16 July 2026

Senate Standing Committees on Economics
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Parliament House
Canberra ACT 2600

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Dear Chair,

SMSF Association Submission – Treasury Laws Amendment (Tax Reform No. 2) Bill 2026

The SMSF Association welcomes the opportunity to provide this submission to the Senate Standing Committee on Economics. As a matter of urgency, we seek to address issues arising from the *Treasury Laws Amendment (Tax Reform No. 1) Bill 2026* (the Bill) to ban limited recourse borrowing arrangements (LRBA) for self managed superannuation funds (SMSF)[1] and urgently seek the Committee and Senate's support to address those concerns.

Given the lack of consultation on the amendments to the Bill and the absence of an explanatory memorandum, essential amendments are now needed to remediate the unintended consequences arising from the operation of the new law, and to ensure alignment with the Government's policy to deliver new residential property. Critically, these amendments must be prioritised to protect impacted members superannuation savings who may now be at risk.

The claims of systemic risk posed by LRBAs to retirement savings have consistently been debunked. Reports from both the Council of Financial Regulators[2] and the Productivity Commission[3] have consistently shown that no systematic risk could be found. Continued monitoring and reporting to Government has consistently been recommended and we support this approach.

We agree that LRBAs are not suitable for everyone and concur they may pose a significant risk to some individuals. The inappropriate use, promotion, or sale of LRBAs (as with any other financial products across the financial services ecosystem) should be addressed under the existing regulatory frameworks and powers conferred upon regulators. Not through sudden and unexpected policy changes, which detrimentally impact legitimate investors and investment activities.

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[1] *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* (Cth) sch 5.
[2] Council of Financial Regulators and ATO, *Leverage and Risk in the Superannuation System* (Report to Government, February 2019); Council of Financial Regulators, *Leverage and Risk in The Superannuation System* (Report to Government, September 2022.
[3] Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness* (Final Report, 21 December 2018): Finding 10.4

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The impacts of this policy shift are not limited solely to the SMSF sector. It has a direct impact on small business owners seeking to invest prudently, provide stability for their business and their retirement income in the future. The viability of projects that supply new housing into the market are directly impacted, and that impact is already being felt.

SMSF assets acquired using a LRBA equated to up to 6.7%[4] of the total value of all SMSF sector assets. Residential property represented 57% of that portion. In real terms, that equates to around 3.8% of all SMSF sector assets.

SMSFs do not hold sufficient market share to actively distort residential property prices. The total residential property investment by SMSFs, both with and without a LRBA, represents just 0.8% of the total Australian residential property market. Further, the long-term investment horizon provides stable, long-term rentals. A supply of good quality residential properties and stable rental markets are as important as access for new home buyers and families as owner occupiers.

While only a small percentage of SMSFs are invested in LRBAs for residential property investment, that is not a justification for poor policy design and outcomes.

SMSFs provide essential base capital funding commitments for many off the plan developments. This role cannot be overlooked and is vital in a housing market where additional supply is urgently needed. It secures bank finance and ensures that the development project as a whole can proceed.

Industry evidence indicates SMSF purchasers can represent 30-60 per cent of investor-led off-the-plan sales, with one major developer reporting 50-60 per cent across various projects.[5] Industry data shows there is a three times multiplier effect from the loss of pre-sales and with industry data also showing there were over 6,500 SMSFs established in FY2024 with an LRBA to purchase residential property, the construction of almost 20,000 new dwelling each year may now be at risk of delay or may not proceed at all.

Those SMSFs who already have LRBA arrangements in place are not impacted by the transitional arrangements but are not immune from the impacts of these changes. There is a very high risk that lenders will start to exit residential LRBA lending or close their books, preventing trustees from refinancing existing arrangements. As a result, trustees may become locked into an arrangement that in the future is no longer fit for purpose, but they will have no ability to switch providers.

We urge Government to align SMSF LRBAs to its housing policy objectives and retain SMSF LRBAs where the secured asset is a newly constructed residential property, including genuine off-the-plan apartments, townhouses and house-and-land dwellings that add to net housing supply.

The technical issues arising from the LRBA amendments and our recommendations in response are set out in *Appendix A – Recommendations.*

[4] Australian Taxation Office, *Self-managed super funds: A statistical overview 2023-24* (statistical report, 16 June 2026) tbl 6: SMSF asset allocations.
[5] UDIA: Scenario analysis against the National Housing Accord.

If you have any questions about our submission, please do not hesitate to contact us. We thank you again for the opportunity to provide this submission and look forward to having the opportunity to consult on these matters.

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.

Appendix A - Recommendations

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Transitional Rules

Recommendation 1 – Definition and guidance on what constitute an "arrangement"

What is an "arrangement" is not clearly stated or defined. The absence of an explanatory memorandum means that no further details or context are provided on what constitutes an 'arrangement'. Certainty on this definition is vital for the parties to the contract to ensure compliance with the measures and to protect deposit monies paid from superannuation retirement savings.

Some examples of scenarios causing concerns and uncertainty include:

1. Some jurisdictions allow for nominee purchasers, enabling the final purchaser to be determined at a later date. It is unclear how such arrangements would be determined under the transitional rules.

2. LRBAs are complex arrangements. Not only is compliance with superannuation law[6] required, but also the property law, stamp duty, and documentation requirements which is dictated by the respective state and territory in which the property is situated. These can affect how an 'arrangement' is contracted.

3. If an error is made in the contract, with amendments required, the trustees risk the arrangement failing to satisfy the transitional arrangements. Yet the original contracts and intention of the trustees were commenced or in place either before or during the transitional period.

4. Where a contract is silent on the requirement for finance, but where the use of a LRBA is intended, would the fund be excluded from using a LRBA? We understand that some contractual arrangements for off the plan purchases do not accept finance clauses. Until

[6] *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA'); *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR').

now that has not of itself precluded the purchaser from using a borrowing to acquire the property when settled upon completion.

5. Off the plan purchases have lengthy contract periods, with settlement often taking 12 months or more to finalise. This presents significant risks for impacted SMSF trustees.

Recommendation 2 – Extend the transitional period

The transitional period of 45 days is unreasonably short and is not a sufficient amount of time for many SMSF trustees who are mid transaction to comply with these amendments. The SMSF sector received no advance warning of these changes. For such a significant change, a 12-month transition period should have been applied.

Any ATO guidance which may be issued in due course will come far too late, and well beyond the expiration of the transitional period. Further, trustees are unable to obtain a binding ruling from the Commissioner of taxation on superannuation[7] compliance matters. Private binding rulings can only be issued with respect to taxation matters.

For those who get it wrong there is a real risk they will lose deposits paid. This means the loss of hard-earned superannuation contributions due to this sudden and unexpected change in Government policy. Contracts already in place prior to the tabling of amendments, not only those entered into during the transitional period, are exposed.

New Residential Property

Recommendation 3 – Retain SMSF LRBAs for newly constructed residential property

We urge Government to align SMSF LRBAs to its housing policy objectives and retain SMSF LRBAs where the secured asset is a newly constructed residential property, including genuine off-the-plan apartments, townhouses and house-and-land dwellings that add to net housing supply.

'Business real property' definition not fit for purpose

Recommendation 4 – Broaden the BRP exception to ensure it captures any real property acquired for use in a business

The term BRP was designed to provide clarity on exceptions to the related party acquisition rules[8] and the in-house asset rules[9] which also involves certain related party arrangements. The BRP definition is not fit for purpose for use in the LRBA provisions. BRP is a precise and specific definition that does not refer to or consider the zoning of the property. What constitutes BRP is substantially a

[7] *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA'); *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR').

[8] *Superannuation Industry (Supervision) Act 1993* (Cth) s 66 – Acquisitions of certain assets from members of regulated superannuation funds prohibited; s 66(2) – Exception – acquisition of business real property and listed securities.

[9] *Superannuation Industry (Supervision) Act 1993* (Cth) pt 8 [Strictly limits investments or prohibits investments in in-house assets]; s 71(1) – Meaning of an in-house asset… an asset of the fund that is a loan to or an investment in a related party of the fund; s 71(1)(g) – but does not include … a lease or a lease arrangement … if through out the term of the lease … the property is business real property (within the meaning of subsection 66(5)) of the fund.

fact-based determination requiring the property to be wholly and exclusively used in a business and looks at the nature of the connection between the use and a business.

Timing of the application of the BRP test is critical. It is applied at the time of acquisition, and in some cases, it is a continuous test applying throughout the holding period.

The LRBA amendments do not address circumstances where the fund acquires property not used in a business at the time of its acquisition, but it is intended to be used in a business post-acquisition. Examples include:

- Vacant land for use in the business. This can be idle or newly developed land acquired for use in business as storage, parking, or primary production activities. Any commercial or rural zoning would not render the property BRP.
- Newly constructed commercial property which has not as yet been used by a business.
- Residential property that may be used as BRP once acquired. This is common for doctor's surgeries and other professional and medical businesses. Such acquisitions and changes of use arise from zoning changes.

The above are just a few examples of property used in a business, acquired on market from unrelated arms-length parties, that would fail to meet the definition of BRP. This outcome would appear to be a distortion and an unintended consequence of the LRBA amendments.

The Commissioner of Taxation's ruling on BRP ruling[10] does not provide sufficient comfort to investors seeking to acquire property for use in their business, that does not meet the strict definition of BRP. The ruling is aged and needs modernisation to ensure it operates effectively in a contemporary setting. However, any review or update is unlikely to provide a remedy or relief for SMSF trustees seeking to acquire property that falls outside the strict BRP definition given the purpose of the ruling. Further, trustees do not have the luxury of time and cannot wait for an updated ATO ruling. They need an urgent and commonsense legislative solution.

[10] Australian Taxation Office, *Self Managed Superannuation Funds: business real property for the purposes of the Superannuation Industry (Supervision) Act 1993* (SMSFR 2009/1, 28 January 2009) : Minor technical amendments (15 November 2023) following *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021* increased the maximum number of allowable members from 4 to 6 from 1 July 2021. No substantive amendments or revisions have been applied to this ruling since its original publication.