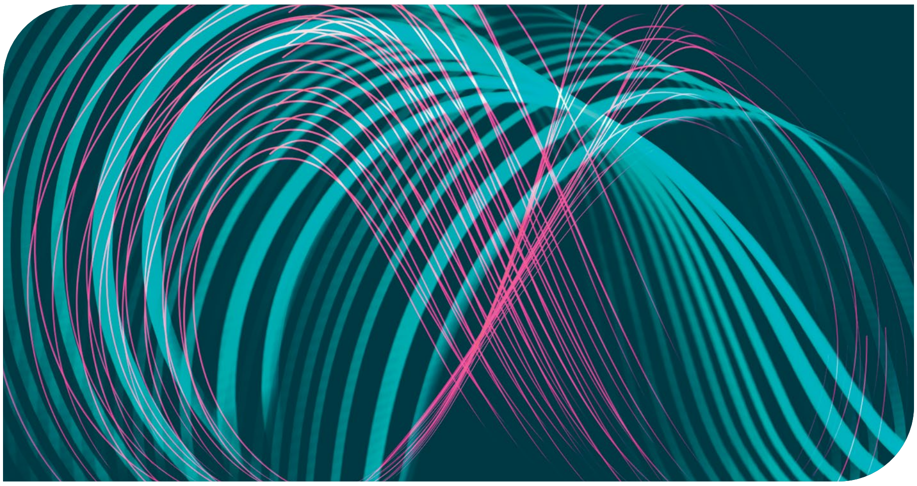
Nexia Australia

Superannuation Solutions

Edition 23



Welcome

Welcome to the latest edition of our Superannuation Solutions Newsletter.

In this edition we discuss the current status of proposed Div 296, the general transfer balance cap increasing from July 2025, regulations around legacy pensions becoming law, and Federal Parliament enacting a statutory objective for superannuation.

We hope you find this newsletter informative. Should you have any questions in relation to how these changes may impact you, please contact one of our SMSF Specialists.

Important Dates

28 January 2025
December 2023 super guarantee contributions due to be made to super fund by employers.

28 February 2025
December quarter Superannuation Guarantee Charge lodgement and payment due if contributions not made by 28 January 2025.

Due date for lodgement of first annual return of SMSFs started in the year ended 30 June 2024.

Fate of Div 296 tax still uncertain

The fate of the Federal Government's plan to impose an additional 15% tax on individual super balances greater than $3m from the 2025-26 year is still unknown. The Government's original intention was for the new tax to be legislated in time for the upcoming Federal election which is due by May this year.

Clients will be aware that this highly controversial measure has been the subject of extensive lobbying on its way through Federal Parliament. The bill passed the House of Representatives last year, but has stalled in the Senate, needing the support of cross bench senators in order to pass.

The bill containing the new tax also contained a number of less controversial changes, and in December the Senate decided to split the bill into two separate bills so the proposed new tax can be considered separately. The two bills are scheduled to be considered on the first parliamentary sitting day of this year, which will be 4 February.

It is possible that the bills may never be considered by the Senate, if the Prime Minister decides to dissolve Federal Parliament early for the general election.

Most stakeholders other than the Federal Government agree that the proposed new tax is poorly designed and would be unfair in its operation, and that the Government has not listened to the legitimate concerns of experienced professionals in the industry.

Transfer balance cap to increase to $2 million on 1 July 2025

The transfer balance cap is indexed to movements in the CPI. Although the December 2024 CPI number is not yet available, Inflation to the September 2024 has been sufficient to mean that the general transfer balance cap will increase from $1.9m to $2m on 1 July 2025. This may provide planning opportunities for clients.

The concept of the transfer balance cap (TBC) was introduced in July 2017 as the upper limit for pension balances in the retirement phase. The general TBC was initially set at $1.6m, to be indexed in increments of $100,000 according to movements in the CPI. An increase to $1.7m was triggered from 1 July 2021, and an increase to $1.9m was triggered on 1 July 2023. Depending on individual circumstances, clients who are intending to commence a retirement phase pension may benefit from delaying until after 30 June and taking advantage of the higher general TBC.

A member's personal TBC can be different to the general TBC. Their personal TBC is initially equal to the general TBC which applied at the time they first began a pension in retirement mode. If the whole personal TBC was used, no further indexation will apply. Where a member has used only part of their person TBC, the indexation rules look back over the member's history to determine the percentage of "cap space" that existed when they had used up the most of their TBC. For example, if it was 80% in 2020, only 20% of the $100,000 indexation will be available from 1 July 2025. As this figure is set historically, reducing the balance of the member's transfer balance account before 1 July 2025 (by perhaps commuting part of a pension) will not create any greater entitlement to indexation. The ATO provides a calculation of an individual's cap space on its online services portal, but this in turn depends on funds providing all relevant information to the ATO in a timely manner.

The general concessional contributions cap is also indexed, but according to movements in average weekly ordinary time earnings (AWOTE) which are released in late February. It was originally set at $25,000 at 1 July 2017 and increased to $27,500 from 1 July 2021 and to $30,000 from 1 July 2024. At this stage an increase in contribution caps is not expected on 1 July 2025. The general non-concessional contribution cap is set as four times the general concessional contribution cap.

While the contribution caps are not expected to increase on 1 July, the increased TBC may provide planning opportunities in situations where the capacity to contribute has been limited because the member's total super balance was greater than the general TBC. For example, a member cannot make non-concessional contributions if their total super balance at the last 30 June was greater than the general TBC in the current year. Non-concessional contributions might be possible again if the member's total super balance is greater than $1.9m but less than $2m at 30 June 2025.

Your Nexia advisor would be pleased to answer any queries and arrange for personalised advice applicable to your individual circumstances if desired.

Legacy pension rules now law

In Superannuation Solutions Newsletter 22 we outlined draft regulations to enable super fund members who hold legacy pensions to exit these products over a 5 year period, and to provide more flexible rules for dealing with reserves in SMSFs. These changes are now law, and have been well received in the superannuation industry.

The new rules apply to legacy lifetime, life expectancy and market-linked superannuation income stream products that commenced prior to 20 September 2007 or were commenced as a result of a conversion of an earlier legacy product that commenced prior to that date. This will allow individuals to exit products that are no longer suitable for their circumstances. These changes were first announced in the 2021-22 Federal Budget.

Lifetime and life-expectancy products are significantly less flexible than more modern account based super pensions. Although market-linked income streams have similarities to account based pensions, all these legacy products have broadly equivalent commutation restrictions. In practice, this means that the only way to voluntarily exit these products, prior to death or the expiry of the term of the pension, is to convert to another legacy product.

The options available for allocations from reserves in SMSFs have also been improved. Under the existing rules, unless reserves are allocated to members in small amounts (less than 5% of each member's balance each year), they generally count against the receiving member's concessional contributions cap, so any excess over the cap will be subject to additional tax. Until now, this has prevented members who hold legacy pensions supported by reserves from exiting the pension, as unwinding the reserve would cause contribution cap or additional tax problems.

Under the new rules, where a legacy pension is ceased and the supporting reserve is allocated to the former recipient of that income stream, the allocation will be exempt from both the concessional and non-concessional contribution caps. In the case of other reserve allocations, amounts exceeding the 5% rule will be allocated against the member's non-concessional contributions cap rather than their concessional contributions cap. In many cases this will ease or eliminate the potential adverse consequences of unwinding a reserve. The commutation must be in full and be completed within 5 years of the commencement of the regulations (that is, by 6 December 2029). In the 2024-25 year the concessional contributions cap is $30,000 and the non-concessional contributions cap is $120,000.

It is worth noting that while the new regulations deal with the super and income tax consequences of exiting a legacy pension, the issue of Centrelink asset test exemptions has not yet been finalised. Under current rules, the commutation of a legacy pension will lose its asset test exemption and could incur a five-year clawback of social security entitlements. However, the Assistant Treasurer has announced in effect that Centrelink benefits will be tested from the date of legacy pension commutation and could result in a loss of benefits, but will not be assessed retrospectively.

Please contact your Nexia advisor if you are affected by the proposed changes or have any other questions on this issue.

Objective of Superannuation now set in legislation

Bearing in mind the sheer size of the superannuation sector, Federal Parliament has now enacted a statutory objective for superannuation, against which proposed changes are to be evaluated.

The three pillars of the retirement income system, namely superannuation, the age pension and private savings, work together to support Australians in retirement. The superannuation system plays a central role, through the compulsory savings of individuals' income during their working life and then through the drawdown of these assets to fund their retirement.

More than 15 million Australians are now benefiting from having a superannuation account. Australia's superannuation pool has grown from around $148 billion in 1992 to $3.5 trillion in 2023. Despite the growing importance of the superannuation system, both for the economy and for individuals' retirement standards, there has not been a broadly agreed purpose or objective for the system.

The 2014 Financial System Inquiry recommended the Government "seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system and report publicly on how policy proposals are consistent with achieving these objectives over the long term". The 2020 Retirement Income Review broadly agreed with the findings of the Financial System Inquiry that an objective for the retirement income system was required to "anchor the direction of policy settings, help ensure the purpose of the system is understood, and provide a framework for assessing the performance of the system".

In December 2024 Federal Parliament passed the Superannuation (Objective) Act, which sets out the purpose of superannuation to be "to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way".

The new law also requires a statement to be prepared for bills or regulations that relate to super, which includes an assessment of whether the bill or regulation is compatible with this objective and the key concepts of "preserve savings", "deliver income", "dignified", "government support", "equitable" and "sustainable".

An explicit object for superannuation is significant in the context of suggestions that are made from time to time for super savings to be made available to assist various goals, such as the provision of housing, or development of sustainable energy sources or building transport infrastructure. Many if not all of these proposals would probably fail to meet the new objective. Short term schemes like the former government's limited release of super to assist with COVID-19 might also fail to meet the objective. It will be interesting to see how seriously future governments take their obligations under these new rules.

Please contact your Nexia advisor if you would like any further information on this topic.

Nexia Australia

Who we are

At Nexia Australia, we're here to help you achieve your goals and plan for future success with bespoke solutions and personalised, practical advice. Equipped with unparalleled experience and expertise in advisory, tax, audit, business strategy, personal wealth services, and strategic thinking, we're the team you can trust to empower you to achieve your objectives and reach new heights.

We specialise in several key industries and cater to a wide range of clients, from small to medium-sized businesses to large private company groups, not-for-profit entities, subsidiaries of international companies, publicly listed companies, and high-net-worth individuals. We've had the privilege of working with market leaders in many sectors of Australian and New Zealand business, and we're here and ready to help you too.

We take pride in being responsive, progressive, and proactive in identifying and implementing the solution to your success.

Contact us

Learn how Nexia Australia can help set you and your organisation up for success. Contact your local Nexia Advisor below to get started.

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