support for a minimum standard of living for Australian retirees. At a minimum, policy settings for the Age Pension and the superannuation system should be aligned to produce efficient, sustainable, and equitable retirement outcomes for Australians.

Building an equitable superannuation system

Part of the crisis of trust in the Australian superannuation system stems from the public perception that, while many rely on the retirement income system for an income in retirement, others use the superannuation system as a favourable tax structure.

The FPA believes there is some truth to this perception, and we understand why many in the Australian public would be sceptical of a system which affords generous tax concessions to those who are sophisticated and/or wealthy enough to take advantage of them. We are also concerned with the public perception of the Australian superannuation system as a mechanism for facilitating intergenerational transfers of wealth outside of the Australian taxation system.

To better align the Australian superannuation system with the proposed objectives of the system, political consensus on a minimum retirement standard for Australians must be achieved.

Recommendation 2:

The FPA recommends that the Government establishes an Australian minimum retirement standard which the efficacy, resilience, and fairness of voluntary savings, compulsory superannuation, and the Age Pension can be evaluated against. This standard should be robust to aged care needs and changing healthcare needs.

Women in Retirement - Superannuation Guarantee payments on carer payments

Under the Paid Parental Leave (PPL) scheme, eligible working parents can receive funding from the Government to care for a newborn child. They may receive up to 18 weeks income. This payment may come either directly from Centrelink or through an employer. Some employers have elected to pay SG for women during both paid and unpaid maternity leave.

Under the original framework proposed by the Productivity Commission in 2009 for the PPL scheme, it was recommended that employers provide superannuation contributions for employees.[9] At that time it was estimated that this component of the Productivity Commission's recommendations would have a net cost of $70m to the economy as 79% of women eligible for the PPL would be eligible for the super contribution component.[10] However, the Productivity Commission recommended that this component of the PPL be delayed three years until after a review.

The PPL has been introduced and implementation has been 'bedded down'. We believe that it is now time to introduce the superannuation component of the PPL.

Having regard to the current economic forecasts and the Government's budgetary constraints, we support the measures recommended by the Productivity Commission to limit the financial impacts on business by:

- Applying the contribution rate to the lower of the employee's actual pre-wages or the minimum weekly wage;
- Limiting mandated superannuation contributions rate to the statutory rate; and
- Restricting superannuation contributions to employees who:
    - Passed the eligibility requirements for PPL, including the work test;
    - Received superannuation entitlements before going on paid leave; and
    - Were eligible for unpaid parental leave.[11]

This proposal would have widespread benefits for women throughout their working lives and for the economy more broadly. Research by Mercer suggests that in the US and other locations outside Australia retirement programs that address different work arrangements (such as part-time or work breaks) 'are associated with higher female representation at the professional through executive level'.[12] According to Mercer, there is a clear link between 'women's participation in the workforce and economic growth'.[13]

The principle enshrined in the Productivity Commission's work, being that superannuation should be paid on income substitutes, should also be extended to Carer Payment, Carer Allowance, Carer Supplement and Parenting Payments. This is consistent with the fact that employees are paid SG on other types of leave such as sick leave, annual leave and long service leave. It would build a direct link in the system between payment for caring work and superannuation contributions.

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[9] Productivity Commission 'Paid Parental Leave: Support for Parents with Newborn Children' Inquiry Report No 47 (February 2009) p xxxvi
[10] Productivity Commission 'Paid Parental Leave: Support for Parents with Newborn Children' Inquiry Report No 47 (February 2009) p xiv, xxix
[11] Productivity Commission 'Paid Parental Leave: Support for Parents with Newborn Children' Inquiry Report No 47 (February 2009) p xxxvi
[12] Mercer 'When Women Thrive, Businesses Thrive' (2014) p40
[13] Mercer 'When Women Thrive, Businesses Thrive' (2014) p4

This reform could, in recognition of the Government's budgetary constraints, be introduced in increments. Even if implemented, this recommendation would only provide an increase to the primary carer's superannuation balance of $954.94 (net of contributions tax over those 18 weeks). We therefore consider this recommendation to be a step towards wider policy reform and in this respect we agree with the recommendation of the Human Rights Commission that a carer credit scheme and a national carer card be introduced.[14] Carer credits, which exist overseas, could take the form of direct credits to the superannuation accounts of individuals with parental care responsibilities and carer responsibilities (either out of the workforce or working part-time) that would be paid annually at the end of the tax year by the government into the individual's superannuation account through adult life.[15]

Recommendation 3:

The FPA recommends that the Government should legislate to require the payment of superannuation on the PPL and other carer's payments.

Remove 'contribution age'

The FPA believes that the Government should introduce measures to encourage workforce participation in retirement in order to address the demographic, social, and economic challenges of our ageing population.

Personal contributions to superannuation are generally not permitted for people aged 75 and over. The FPA recommends that individuals who satisfy the work test should be able to contribute to super beyond the age of 75. This will further align and simplify superannuation rules, encourage contributions into superannuation, and reduce the future reliance on the Age Pension.

In addition, the contribution age restrictions also impact on those Australians owning and operating a qualifying small business. Many small business operators consider their business to be their superannuation and under the current rules cannot use the Small Business Concessions if they dispose of their business after the age of 75. Many small business operators consider retirement after 75, and cannot contribute the capital gain or the proceeds of the disposal to their superannuation fund. The fact that small business operators are unable to take advantage of the concessions other Australians have built up within superannuation throughout their working lives demonstrates significant inequity in the system.

The FPA also proposes that the contribution age limit on spouse contributions, and any associated age-tested contribution matters should be removed. This will help to provide Australians with a simpler and fairer superannuation system that encourages older Australians to continue building their retirement savings.

Recommendation 4:

The FPA recommends the Government provide incentives to encourage people to defer the age pension by allowing individuals who are still working to contribute to superannuation beyond the age of 75.

[14]Australian Human Rights Commission 2013 *Investing in Care: Recognising and valuing those who care,* Volume 1: Research Report 2013, Sydney: Australian Human Rights Commission p 26
[15]Australian Human Rights Commission 2013 *Investing in Care: Recognising and valuing those who care,* Volume 1: Research Report 2013, Sydney: Australian Human Rights Commission p 15

Superannuation concessional contribution caps

Concessional contribution limits

Government policy should encourage Australians to contribute to their superannuation and, where possible, fund their own retirement. The overall objective of the superannuation system is to provide an accessible mechanism to encourage Australians to save enough money to be financially independent in retirement to reduce the reliance on the social welfare system, thereby reducing the financial burden on the Government.

The FPA submits that the concessional contribution cap of $35,000 for those over 50 and $30,000 for those under 50 (2015/16) remains too low and not flexible enough to encourage Australians to make additional contributions to superannuation.

The following table highlights that a couple will need $640,000 of retirement savings to support comfortable retirement standard. However, this amount assumes that the couple will still need to rely on a part age pension in order to survive. For Australians to fully fund their retirement well over $640,000 will be required.

Table 1: Lump sum retirement benefits after 30 years in a taxed fund[16]

Tax treatment and contribution level	Wage of $30,000	Wage of $50,000	Wage of $100,000
9.5% contributions and investment earnings taxed at current rates.	$110,000	$183,000	$366,000
Lump sum if contributions made at the rate of 12% of salary.	$146,000	$244,000	$487,000
Lump sum needed to support comfortable lifestyle for a couple (**assumes receipt of part Age Pension**).	$640,000	$640,000	$640,000
Lump sum needed to support comfortable lifestyle for a single person (**assumes receipt of part Age Pension**).	$545,000	$545,000	$545,000

The lead up to retirement (such as the last 10 years of full-time work) is a critical period for retirement preparedness, employing sound transition to retirement strategies and growing one's retirement savings. For many Australians, it is these final years of full-time work when they are more likely to be able to afford to make additional voluntary contributions to superannuation.

The FPA recommends the Government increase the concessional contribution cap for those over 50 years to $60,000 (from the current cap of $35,000), two times that of the concessional cap for those less than 50 years (currently $30,000). The cap for those less than 50 years should be indexed, whereas the cap for those over 50 years should always be double the cap for those less than 50 years. This would encourage

[16] Association of Superannuation Funds of Australia, 'The ASFA Retirement Standard' (September 2015), available at < http://www.superannuation.asn.au/ArticleDocuments/129/ASFA-RetirementStandard-Budgets-Sep2015.pdf.aspx>

individuals to contribute to their superannuation and, in the long-term, reduce the reliance on the age pension.

The FPA acknowledges the government's current focus on returning the budget to surplus. The ideal public policy outcome would be to increase the concessional contribution cap for those aged 50 and over to $60,000 in this year's budget. However, to support the government's budget surplus priority, an alternative arrangement could be considered to increase the cap in $5,000 increments every two years until it reaches $60,000.

Allowing women to 'catch up'

Contribution caps limit the concessional and non-concessional contributions that people can make to their superannuation accounts each year. There have been positive developments in this space however more can be done to give women the flexibility necessary to 'catch up' on their contributions, and reduce the Gap.

Typically, in their 20s women have similar earning and contribution patterns to men.[17] In their 30s and 40s many women take career breaks, undertaking less paid work and more unpaid work. Women therefore contribute much less than men to their superannuation during these years. During their 50s and 60s, some women focus on retirement and engage more with the superannuation system. Some make higher voluntary contributions in an effort to increase their superannuation accounts. Contribution caps limit the extent to which women can make higher contributions.

Further work needs to be undertaken to give all those with broken work patterns the flexibility they need to make 'catch up' contributions. We encourage the Government to explore and model lifetime caps and carry-forward provisions, but also believe that it is imperative that caps be means-tested on a household income basis. This would reduce the opportunities of high income earners to take unfair advantage of these provisions. Any such reform should have at least a 12 month transition period for implementation.

Concessional contribution definition

The current contribution cap includes personal deductible contributions, Superannuation Guarantee contributions, and voluntary employer contributions, which include salary sacrifice. The penalties for breaching the caps are applied at the member level but the control of contributions can be outside the control of the fund member, creating administrative complexity. For this reason it is recommended that Superannuation Guarantee contributions (which are mandated under specific rules) be removed from the concessional contribution cap. This will become increasingly important as the Superannuation Guarantee is to increase incrementally from 9.5 to 12 percent by July 2025. Examples of possible unintended consequences of the existing contributions cap are outlined below:

> ***Client case study***
> *Barry (age 48) has paid off the house and is maximising his contributions to superannuation in preparation for retirement. Barry is a sales person and earns a base salary of $120,000, plus Superannuation Guarantee of $11,400. He sought advice on the most efficient way to*

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[17] ANZ Survey of Adult Financial Literacy in Australia (May 2015) pp6-7

accumulate retirement savings and has arranged for his employer to salary sacrifice $18,600 into superannuation. This is calculated to keep him within his $30,000 concessional contributions cap. However, consider the impact of the following scenarios for Barry:

- *Scenario 1 – Barry has a good year and receives a bonus of $50,000 on which his employer is required to pay an additional superannuation guarantee of $4,750. This may cause Barry to breach the cap and be liable for an excess contributions charge, which will also increase the administrative burden on both Barry and the ATO.*
- *Scenario 2 – Barry receives a pay increase of $30,000 during the year. The increased salary will also result in an increased superannuation guarantee payment and Barry could inadvertently breach the cap, which will also increase the administrative burden on both Barry and the ATO.*
- *Scenario 3 – Barry's employer pays the superannuation guarantee fortnightly. When Barry is planning his level of salary sacrifice he calculates that the employer will pay $438 per fortnight ($11,400 for the financial year). However, this year has an extra pay period and so in this financial year the employer actually pays $11,838 which may result in an excess contribution. Barry can apply to the Australian Tax Office (ATO) to exercise discretion to allocate the extra payment to a different financial year, but this is an unnecessary complexity and an administrative cost to the ATO.*

Recommendation 5:

The FPA recommends the following policies:

- The removal of Superannuation Guarantee contributions from the concessional contributions cap.
- The increase of the concessional contribution cap for all Australians over 50 to $60,000, with a provision for indexation.

Government co-contribution scheme

The previous government reduced the Coalition's co-contribution scheme and only partially replaced the reduction with the Low Income Superannuation Contribution (LISC), which provided a rebate of the tax paid on the Superannuation Guarantee contribution for low income earners. This rebate was paid back into the individual's superannuation fund. A bill to repeal LISC was passed by parliament on 2 September 2014 and came into effect on 5 September 2014. LISC will only be payable in respect of concessional contributions made up to and including the 2016-17 year. We reaffirm our support of the Low Income Superannuation Contribution as stated in our submission to the Senate Economics Legislation Committee (available here), and urge the Government to use the 2016-17 Budget to address this systemic unfairness.

People should be encouraged to make voluntary contributions to superannuation wherever possible, especially those on low incomes or with broken work patterns. The co-contribution scheme had evidenced some success in this area.

To incentivise Australians to save for retirement, the FPA recommends the government restore the co-contribution scheme with;

- co-contributions to match the amounts between 2004 and 2009;
- the maximum Government contribution to $1,500 and a timetable to increase; and
- an increased income threshold to allow for greater access to the co-contribution scheme.

These increases would stimulate further incentives for people to actively engage with their superannuation and make after-tax contributions.

While the co-contribution scheme is intended to assist lower income earners, anecdotally it would appear that such taxpayers are often unlikely to be able to avail themselves of the benefits as their disposable income is likely to be totally consumed by household expenditure. This is an area where the Government could work to provide a further concessional adjustment that genuinely assists low-income earners increase their superannuation contributions.

The FPA would like to highlight that the current co-contribution scheme only supports those who are working. We recommend the removal of the work-test requirement to extend the co-contribution to people who are temporarily not working such as stay-at-home parents, carers and those on income protection or workers' compensation insurance benefits.

The FPA suggests the fiscal impact of the restoration and broadening of the co-contribution scheme could be offset by the resulting future savings on age pension expenditure and should not be funded by an increase in other superannuation taxes. Funding options could include better targeting of the measure with the introduction of a family income threshold for members of a couple rather than eligibility based on just the individual's income. Not only would this assist with the expansion of the measure to a non-working spouse, but it would also promote greater equity and affordability.

Supporting low-income earners

The Low Income Superannuation Contribution (LISC) scheme was introduced in 2013 and is now scheduled to terminate in 2017. It is available to those who earn less than $37,000 per annum. Eligible persons may receive rebates of up to $500 annually on the tax they have paid on compulsory contributions, being 15% of the before-tax contributions made to a super account during the year.

We consider this scheme well designed in two key respects: first, it does not require eligible persons to apply because the Australian Tax Office (ATO) simply determines eligibility; and second, it is paid directly by the Government to the recipient's superannuation account.

It is particularly useful to women because a significant proportion of low income and part time workers are women. Women make up only 35 per cent of the full-time work force, whereas they make up 70 per cent of the part-time work force.[18] About one in two working women receive a LISC payment.

Termination of this scheme indirectly discriminates against women. LISC should be re-instated and, ideally, the amount available under LISC should be increased. Consideration should be given to increasing the amount available as a rebate under LISC. The amount of $500 is based on a superannuation guarantee contribution rate of 9% being a 15% tax benefit relative to taking that sum as salary. The sum available should be increased to $527.25 to match the increase in superannuation guarantee to 9.5% and increased incrementally as the superannuation guarantee level rises.

Recommendation 6:

To encourage Australians to save for retirement, the FPA recommends amending the Coalition's co-contribution scheme with;

- the reinstatement of the maximum Government contribution of $1,500 and a timetable to increase the contribution amount;
- an increased income threshold to allow for greater access to the co-contribution scheme;
- the removal of the work-test requirement to extend the co-contribution to people who are temporarily not working such as stay-at-home parents, carers and those on income protection or workers' compensation insurance benefits; and
- an increase to the income threshold for access to the Government co-contribution (with the potential for a family income test rather than an individual income test).

To support low income earners, particularly women, the Federal Government should reinstate the Low Income Superannuation Contribution scheme and consider increasing the amount available under that scheme.

[18] Australian Bureau of Statistics, 2015, Labour Force Australia , 6291.0.55.001

Transition to Retirement

There has been recent speculation that the Government is considering removing the transition to retirement provisions following the Productivity Commissions Research Paper – Superannuation Policy for Post Retirement (July 2015). We note that the research indicated that the transition to retirement arrangements are being more commonly used by "the wealthy" to minimise tax. The FPA believe this is the case because higher net wealth and higher income individuals are more likely to seek out advice on their finances from financial planners and accountants due to the misconception that financial advice is only for the wealthy. As noted above in the section entitled "Tax Deductibility of Advice Fees", the non-tax deductibility of advice fees creates a disincentive for consumers to seek out financial planners, and leads to consumers being less financial literate.

The benefits of a transition to retirement account based pension apply equally to all parts of society in that the tax free treatment of earnings within the pension phase are the same irrespective of an individuals super wealth, and income drawn from the pension either receives the same 15% tax rebate under age 60, or is tax free for those over 60. Therefore there is no greater benefit or incentive for higher net wealth individuals to use a transition to retirement account based pension other than they tend to seek out advice from a financial planner at a higher level.

While we acknowledge there are benefits to salary sacrifice for those with higher incomes, we also note that those with higher income are also likely to be able to take less advantage of the benefits of salary sacrifice sure to the concessional contribution caps. Therefore there is a greater benefit for individuals with lower incomes to actually increase their retirement savings through the use of salary sacrifice. This benefits the Government by decreasing reliance on the age pension in the long term and making retirees more self sufficient.

Recommendation 7:

The FPA recommends that the Government maintain the transition to retirement pension laws and encourage all consumers to seek advice around using this strategy to decrease the reliance of individuals on the age pension as they enter into retirement.

Limited Recourse Borrowing Arrangements

In its current form, section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) requires that the trustee of a regulated superannuation fund (RSF) who wishes to execute a limited recourse borrowing arrangement (LRBA) must ensure that the asset is held by another (the Holder) in such a manner that they (the RSF Trustee) acquire a beneficial interest in the asset. That other person holds the relevant asset via a Holding Trust. The Holding Trust is commonly of a bare or absolute entitlement trust nature though the precise form and structure has been found to vary.

The Holding Trust requirement is unnecessary and causes confusion and additional costs for parties wishing to execute LRBAs without providing any real benefits (particularly in the form of protecting superannuation assets). Therefore, this submission is specifically for the modification of section 67A to enable LRBAs without the need for a Holding Trust requirement. The suggested amendments, outlined in Appendix B, are minimal in scope.

In support of our recommendation, we make the following comments and observations which, we believe, demonstrate that it accords with the relevant generally-recognised criteria for an efficient tax system, i.e. fairness, efficiency and certainty/simplicity.

Nil Cost to Industry

The current law is not displaced or affected, it continues to apply. Adopting our recommendation means that providers of "traditional instalment warrants" arrangements will continue to be within the law (e.g. the Macquarie Flexi 100 Trust of Macquarie Financial Products Management Limited). Accordingly, we estimate that there will be nil cost to industry to adapt.

No Grandfathering

The purpose of any change is to improve for the future, not address any past concerns. As a result of the above, and also the fact that our recommendation is prospective only in its application, its adoption will not require any "grandfathering" of existing arrangements. Again, this provides participants and industry certainty and efficiency.

Limited Recourse Retained

Very importantly, the adoption of our recommendation will ensure that a fundamental aspect of the existing provisions is retained, i.e. protection of the other assets of the superannuation fund from the limited recourse borrowing. That is, our recommendation does not in any way impose any additional risk to retirement savings, by ensuring that the strictly limited recourse nature of the borrowing (which is not enhanced in any way by the existence of the Holding Trust requirement) continues.

Clarity Around Arrangements

LRBAs commonly involve the vesting of an absolute entitlement to the relevant asset in the trustee of the superannuation fund. There is some anecdotal evidence that some LRBAs have not been so drafted. In fact, the FPA feels that the existence of the Holding Trust requirement has resulted in poorly/incorrectly drafted and/or executed arrangements, with the consequence that there may be unnecessary capital gains tax, GST and/or stamp duty liabilities. The adoption of our recommendation will eliminate the future risk for these

liabilities and, therefore, the need to amend the relevant laws (we note an Exposure Draft for the look through treatment for these arrangements was released for consultation in January 2015).

Cost Savings

Finally, we also feel that adoption of our recommendation will result in substantial cost savings for all types of superannuation funds, which would otherwise erode retirement savings. We estimate that those savings (in each LRBA) are as follows:

- Establishment of a corporate holding trustee - $800
- Creation of Holding Trust and other associated legal documents - $2000
- Advice in relation to the above - $1500
- ASIC review of corporate holding trustee - $230 (annual)
- Audit - $400 (annual)
- Accounting - $500 (annual)
- Liquidation of corporate holding trustee - $1500
- Creation of legal documents relating to the above - $1000
- Advice in relation to the above - $1500
- Potential capital gains tax, GST and/or stamp duty liabilities - at least $20 000.

The FPA acknowledges that the FSI Final Report recommended that leverage inside superannuation should be banned. Our second-round submission to the FSI recommended a measured, evidence-based approach to preventing consumer detriment through LRBAs. We also note that there is an ongoing Treasury consultation to determine how the Government should respond to the FSI Final Report recommendations. As such, our recommendation to remove the holding trust requirement in section 67A is contingent on the Government’s consultation process around whether or not leverage should remain available inside superannuation.

Recommendation 8:

The FPA recommends removing the Holding Trust requirement in section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) with respect to limited recourse borrowing arrangements on a prospective basis, in accordance with **Appendix B** of this submission.

INSURANCE

Improving tax equity, simplification & efficiency of insurance protection mechanisms

Life, Total and Permanent Disability (TPD), and income protection insurances incur different tax treatment depending on the type of policy, how it was purchased, who purchased it and for what purpose. The FPA suggests that addressing the anomalies and complexities of the tax treatment of insurance would greatly assist in closing the protection gap.

Providing deductibility of premiums and equivalent taxation treatment of death and TPD proceeds payable within and outside the superannuation environment will provide equity regardless of whether individuals access insurances in one regime or the other.

Allowing tax deductibility of insurance premiums for non-super policies will add incentive for Australians to take out life insurances, reducing our documented under-insurance problem in Australia and consequently reducing reliance on government benefits when insurable events occur.

Further, allowing tax deductibility of insurance premiums, especially for disability policies such as total and permanent disability and trauma, should be included in the mechanisms of the National Disability Insurance Scheme. This greater increase in Australians being covered by disability insurance would relieve the long term budgetary position of the National Disability Insurance Scheme and encourage individuals to assist in providing the funds to support themselves in the unfortunate event of their disablement.

Equalising taxation treatment will simplify this area on a number of levels:

- Calculation methodology and adequacy requirements for consumers - Currently consumers must take into account both tax deductibility of premiums and any taxation consequences if a claim is paid when determining the amount of insurance cover to apply for whether held directly, via superannuation, or via a group employer arrangement.

- Deductibility of premiums versus non-deductibility of proceeds - Where tax is likely to be paid on proceeds, insurance cover must be grossed up to cover the potential tax, in order to maintain the required level of benefit, and the corresponding increase in premium must be weighed up against any deductibility of premiums that is available.

- Assumptions regarding beneficiaries - In assessing what tax is likely to be paid on death or TPD benefits, consumers and their advisers must make assumptions about who will be the beneficiary/beneficiaries, and what age they will be, at the time the benefit is payable. The decisions based on these assumptions must be made well in advance of the likely insurable events occurring, making them subject to legislative risk and subjecting consumers to the likelihood they will be unable to re-arrange plans due to potential future uninsurability issues.

- Superannuation administration - The administration related to the taxation consequences of benefit payments and also that related to determining dependency of member's beneficiaries could be significantly reduced. This would reduce reporting, time, training and errors, and lead to more

appropriate cover for consumers. This affects not only superannuation administrators' costs (passed on to consumers) but also costs related to the Superannuation Complaints Tribunal (SCT), as most complaints to the SCT relate to the payment of death and TPD benefits.[22]

- Group insurance arrangements - The administration related to the taxation consequences of benefit payments would remove the current disincentive for employers to provide group insurance arrangements that have been in place since the "Simpler superannuation" changes were introduced.

- Taxation regime – The ATO would not have to deal with (at least seven) different tables relating to the taxation consequences of employer and superannuation payments on death and TPD. Again, this would reduce reporting, time, training and errors.

Benefit (claim) proceeds

Determining the taxation consequences of receiving death or TPD benefits from superannuation or an employer is a highly complex task. It is unlikely that any person who is not a tax specialist or financial planner would be able to calculate potential tax payable, or the strategic consequences of decisions they make in relation to where they hold these insurances, how benefits are drawn down in the event of death or TPD and to whom those benefits may be payable.

This issue is of particular concern to the FPA and its members as the impacts of the complexity of the system make it extremely difficult for consumers to make decisions at a time when they are already confronted by very emotional and traumatic events in their lives.

Legislation should be amended so that the taxation implications of insurance proceeds received are the same for personal insurance policies held inside or outside superannuation. The proceeds of a death or TPD policy held outside superannuation is generally paid tax-free, so the same tax-free status should apply to policies paid inside superannuation.

The taxation of death benefits from superannuation payable to 'non-dependants' (especially adult children) is inconsistent with that applicable to the terminally ill (who can withdraw benefits tax free prior to death and make gifts to adult children), encourages early withdrawal and unnecessarily complex and expensive strategies such as recontribution.

The application of an element untaxed in the taxable component where an insurance payout is included in the death benefit creates a high level of taxation on death benefits paid to a non-death benefits dependant (e.g. payment to an adult child) and the ATO can receive a significant portion of the payment.

> ***Client case study:***
> *A client of an FPA member was 57 when he died very suddenly. He had been a member of a fund for 8 years and had a superannuation balance of $8,000 and an insurance life policy of $100,000. The death benefit was split between his two adult sons. The tax payable on the death benefit was $25,920 and each son received $41,040. If the client had not died so*

[22] Superannuation Complaints Tribunal, *Annual Report 2007-2008*

suddenly he could have withdrawn the full benefit under the terminal illness conditions with no tax payable and then made a tax-free gift of $54,000 to each son.

The untaxed element also creates an anomaly where the life insurance policy is held in a fund that includes accumulated savings compared to a stand-alone insurance fund. The formula for calculating the element untaxed is based on the full death benefit payable (less any tax-free component). In this way, some of the accumulated savings is also converted to an element untaxed and a higher rate of tax of 30 per cent plus Medicare Levy applies. If the superannuation fund did not include an insurance payment the accumulated savings only includes an element taxed, and tax of 15 per cent plus Medicare Levy is applied.

Recommendation 9:

The FPA recommends the following changes for equity and simplification:

- For Death benefits, removal of taxation on all death benefit proceeds paid from superannuation regardless of the beneficiary, as per personally held insurances.
- As a minimum, remove the untaxed element calculations for all death benefits and additionally, remove all tax on death benefits paid to adult children.
- If taxation treatment of death benefits is to continue to relate to whether the recipient is a dependant or not, a standard definition of dependant should apply across all regimes, i.e. superannuation, taxation and 'anti-detriment' payments.
- For TPD benefits, the full payment accessed under permanent incapacity should be tax-free.

Improve access to insurance for small business

The complexity and inequity resulting from the differing Capital Gains Tax (CGT) treatment that applies to non-super TPD/trauma policy proceeds compared to the CGT treatment for life cover proceeds can greatly restrict the accessibility to vital risk cover for a broad range of small businesses, particularly where the business owners are not family members.

For life cover, the relevant CGT exemption only applies if the section 118-300 requirements of the Income Tax Assessment Act 1997 are satisfied. However, for a CGT exemption to apply to TPD/trauma proceeds, the different requirements in section 118-37 need to be satisfied.

While these differing CGT exemption requirements rarely cause an issue in personal risk situations, they are a significant concern and a complicating factor in business risk applications such as key person and Buy/Sell (business continuation) insurance arrangements.

For example, where a company taxpayer wants to effect Life, TPD and Trauma key person capital purpose cover on the life of one of its key people, if the three types of cover are owned by the company (for example all under the one insurance policy), any life cover proceeds will be received CGT free, but the company will incur tax on the gain derived from the TPD/Trauma proceeds.

This is a frustrating situation for business taxpayers and their advisers often resulting in extra complexity involved in separating the ownership of the life cover from the TPD/trauma cover and having differing

ownership of the various covers. In the worst case, the complexity can result in not going ahead with implementation of some or all of the insurances.

Applying the section 118-300 rules consistently to all three types of cover – Life, TPD and Trauma – would remove the complexity for business owners and should assist in effecting the required insurance, thereby contributing to the survival of the business in situations where the key people/owners suffer one of these insurance events.

Recommendation 10:

To improve access to vital insurance cover for Australian businesses, the FPA recommends:

- Capital Gains Tax (CGT) exemption requirements in section 118-300 of the Income Tax Assessment Act 1997 be consistently applied to non-super TPD/trauma policies and life insurance cover; and
- Removal of the CGT exemption requirements that currently apply to TPD/trauma proceeds in section 118-37 of the Income Tax Assessment Act 1997.

Consistent definition of 'dependant'

Currently different definitions of dependants apply for superannuation, employment termination payments, death benefit termination payments, and the increased lump sum death benefit (i.e. the anti-detriment payment) associated with Section 295-485 under the Income Tax Assessment Act 1997 (ITAA97). People do not understand different concepts of "dependant" or the taxation implications associated with these concepts. The provisions regarding dependency in superannuation law result in unnecessary complexity and can be a disincentive to fund for retirement via the superannuation system.

To access insurance benefits provided via superannuation, and accumulated benefits on death or total and permanent disability (TPD) generally, a person must meet a number of definitions. Pension and insurance benefits from superannuation can only be paid by the fund trustee to a member, their dependant as defined in the Superannuation Industry (Supervision) Act 1993 (SIS) or their legal personal representative. The taxation treatment of those proceeds however, will depend on whether the recipient meets the definition of tax 'dependant' under the ITAA97.

Superannuation Industry (Supervision) Act 1993 definition of dependants:

- Current spouse – includes de facto
- Same sex spouse (from 1 July 2008)
- Any child
- Interdependency relationship
- Financial dependant

Income Tax Assessment Act 1997 dependants:

- Current spouse (includes de facto) or former spouse
- Same sex spouse (from 1 July 2008)
- Child under 18
- Interdependency relationship
- Financial dependant

The definition differs again in the case of “anti-detriment payments”, representing a refund of contribution tax paid by a consumer over their superannuation membership years under Section 295-485 of the ITA Act 1997:

- Spouse (including de facto)
- Same sex spouse (from 1 July 2008)
- Former spouse
- Any child (including adult)

The design of the ‘anti-detriment payment’ rules in general makes availability and application of this benefit inconsistent between types of funds. Further, there is the anomaly that a former spouse cannot receive a death benefit under superannuation law, but can under tax law, including the anti-detriment payment. Therefore, for a former spouse to receive a death benefit from a superannuation fund it must go through the deceased estate, an additional complexity to the superannuation death benefit system at time when families may be suffering anguish at the loss of a family member.

Children receiving death benefit proceeds in the form of a superannuation pension must commute the benefit to a lump sum at age 18 or 25 if still a dependant – further encouragement to spend rather than continue to save through the superannuation system.

In addition, a reversionary pensioner (the beneficiary who will continue receive a superannuation pension if the first recipient dies) must be a dependant under the SIS Act to be nominated but the pension can only be paid to a tax dependant.

Similar to the tax treatment of insurance benefits, this issue is of particular concern to the FPA and its members as the impacts of the complexity of the system make it extremely difficult for consumers to make decisions at a time when they are already confronted by very emotional and traumatic events in their lives.

Recommendation 11:

The FPA recommends:

- The simplification of the tax treatment of death benefits including more consistent definitions of “dependant” for tax and superannuation purposes, as well as aligning these with the definition of eligible beneficiary for anti-detriment benefits; and
- The definition of dependant in the SIS Act is applied for tax purposes.

SOCIAL SECURITY

Consistent approach to the means test for social security payments

The FPA would again like to state our opposition to the Social Services and Other Legislation Amendment Act 2013. In our submission to the Senate Standing Committee on Community Affairs inquiry into the Social Services and Other Legislation Amendment Bill 2013 we highlighted the poor outcomes achieved for income supported retirees because of the changes to the means testing of account based pensions. These changes have been in place since 1 January 2015, and our view is that this remains an erroneous policy.

It is surprising that the Government was willing to adopt the Rudd and Gillard Labor governments' policy on deeming account-based pensions, given the Coalition's long standing encouragement of individuals to grow their super and allowing them to self-fund their retirements. This policy position seems contradictory to the Coalition Government's 2007 simplification of the superannuation system which was designed to encourage the use of retirement income streams. This has been further compounded by the new capping of defined benefit pension deductible amounts to 10%.

As stated in our submission to the Senate Committee inquiry, the decision to deem account based pensions will only help to encourage Australians to squander their retirement savings and create further reliance on social security benefits. The 2007 simplification of superannuation specifically encouraged account based pensions to help manage retirement cashflow and encourage diversification of assets. The FPA continues to recommend that the Coalition Government restore their commitment to supporting self-funded retirees.

Given the Government's current focus on returning the budget to surplus, there are other policy options which could assist the Government to make the means testing of social security fairer. These include:

- Addressing the significant difference between the income and asset tests for pensions from annuities, defined benefit pension products, and account based pensions which could be brought more into line;

- Addressing the significant difference between the income and asset tests generally. Whether an asset is affected by the incomes test (due to deeming) or assets test, the test should give consumers the same age pension assessment outcome. The chart below shows that at present, depending on the value of an income support recipient's assets, they are affected by the income or assets test differently which introduces uncertainty and opportunities to manipulate the social security system. This becomes even more extreme following the 1 January 2017 asset test changes.

Single Homeowner

Pension Assets Test

Pension Income Test

Pension Assets Test Post 1/1/2017

- The social security means test upper thresholds are incredibly generous to self-funded retirees. A single person can earn up to $49,296pa or have up to $783,500 in assets (excluding their home) and qualify to received some social security benefit; while a married couple can earn up to $75,452pa and have up to $1,163,000 in assets (excluding their home) and still receive some social security benefit. As such a freezing of these caps for a period of time may achieve a reasonable outcome for the Government's budgetary position and have no significant effect on the retirement affordability of wealthy self-funded retirees.

Recommendation 12:

The FPA recommends:

- Consistency in the income testing assessment of all retirement income streams.
- Consistent outcomes for income and asset means testing in retirement.
- Relieving budgetary pressure by freezing upper social security means test thresholds for members of the community who are able to self-fund their retirement.
- Reversing Schedule 11 of the Social Services and Other Legislation Amendment Act 2013 and reinstate the previous law.

OTHER POLICY PROPOSALS

Monitoring and reporting on the gender retirement Gap

The age pension ought to ensure all Australians have a level of income consistent with a dignified retirement. Given that women make up the majority of people living solely on the age pension, and that they live longer, the level of the age pension is relevant to their financial citizenship.

Structural reforms must be underpinned by quality data and a strong understanding of the interaction between the policy settings in each of the three pillars of the retirement system.

The following recommendation would equip the Government with the evidence and focus required to underpin structural reforms over the longer term.

Recommendation 13:

The Federal Government should fund the Federal Sex Discrimination Commissioner to monitor and report on the gendered nature of the retirement income gap, including the sufficiency of the pension.

Building women's financial literacy

There have been significant developments in the area of financial literacy over the past five years. ASIC, for example, publishes materials through the MoneySmart website which assist women if they visit the website.

We believe more can be done to teach and engage with women about their finances. Most importantly, more needs to be done to reach out to women, not just make information available to women who seek it.

We are currently working on a financial literacy strategy, part of which will target women. Government could usefully mobilise and co-ordinate different public and private sector stakeholders to contribute to a campaign to improve the financial literacy of women. It should:

- Target women specifically, taking account of the different attitudes of men and women to their financial affairs;
- Build upon the successes so far, by using existing education materials;
- Provide individual face-to-face teaching and financial counselling as much as possible;
- Shape teaching points to the life cycles of women (that often include having children and caring for aging parents);
- Engage with women in locations or organisations with which they already engage (such as community groups, Government departments and online spaces);
- Utilise, to the greatest extent possible, professionals (such as planners) within the financial services sector to educate and counsel women.

The Office for Women is ideally placed to co-ordinate a campaign to improve the financial literacy of women. Many of the points at which women already interact with the Federal Government (for example, through Centrelink, the MyGov website) and State Government (for example, maternity hospitals and baby health nurses, aged care workers) could be used to push financial information out to women.

In our view, there are a series of opportunities for building financial literacy over women's lifespans. See Appendix C for an outline of a financial literacy program to target women.

Recommendation 14:

The Federal Government should, through the Office for Women, fund and co-ordinate a financial literacy strategy targeting women as demonstrated in Appendix C.

Retail and sophisticated investor definitions

The FPA strongly supports a review into the definitions of retail, sophisticated, and wholesale investors. While the FSI Final Report did not address this particular point, our first-round submission to the Financial System Inquiry did raise the issue:

"When considered from an updated conceptual framework, there are several difficulties with the retail/sophisticated investor distinction;

- the distinction is based on the wealth of the investor, rather than a qualitative and/or quantitative measure of their financial literacy;
- the distinction does not incorporate behavioural elements into the categorisation or basic understanding of how these participants will operate;
- the distinction functions to remove judgement and discretion from financial intermediaries regarding their conduct towards clients with differing degrees of financial capability, and;
- the distinction, when paired with a disclosure-based system of regulation, encourages documentary compliance with little consumer protection benefit or improvement in financial capability or opportunity."

An updated concept of the financial citizen, as a standard that incorporates the behaviour, capacity, and opportunity of investors, is preferable to the present artificial distinction between retail and sophisticated investors. It would also offer greater flexibility to the financial services sector as to how institutions manage their relationships with clients."23

Our submission also proposed a series of reforms to the foundational legal and regulatory concepts which underpin the definition:

[23] FPA, above n 1 at pp 23-24

"Investor/consumer: Market participants could be categorised with respect to the purpose they have engaged with the financial system. In particular, users who rely on carrying risk for profit as the basis of their use of the financial system should have different regulatory rights and obligations to users who purchase financial products as a consumer.24

Suitability regulation: Suitability regulation may also be appropriate outside of recommending complex products. If financial intermediaries are required to form a judgement about the financial capability of the clients they serve, it will help them to tailor their disclosure obligations to the needs of the client and to reasonably adjust the scope of their professional obligations to those needs as well.

Institutional/individual: This distinction relies on the institutional checks and balances available to the client in order to mitigate behavioural, capability, and exclusion-based inefficiencies. Where suitability regulation is intended to respond to the unique financial capability of the client, regulation which focuses on the ability of the investor to access financial intermediaries to help that investor make better financial decisions."25

We are disappointed that the FSI Final Report did not address this issue, and we urge the Government to take steps towards a review of the retail, sophisticated, and wholesale investor definitions in the Corporations Act.

Recommendation 15:

The FPA recommends a review of the effectiveness and value of the retail, sophisticated, and wholesale investor definitions in the Corporations Act.

ASIC Funding Model Recommendations

As covered in our submission to Treasury on the industry funding model for ASIC[26], the FPA recommends that Treasury consider re-working the industry funding model for ASIC and in doing so consider the following:

- The model to appropriately reflect ASIC's activity necessary to oversee the risk posed to consumers based on the scale of the advice operations and other risk factors.
- Comply with government policy regarding small business
- Ensure the funding model link to the larger reform agenda, particularly the FSI, PJC Inquiry, and ASIC Capability Review.

[24]For more detail on the investor/consumer distinction, see Niamh Moloney, 'The Investor Model Underlying the EU's Investor Protection Regime: Consumers or Investors?' (2012) *European Business Organization Law Review* 13, 169-193; Dimity Kingsford-Smith and Olivia Dixon, 'The Consumer Interest and the Financial Markets', in Eilis Ferran, Niamh Moloney and Jennifer Payne (eds) *The Oxford Handbook of Financial Regulation* (2014 - forthcoming).

[25] FPA, above n 1 at p 24

[26] Financial Planning Association of Australia, Industry funding model for ASIC submission (October 2015)

The FPA would welcome the opportunity to work with Treasury to explore alternative funding possibilities. Below are some suggestions that could be considered and worked through to help develop an alternative approach.

Annual funding levy

The FPA suggests the annual funding levy should be made up of two parts:

A. Part A – a revised model that is equitable across the financial services industry and supports the role of small business.

B. Part B – an overlay of risk-based concessions that incentivise professional behaviour and encourage businesses to reduce their consumer risk, and the regulatory activity required by ASIC .

Part A – annual levy structure

To achieve an equitable funding model for the financial services industry, the annual levy must be scalable and inline with government policy. The FPA recommends:

1) The removal of fixed costs from the levy for financial advice licensees. All costs should be scalable. Rates per adviser and per authorisation would need to be reviewed to compensate for the reduction in the levy caused by the removal of the fix costs.

2) An exemption from the annual funding levy for small licensee businesses with 5 advisers or less.

3) Consideration should be given to whether the principle of scalability could be applied to the sub sector flat annual levies.

These changes could be restricted to the Australian Financial Services Licensee (AFSL) component of the model to retain the integrity of the rest of the proposed funding model.

Part B – Overlay of Risk-based measures

The FPA recommends concessions apply to the annual levy and be available for licensees who adhere to measures to reduce the regulatory and consumer risks of their business activity. For example:

1) 10% discount for licensees who provide independent financial advice as defined by s923 of the Corporations Act.

2) 10% discount for licensees with 90% of advisers voting members of a recognised professional body (90% of advisers will give licensees flexibility to cater advisers leaving and new advisers entering the industry and need time to meet professional body criteria).

3) 10% discount for licensees with clear complaints history over a set period of time, such as 5 years.

Licensees who receive levy concessions should be assessed each year to determine any change in their adherence to risk measures and the impact on the levy they should pay.

Fee schedule

The FPA recommends the proposed fees related to Australian Financial Services Licenses (AFSLs) reflect the scale and complexity of the financial advice operations of the applying business, and therefore the ASIC resources required to assess the application. For example, the model could consider a license fee range that separates issuing of products versus no product. There could also be alternate segmentation that could help in scaling the licensing fees.

- Applicant does not issue financial products
  - a license application with less than 5 authorised representatives and no products
  - a license application with 5 – 19 authorised representatives and no products
  - a license application with 20 – 49 authorised representatives and no products
  - a license application with 50 – 99 authorised representatives and no products
  - a license application and 100 and over authorised representatives and no products

- Applicant issues financial products
  - a license application with less than 5 authorised representatives, issues products
  - a license application with 5 – 19 authorised representatives, issues products
  - a license application with 20 – 49 authorised representatives, issues products
  - a license application with 50 – 99 authorised representatives, issues products
  - a license application and 100 and over authorised representatives, issues products

Appropriate fees should apply to each category.

Recommendation 16:

The FPA recommends the introduction of an industry funding model for ASIC be delayed by at least 12 months due to the uncertainty of the reform agenda resulting from the FSI recommendations and the Capability Review into ASIC. The funding model should then be introduced in stages.

Equal standing for FPA members and members of other professional bodies

The Financial Planning Association (FPA) asks for our members to be given the same standing as members of other professional bodies such as the CPA, ICAA, IPA and NTAA when it comes to being included as 'authorised witnesses' for Commonwealth Statutory Declarations.

Background

Commonwealth Statutory Declarations are currently governed by the Statutory Declarations Act 1959 and the Statutory Declarations Regulations 1993.

Under current legislation only the people listed in Schedule 2 to the Statutory Declarations Regulations 1993. Financial planners are not currently included on the list.

These Statutory Declarations can be used:

- In conjunction with the administration of any Department of the Commonwealth (i.e. ATO, ASIC, etc.)
- For the purposes of a law of the Commonwealth (i.e. Tax, Super, Social Security)
- In connection with any matter arising under a law of the Commonwealth.

Application with other Acts

The statutory Declarations Act 1959 only authorises a person to witness a Commonwealth statutory declaration. Under the Regulations, this list includes a person who is authorised to witness a statutory declaration of a particular State (or Territory) where it is made in that State (or Territory).

Individuals who can witness Commonwealth statutory declarations cannot automatically witness a State (or Territory) declaration. Only where the State (or Territory) also lists the specific occupation, or deems the Commonwealth Regulations, can they also sign the State (or Territory) based declaration. Currently there is one state and one territory that deem occupations listed under the Commonwealth Regulations.

Other Acts, such as the Anti-Money Laundering and Counter-Terrorism Act 2006, deem persons listed under the Statutory Declaration Regulations 1993 to qualify as persons that can certify copies of documents [see the definition of certified copy under paragraph 1.21 of Instrument 2007 (No. 1)].

While the AML/CTF rules also allow Financial Planners to certify documents there is the additional requirement that they must be an authorised representative of an AFSL license, having two or more years of continuous service with one or more licensees.

If Practitioner members of the FPA were to be included in the Statutory Declarations Regulation 1993, it would then allow FPA members with less than two years experience (or where they had a career break) to still qualify to certify AML/CTF material.

We have been previously advised that the Regulations are not scheduled to be reviewed until 2017. As there is no intent to specifically exclude financial planners from the current list of professionals, we are urging the Government to bring forward this review and consider this amendment as a priority.

Recommendation 17:

The FPA recommends that the review into the update of the Statutory Declaration Regulations be brought forward, and for our practitioner members be included. We also recommend amending Schedule 2 of the Statutory Declarations Regulations 1993 with a new item number as follows:

Item	Person
239	Certified Financial Planner member of the Financial Planning Association of Australia

Professional privilege for financial planners

Legal professional privilege ("LPP") is a right attaching to qualifying communications between lawyers and their clients. In its basic form, LPP applies to communications for the dominant purpose of:

- Obtaining or giving legal advice ("advice privilege") or
- Preparing for anticipated litigation ("litigation privilege").

This privilege is considered a right of the client rather than the (legal) professional, and it has its roots in the notion that fairness and public interest require a client being able to make full and frank disclosures to their professional adviser without the risk of prejudice and damage by subsequent compulsory admission.

Extending Professional privilege to other advice relationships

It is widely viewed that LPP is necessary to ensure proper administration of justice. However, under common law, LPP only extends to the client-lawyer relationship.

In 2007 the Australian Law reform Commission (ALRC) delivered a report, "*Privilege in Perspective: Client Legal Privilege in Federal Investigations*", which reviewed LPP in the context of federal investigatory bodies, including the ACCC, ASIC, ATO, APRA, AFP and Royal Commissions of inquiry.

One of the major recommendations of the ALRC report was that privilege be extended, in defined circumstances, to include tax advice provided by Accountants. This extension would formalise the Accountant's exemption (see below) and would bring Australia into line with the position in the US, UK and NZ.

The Tax Commissioner vs. professional privilege

Under Sections 263 and 264 of the Income Tax Assessment Act 1936 (ITAA 36) the Commissioner has broad powers enabling the ATO to access to buildings and documents in pursuit of their legal aims. This provision captures the two primary Tax Acts, plus parts of the Taxation Administration Act 1953, which together contains the powers dealing with objections, reviews and appeals and the collection and recovery of income tax.

Since the decision of Baker v Campbell (1983) 153 CLR 52, communications and documents under LPP have not been available for inspection by the Commissioner under sections 263 and 264.

The Accountant's exemption

In the 1980's the Accounting lobby successfully argued that the ability of Lawyers to claim LPP gave them a competitive advantage over the accounting profession when providing taxation advice. In response the ATO issued the 'Access and Information Gathering Manual' guidelines recognising that "*taxpayers should be able to consult with their professional accounting advisers on a confidential basis*" and created self-imposed limits on ATO access to accountant's papers.

This exemption provides different concessions for differing types of documents, such as source documents (*i.e. records of transactions*), restricted source documents (*i.e. Advice documents*) and non-source documents (*i.e. Other advice documents*).

Since 1 July 2014, Financial Planners have been required to fall under registration and governance of the Tax Practitioners Board, with progressive registration since 1 July 2014. This change recognizes that Financial Planners provide Taxation Advice that clients rely on to make informed financial decisions.

While there is scope[27] for the ATO to lift the Accountant's exemption, there remains a competitive advantage with Accountants having access to this exemption while Financial Planners do not.

It was noted in the 2007 ALRC report that the fact that the same advice can be given by accountants and lawyers on taxation matters as the crucial factor in their push for the extension of privilege to taxation advice. On the same basis this should also extend to Financial Planners providing the same advice.

In 2011 the ALRC provided a submission in response to the Discussion Paper on "*Privilege in relation to Tax Advice*". This submission covered a number of areas, including the extension of the proposed Privilege to BAS agents. The ALRC response was that BAS agents may be included under any extension within their limit to provide advice with respects to taxation law under section 90-10 of the Tax Agent Services Act 2008.

Further, the ALRC made a general observation that it is the lawful provision of advice with respect to particular laws that provides the foundation for applying the rationale to other professionals.

The FPA shares the same interpretation that would see the new category of Registered Tax (Financial) Adviser captured within any law created to extend the provision of LPP (in defined circumstances).

Recommendation 18:

The FPA requests as an interim measure that Financial Planners are included in the ATO's self-imposed 'Accountants exemption' to ensure there is no commercial advantage where the same advice is being provided by the two different professions.

Longer term, the FPA requests statutory provisions to ensure all practitioners receive professional privilege, in defined circumstances, relevant to the areas of law they provide advice in (i.e. taxation, superannuation, social security, etc)

[27] *White Industries Aust v Commissioner of Taxation (2007)* 66 ATR 306

APPENDIX A – List of Recommendations

Recommendation 1:
The FPA recommends the preparation of an initial financial plan, and ongoing management fees or annual retainer fees, be expressly stated to be tax deductible.

To support this proposal, the FPA recommends that the Government engage the Productivity Commission to examine the short-term and long-term position of the Budget if the preparation of an initial financial plan and ongoing fees were tax deductible. This report should be robust to a variety of different solutions, such as means-tested or capped tax deductions.

Recommendation 2:
The FPA recommends that, should the appropriate mechanisms to bind the Superannuation system to overarching objectives be implemented, the FSI Final Report recommendations regarding the objectives of the superannuation system should be implemented to the extent that these recommendations do not endorse particular financial products or classes of financial products.

Recommendation 3:
The FPA recommends that the Government establishes an Australian minimum retirement standard which the efficacy, resilience, and fairness of voluntary savings, compulsory superannuation, and the Age Pension can be evaluated against. This standard should be robust to aged care needs and changing healthcare needs.

Recommendation 4:
The FPA recommends that the Government should legislate to require the payment of superannuation on the PPL and other carer's payments.

Recommendation 5:
The FPA recommends the Government provide incentives to encourage people to defer the age pension by allowing individuals who are still working to contribute to superannuation beyond the age of 75.

Recommendation 6:
The FPA recommends the following policies:

- The removal of Superannuation Guarantee contributions from the concessional contributions cap.
- The increase of the concessional contribution cap for all Australians over 50 to $60,000, with a provision for indexation.

The Federal Government should extend caps on concessional contributions to enable workers with broken employment patterns to maximise their superannuation account balances.

Recommendation 7:
To encourage Australians to save for retirement, the FPA recommends amending the Coalition's co-contribution scheme with;

- the reinstatement of the maximum Government contribution of $1,500 and a timetable to increase the contribution amount;
- an increased income threshold to allow for greater access to the co-contribution scheme;

- the removal of the work-test requirement to extend the co-contribution to people who are temporarily not working such as stay-at-home parents, carers and those on income protection or workers' compensation insurance benefits; and
- an increase to the income threshold for access to the Government co-contribution (with the potential for a family income test rather than an individual income test).

To support low income earners, particularly women, the Federal Government should reinstate the Low Income Superannuation Contribution scheme and consider increasing the amount available under that scheme.

Recommendation 8:
The FPA recommends that the Government maintain the transition to retirement pension laws and encourage all consumers to seek advice around using this strategy to decrease the reliance of individuals on the age pension as they enter into retirement.

Recommendation 9:
The FPA recommends removing the Holding Trust requirement in section 67A of the Superannuation Industry (Supervision) Act 1993 (Cth) with respect to limited recourse borrowing arrangements on a prospective basis, in accordance with Appendix B of this submission.

Recommendation 10:
The FPA recommends the following changes for equity and simplification:

- For Death benefits, removal of taxation on all death benefit proceeds paid from superannuation regardless of the beneficiary, as per personally held insurances.
- As a minimum, remove the untaxed element calculations for all death benefits and additionally, remove all tax on death benefits paid to adult children.
- If taxation treatment of death benefits is to continue to relate to whether the recipient is a dependant or not, a standard definition of dependant should apply across all regimes, i.e. superannuation, taxation and 'anti-detriment' payments.

For TPD benefits, the full payment accessed under permanent incapacity should be tax-free.

Recommendation 11:
To improve access to vital insurance cover for Australian businesses, the FPA recommends:

- Capital Gains Tax (CGT) exemption requirements in section 118-300 of the Income Tax Assessment Act 1997 be consistently applied to non-super TPD/trauma policies and life insurance cover; and

Removal of the CGT exemption requirements that currently apply to TPD/trauma proceeds in section 118-37 of the Income Tax Assessment Act 1997.

Recommendation 12:
The FPA recommends:

- The simplification of the tax treatment of death benefits including more consistent definitions of "dependant" for tax and superannuation purposes, as well as aligning these with the definition of eligible beneficiary for anti-detriment benefits; and
- The definition of dependant in the SIS Act is applied for tax purposes.

Recommendation 13:
The FPA recommends:

- Consistency in the income testing assessment of all retirement income streams.
- Consistent outcomes for income and asset means testing in retirement.
- Relieving budgetary pressure by freezing upper social security means test thresholds for members of the community who are able to self-fund their retirement.
- Reversing Schedule 11 of the Social Services and Other Legislation Amendment Act 2013 and reinstate the previous law.

Recommendation 14:
The Federal Government should fund the Federal Sex Discrimination Commissioner to monitor and report on the gendered nature of the retirement income gap, including the sufficiency of the pension.

Recommendation 15:
The Federal Government should, through the Office for Women, fund and co-ordinate a financial literacy strategy targeting women as demonstrated in Appendix C.

Recommendation 16:
The FPA recommends a review of the effectiveness and value of the retail, sophisticated, and wholesale investor definitions in the Corporations Act.

Recommendation 17:
The FPA recommends the introduction of an industry funding model for ASIC be delayed by at least 12 months due to the uncertainty of the PJC and FSI recommendations. The funding model should then be introduced in stages.

Recommendation 18:
The FPA recommends that the review into the update of the Statutory Declaration Regulations be brought forward, and for our practitioner members be included. We also recommend amending Schedule 2 of the Statutory Declarations Regulations 1993 with a new item number as follows:

Item	Person
239	Certified Financial Planner member of the Financial Planning Association of Australia

APPENDIX B – Proposed redrafting of Section 67A of the Superannuation Industry (Supervision) Act 1993

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 67A

Limited recourse borrowing arrangements

Exception
(1) Subsection 67(1) does not prohibit a trustee of a regulated superannuation fund (the RSF trustee) from borrowing money, or maintaining a borrowing of money, under an arrangement under which:

(a) the money is or has been applied for the acquisition of a single acquirable asset, including:
(i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset (but not expenses incurred in improving the acquirable asset); and
Example: Conveyancing fees, stamp duty, brokerage or loan establishment costs.
(ii) money applied to refinance a borrowing (including any accrued interest on a borrowing) to which this subsection applied (including because of section 67B) in relation to the single acquirable asset (and no other acquirable asset); and

(b) the acquirable asset is held BY THE RSF TRUSTEE OR IT IS HELD on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset; and

(c) the RSF trustee HAS LEGAL OWNERSHIP OR has a right to acquire legal ownership of the acquirable asset by making one or more payments after acquiring the beneficial interest; and

(d) the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) default on:
(i) the borrowing; or
(ii) the sum of the borrowing and charges related to the borrowing;

are limited to rights relating to the acquirable asset; and

Example: Any right of a person to be indemnified by the RSF trustee because of a personal guarantee given by that person in favour of the lender is limited to rights relating to the acquirable asset.

(e) if, under the arrangement, the RSF trustee has a right relating to the acquirable asset (other than a right described in paragraph (c))--the rights of the lender or any other person against the RSF trustee for, in connection with, or as a result of, (whether directly or indirectly) the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the acquirable asset; and

(f) the acquirable asset is not subject to any charge (including a mortgage, lien or other encumbrance) except as provided for in paragraph (d) or (e).

Meaning of acquirable asset

(2) An asset is an acquirable asset if:
- (a) the asset is not money (whether Australian currency or currency of another country); and
- (b) neither this Act nor any other law prohibits the RSF trustee from acquiring the asset.

(3) This section and section 67B apply to a collection of assets in the same way as they apply to a single asset, if:
- (a) the assets in the collection have the same market value as each other; and
- (b) the assets in the collection are identical to each other.

Example: A collection of shares of the same class in a single company.

(4) For the purposes of this section and section 67B, the regulations may provide that, in prescribed circumstances, an acquirable asset ceases to be that particular acquirable asset.

RSF trustee
(5) Paragraphs (1)(d) and (e) do not apply to a right of:
- (a) a member of the regulated superannuation fund; or
- (b) another trustee of the regulated superannuation fund;

to damages against the RSF trustee for a breach by the RSF trustee of any of the RSF trustee's duties as trustee.

(6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to a right of any person against the RSF trustee includes a reference to a right of a person who is the RSF trustee, if the person holds the right in another capacity.

APPENDIX C – Outline of Financial Literacy Strategy to target women

Era	Life events	Examples of 'reaching out' opportunities
Under 25	Education and training First job	- Teaching financial literacy to girls while they are still at school, incorporating into various parts of the curriculum - For young employees, large employers and superannuation funds could teach women about voluntary contributions and any Government schemes that may benefit them
Starting out	Starting new relationship Having a baby	- Pre-marital counselling, Birth Deaths and Marriages and marriage celebrants - Maternal health nurse/ baby health centre /Employers, Hospitals, Health Fund (maternity) - Centrelink, Medicare and MyGov are all points of interaction that new mothers have interaction with the Government and could be used for education
Loss of income	Returning to work part time Redundancy/retrenchment	- Former employers (for example at the point of offering redundancy payments) - Banks, which may be part of the process of adjusting the terms of a mortgage in the event of loss of income
Set backs	Divorce/separation Death of spouse Becoming a carer	- Family Court and legal counsel could make a financial advice or counselling offering - Carers Forum where employees can access information as well as connect with individuals who have experienced similar events. - Super Funds to education especially around insurance held in super for death and disability

Retirement	Transitioning to pension phase	- Financial counsellors, for example the Financial Information Service which sits within Centrelink could specifically target and provide financial counselling that particularly assists women. - Not For Profit organisations and Community Groups