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MEDIA RELEASE

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Joint submission offers Senate five ways to fix the SMSF property lending ban

The Auditors Institute Ltd (AIL) and The Institute of Financial Professionals Australia (IFPA) have lodged a joint submission with the Senate Economics Committee on the recent ban on limited recourse borrowing arrangements (LRBAs) over residential property.

The submission puts five options to government, in order of preference.

Option 1 — Carve out for new builds

Exempt new residential dwellings from the ban, using the government's own definition of a new residential dwelling in section 26-160 of the ITAA 1997 — the same test applied in the negative gearing and CGT reforms. This aligns the LRBA rules with the stated purpose of the Budget package rather than working against it and requires no new drafting.

Option 2 — Define and ban residential property directly

As drafted, the ban applies to any real property that is not business real property (BRP). That catches more than residential property — vacant land, farmland not used in a business, and mixed-use property are all swept in. If the policy target is residential property, the legislation should define residential property and ban LRBAs against that definition specifically. The current drafting is broader than the announced policy.

Option 3 — Test BRP status at acquisition only (fallback)

If Option 2 is not adopted, the timing problem in the current ATO interpretation should still be fixed. On that interpretation, a property that ceases to be BRP during the life of the loan places the fund in breach. Testing BRP status at acquisition only would give trustees certainty for the duration of the loan without changing the underlying policy intent.

Option 4 — Limit LRBAs to ONE at a time for SMSFs

It would make sense to enable taxpayers to invest and plan as they desire and this can still work if the rules are amended to allow ***ONLY ONE (1) LRBA at a time.***

Option 5 — APRA restrictions on LVRs

APRA could introduce financing reforms to slow the housing market and encourage new builds by modifying the Loan to Value Ratio (LVR) permitted by financial institutions. Higher LVRs could be permitted on new builds over existing dwellings.

"As it stands the measure reaches property outside the announced scope and can put trustees in breach through events they do not control. Any one of the five options would fix that," said Kurtis Alaeddin, IFPA Vice President.

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