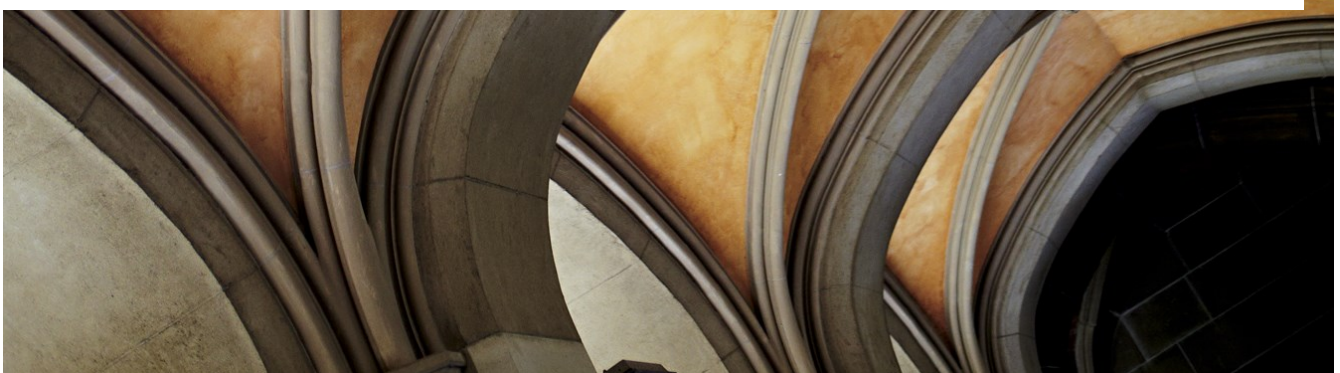




# Housing related superannuation measures

Submission by UniSuper

4 August 2017



## About UniSuper

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UniSuper<sup>1</sup> is the superannuation fund dedicated to people working in Australia's higher education and research sector. With approximately 400,000 members and around \$63 billion in assets under management, UniSuper is one of Australia's largest superannuation funds and has one of the very few open defined benefit schemes.

UniSuper Management Pty Ltd would welcome the opportunity to discuss the submission further and to provide additional information in respect of the comments made in this submission. Should you have further queries, please contact Benedict Davies, Manager, Industry & Public Policy on (03) 8831 6670 or [benedict.davies@unisuper.com.au](mailto:benedict.davies@unisuper.com.au)

## Comments on the Exposure Draft Schedule 1

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We would like to highlight a technical issue associated with the proposed definition of contributions that count, and are thus eligible to be withdrawn, under the rules for the first home saver superannuation scheme.

The proposed definition of voluntary employer contributions relies on the existing definition for mandated employer contributions; however, we think this definition will miss some contributions which are nevertheless involuntary. To address this, we suggest utilising the existing Reportable Employer Superannuation Contribution framework which contains a useful “capacity to influence” test. The RESC framework was established close to 10 years<sup>2</sup> ago and is generally well understood. Importantly, these rules were introduced for a similar purpose that goes to the heart of this issue: What is a compulsory employer contribution compared to a voluntary salary sacrifice arrangement?

### Proposed definition of eligible contributions

“Eligible contributions” are defined in proposed section 138-30 of the Tax Administration Act 1953 (TAA 53). Subsection (2) would act to restrict releasable contributions for the purposes of first home purchases to non-mandated employer contributions and member contributions, while excluding contributions made in respect of a defined benefit fund and contributions to constitutionally protected funds.

Mandated employer contributions are defined in SIS Regulation 5.01 as follows:

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<sup>1</sup> This submission has been prepared by UniSuper Management Pty Ltd (ABN 91 006 961 799), which acts as the administrator of the Trustee, UniSuper Limited (ABN 54 006 027 121).

<sup>2</sup> Tax Laws Amendment (2009 Measures No. 1) Act 2009

**"mandated employer contributions "**, in relation to a member of a regulated superannuation fund, means contributions by, or on behalf of, an employer that are equal to the sum of:

(a) the contributions made by, or on behalf of, the employer to the fund in relation to the member, that:

(i) reduce the employer's potential liability for the superannuation guarantee charge imposed by [section 5](#) of the [Superannuation Guarantee Charge Act 1992](#) ; or

(ii) are payments of shortfall components; and

(b) the contributions (other than contributions of the kind specified in [paragraph \(a\)](#)) made by, or on behalf of, the employer to the fund in relation to the member in or towards satisfaction of the employer's obligation to make contributions for the member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority.

In short, this definition aims to include contributions made to satisfy an SG obligation or those made in accordance with the terms of a certified agreement, such as an EBA. While this definition captures a significant amount of mandatory contributions from being treated as voluntary, it will not exclude all contributions. Notably, contributions made for the benefit of employees who, while not employed under an EBA, receive above SG superannuation support.

Some employers provide superannuation support in excess of the SG where elements of EBAs become incorporated into general conditions of employment. Often (but not always) this higher level of support was originally the result of employers providing a defined benefit or a choice to have an equivalent contribution to a defined contribution scheme. This is historically the case with public sector employers (State and Commonwealth) and elements of the higher education sector (for example, related bodies / think-tanks which do not have an EBA, and even within the financial services sector, such as employees of UniSuper.)

While mandatory amounts paid by an employer above the rate of SG are unlikely to be a RESC (because the employees have no capacity to influence that amount), those amounts would potentially fall outside the definition of mandated contributions. We think it is inconsistent with the intent of the law and encourage consideration of relying more on the RESC framework rather than on the definition of mandated and non-mandated contributions.

## **Excluding defined benefit contributions from eligible contributions but allowing voluntary withdrawals is inconsistent**

A related issue arises whereby contributions in respect of defined benefit schemes are to be excluded from the proposed definition of voluntary contributions (section 138-30(2)(c)) and are thus ineligible to be released for the purchase of a home; however, defined benefit superannuation providers could still voluntarily release monies in respect of a defined benefit interest (EM para 1.24).

In other words, the money going in is ineligible to be withdrawn yet some part of the corpus of the defined benefit is potentially eligible to be withdrawn. This is oddly inconsistent. If withdrawals from defined benefit schemes are permitted, then contributions made to fund that defined benefit component should be eligible to be released. While most, if not all, defined benefit schemes have a singular focus on delivering a benefit at retirement, the spirit of this law (i.e. members can make additional voluntary non-retirement based savings into superannuation for the purposes of home purchases) could be better served by allowing both contributions to count and be released.

While most defined benefit schemes would require significant benefit design (and trust deed) changes, the proposed exclusion of contributions to defined benefit schemes effectively ensures that these schemes will never be able to develop this as a feature of their benefit design. While we believe few defined benefit schemes will change their focus from retirement, we submit that it should still be a potential future benefit design option for them. To that effect, releasing monies from a defined benefit component should continue to be voluntary (i.e. based on trustee policy), but salary sacrificed member contributions to defined benefit schemes should at least count as eligible voluntary contributions. In many hybrid schemes, those contributions could be released from an associated accumulation interest.

There are also potential behavioural consequences if salary sacrificed member contributions to a defined benefit interest do not count as voluntary contributions, whereas salary sacrificed member contributions to a defined contribution (DC) interest do. In such instances, we suspect some people will choose to switch contributions to a DC component (reducing forever their contributions to their defined benefit which is generally an irrevocable election owing to selection risks).