



26 October 2018

Rebecca McCallum
Manager
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: superannuation@treasury.gov.au

Dear Ms McCallum,

SMSF ASSOCIATION SUBMISSION ON EXEMPTION FROM THE WORK TEST FOR SUPERANNUATION CONTRIBUTIONS

The SMSF Association (SMSFA) welcomes the opportunity to make a submission on the legislation and regulations which will provide a one-year exemption from the work test for superannuation contributions for certain taxpayers.

The ability to allow recent retirees and older Australians to boost their superannuation balances is strongly supported by the Association.

However, we do raise concerns regarding the complexity of the superannuation contribution legislation, especially for individuals of an age approaching 65 up to 75. Individuals should be able to have a simple understanding of their contribution limits and the opportunities available to them and we believe the current combination of superannuation rules, including the proposed amendments, makes this difficult.

For example, different contribution caps relating to the non-concessional bring forward provisions and an individual's total superannuation balance (TSB), age restrictions, downsizer contributions, catch-up concessional contributions, and work test exempted contributions with caveats for the bring forward rule make for very complex legislation.

Furthermore, the introduction of another alternative contribution TSB threshold at \$300,000 applies additional complexity to the superannuation system.

For this reason, in our 2018-19 Budget submission, we proposed the Government should consider restoring its previous policy announced in the 2016-17 Budget to repeal the superannuation work test.

Given the changes in workforce participation and changes to the Age Pension, the removal of the work test would remove barriers and the red tape associated with superannuation contributions made by older workers. SMSF auditors and professionals find that confirming if an individual over 65 has worked 40 hours in 30 days an arduous process, creating unneeded inefficiency. Additionally, this inefficiency corresponds to a rule which is difficult for the ATO to police.



Alternatively, we suggested that consideration be given to including volunteering as a potential category that satisfies the definition of 'gainfully employed'. This provides a strong social outcome and encourages individuals to give back to society while also allowing more flexibility for individuals aged 65 to 74 who may not be able to find gainful employment to make contributions to superannuation. This is especially relevant as life expectancies continue to grow.

Considering these proposals, we stress any amendments to superannuation contribution legislation be as simple as possible.

Align the total superannuation balance threshold with the catch-up concessional threshold

As highlighted, the legislation introduces another TSB threshold at \$300,000. This is in addition to the \$500,000 TSB threshold for catch-up contributions, the \$1,000,000 threshold for quarterly transfer balance cap reporting for SMSFs and the \$1.4 million, \$1.5 million and \$1.6 million thresholds for non-concessional contributions.

The SMSFA recommends that the work test exemption threshold be increased to \$500,000 to align with the catch-up concessional contributions threshold to reduce complexity and ensure there is a level of consistency across contribution thresholds.

We do not believe this would incur a significant revenue cost to the Government.

Excluding bring-forward contributions

The SMSFA believes the greatest complexity concerning the proposed amendments surrounds the work-test exemption and its interaction with the bring-forward arrangements for non-concessional contributions for individuals between 64 and 65. The explanatory memorandum states:

The proposed regulation changes provide a one-year exemption from the work test that applies as part of the superannuation contribution acceptance rules to allow recent retirees to boost their superannuation balances.

This Schedule ensures that the proposed regulation changes operate as intended by preventing an individual accessing a benefit up to the value of providing a three year work test exemption period. This unintended outcome could otherwise be the result of an interaction between the work test rules and the bring-forward arrangements for non-concessional contributions in the ITAA 1997.

However, we believe the legislation should be viewed as merely allowing an individual an extra year to access the bring-forward provisions which are already prescribed in legislation. Its affect does not specifically provide the value of three years of extra work test exempt contributions, but only an additional year of the ability to make extra contributions compared to the current system. This is because the use of the bring-forward rule is extended by one year longer.

The following examples illustrate this point:



In each scenario the individual is under 65 at some stage during the financial year in which bring-forward contributions were made

Current Law				New Law			
Employment status	Age	Contribution	Effective Cap usage	Employment status	Age	Contribution	Effective Cap usage
Met work test (WT)	64	\$ 300,000	\$100,000	Met work test (WT)	64	\$ 100,000	\$100,000
Did not meet WT	65		\$100,000	Met WT exemption	65	\$ 300,000	\$100,000
Did not meet WT	66		\$100,000	Did not meet WT	66		\$100,000
Did not meet WT	67			Did not meet WT	67		\$100,000
		\$ 300,000				\$ 400,000	

We do not see the ability to make bring-forward non-concessional contributions as an unintended consequence because individuals must be under 65 in the financial year to access them. Furthermore, given that individuals must have a TSB under \$300,000 to access the bring-forward provisions under the work test exemption this will ensure the time extension is appropriately targeted and unlikely to be a revenue risk to the Government.

Removing this complexity, simplifies the legislation and allows individuals access to the existing superannuation contribution limits without having to refer to excluding work-test contributions. The same rationale has been applied for catch-up concessional contributions which will remain available under this legislation.

Additionally, the complication will result in individuals inadvertently making mistakes and funds being forced to administer excess non-concessional contributions rules and releases. On this note, if the Government does not decide to simplify the law it is important that the excess contributions refunding rules cover work test exempt contributions.

The proposal to restrict the bring forward rule will also require funds to record and report different sub categories of non-concessional contributions either being non-work test exempted non-concessional contributions or work test exempted non-concessional contributions. This will require a significant spend to update administration systems, increasing costs to members and complexity.

To summarise, if an individual meets the work test or the work test exemption, they should be able to use all the contributions available to them.

As mentioned above, we believe any revenue loss in applying a simpler form of the work test exemption would be very minimal. This is because individuals must have a TSB under \$300,000 and that plausible use of the bring-forward rules will only provide an extra year to use the concession and an extra year of effective non-concessional contributions cap usage.

If you have any questions about our submission, please do not hesitate in contacting us.

Yours sincerely,

John Maroney
 CEO
 SMSF Association



ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have over \$750 billion of the funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.