SMSF Association

Budget Submission

2025/26

January 2025

About the SMSF Association

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisers and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, 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

Our Beliefs

- We believe that every Australian has the right to a good quality of life in retirement.
- We believe that every Australian has the right to control their own destiny.
- We believe that how well we live in retirement is a function of how well we have managed our super and who has advised us.
- We believe that better outcomes arise when professional advisors and trustees are armed with the best and latest information, especially in the growing and sometimes complex world of SMSFs.
- We believe that insisting on tight controls, accrediting, and educating advisors, and providing accurate and appropriate information to trustees is the best way to ensure that self-managed super funds continue to provide their promised benefits.
- We believe that a healthy SMSF sector contributes strongly to long term capital and national prosperity.
- We are here to improve the quality of advisors, the knowledge of trustees and the credibility and health of a vibrant SMSF community.
- **We are the SMSF Association.**

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Foreword

The SMSF Association welcomes the opportunity to put forward our 2025 Pre-Budget submission. We thank the Government and Treasury for the consideration given to our previous pre-budget submissions and the opportunity to engage on various matters over the past year.

We thank the Government and Treasury on the registration of regulations to give effect to the Legacy Pension amnesty. These were important reforms, providing essential relief to impacted members who are trapped in old-style, inflexible products, many of whom hold small balances and have high associated compliance costs.

We welcome the opportunity to engage and consult with the Government and Treasury, through open and timely engagement on proposed amendments and measures. Robust consultation processes, with appropriate consultation periods and practical timelines ensure good policy and legislative design, minimising unintended consequences which can cause harm and take considerable time to remediate due to the legislative processes.

Sector neutrality is a vital element of superannuation policy. Different legislative outcomes should be strongly discouraged. It must only be considered where it is fundamental to the delivery of equitable treatment under the law due to the unique characteristics that apply across sector participants.

The SMSF Association has long held the view that consumer choice is a paramount element of superannuation. This is achieved through a robust superannuation sector with a range of participants and products to meet the varied needs of individual consumers. We support inclusive policies that appropriately consider and balance the needs of all, across the diverse range of sector participants.

We also look forward to continuing our discussions on reforms for accountants to address issues arising with regards to financial advice. A legislative solution is needed to remedy the legislative misalignment between the provision of accounting and tax agent services, and financial advice. There is also a need for a fit for purpose licensing regime for qualified accountants. The limited licensing model is a dying model. It is not fit for purpose and most accountants, regardless of their qualifications, are unable to enter the advice regime due to the operation of the professional year.

Qualified accountants have a role to play in helping to fill the advice gap that exists between financial advisers and the proposed advice regime that will apply to APRA regulated superannuation funds. This vital middle ground has been overlooked throughout the Quality of Advice Review, and financial advice reform agenda that has followed. This is despite the recommendations of the James Review, and the progress of other James Review recommendations through the Governments current policy agenda.

We therefore encourage the Government to escalate this issue and include as a policy priority, starting with a genuine review of the role of accountants as recommended by the James Review. Not all clients who wish to seek financial advice will have access to a licensed financial adviser and accountants will have a vital role to play in addressing crucial structuring and tax related matters in assisting their clients. The grey line that exists between what constitutes the provision of a tax agent service and financial advice therefore needs urgent remediation.

Finally, we thank the Government for including the financial advice profession in the proposed 'new class of advisers' under Tranche 2 of the Quality of Advice Review. This provides an opportunity to create career opportunities in financial advice and to expand the range of advisers who can work in a financial advice firm, supporting financial advisers and their clients.

Executive Summary

Summary of Recommendations

Our submission seeks to highlight and address key issues impacting the SMSF and broader superannuation sectors. These are set out across 4 core themes of sector equity, legislative reforms, sector integrity, modernisation and simplification. Several measures are spotlighted below:

1. **Deductibility of financial advice fees.** Important legislative amendments under Tranche 1 of the Quality of Advice Review reforms have been enacted. These provide greater certainty for the deductibility of financial advice fees from a member's interest in an APRA fund. The superannuation law does not provide an equivalent outcome for members of SMSFs. A law change is needed to ensure equitable treatment applies to members of SMSFs and to align with the underlying policy intent.

2. **Non-arm's length expenditure – specific expenditure and capital gains tax technical issues.** Issues arising from the operation of the non-arm's length expenditure rules remain outstanding and require urgent remediation. The treatment of specific fund expenditure and non-arm's length capital gains under the current tax law results in the impost of disproportionate tax penalties. These are the result of poor legislative design. This is in part due to the lack of cohesion across intersecting elements of the Tax Act or an ability to isolate a non-arm's length element. As a result, the law does not operate as intended. A legislative solution is required as a matter of urgency.

3. **Simplifying Transfer Balance Caps.** The indexation of the Transfer Balance Caps continues to add further complexity to the superannuation system. The system has shifted from having a single cap to individual caps ranging from $1.6 million to $2.0 million as of 1 July 2025. This is causing confusion and increased costs across the sector. The use of a single cap will reduce costs, uncertainty and benefit all stakeholders. Noting these complexities will continue to grow exponentially with future indexation of the cap. Indexation is vital in ensuring the cap keeps pace with inflation.

4. **Reducing the number of Total Super Balance thresholds**. The introduction of multiple Total Super Balance thresholds is unnecessarily adding to the complexity of the superannuation system. This has made it increasingly difficult for individuals to understand superannuation and their options. The SMSF Association believes the number of Total Super Balance threshold could be significantly reduced and better aligned by linking to the general transfer balance threshold and associated indexation.

5. **Reform of the notice of intent to claim a tax deduction rules.** The operation of these rules is overly complex, contains multiple hurdles and points of failure. The result is the loss of a tax deduction for an individual making the contribution. The regime is inflexible and does not allow for amendments or remediation. A point of failure can often be the result of a simple administrative error, which the taxpayer is unable to remedy, and the Commissioner of Taxation has no discretionary powers to resolve. The operative provisions need reform and modernisation to ensure the law operates in a manner that is fit for purpose in a modern context.

6. **Removing ambiguity regarding the application of the of the design and distribution obligations and target market determinations to SMSFs**. The SMSF Association believes these provisions should not apply to the establishment of an SMSF, when adding a new member to an SMSF, or when commencing a pension in an SMSF. This is an increasing area of concern with an emerging

trend seeing financial advisers unable to advise SMSF trustees without a TMD or required to attend to unnecessary administration which is adding additional time and cost in delivering advice to clients at a time where Government's policy focus is on delivering advice efficiently and cost effectively.

7. **Outstanding measures – Reform of residency rules for SMSFs.** Announced in the May 2021 Budget, these measures are still to be legislated. These are important reforms for the SMSF and small APRA fund sector. We ask the Government and Treasury to undertake the necessary industry consultation and progress the required legislation as a matter of priority.

Sector Equity

Deductibility of financial advice fees from a member's interest in an SMSF

We welcome the legislating of Tranche 1 of the Quality Advice Review, including the deductibility of advice fees from member's superannuation fund accounts. These measures seek to 'facilitate better access to superannuation and retirement advice by clarifying the legal basis of existing practices in which superannuation trustees pay advice fees from a member's superannuation account at the request of the member.'[1] The legislating of these measures provides greater certainty and consistency for members and fund trustees alike in relation to advice received by the member regarding their interest in the fund.

The deductibility of advice fees afforded under these provisions and the 2024 amendments, do not provide an equitable remedy for members of SMSFs. This is due to the operation of the current superannuation law,[2] with the legislative amendments built upon the existing legislative framework, replacing them with a clearer and modernised legislative framework. [3]

Whilst these are important reforms, what has been overlooked, is the need for the inclusion of an equitable legislative solution for members of SMSFs. SMSFs do not have a permissive provision within the superannuation law[4]. As such, the sole purpose test,[5] the prohibition on the provision of financial assistance to a member of the fund,[6] and the operation of the early access tax penalty provisions[7] are impassable barriers.

This gap in the superannuation legislation has created a divide between members of APRA funds and members of SMSFs. When we compare the pair, one group of members can elect to pay for the financial advice that relates to their interest in the fund paid from their superannuation member account, the others are, based on a strict legislative interpretation, prohibited from doing so. This also will exclude SMSF members from availing of the tax deductibility of certain advice fees.[8]

While the members and trustees[9] of SMSFs are one and the same, the treatment of advice provided to these distinctly separate roles differs vastly. Advice received in the capacity of trustee where the advice relates to the operation of the fund will be an expense of the fund and a deductible expense that may be either revenue or capital in nature. As noted already, advice that is received by the member in relation to their personal interests in the fund cannot, based on a strict legislative interpretation, be paid by the fund itself or from the member's interest in the fund.

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[1] Explanatory Memorandum, Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1 (Cth), Exposure Draft, pt 1 [1.8].
[2] *Superannuation Industry (Supervision) Act 1993* (Cth) s 99A.
[3] Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1 (Cth), Exposure Draft sch 1 pt 1 s 99FA.
[4] Ibid n 2. "The Act."
[5] Ibid s 62.
[6] Ibid s 65(1)(b)(i).
[7] *Income Tax Assessment Act 1997* (Cth) s304-10.
[8] Treasury Laws Amendment (2024 Measures No. 1) Bill 2024: Quality of Advice Tranche 1 (Cth), Exposure Draft sch 1 div 2.
[9] Ibid n 2, s 17A. Trustees includes two or more individual trustees or one or more directors of a corporate trustee.

Not all members of SMSFs in need of personal advice about their interest in the fund have the capacity to pay those costs directly. This may be due to a change in personal financial circumstances, separation or divorce of the parties involved, and may include situations where the SMSF ceases to appropriate for the member.

All superannuants are entitled to have access to and receive financial advice and to protect and preserve their retirement benefits.

Proposed solution: Insertion of a provision into the *Superannuation Industry (Supervision) Act 1993* (Cth) to make it clear SMSFs trustees can deduct from the member's interest in the fund advice fees that relate to that interest in the Fund. Those fees would be tax deductible in accordance with the Tranche 1 amendments to *Income Tax Assessment Act 1997* (Cth) s 12-5 and s 295-490(1).

Review of the Role of Accountants

In 2019, the James Review[10] made key recommendations for a single disciplinary model for financial advisors. This saw the regulation of tax (financial) advice move from the Tax Practitioners Board and to ASIC. This was a practical reform, simplifying the regulatory environment for financial advisers.

What has been largely overlooked, is the Review's Recommendation 7.2[11] which stated:

> *Having recommended the regulatory burden on tax (financial) advisers is to be reduced, the Review believes it is reasonable that a similar level playing field should be considered for accountants. The Review therefore recommends the Government initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to. Such a review could perhaps be undertaken by the Productivity Commission.*

Recommendation 7.2 was referenced in Quality of Advice Review but was largely ignored. This was in part due to the significant size of the review and complexity across a range of issues included in the Terms of Reference. For accountants this outcome was disappointing, as the Terms of Reference noted that the James review recommendation was a relevant recommendation for consideration.

The initial issues paper[12] laid the foundation for a review of the current legislative framework, providing essential scene setting with key background information, including the link to James Review. Five targeted questions were asked of stakeholders:

1. Should accountants be able to provide financial advice on superannuation products outside of the existing AFSL regime and without needing to meet the education requirements imposed on other professionals wanting to provide financial advice? If so, why?
2. If an exemption was granted, what range of topics should accountants be able to provide advice on? How can consumers be protected?

[10] *Independent Review of the Tax Practitioners Board* (Final Report, 31 October 2019).
[11] *Independent Review of the Tax Practitioners Board* (Final Report, 31 October 2019) 14.
[12] *Quality of Advice Review* (Issues Paper, March 2022) 28-9.

3. What effect would allowing accountants to provide this advice have on the number of advisers in the market and the number of consumers receiving financial advice?
4. Is the limited AFS licence working as intended? What changes to the limited licence could be made to make it more accessible to accountants wanting to provide financial advice?
5. Are there other barriers to accountants providing financial advice about SMSFs, apart from the limited AFSL regime?

In the final report[13], issues for accountants were not adequately addressed, the Report noting that many of the issues were outside of the terms of reference. The Report also acknowledged that the Review was *'not unsympathetic to the concerns raised about the costs associated with providing this advice. They are high'*[14] and that *'there does not appear to be much merit in holding a limited AFS licence'*.[15]

Advice in relation to SMSFs is not only about establishing an SMSF, it is being able to advise a client not to establish one or when to exit where an SMSF is not appropriate. These types of advice all constitute financial product advice.

An SMSF is not suitable for everyone, and we have severe advice gap in the market. Financial advisers are reporting that they are at capacity, and accountants are reporting that clients who urgently need financial advice are unable to access that advice.

Conversely, proposals for Tranche 2 of the Quality Advice Review reforms would see the introduction of a new class of adviser for the large APRA superannuation funds. Their stated role is to address the advice gap for the many unadvised Australian's. We support these reforms in principle, and they are urgently needed. However, this is creating a significant gap for middle Australian's who have sought to take control of their financial well-being.

Critically, we do not support the return of the former accountants' exemption. What we do support, is legislative certainty on what is a defined as a tax agent service, and exploring the role accountants can play regarding financial literacy, education, and nudges. Secondly, we seek to consult on an appropriate framework, for suitably qualified SMSF professionals to be able to provide limited, prescribed services to advise, assist, and educate current and future SMSF trustees. Any model must be consumer centric and contain appropriate consumer protections.

Proposed Solution: We ask that a fulsome and genuine review is undertaken of the role of accountants, as recommended by the James Review. Such a review should be conducted as a matter of priority.

Extending Opportunities for New Class of Adviser

The proposed new class of adviser under Tranche 2 of the Quality of Advice Review will play a vital role in supporting and assisting unadvised members of the large APRA funds. We thank the

[13] *Quality of Advice Review* (Final Report, December 2022).
[14] *Quality of Advice Review* (Final Report, December 2022), 80.
[15] *Quality of Advice Review* (Final Report, December 2022), 81.

Government and Treasury for engaging with industry and being open to expanding the opportunities for the new class of adviser in financial advice firms.

This is a unique opportunity for the profession. By allowing financial advice firms to employ a 'new class' of adviser would see them play a valuable support role, for both clients and the firms qualified financial advice professionals. Other considerations on the role these advisers can play include enabling the children of advised clients, the opportunity to access simple advice, reflective of their stage of life, such as acquiring their first superannuation fund.

Another tangible benefit is the creation of genuine career opportunities and pathways into the financial advice profession. Targeted policy development, such as this will support the growth of the financial advice profession, as the need for professional advice continues to grow across the community alongside increasing in complexity. As such, the Government needs to support the sector by embracing innovation.

We look forward to continuing our engagement on these proposed reforms.

Tax (Financial) Adviser Access to Client Tax Reports

We acknowledge Treasury's release of the consultation paper: *Review of Tax Regulator Secrecy Exceptions*, which includes a discussion of issues for future consideration. We welcome the discussion on access to certain ATO-held information by financial advisers who are 'qualified tax relevant providers' providing tax (financial) advice.

A *'Tax (financial) advice service'* is defined in section 90-15 of the *Tax Agent Services Act*[16] as*:*

> (1) A ***tax (financial) advice service*** is a tax agent service … provided by a financial services licensee or a representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:
>
> a) the service relates to:
>
> (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
>
> (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and
>
> b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
>
> (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
>
> (ii) to claim entitlements that arise, or could arise, under a taxation law.

These elements of the definition mirror the definition of a 'tax agent service.'[17] The key difference between the two classes of tax services is the express exclusion of the preparation of returns or statements in the nature of return as a tax (financial) advice service.[18] There are essential policy elements for this distinction.

[16] *Tax Agent Services At 2009* (Cth).
[17] *Tax Agent Services At 2009* (Cth), s 90-5.
[18] *Tax Agent Services Act 2009* (Cth), s 90-15(3).

Of crucial importance here is the direct correlation for the provision of tax advice and the reliance a client can place in that advice for both classes of tax advice.

Notably, the Australian Taxation Office have issued new guidance[19] on the tax deductibility of financial advice fees. A deduction for taxation advice can only be claimed where the advice relates to the client's tax affairs[20] and is provided by a recognised tax adviser.[21]

Parity is needed for all tax professionals, to ensure that each cohort has access to information essential in the provision of timely and accurate advice to their clients.

Significant disparity arises between professionals due to the operation of the transfer balance cap and total superannuation balance provisions. These are discussed in further detail in a section following in this submission.

Recommendation: Necessary policy and legislative reform to be elevated and progressed as a matter of priority on commencement of the 48th Parliament.

Legislative Reforms

Technical amendment

The SMSF Association's specialist auditor accreditation program is a recognised qualification[22] for approved SMSF auditors[23]. The regulations currently refer to the Association as the 'SMSF Professionals' Association of Australia Limited,' also colloquially referred to as SPAA. This is the Associations former name, with the name formally changed to 'SMSF Association Limited' in 2015.

While many established SMSF professionals and other stakeholders still today interchangeably refer to the SMSF Association as SPAA, this reference in the Regulations may be confusing for new entrants or create uncertainty.

We ask Treasury, with the support of Government, to progress a technical amendment to update the regulations to reflect the Associations' change of name.

Wholesale Investor Rules and SMSFs

The operation of the wholesale investor rules in the context of SMSFs are uncertain. The current legislative drafting does not contemplate their application to SMSFs. The resulting uncertainty is of significance and in need of urgent remediation through legislative amendments.

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[19] Australian Taxation Office, *Income Tax: Deductions for financial advice fees paid by individuals who are not carrying on an investment business* (TD 2024/7, 25 September 2024).
[20] *Income Tax Assessment Act 1997* (Cth), s 25-5(1)(a).
[21] *Income Tax Assessment Act 1997* (Cth), s 25-5(2)(e), s 995-1: '*recognised tax adviser':* (c) a qualified tax relevant provider (within the meaning of the *Corporations Act 2001*).
[22] *Superannuation Industry (Supervision) Regulations 1994* (Cth), r 9A.01(3)(b).
[23] *Superannuation Industry (Supervision) Act 1993* (Cth), pt 16 div 1A.

Recent AFCA determinations[24] have further highlighted this legislative uncertainty. Through these determinations, AFCA have as a result had a law-making effect due to the precedential nature of the decisions, and the lack of guidance or instruments issued by ASIC or case law. The reasons for these decisions are contrary to industry's understanding of the application of these provisions in the context of SMSFs.

As a result, wholesale advisers and product issuers, together with impacted SMSF trustees are uncertain as to how the tests are to apply to SMSFs. There are concerns about the impact this will have for investments and investors and where SMSFs who have been classed as wholesale will go for advice if they are suddenly classed as retail clients. This will have implications for other investors if SMSFs are required to exit or divest certain investments. It may also impact the commercial viability of certain investments or projects.

While the SMSF Association has expressed concerns surrounding the suitability of $2.5 million net asset test in a contemporary context, this is an issue that needs to be addressed quite separately from the issues arising for SMSFs outlined here.

Legislative certainty is urgently needed to ensure that:

- The application of the $2.5m net asset test applies to SMSFs where the trustees satisfy the test requirements
- The $10m test applies to APRA regulated funds with more than 6 members
- Advice on the investments held in an SMSF, and the placement, issue, acquisition or disposal of fund investments does not constitute a dealing in a superannuation product.
- The definition of a superannuation product to be clearly defined, ensuring it applies to the acquisition or disposal by a member of an interest in a superannuation fund, a pension, lump sum and estate planning.
- The operation of the superannuation sourced funds to be clarified to ensure that the legislation achieves the original policy intent and does not act to limit an SMSF's investment in financial products.

These are long standing issues which are now coming to a head due to the AFCA determinations. Despite numerous reviews and inquiries over the last 14 years, there have been no outcomes in this area of law.

Proposed Solutions: The registration of a legislative instrument by the Minister or ASIC to provide interim relief and certainty, with further consultation on legislative amendments and/or targeted regulations to provide long-term legislative certainty.

Non-arm's Length Expenditure – Specific Expenditure

We thank Treasury for the work undertaken, involving a number of consultations and direct engagement, to provide a remedy to address the disproportionate outcomes arising from non-arm's

[24] *AFCA Determination Case 12-00-923475* (2024); *AFCA Determination Case 12-00-*768719 (2024); *AFCA Determination Case 12-00-*818795 (2024); AFCA *Determination Case 826748* (2022).

length expenses classed as general fund expenses. This posed a significant risk that the whole of a superannuation fund's income could be tainted as non-arm's length income.

While the legislative amendments became law in June 2024[25] these amendments provided a partial remedy on the operation of the NALE rules. Significant issues remain with the legislative design and operation of the NALE measures to specific fund expenses, which result in retrospective tainting of accrued capital gains, does not provide a de minimis rule, or the option of rectification where NALE is triggered inadvertently. As a result, the operation of these measures are particularly punitive and its reach extends well beyond what is reasonable or intended.

We understand the level of fatigue surrounding NALE, however we urge Government and Treasury to press on, complete the job, and reprioritise this important work to deliver the legislative amendments urgently needed to remedy the current provisions.

These remaining issues are significant and will require careful technical review and consultation to ensure the respective provisions operate as intended.

Specific Fund Expenses

Under the current law, a small capital expense will taint both the income derived from the asset as well as the entire capital gain when the asset is eventually sold. This will have retrospective application when we consider the accrued capital gains over the life of the asset prior to the incurrence of the expense. Further, it risks tainting gains accrued prior to the introduction of the NALE provisions.

A capital repair to property during the holding period, or when preparing it for sale, are examples of such an expense. This differs significantly to a circumstance where, under a scheme, an asset at first instance was not acquired at market value.

Other examples we have seen include inadvertent errors, although remedied in a timely manner, can never be rectified. This has been affirmed with the Australian Taxation Office.

One case brought to our attention entails a fund that acquired a property using a limited recourse borrowing. The current borrowing is via a related party loan which has strictly complied with the ATO guidelines[26] at all times.

Each year the loan interest rates and repayments were carefully reviewed, the trustees documenting that process and updating repayments accordingly. That review process was undertaken under the guidance of their adviser and accountant. A mistake was made, and the trustees were advised of an incorrect repayment amount. This was due to an error made in the calculations.

The error was detected 3 months later, and just after the end of the financial year. The trustees immediately documented what happened, prepared updated records, and remedied the repayment shortfall amount.

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[25] *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023:* Royal Assent; Act No 52 of 2024, 28 June 2024.

[26] Australian Taxation Office, *Income tax - arm's length terms for Limited Recourse Borrowing Arrangements established by self-managed superannuation funds* (PCG 2016/5, 6 April 2016): Updates made on 28 September 2016 and 21 March 2022.

Despite the shortfall being minor, inadvertent, and rectified in a timely manner, all of income from the property will forever be classed as non-arm's length income (NALI) and taxed at the highest marginal tax rate, currently 45%. In addition, the whole of the capital gain from the property will be treated as NALI. This includes the capital gain accrued over successive years.

The penalty for getting it wrong, including situations such as this where inadvertent mistakes have been made, should not give rise to the severe and punitive consequences as outlined above.

This scenario needs to be contrasted and distinguished from circumstances where a significant discount has been obtained by the trustees under a scheme, that is not arm's length in nature. Here, it is appropriate for the income derived from the asset, including capital gains to be classed as NALI/NALE.

A practical and equitable solution is urgently needed. A method that allows for a proportionate approach to be taken must be considered where the non-arm's length element represents only a portion of the overall value. The remediation of small, inadvertent errors should be available where appropriate, alongside Commissioner discretion.

Capital Gains Tax – Technical Issues

The Commissioner of Taxation's 2024 Tax Determination[27] highlights a serious issue arising from the misalignment of the NALI/NALE[28] provisions with the calculation, treatment, and classification of capital gains[29] as statutory income.[30]

The operation of the current law risks tainting arm's length capital gains that occur in the same year as one that is not at arm's length. This is clearly an unintended consequence.

An urgent legislative solution is required to remediate this outcome, and to allow for the apportionment of capital gains, separately recognising the proportion of the net assessable capital gains that are not arm's length income.

We look forward to continuing our dialogue with Treasury in seeking an appropriate, and equitable, legislative solution as a matter of priority.

Proposed Solution: We ask that Treasury engage with industry stakeholders to work through possible legislative solutions, leading to exposure draft legislation. Legislative amendments are urgently needed and should be prioritised.

Design and Distribution Obligations/Target Market Determinations

Issues with the drafting of the Design and Distribution Obligations ("DDO") and target market determination ("TMD") for SMSFs have been raised with Treasury and ASIC on several occasions since its introduction. Our members are reporting a concerning, and growing trend, with some Australian

[27] Australian Taxation Office, *Income tax: how the non-arm's length income and capital gains tax provisions interact to determine the amount of statutory income that is non-arm's length income* (TD 2024/5, 17 July 2024).
[28] *Income Tax Assessment Act 1997* (Cth) s295-550.
[29] *Income Tax Assessment Act 1997* (Cth) s 102-5. Capital gains tax- Method statement.
[30] *Income Tax Assessment Act 1997* (Cth) s295-10. Tax payable by superannuation entities – Method statement

Financial Services Licensees requiring advisers to obtain or hold a TMD for the SMSF itself when advising SMSF clients. This includes existing SMSFs and new SMSF establishments.

Without a fund TMD, the advisers may be prohibited from advising the SMSF client or be required to attend to unnecessary compliance processes and seek approval from their AFSL. It is adding unnecessary red tape, regulatory burden, complexity, time, and cost to the advice process for SMSFs. This is counter to the objectives of the Quality of Advice Review and the Government's current policy agenda regarding the accessibility and affordability of financial advice.

Advisers are now also concerned about their risk exposure in this area. Noting they are not authorised to prepare or advise on the preparation of a TMD as they are not product developers or issuers.

A simple legislative amendment to clearly exclude SMSFs would remediate the issue and provide certainty for AFSLs, financial advisers and their clients, future and existing SMSF trustees.

Background

During the public consultation in 2018, ASIC noted that the proposed legislation, unless amended, would unlikely apply to SMSFs as *"the initial distribution of interests in SMSFs may not be captured by the revised exposure draft legislation"*[31].

Given the original drafting of the Bill and the fact the Senate Economics Legislation Committee made no mention of the need for SMSFs to be included, it is our belief that the DDO/TMD regime was not intended to apply to the establishment of an SMSF and financial dealings with regards to an SMSF.

The legislation and regulations are not sufficiently clear to enforce this intent.

Other parties noted during the various consultations that, in the context of the DDO and TMD legislation, an SMSF was a shell that needs to be considered distinctly differently to the financial products it acquires:

> *"There is one important financial product where there is a greater level of uncertainty about the applicability of the Design and Distribution Obligations legislation, and we would have liked to have seen this uncertainty addressed through this regulation. Self Managed Superannuation Funds (SMSF) are classified as a financial product, however they are different from other financial products in a number of ways.*
>
> *We believe that there are grounds for treating SMSFs differently, including the fact that they are more of a service than a product and are typically used to house other products that will be caught under the Design and Distributions Obligations legislation. In addition, the product provider is technically the trustees of the SMSF, who are also the members of the fund. Thus, the benefit of this legislation is less apparent in the case of SMSFs."*[32]

Treasury in their evidence to the Senate Economics Legislation Committee inquiry into the Bill, noted the need to exclude SMSFs from the regime:

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[31] ASIC, 2018, *Design and distribution obligations and product intervention power: Revised exposure draft legislation – Submission by the Australian Securities and Investments Commission,* Paragraph 75

[32] AFA, 2019, *AFA Submission – Corporations Amendment (Design and Distribution Obligations) Regulations 2019*

"…it would be inappropriate to include SMSFs because the design and distribution obligations require the issuer to determine a class of consumers, whereas a person designs an SMSF and in effect is 'selling it to themselves.'"[33]

The financial products acquired by and held in the SMSF are subject to the DDO and TMD requirements. This is entirely appropriate and aligns with the underlying policy intent.

Since the commencement of these provisions, conflicting views have emerged on whether the provisions apply to SMSFs and, if they do, how they should be applied in an SMSF context. It has been described as "a lawyer's picnic".

Proposed Solution: Expressly exclude SMSF establishments, addition of new members and commencement of pensions in an SMSF from the DDO/TMD requirements.

The DDO applies to issuers and distributors of financial products that are available for acquisition by issue or by regulated sale in Australia.

A product distributor is required to take reasonable steps that will, or are reasonably likely to, result in distribution of a financial product being consistent with the product's TMD.

Financial advisers are expected to consider a product's TMD when providing advice and meeting their best interest duty and complying with their obligations in the code of ethics.[34]

Each SMSF is unique to its members. The members and trustees are one and the same. As such they will each have very different investment objectives, risk profiles, preferences, and needs.

An SMSF is a private fund and does not offer membership to the public at large. Therefore, the requirement to have a publicly available TMD as required under the legislation does not align to the principles or function of an SMSF.

SMSFs meet the definition of a financial product. However, when we look at how it resides within the DDO/TMD framework, it is a structure in which to house financial products. Those financial products will need to comply with the DDO/TMD regime obligations.

There are no consumer or public benefits to be gained by extending the DDO/TMD provisions specifically to the SMSF structure itself. Rather, including SMSFs will add unnecessary complexity and cost burdens for no benefit. The logic that applies to commercial product issuers does not apply in an SMSF context as the SMSF structure is not being offered to the public at large.

More concerning, the current ambiguities are camouflaging potential contingent liabilities that may arise for both financial advisers and licensees, were a different interpretation of the law is applied in the future. This may occur due to action of a regulator, litigation, or formal complaint with AFCA.

ASICs regulatory guide RG 274 *Product design and distribution obligations* is silent on SMSFs and the issues surrounding SMSFs. There is no clear, practical, interpretive guidance from the regulator as

[33] Ms Kate O'Rourke, Principal Adviser, Consumer and Corporations Policy Division, The Treasury, Committee Hansard, 1 November 2018, p. 35

[34] *Financial Planners and Advisers Code of Ethics 2019* (Cth).

there is no clear exemption in the current legislation and regulations. The legislation is silent on the express inclusion or exclusion of SMSFs from the DDO/TMD regime.

SMSFs are consumers of financial products and services. The financial products acquired by the fund will be subject to the DDO/TMD regime. In addition to a PDS, a TMD must also be provided to the trustees in relation to each financial product acquired. This is the appropriate point for the DDO/TMD regime to apply in an SMSF context.

The operation of the existing legislation, including the pre-existing PDS provisions, do not provide a sufficiently clear framework to assist with the interpretation and application of the DDO/TMD provisions to SMSFs.

Under Sub-section 1012D(2A) of the *Corporations Act 2001*, a product disclosures statement (PDS) does not have to be given to a new member of an SMSF where the trustee believes on reasonable grounds that the member has received, or knows they have access to, all the information that a PDS would be required to contain. Therefore, SMSFs and their trustees or firms advising SMSFs require disclosure but are exempted under reasonable grounds.

This exemption may not be able to reasonably be relied upon in in the context of the DDO/TMD when we consider other situations that regularly arise in an SMSF context:

1. A member requests the payment of a pension from the SMSF trustee. A PDS is required to be issued by the Fund.
2. The trustee voluntarily executes a PDS on establishment or addition of a new member, although not required to do so.

By default, a PDS will be included as part of the standard document package provided. It is then up to the trustee to determine whether they require or use the PDS provided. As a result, it is not uncommon for the PDS to automatically included in the documents adopted or executed by the trustees and members.

If a PDS was not required, would the SMSF be captured under the DDO/TMD provisions for the mere fact a PDS has been prepared, executed and/or adopted?

The SMSF structure itself addresses a range of issues that form part of the operative intent of the DDO/TMD regime.

Under the existing legislative framework that applies to SMSFs, the trustees have obligations imposed by way of trustee covenants under SISA s.52B. Of particular relevance is the covenant in SISA s.52B(2)(f) and SISR 4.09 that require the SMSF trustees to *formulate, review regularly and give effect to an investment strategy.*

The trustees must ensure that the investment strategy is documented, monitored, complied with, and maintained by the SMSF trustees. The investment strategy must have regard to whole of the circumstances of the fund, including, but not limited to:

a) *the **risk** involved in making, holding and realising, and the **likely return** from, the entity's investments, having regard to its **objectives** and expected **cash flow requirements**;*

b) *the **composition** of the entity's investments as a whole, including the extent to which they are diverse or involve exposure of the entity to risks from inadequate **diversification**;*

c) *the **liquidity** of the entity's investments, having regard to its **expected cash flow** requirements;*

d) *the ability of the entity to discharge its existing and prospective **liabilities**;*

e) *whether the trustees of the fund should hold a contract of insurance that provides **insurance cover for one or more members** of the fund.*

In addition to the above and the trustee's fiduciary duty, the legislation also requires the trustees to consider the 'best financial interests' of all fund members.

The trustees of the SMSF are directly responsible for the operation of the fund, including ongoing fund compliance, formulating investment strategies, and making investment decisions. Indeed, they may engage various professionals and services to assist them in fulfilling their duties and obligations. However, this does not alleviate or remove the core trustee duties and obligations.

SMSF trustees are not required to be licensed financial advisers, product manufacturers, issuers, or providers. Further, they do not engage in retail product distribution. Although they may engage these services and acquire financial products from an appropriately licensed provider.

The trustee's duties and obligations ensure that the needs of individual members are appropriately considered, documented, and actioned. These all align with the policy objective of the DDO/TMD obligations. Noting that the DDO/TMD obligations would still apply to financial products acquired by the Fund.

The requirement for a TMD to be publicly available does not align with SMSFs which are a private, closely held fund, as the members and trustees are one in the same.

Since 1 July 2021, SMSFs are permitted a maximum of 6 members. The number of SMSFs using these updated measures are low. Prior to this legislative amendment, membership was limited to a maximum of 4 members. A significant majority of funds have two members. We do not expect this to significantly change.

Table 1: Distribution of SMSFs based on the number of members[35]:

Number of members	2022-23
1	25.1%
2	68.1%
3	3.3%
4	3.3%
5	0.2%
6	0.1%
Total	**100%**

If SMSFs are to be included in the DDO obligations, this could include unreasonable design parameters and restricted distribution obligations for trustees dealing with themselves or entities which deal with SMSFs.

[35] Australian Taxation Office, 2024, *Self-managed super fund quarterly statistical report – September 2024,* [online] <https://data.gov.au/data/dataset/self-managed-superannuation-funds > , Table 4: Membership Size

Given the current legislative uncertainty, and the apparent intent to exclude SMSFs, we believe it is appropriate for the legislation and regulations to be amended to specifically exclude SMSFs from the DDO/TMD regime with regards to:

1. Establishment of an SMSF
2. Admission of new members to an SMSF
3. Commencement of a pension in an SMSF

This will align the legislation to the policy intent, reduce red tape and compliance costs for the SMSF sector and provide important clarity for financial advisers, document providers and SMSF trustees.

Sector Integrity

Specialist Education Standards

The SMSF Association has consistently advocated for and promoted the need for strong education and advice standards. The need for specialisation and specialist education sits at the heart of our corporate mission and beliefs. Given the risk of harm to consumers we have consistently called for professional standards that require specialist accreditation.

We would welcome measures seeking to increase the education standards required for SMSF professionals. Raising of education standards of SMSF professionals, will increase their knowledge relating to specific and complex legislation, it would also discourage advisers who wish to give SMSF advice or others who seek to provide services to SMSF trustees, but have not undertaken specialist SMSF training.

Introducing an SMSF education requirement, would also limit advisers who are licensed but have poor knowledge of SMSFs and limited recourse borrowing arrangements from advising on these products. In turn it then discourages property spruikers from entering the SMSF advice market as the education requirement could be too high.

Education cannot entirely prevent poor and misleading advice, but along with the implementation of other policy measures, including targeting those providing unlicensed advice, it will assist in providing additional safeguards for SMSF members, from those who potentially lack the required knowledge to provide the specialist advice needed for SMSFs.

Furthermore, a requirement to seek specialist SMSF advice would restrict the practices observed in one-stop property shops and cold calling activities, which have been shown to be a detrimental pathway to inappropriate limited recourse borrowing arrangements.[36]

ASIC's Report 575[37] observed:

> *We believe these results indicate a need to increase the education and training requirements for advice providers who provide personal advice on SMSFs.*

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[36] Australian Securities and Investment Commission, *Improving the quality of advice and member experiences* (Report No REP 575, 28 June 2018).
[37] Ibid.

> *To improve the quality of SMSF advice, we will be engaging in discussions with FASEA about a specific SMSF qualification for advice providers wishing to provide SMSF advice.*

The Productivity Commission noted ASICs stated position above and supported specialist training for those advising on SMSFs. [38]

We welcome the opportunity to further discuss these concerns with Government and Treasury. Noting, that any future policy development must be considered alongside a review of the role of accountants, discussed previously in this submission. This will ensure that the right policy settings are achieved for the respective professions but also for the benefit and protection of current and potential future SMSF trustees.

Modernisation and Simplification

Complex Taxation of Superannuation

The current system of the taxation of superannuation benefits and balances, and persistent changes by Government are adding unnecessary complexity, cost and uncertainty to the superannuation system. With the high number of taxation measures with different taxing points[39] (inside and outside the superannuation fund), it makes identifying the headline tax rate applied to superannuation benefits difficult to quantify in individual circumstances. Finally, benefits are additionally taxed when paid to a beneficiary of a deceased member.

Measures such as the proposed Division 296 tax fundamentally fail the tax policy principles of equity. This is due to the policy design which seeks to tax unrealised capital gains rather than actual taxable income. Under this proposal, a fund with a significantly large member balance in receipt of actual taxable income could pay no tax. Yet a lower balance holder with low taxable income, due to market movements would be taxed.

Superannuation has by its nature, long term investment time horizons, with capital locked away for an extended period. Australian's need certainty, and simplicity and equity. Any reform agenda for the taxation of superannuation must consider these maxims.

Prior to the consideration of any significant tax policy changes, it would be beneficial to consider a cross-sector review of accounting and reporting models, systems and capabilities and identify gaps and areas in need of modernisation. This will be essential to the long-term sustainability of the superannuation concessions and ensure sector equity and greater transparency across stakeholders.

This work must be approached with care and cannot be rushed to ensure the right policy settings are achieved and any reforms and associated system designs can be modelled, mapped, designed and implemented in a cost-effective manner for the benefit of members, Government and the broader superannuation system.

Personal Transfer Balance Cap

The indexation of the general transfer balance cap (TBC), results in individuals holding a personal TBC. The value of an individual's cap will depend on their circumstances and will range anywhere between

[38] Productivity Commission 2018, *Superannuation: Assessing Efficiency and Competitiveness*, Report no. 91

[39] A range of tax assessments are levied on the individual directly, with an option to release amounts from superannuation. Other taxes are applied at the fund level.

$1.6 million to $2.0 million (from 1 July 2025), rather than one single cap for all individuals. As indexation applies on a proportionate basis, the resulting, individual TBC amounts are not relatable or intuitive and do not correlate with current or historical cap amounts.

The current method used to index the cap causes significant complexity, confusion, and is compounded by the lack of access for financial advisers and SMSF administrators to the ATO reports needed to obtain an individual's TBC.

A member's personal TBC will equal the general TBC in the year they first have a retirement phase income stream counted against their transfer balance account. Under proportional indexation, the unused portion of the member's personal TBC (based on the highest percentage usage of their TBC) will be indexed in line with the indexation of the general TBC.

This is an overly complex situation which over time will result in most individuals with a retirement phase income stream having a personal TBC which is vastly different to the general TBC maximum. This distortion has and will continue to grow in complexity as indexation of the TBC is applied.

Due to the complex nature of proportional indexation, it is inevitable that mistakes will be made leading to inadvertent breaches of the TBC.

The indexation which is applied to a member's TBC is dependent on the member's highest ever transfer balance which in-turn determines the amount of indexation (between nil and $100,000) that is applied to their TBC. The information in this table is generic and does not determine an individual's exact TBC. It however highlights the significant variability resulting from individual TBCs.

Proposed solution: Remove proportional indexation of the TBC. Indexation should apply equally to all holders of retirement pensions and income streams.

Recommendation:

One simple way of addressing the complexities associated with proportional indexation would be to align all members with an unused TBC amount with the general TBC. This would provide certainty, reduce costs, and simplify the administration involved for the Australian Taxation Office, financial advisers, SMSF administrators and tax agents as well as the members themselves.

Indexing the TBC in this manner ensures that superannuation members in retirement are not disadvantaged by the impacts of inflation.

The costs of allowing broad application of TBC indexation and the incremental loss of tax revenue are not expected to be significant, particularly when we consider the oncosts of indexation including the costs of administration and complex system redesign. These system costs will be incurred each time indexation falls due.

The need for access to timely and accurate data is fundamental to ensuring that members comply with their TBC. This highlights the need for Government to ensure that access to this data is not limited and can be accessed by all authorised advisers in a secure and efficient way.

Total Super Balance threshold complexity

Since 1 July 2017, an individual's Total Super Balance (TSB) has been used to determine an individual's ability to access certain superannuation concessions. The SMSF Association has been supportive of this method as an effective way to target appropriate cohorts of superannuation members.

However, the introduction of multiple TSB thresholds is unnecessarily adding to the complexity of the superannuation system. This has made it increasingly difficult for individuals to understand the superannuation system and their options.

We acknowledge that administrative reforms have seen the removal of the $1,000,000 TSB threshold for transfer balance account reporting (quarterly or annual reporting test) for SMSFs from 1 July 2023.

Table 2: TSB threshold tests

TSB Threshold	Applicable Measure
$300,000⁺	Work-test exemption – concessional contributions
$500,000⁺	Catch-up concessional contributions
$1.68m, $1.79m, $1.9m*	Bring forward non-concessional contribution caps
$1.9m*	Non-concessional, spousal contributions, and co-contributions
$1.6m⁺	Disregarded small fund asset rule

* Subject to indexation

⁺ No indexation

In addition to the number of thresholds, confusion, complexity and added costs arise because some of these thresholds are indexed and some are not, and those that are indexed are subject to different methods of indexation.

The number of thresholds that apply have not only made it more difficult for superannuation members to understand and use the superannuation system, but it has also made it more difficult for their advisers and superannuation fund administrators. It increases the professional services fees paid by superannuation members as they need specialised advice to understand the different layers of thresholds that may apply to them and when they apply.

Furthermore, when inadvertent errors are made by superannuation fund members and/or their advisers, it can result in breaches of the contribution caps which are often difficult, time consuming and expensive to resolve.

Proposed solution: Reduce the number of TSB thresholds and ensure indexation is consistently applied.

The SMSF Association proposes the following amendments which will help streamline and simplify the use of TSB thresholds:

1. **Remove the tiered TSB thresholds for bring forward non-concessional contribution (NCC) thresholds:**
    a. This will reduce the complexity involved in making bring forward NCCs when nearing the TSB threshold.

b. This reduces the ability for confusion and complexity in the system which has increased with the recent indexation of thresholds and rates.

c. The indexation of the NCC differs to the TSB. The can result in indexation occurring at different time. This increases complexity and can be confusing, as this can deliver unexpected outcomes, as evidenced in the table below. Removing the tiered TSB approach removes this disconnect and confusion.

d. It allows individuals to increase their superannuation balance and better prepare for their retirement. We do not anticipate that this will incur a significant revenue cost to the Government as individuals are only able to make use of the bring forward rule once every three years and are cap limited.

e. Indexation of these amounts results in less intuitive figures.

f. Simplification of the law will make it easier to track over time. For example, it may be difficult to identify when an individual has triggered their bring forward NCC cap and whether the 2 or 3 year bring forward cap applies.

Proposed Solution – Adopt a single threshold, with NCCs, spousal and co-contributions aligned with the general TBC. Allowing the NCC three year bring forward to be applied where the member has a balance under the TSB threshold.

Table 3: Interaction of Total Superannuation Balance and Non-concessional Contributions.

Bring-forward period	**Total Superannuation Balance ***				
	1 July 2017 to 30 June 2021	**1 July 2021 to 30 June 2023**	**1 July 2023 to 30 June 2024**	**1 July 2024 to 30 June 2025**	**1 July 2025 onwards**
3 years (3 x NCC cap)	Less than $1.4m	Less than $1.48m	Less than $1.68m	Less than $1.66m	Less than $1.76m
2 years (2 x NCC cap)	$1.4m to less than $1.5m	$1.48m to less than $1.59m	$1.68m to less than $1.79m	$1.66m to less than $1.78m	$1.76m to less than $1.88m
1 year (1 x NCC cap)	$1.5m to less than $1.6m	$1.59m to less than $1.7m	$1.79m to less than $1.9m	$1.78m to less than $1.9m	$1.88m to less than $2.0m
$0 NCC cap	$1.6m and over	$1.7m and over	$1.9m and over	$1.9m and over	$2.0m and over
TSB	**$1.6m**	**$1.7m**	**$1.9m**	**$1.9m**	**$2.0m**
NCC Cap	**$100,000**	**$110,000**	**$110,000**	**$120,000**	**$120,000**

* Measured on 30 June in the financial year prior to the contribution being made

2. **Align the disregarded small fund assets threshold to the general TBC**:

    a. Alignment with the general TBC ensures that the disregarded small fund assets threshold is subject to indexation at the same time as other measures using this cap.

    b. It brings consistency and simplicity to the operation of the caps.

    c. The proposal aligns the policy objectives, and the operation of the TBC and the disregarded small fund asset rules.

Proposed Solution – Align the disregarded small fund asset threshold to the general transfer balance cap.

The net effect of all these changes would be a substantial reduction in the number of superannuation and tax rules which require a member's TSB to be assessed against a prescribed threshold. It would significantly reduce complexity and red tape while having a negligible impact on Government revenue.

Notice of Intent to Claim a Deduction - Concessional Contributions

The ability for individuals to claim a tax deduction for personal, concessional contributions has evolved over time. That evolution has seen good policy design that reflects the modern working environment. It provides flexibility and choice, ensuring that all individual taxpayers have equal opportunities to make additional concessional contributions. Either as salary sacrifice contributions or personal deducible concessional contributions.

Despite these reforms, one element has continued unchanged and in need of modernisation and reform - the notice of intent to claim a deduction[40] form and associated compliance processes. In an environment with improved data access and processing, electronic reporting and forms, there is an opportunity to improve the member experience, accessibility, and simplicity, to encourage superannuation savings.

In navigating the legislated requirements, there are multiple potential points of failure that could result in an individual being denied a tax deduction for the contributions they have made. In turn this prevents an individual from utilising their concessional contributions cap.

Timing issues can create circumstances which may deny the individual the tax deduction and the ability to utilise their concessional contribution cap. The preparation and lodgement of a NOI typically occurs at the end of the financial year, once the individual's taxable income and contributions for the year are known.

Where an individual's income tax return is inadvertently lodged prior to the issue of the written acknowledgement from the fund, the whole of the contribution will cease to be tax deductable. This is a particularly harsh outcome for what is administrative in nature. The deduction should be permitted so long as the acknowledgement is received from the fund no later than the last day of the financial year following the year the contribution was made.

Under the self-assessment rules, a person that fails to do so, would be subject to the additional income tax liability, general interest charges and any other applicable penalties the Commissioner may levy under existing tax law.[41]

Other issues arise where a partial rollover or withdrawal of benefit occurs. For example, where the Commissioner issues a release authority to the fund. This compels an amount to be paid out of the member's interest in the fund. There is no mischief in allowing the deduction where sufficient funds remain in the member's interest in the fund.

[40] *Income Tax Assessment Act 1997* (Cth) s290-170.
[41] *Taxation Administration Act 1953* (Cth) sch 1 s 284-75(1).

The other issue is a member's inability to vary a notice. If a mistake is made, the member has no ability to rectify the notice. The deductible amount cannot be increased, and a member is prevented from revoking their election.

Recommendations:

1. Addition of Commissioner discretion to allow a deduction.
2. Allow the deduction where the member has notified their superannuation fund trustee and received written notice in the 12-month period after the end of the financial year in which the contribution is made. Including where the member has already lodged their income tax return.
3. The deduction to be allowed where the member's interest still holds sufficient funds to pay the tax and reallocate the necessary contribution amount from the member's tax-free component to their taxable component.
4. Allow variations to be made, including after the lodgement of the individual's income tax return. The variation must be made and acknowledged in the 12-month period after the end of the financial year in which the contribution is made.
5. Permit variations to increase or decrease the amount of a deduction, including where the individual's income tax return has already been lodged.
6. Allow an individual to vary an amount claimed in their income tax return, where their return has already been lodged for the year of income.
7. Allow for a technology neutral solution for an improved user experience, minimise system-based points of failure and provide for the expedient preparation, lodgement and processing of member NOIs.

Outstanding Measures

Residency Rule Amendments – SMSFs and Small APRA Funds

We acknowledge that the previously announced reforms of the residency rules for SMSFs and Small APRA funds were originally made by the former Government. We therefore thank the current Government for their October 2022 Budget announcement confirming that the reform of the residency rules had been incorporated into the Government's policy agenda.

This is an important reform for the small fund sector, and we ask the Government and Treasury to undertake the necessary industry consultation and progress the required legislation as a matter of priority.

The concessions made during Covid-19 around SMSF temporary absence rules showed that the proposed changes to the residency rules are practical and workable, with trustees operating in a compliant matter. The modernisation of the temporary absence rules and the abolition of the active member test aligns to the broader policy objective of ensuring that the superannuation system operates efficiently and cost effectively, removing the need for the unnecessary duplication of superannuation accounts.

We encourage the Government to urgently progress both limbs of these proposed reforms.

A legislative solution to these outstanding measures would be a quick win for Government and, with the appropriate policy settings, provide vital solutions and certainty for impacted individuals.

Legacy Pension Amnesty

We thank Government and Treasury for consulting on and expediting the registration of Regulations to give effect to the legacy pension amnesty. These regulations, alongside the measures addressing allocations from pension reserves provide essential relief for members of SMSFs trapped inside these old-style products and, in some cases, an SMSF that is no longer appropriate.

We urge Government to now progress as a matter of priority the legislative instrument needed to provide a debt waver for those who may be reassessed for Centrelink purposes due to the commutation of their pension product. These legacy pension products were concessionally treated for Centrelink assessment purposes. In changing their arrangements, these individuals are exposed to lookback assessments of up to 5 years.

We are aware of retirees who are hesitant to act due to concerns that they will be subject to lookback assessments. These are people who due to their age should be free to restructure their affairs, as is appropriate in their circumstances, as soon as possible.