QMV LEGAL

Commonwealth Budget

SUPERANNUATION BRIEF

2021-22 Commonwealth Budget

KEY MEASURES

- $450 SG threshold removal
- First Home Saver Scheme
- Downsizer contributions
- Work test removal
- Legacy retirement income products

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IN BRIEF

*The Commonwealth Budget didn't include any announcements in relation to changes to the legislated increases in the **Superannuation Guarantee**, however we did (finally) see a policy to **remove the $450 monthly earnings minimum threshold** to qualify to receive SG contributions from an employer.*

*There were also some important announcements in relation to changes to the **First Home Saver Superannuation Scheme, Downsizer Contributions**, and changes to the **Work Test** for members aged between 67 and 74.*

It seems that superannuation trustees might have some time to implement the multiple waves of reform from the previous few years before the next wave hits.

POLICY ANNOUNCEMENTS

Removing the $450 per month SG threshold

The Government announced its intention to amend the *Superannuation Guarantee (Administration) Act 1992* to **remove the current $450 per month minimum income threshold**, under which employees do not have to be paid the superannuation guarantee by their employer.

The change is expected to commence from **1 July 2022**, subject to legislation being passed by the Parliament.

> *Superannuation trustees should plan to ensure that all disclosure and member facing material is updated to reflect the broader eligibility of members to receive mandatory employer SG contributions. Consideration should also be given to the impact of the changes on any retirement planning online calculators or tools.*

Family & Domestic Violence Early Release Scheme Abandoned

The Government confirmed that it **will not proceed** with the previously announced measure that would have extend **early release of superannuation** conditions to include **victims of family and domestic violence**.

Treasury had previously consulted on the proposed changes, however Government has decided not to purse the changes further.

> *Superannuation trustees can shelve any plans that may have been developed with the intention of making benefits available to members who may have been victims of family or domestic violence. Trustees may wish to consider member facing representatives are equipped with detail of other early release options which may be relevant for such members.*

First Home Super Saver Scheme

The *Treasurer* and *Minister for Superannuation, Financial Services and the Digital Economy* announced prior to the Commonwealth Budget a policy of seeking changes to the **First Home Super Saver Scheme** (FHSSS).

Under the proposed changes, the maximum amount of voluntary contributions that can be released under the Scheme will be **increased from $30,000 to $50,000**.

Voluntary contributions made from 1 July 2017 up to the existing limit of $15,000 per year will count towards the total amount able to be released. The increase in maximum releasable amount is intended to commence from **1 July 2022**.

The Government also announced its intention to make four technical changes to the legislation underpinning the FHSSS to improve its operation as well as the experience of first home buyers using the scheme:

- increasing the **discretion** of the Commissioner of Taxation to **amend and revoke** FHSSS applications;
- allowing individuals to **withdraw or amend** their applications prior to them receiving a FHSSS amount, and allow those who withdraw to re-apply for FHSSS releases in the future;
- allowing the Commissioner of Taxation to **return any released FHSSS money** to superannuation funds, provided that the money has not yet been released to the individual; and
- clarifying that the money returned by the Commissioner of Taxation to superannuation funds is treated as funds' **non-assessable non-exempt income** and does not count towards the individual's **contribution caps**.

These measures are intended to apply retrospectively from **1 July 2018**.

> *Superannuation trustees should consider engaging their administration technology service provider or function to plan the implementation of the changes to the maximum release amount and treatment of returned money. Trustees may also need to update disclosure material, contact centre guides or scripts, and any information in relation to the FHSSS on the fund's website.*

Downsizer Contributions

The Government announced its intention to legislate to **reduce the eligibility age** to make downsizer contributions into superannuation **from 65 to 60 years** of age.

The downsizer contribution allows people to make a one-off, post-tax contribution to their superannuation of **up to $300,000 per person** from the proceeds of selling their home. Both members of a couple can contribute in respect of the same home, and contributions do not count towards non-concessional contribution caps.

This measure is intended to allow more older Australians to consider downsizing to a home that better suits their needs, thereby freeing up the stock of larger homes for younger families.

The measure is intended commence from **1 July 2022**.

> *Superannuation trustees should consider engaging their administration technology service provider or function to plan the implementation of the changes to apply to a broader cohort of members. Trustees may also need to update disclosure material, contact centre guides or scripts, and any information in relation to the downsizer contributions on the fund's website.*

Legacy Retirement Income Products

The Government intends to legislate to allow individuals to exit a specified range of legacy retirement products, together with any associated reserves, for a two-year period.

The measure will include **market-linked**, **life-expectancy** and **lifetime** products, but not flexi-pension products or a lifetime product in a large APRA-regulated or public sector defined benefit scheme.

Currently, these products can only be converted into another like product and limits apply to the allocation of any associated reserves without counting towards an individual's contribution caps.

This measure will permit full access to all of the product's underlying capital, including any reserves, and allow individuals to potentially shift to more contemporary retirement products.

Social security and taxation treatment will not be grandfathered for any new products commenced with commuted funds and the commuted reserves will be taxed as an assessable contribution.

The measure will have effect from the first financial year after the date of Royal Assent of the enabling legislation, but no expected date was announced.

Superannuation trustees that offer or continue to manage legacy market-linked, life expectancy, or lifetime retirement income products should assess the potential impact of such changes (noting the lifetime pension exception for APRA regulated funds.

The cessation of any social security and taxation treatment upon treatment is likely to be very important to many members in these products, and trustees should consider developing guidance material for members and advisers. Consideration should also be given to any fund rules which may be relevant in allowing the transfer of the legacy products in scope.

Work Test Partial Repeal

The Government intends to legislate to allow individuals **aged between 67 to 74 years** (inclusive) to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice superannuation contributions **without meeting the work test**, subject to **existing contribution caps**. Individuals aged 67 to 74 years will still have to meet the work test to make personal deductible contributions.

Currently, individuals aged 67 to 74 years can only make voluntary contributions (both concessional and non-concessional) to their superannuation, or receive contributions from their spouse, if they are working at least 40 hours over a 30 day period in the relevant financial year.

Removing the requirement to meet the work test when making non-concessional or salary sacrifice contributions will simplify the rules governing superannuation contributions and will increase flexibility for older Australians to save for their retirement through superannuation. The measure is expected to commence from **1 July 2022**.

Superannuation trustees should consider planning for the implementation of any necessary changes to their administration processes and systems that relay on work test status information to accept contributions. Trustees may also need to update disclosure material, contact centre guides or scripts, and any information in relation to the contributions on the fund's website.

SMSF trustee residency

The Government announced its intention to legislate to **relax residency requirements for self-managed superannuation funds** (SMSFs) and small APRA-regulated funds (SAFs) by extending the central control and management test safe harbour from two to five years for SMSFs and removing the active member test for both fund types.

The measure is intended to have effect from the start of the first financial year after Royal Assent of the enabling legislation, which the Government expects to have occurred prior to **1 July 2022**.

This measure will allow SMSF and SAF members to continue to contribute to their superannuation fund whilst temporarily overseas.

> *Superannuation trustees of SMSF and SAFs that expect to reside outside Australia should consider the impact of the changes on the ability of members to contribute to the fund during periods where the trustee is abroad.*

Hedging and Foreign Exchange Deregulation

The Government announced its intention to legislate to make technical amendments to the **Taxation of Financial Arrangements** legislation which will include facilitating access to hedging rules on a portfolio hedging basis.

The amendments are intended to also reduce compliance costs and correct unintended outcomes, so that taxpayers are not subject to unrealised taxation on **foreign exchange gains and losses** unless this is elected.

These changes are expected to apply for relevant transactions entered into on or after **1 July 2022**.

> *Superannuation trustees with internally managed investment portfolio(s) should assess the impact of the changes on future relevant transaction.*

Pensions Loan Scheme

The Government announced additional funding over the next four years to improve the uptake of the existing **Pension Loans Scheme** (PLS) by:

- allowing participants to access up to two lump sum advances in any 12 month period, up to a total value of 50 per cent of the maximum annual rate of the Age Pension;
- introducing a No Negative Equity Guarantee so borrowers will not have to repay more than the market value of their property; and
- raising awareness of the Pension Loans Scheme through improved public messaging and branding.

The PLS is a voluntary, **reverse mortgage type loan** available to assist older Australians who wish to boost their retirement income by unlocking equity in their real estate assets. The PLS applies to retirees receiving the Age Pension and those receiving superannuation income streams.

Through the PLS, people can receive additional regular fortnightly payments with the payments accruing as a debt secured against their Australian property. The PLS allows a fortnightly loan of up to 150 per cent of the maximum rate of Age Pension and an interest rate, currently set as 4.5 per cent, is charged.

> *Superannuation trustees may wish to consider ensuring that financial advice functions are aware of the proposed changes, however there is no direct impact on a superannuation trustee.*

Financial Market Infrastructure Regulatory Reforms

The Government announced its intention to introduce a **Financial Market Infrastructures** (FMIs) regulatory reform package to provide Regulators with sufficient power to pre-emptively identify and manage risks, or intervene in a FMI failure crisis. The reform package is intended to:

- provide powers for the **Reserve Bank of Australia** (RBA) to manage a failure at a clearing and settlement facility;
- enhance the supervisory and licensing power of the **Australian Securities and Investments Commission** and the RBA; and
- streamline regulatory powers to improve the efficiency of regulatory administration.

Superannuation trustees are not directly affected by the proposed changes, however trustees may wish to consider the impact of the change on any market failure related risk assessments as part of the trustee's risk management framework.

Life insurance and managed investment legacy products

The Government announced its intention to fund and establish an **industry working group** to develop and consult on the design of a streamlined mechanism to facilitate the transfer of policyholders from **closed life insurance products** and **managed investment scheme products** to new products.

Superannuation trustees may wish to have some involvement in the consultation once it commences, particularly where the trustee is the policy holder of a legacy life insurance policy or beneficiary to a legacy managed investment scheme.

Foreign Financial Service Providers

The Government announced its intention to consult on options to restore previously well-established regulatory relief for **Foreign Financial Service Providers** (FFSPs) who are licensed and regulated in jurisdictions with comparable financial service rules and obligations, or have limited connection to Australia, from holding an Australian Financial Service License, in order to reduce duplicate regulatory requirements.

The relief is limited to FFSPs that deal with wholesale clients and professional investors. The Government also announced its intention to consult on options to create a **fast-track licensing process** for FFSPs who wish to establish more permanent operations in Australia. Fast-tracking is intended to shorten application timeframes and reduce barriers to entering the Australian market.

Superannuation trustees are unlikely to be directly affected by the changes, however consideration may need to be given to any impact of change in licensing status of any FFSPs that provide services to trustees.

APRA & Super Consumers Australia funding

The Government has committed to providing additional funding to support stronger consumer outcomes for members of superannuation funds by providing:

- $9.6 million for the **Australian Prudential Regulation Authority** to supervise and enforce increased transparency and accountability measures as part of the Government's ***Your Future, Your Super*** reform; and
- $1.6 million to **Super Consumers Australia** to support stronger consumer outcomes on behalf of superannuation fund members.

The funding for this uplift will be partially met through an increase in levies on regulated financial institutions, including superannuation trustees.

> *Superannuation trustees may wish to consider the impact of the likely resulting uplift in APRA supervision and enforcement activities in relation to the proposed Your Future, Your Super reforms on regulatory and compliance risks. Consideration might also be given to planning for future increases in regulatory levies.*

Improving visibility of Superannuation Assets in Family Law Proceedings

The Government confirmed its previous announcement that it would introduce enabling legislation to deliver the Improving the **Visibility of Superannuation Assets in Family Law Proceedings** measure, which was announced as part of the 2018 Women's Economic Security Statement (and delayed due to the pandemic).

The Government is building an electronic information sharing mechanism between the Australian Taxation Office (ATO) and the Family Law Courts (now to be within the Federal Court) to allow superannuation assets to be readily identified during family law proceedings. Allowing the ATO to provide this information to the Courts will ensure more just and equitable superannuation splitting outcomes.

> *Superannuation trustees are unlikely to be directly impacted by the proposed changes (as the existing ATO reporting infrastructure is likely to be utilised), however member service teams may receive enquiries about how Courts obtain access to superannuation interest data.*

ABOUT QMV LEGAL

QMV Legal is focused on providing pragmatic and expert legal advice which considers both the **nuance of superannuation law** and the commercial and operational objectives of superannuation trustees and providers.

Being **closer to the business** operations and technology of running a superannuation fund provides QMV Legal with a unique insight into the legal issues faced by superannuation funds.

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CONTACT US

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