

9 June 2026

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

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Dear Committee Secretariat,

Inquiry – Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 and a related bill

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback to the Senate Economics Committee on the Treasury Laws Amendment (Tax Reform No. 1) Bill 2026.

The FAAA appreciates the Government's concerns about the affordability of housing and the need to take action to address this, particularly for younger Australians. We understand and accept the changes that have been proposed to negative gearing for residential property. We also support the introduction of the Working Australian Tax Offset (WATO) and the Standard deduction for work-related expenses.

Our submission focuses on:

- Potential unintended consequences in relation to the differential tax treatment of residential property inside and outside superannuation.
- Improvements to the design of the CGT and negative gearing changes.

We welcome the fact that proposed changes to CGT and negative gearing did not impact superannuation. However, an unintended consequence is that there is now a substantial tax incentive for Australians who want to invest in established residential property to do so via a Self Managed Super Fund (SMSF).

Whilst we support Australians having the opportunity to invest in established residential property via the SMSF structure, we are concerned that many of them will be convinced to do so via high pressure sales tactics without the benefit of financial advice, without a full understanding of the obligations that they are accepting as trustees of a super fund and without appreciating the risks involved with such strategies. We

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. FAAA advocates for the interests of financial advisers and their clients across the country.

fear that this may become the next sphere of extreme consumer risk. While the Government has proposed reforms to superannuation switching (which form part of its response to the Shield and First Guardian collapses), those reforms might not sufficiently address this particular risk.

FAAA recommendations

The FAAA has four key recommendations:

- **Confront incentive to invest in property via an SMSF.** We believe that the Government needs to carefully consider the consequences of introducing a distortion between investment inside and outside super with respect to residential property, and that further measures are needed to protect Australians being the target of unscrupulous operators promoting investment in property via SMSFs.
- **Choice.** We recommend that the Government remove some of the restrictions on choice with respect to the application of the CGT changes. If they believe that the most appropriate method of taxing capital gains is through CPI indexing, then this should be allowed for pre 1 July 2027 assets from the date of acquisition. We address further issues with choice below.
- **Greater certainty.** We believe that too much of this reform is subject to the discretion of the Minister and we recommend that greater certainty is provided before the Bill is passed in the Parliament.
- **Minimum tax rate.** We do not support the application of a minimum tax rate of 30% being applied to capital gains.

FAAA Detailed Feedback

SMSFs exposed to property spruiking risk

We welcome the fact that the proposed CGT and negative gearing changes do not impact superannuation arrangements. However, there is now a substantial incentive for Australians who want to invest in (established) residential property to do so via a Self-Managed Super Fund (SMSF).

Before these changes, many Australians had a tax incentive to invest in residential property in their own name, as:

- negative gearing could help them reduce their tax payable on income from other sources, and
- the 50% CGT discount reduced the gap between CGT paid in superannuation (an effective rate of 10%), and CGT paid in one's own name (a maximum of 22.5% at the top marginal tax rate).

Post the budget changes, however, unless the property is a new build:

- negative gearing will no longer be available for investment in existing properties, and

- the CGT rate payable will increase to a minimum of 30%. In addition, the new method, indexation, will expose more of the capital gain to taxation (the 50% discount will only be available for new builds).

Australians considering investment in established residential housing will therefore have a much stronger incentive to do so via the much more favourably taxed vehicle, superannuation, using a structure that can facilitate this – SMSFs.

The carve-out of superannuation from CGT and negative gearing changes creates an opportunity for unscrupulous property spruikers and operators to actively promote this tax advantage, to persuade more Australians into investing into property via an SMSF. Since the announcement of these reforms, there has been an uplift in advertising on social media suggesting that SMSF property investment is the new big opportunity. This is on top of a recent material increase in the establishment of SMSFs.

While this strategy can be beneficial for consumers, it carries higher risks, including high rates of gearing, very low levels of diversification, illiquidity, and risks that the regular payments required to support the strategy might exceed the ability of the consumer to contribute to their super.

The Government's existing superannuation switching reforms do not address this particular risk. We believe further work is needed to identify targeted reforms that will reduce the risk of investors being directed into property investment that might not be in their best interests. To help address this, we recommend consideration of the following options:

- Higher standards for starting an SMSF, including enhanced warnings and a requirement to complete on-line training before individuals are cleared to set up an SMSF.
- Limitations on Limited Recourse Borrowing Arrangements (LRBAs).
- A prohibition on SMSFs investing in property development.
- Limitations on advertising which refers to property in connection with SMSFs.
- Stronger guidance on the importance of diversification for SMSFs.

CGT adjustments

We have reservations about the design changes and the transitional arrangements for the CGT reforms. We feel that it has reduced taxpayer choice, and increased complexity in the system. We do not believe that it should be necessary to build the transitional arrangements around a deemed disposal and reacquisition of existing assets on 1 July 2027. This significantly impacts complexity and directly affects fairness as we have addressed below.

Reduced choice and increased complexity

With respect to our concerns around reduced choice and increased complexity we have the following feedback:

- It is currently possible to use the CPI indexation method for assets purchased between 1985 and 1999 (even if indexation ceased as at 1999). The Explanatory Memorandum to the Bill makes it clear that the Government believes that a CPI indexation discount is the most appropriate method. We therefore recommend that the CPI indexation method be retained to allow Australians to choose to use CPI indexation for their pre 1 July 2027 assets for CGT purposes, from the date of purchase.
- The deemed disposal and re-acquisition of pre 1 July 2027 assets on that date significantly increases the level of complexity that will impact CGT calculation in the future. This necessitates the valuation of these assets as at 1 July 2027 and the separate treatment of the gain prior to 1 July 2027 and post 1 July 2027. This, along with other complexity discussed in this paper, will make it virtually impossible for everyday Australians to do their own CGT calculations. It will also likely increase the cost of advice obtained from tax agents.
- The mandated order of attribution of capital losses, as set out in paragraph 1.94 of the Explanatory Memorandum, removes the element of choice that previously existed and in our view is unfair. Currently Australians can choose which gains to offset with capital losses. Thus, capital losses could be offset firstly against those gains from assets held for less than 12 months. The design of this new order of application serves to disadvantage Australians by forcing any capital losses to be applied to deferred capital gains before the CGT discount is applied. This is unfair. It also creates substantial additional complexity. Example 1.9 in the Explanatory Memorandum shows how Asher was forced to apply the \$200,000 of carried forward capital loss against the deferred non-residential capital gain, meaning that the 50% discount available for this asset was lost. We do not support this.
- We are concerned about the complexity involved in needing to value all pre 1 July 2027 assets as at 30 June 2027. We imagine that this would create a huge amount of work for valuers and would be a costly exercise for investors. We accept that this would be less of a concern for market linked investments, where a market price would exist as at the close of trading on 30 June 2027. We appreciate that the legislation seemingly allows for an apportionment basis, however this has not been adequately explained and will be at the discretion of the Minister. This option might be a good solution to avoid the cost of getting all assets valued as at 30 June 2027, however there is currently a lack of clarity about how this apportionment model would work. We would have assumed that apportionment on the basis of the length of time that the asset is held prior to and after 1 July 2027 would be a reasonable approach. We note example 1.12 in the Explanatory Memorandum, that shows an asset bought in 2022 that is sold in 2032 and 40% of the gain is attributed to pre 1 July 2027 and 60% to post 1 July 2027. This example fails to set out the exact dates of purchase and sale (undermining the value of the example), making this more complex to interpret. It does appear to suggest an apportionment basis other than actual days of holding.

Other concerns

The FAAA has the following other concerns with the CGT changes:

- We note the fact that under the deemed disposal and reacquisition of pre 1 July 2027 assets, that they will be treated as having a September quarter 2027 CPI base, rather than a June 2027 CPI base. That means that for the first quarter after 1 July 2027, that they will not achieve any benefit for inflation indexation. That is in our view unfair.
- We are concerned about the equity of the minimum 30% tax rate on capital gains. We question whether this is necessary. The statement in paragraph 1.20 of the Explanatory Memorandum that *“If applied in 2022–23, over 95 per cent of net capital gains income would have been earned by people who are either not affected by the minimum tax or who had a marginal tax rate of more than 30 per cent during their working lives”*, seems to imply that it would impact a relatively small percentage of the population. We are concerned that this will impact those who are in that phase of life where they have retired, but are not yet old enough to access the age pension. This measure will likely just encourage them to wait until they are old enough to access the pension before selling assets or they might otherwise be encouraged to apply for job seeker allowance, even if they have no intention of working again. There is a lack of detail to explain the merits of this part of the reform. It seems unnecessary to us and only likely to disadvantage a section of the community who are already very unlikely to be wealthy.
- We further highlight that in the original version of the CGT regime that existed prior to the 1999 changes, a taxpayer’s exposure to CGT was determined based on what additional tax would be payable on one fifth of the capital gain, and then multiplied by five. This ensured that the capital gain did not unreasonably push a taxpayer into a higher tax bracket. There is nothing similar in this proposal, yet at the same time there is this 30% minimum tax rate. This seems unfair.
- We are disappointed in the examples used in the Explanatory Memorandum as they lack sufficient details in terms of exact months purchased, precisely when the assets were sold and how any CPI indexation was applied.

Limit negative gearing for residential property to new builds

The FAAA accepts the need for Government to take action to address housing affordability concerns. The primary action that the Government is taking with this Bill is to reduce the incentive for investors to buy residential property, reducing its price through lower competition to make it more affordable for younger Australians to buy a principal private residence. We have four key suggestions on this reform:

Ministerial discretion as to 'new dwellings' definition

The definition of new residential dwelling is critically important given the substantial tax consequences for purchasers. However, this definition of new residential dwelling is subject to Ministerial discretion. It is our view that certainty on this issue is particularly important as it will be impacting investment decisions until it is resolved. There is already some debate in the media about seeking to broaden the definition and we keenly await the release of a draft legislative instrument on this definition.

Application to the transfer of property

We are concerned about the treatment of assets with respect to inheritance or divorce settlement and whether the treatment of existing residential property purchased before 7.30pm on 12 May 2026 will be impacted. We would have assumed that the existing residential property classification would be preserved in the case of a transfer of ownership of the property in the event of death or as part of a divorce settlement. Paragraph 2.35 of the Explanatory Memorandum discusses the case of a residential property held as joint tenants, with a future transfer of the remaining 50% being treated as a new interest and therefore subject to the requirement to quarantine losses. This transfer of joint tenant assets is exactly what happens when a person dies and the remaining share is transferred to their spouse or where a divorce settlement results in property ownership being transferred. We do not believe that it is fair to force this outcome when ownership is being transferred as a result of death or divorce.

Separately, complications might arise in the case of the construction of "granny flats", where the ownership of the property remains as part of a broader family unit. We believe that this should also be allowed for.

Cumulative impact on housing

The banning of negative gearing on existing property may result in a reduction in properties that are available for rent, and thus present an increased challenge for those seeking accommodation who are not wanting to or capable of buying property. We are also concerned that the cumulative impact of the CGT changes and the negative gearing changes together could lead to a material decline in property prices, which could have a very negative impact on many Australians, particularly those who have recently bought property with very small deposits. It is important that the Government monitors this risk tightly and is ready to act swiftly if needed to restore supply.

Level playing field across asset classes

We are concerned about the impact that removing negative gearing on established residential property has with respect to an inconsistent approach and a distortion in the level playing field. It is our view that to the largest extent possible, the taxation laws should apply consistently across all asset classes. As it is only investment in existing residential property that is subject to a ban on negative gearing, there is a danger that investors might consequently be encouraged to consider more aggressive gearing into other

asset classes that may be riskier and more volatile and potentially not in line with their personal needs and goals.

Working Australians Tax Offset

The FAAA supports the Working Australians Tax Offset (WATO) proposal. We believe that this is a moderate scale initiative to provide cost of living relief to working Australians. We support the targeting of this measure at working Australians.

We believe that the WATO should be available, on a pro-rata basis, for those Australians whose income from labour is less than the tax free threshold, despite having other income that pushes them above the tax free threshold, and we believe that this should be set out in the legislation, rather than being the subject of ministerial discretion. This could easily be incorporated into the law, as is the case with many other tax offsets.

Standard deduction for work-related expenses

The FAAA supports the standard deduction for work-related expenses. We support the targeting of this to people who have labour related assessable income of \$1,000 or more and the proportional availability for those who have a lesser level of labour related income.

Conclusion

The FAAA welcomes the opportunity to provide feedback on this Treasury Laws Amendment Bill. We broadly support three of the four measures in this Bill, however have major concerns about the changes to Capital Gains Tax. We believe that it should be better targeted and not involve such a high level of complexity.

If you have any questions about our submission, please do not hesitate to contact me on (02) 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



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