

7 September 2011

Manager, Contributions and Accumulation Unit
Personal and Retirement and Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: recc@treasury.gov.au

Dear Sir/Madam

Consultation Paper – Refund of Excess Concessional Contributions

Thank you for the opportunity to provide feedback on the proposals contained in the Consultation Paper *Refund of Excess Concessional Contributions*.

About National Seniors Australia

National Seniors Australia is the largest organisation representing Australians aged 50 and over, with approximately 250,000 members nationwide. We provide a well-informed and independent voice on issues of concern to our members and older Australians more generally.

National Seniors' Position

National Seniors welcomes the Government's announcement in the 2011-12 Budget to provide some relief to eligible people who have breached their concessional contributions cap by \$10,000 or less, commencing from 2011-12. This measure gives eligible individuals the option to have their excess contributions of \$10,000 or less refunded and assessed at their marginal tax rate(s), rather than incurring excess contributions tax (ECT).

We note that the operation of the ECT unfairly penalises those who are trying to provide for their retirement by maximising their superannuation contributions, but who may inadvertently breach their concessional contributions cap because they have little or no control over the timing of contributions made to their superannuation account(s). Under current arrangements, the only way people can prudently manage the risk of breaching their contributions cap is by contributing somewhat less than the maximum, to allow for unexpected contributions to be made to their account. In practice, this means that, unless the risk materialises, these individuals effectively face a reduced contributions cap and potentially lower retirement incomes.

While National Seniors considers that this new measure is a step in the right direction, we are concerned that its design is too restrictive and will continue to expose many contributors unfairly and unwittingly to the ECT. The consultation paper proposes that:

- The refund option will only be offered to an individual who has excess concessional contributions of \$10,000 (not indexed) or less in a particular year and only for the first year in which the concessional contributions cap is breached. However, it is possible that circumstances outside the control of the individual could lead to a breach in more than one year, with later year breaches more serious than the initial breach.

National Seniors considers that all breaches of \$10,000 or less each financial year should be eligible for the refund option.

- If an individual chooses not to take the refund option on the first breach, he or she is no longer eligible for the refund option in subsequent years. It is likely that, if the breach were very minor, many people would choose to incur the ECT, so that they could "save" the refund option in case there was a more substantial breach in the future.

If the Government continues to limit eligibility to 'one bite of the cherry', National Seniors considers that individuals should have the option to choose whether take up the refund option on the first breach or to defer accessing a refund to a later breach.

- To be eligible for a refund, an individual would be required to lodge an income tax return for the relevant year, within one year of the end of the financial year in which the excess concessional contributions were made. However, we note that under the new personal income tax arrangements that are planned to come into effect from 2012-13, when the tax-free threshold will rise from \$6,000 to \$18,200, it is estimated that over 1 million Australians will no longer be required to lodge income tax returns. It is reasonable to assume that this figure will include some who have breached their concessional superannuation cap, but who will be ineligible for the refund option unless they lodge a tax return.

We recognise that in some cases it may only be possible to determine if a breach of the concessional cap has occurred when information from the income tax return (ITR) is aggregated with information from the member contributions statement (MCS), however we would expect that in many cases it would be possible to identify a potential breach on the basis of the MCS alone (even if the exact quantum of the breach needs to be established with reference to an ITR).

National Seniors considers that where it appears from an MCS that a breach of the concessional cap may have occurred, but the individual concerned has not lodged an ITR by the due date, the Commissioner of Taxation should notify the individual, giving him/her the opportunity to lodge an ITR within 60 days to establish eligibility for a refund of excess concessional contributions and assessment of those contributions at the person's marginal tax rate, rather than incurring ECT.

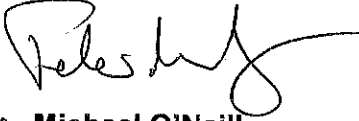
- Eligible individuals will only have 28 days from the date of receipt of notification to accept an offer of a refund or otherwise advise the Commissioner of Taxation that the amount of concessional contributions is not correct or that they intend to apply for the Commissioner's discretion to disregard or reallocate contributions.

National Seniors considers that this timeframe is insufficient and should be extended to 60 days.

The design of this measure, as it stands, adds further complexity to an already complex superannuation system. We believe that a major and ongoing information campaign will be required to make superannuation contributors aware of the new arrangements and the need for vigilance to ensure they do not breach their concessional contributions cap.

If you have any questions about our submission, please contact Peter Matwijiw, General Manager Policy and Research on 02 6230 4588.

Yours sincerely



 **Michael O'Neill**
Chief Executive