



SMSF Association
Budget Submission
2026/27

January 2026



ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 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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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 four core themes of sector equity, legislative reforms, sector integrity, modernisation and simplification. Several measures are spotlighted below:

1. **Minimum Pension Underpayments.** Updated TR 2013/5 included an unexpected amendment, confirming the ATO's view, that where a pension fails to make the minimum payment, the pension ceases only for income tax purposes – and must be commuted for superannuation purposes, before a new pension can start again. This gives rise to several practical issues particularly when dealing with the unnecessary complexity created by the proportioning rules when there is a pension underpayment. A legislative amendment is required to remove the need for retrospective calculations of tax components for pension interests which fail the minimum pension standards in a particular income year.
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 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 thresholds could be significantly reduced and better aligned by linking to the general transfer balance threshold and associated indexation.
5. **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

An objective of the 2024 *'Delivering Better Financial Outcomes'* legislative amendments¹ was 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.'*² These measures provide greater certainty and consistency for APRA fund members and fund trustees alike in relation to advice received by the member regarding their interest in the fund.

The object of these reforms were the APRA regulated superannuation funds, with amendments made to both the superannuation³ and taxation laws⁴. While the amendments to the taxation laws apply to all regulated superannuation funds, amendments to the superannuation law addresses APRA funds only.

We acknowledge that that the original provisions in section 99FA⁵ were inserted in response to the findings of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. The 2024 amendments saw the revision of the existing provisions regarding the deduction of member's fees as they apply specifically to APRA funds.

However, Industry is concerned, that without a permissive provision made available within the superannuation law⁶ specifically for SMSFs, members risk being denied equal treatment to those who are members of APRA regulated funds. Further, for trustees, there is the risk of penalties being applied where the regulator considers such payments to be breaches of the sole purpose test⁷ the prohibition on the provision of financial assistance to a member of the fund⁸ and the operation of the early access tax penalty provisions⁹.

The closely held nature of SMSFs presents potential compliance jeopardy for SMSF trustees and members. The members and trustees¹⁰ of SMSFs are one and the same, heightening the risk of breaching existing law and compliance action being taken by the regulator. Rather than relying upon the regulator's interpretation of these provisions with respect to SMSFs, certainty should be encoded into superannuation law, to ensure that the sector has both certainty and equitable treatment. We believe this was the original intent of these provisions.

¹ *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* (Cth).

² Explanatory Memorandum, *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024* (Cth), pt 1 [1.8] – Royal Assent granted on 9 July 2024 [Act No 67 of 2024].

³ *Superannuation Industry (Supervision) Act 1993* (Cth).

⁴ *Income Tax Assessment Act 1997* (Cth).

⁵ *Superannuation Industry (Supervision) Act* (n 3).

⁶ *Ibid*.

⁷ *Ibid* s 62.

⁸ *Ibid* s 65(1)(b)(i).

⁹ *Income Tax Assessment Act* (n 4) s304-10.

¹⁰ *Superannuation Industry (Supervision) Act* (n 3) s 17A. 'Trustees includes two or more individual trustees or one or more directors of a corporate trustee.'

Advisers providing advice and services to SMSFs need to determine who is to receive those services. Advice is 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. Advice that is received by the member in relation to their personal interests is not an expense of the fund.

Current ATO guidance on financial assistance¹¹ states that the ‘*assistance given must be financial in nature*’¹², also noting that the ‘*term “financial assistance” is not defined*’.¹³ The provision of financial assistance is also said to include the ‘*taking on of an obligation, or any other arrangement that, on an objective assessment is in substance to provide financial assistance to a member or relative of a member using the resources of the SMSF.*’¹⁴

Expanded definitions note that the meaning of financial assistance ‘*refers to assistance “relating to monetary receipts and expenditures; relating to money matters.”*’¹⁵

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 be appropriate for the member.

All superannuants are entitled to have access to and receive financial advice and to protect and preserve their retirement benefits. Providing certainty on the deductibility of the cost of that advice from the member’s interest in their superannuation account, is paramount for all members whether that interest is held in an APRA fund or a SMSF.

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. Permissible fees would be those fees that 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).

Tax (Financial) Advice - 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.

¹¹ Australian Taxation Office, *Self Managed Superannuation Funds: giving financial assistance using the resources of a self managed superannuation fund to a member or relative of a member that is prohibited for the purposes of paragraph 65(1)(b) of the Superannuation Industry (Supervision) Act 1993* (SMSFR 2008/1, 21 November 2012)

¹² Ibid [7].

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid [52].

A ‘*Tax (financial) advice service*’ is defined 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.¹⁶

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.

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 guidance¹⁹ 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 affairs²⁰ 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.²²

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

¹⁶ *Tax Agent Services Act 2009* (Cth) s 90-15.

¹⁷ *Ibid* s 90-5.

¹⁸ *Ibid* s 90-15(3).

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* (n 4) s 25-5(1)(a).

²¹ *Ibid* 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 Also refer to: [Personal Transfer Balance Cap](#) and [Total Super Balance threshold complexity](#).

LEGISLATIVE REFORMS

Technical amendment

The SMSF Association's specialist auditor accreditation program is a recognised qualification²³ for approved SMSF auditors²⁴. The regulations currently refer to the Association as the 'SMSF Professionals' Association of Australia Limited,' also colloquially referred to as SPAA. This is the Association's 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 and creates uncertainty.

Despite previous requests, these technical amendments remain outstanding. We therefore ask Treasury, with the support of Government, to progress a technical amendment to update the regulations to reflect the Association's change of name.

Minimum Pension Underpayments

In June 2024, an update to TR 2013/5²⁵ included an unexpected amendment, confirming the ATO's view, that where a pension fails to make the minimum payment, the pension ceases only for income tax purposes – and must be commuted for superannuation purposes, before a new pension can start again.

This means the trustee must be able to evidence that the member has exchanged their rights in relation to the failed pension for income stream benefits from a new pension. Without this additional step, the new income stream will not be entitled to claim exempt current pension income (ECPI)²⁶.

This gives rise to several practical issues particularly when dealing with the unnecessary complexity created by the proportioning rules when there is a pension underpayment.

Given the fund's financial accounts and annual tax return are normally not completed for several months after the end of the income year, it is not uncommon for pensions which fail to pay the minimum pension in a particular income year, to remain undetected for several months into the following income year. By the time the trustees become aware of the pension underpayment for the previous financial year, several pension payments may have already been received by the member in the new income year. This means pension payments received not only during the income year in which the pension failed but also in the new income year prior to the pension being commuted, are required to be reclassified as lump sum withdrawals and a retrospective calculation of the taxable and tax-free components undertaken for each withdrawal.

The impacts of the tax free and taxable components of the member's balance, and the requirement for a retrospect recalculation is misaligned with practical fund administration. It creates an unnecessary administrative burden on trustees with little to no tax advantage.

²³ *Superannuation Industry (Supervision) Regulations 1994* (Cth), r 9A.01(3)(b).

²⁴ *Superannuation Industry (Supervision) Act* (n 3) pt 16 div 1A.

²⁵ Australian Taxation Office, *Income tax: when a superannuation income stream commences and ceases* (TR 2013/5, 26 June 2024).

²⁶ *Income Tax Assessment Act* (n 4) sub-div 295-F 'Exempt Income'.

Proposed solution: a legislative amendment is required to remove the need for retrospective calculations of tax components for pension interests which fail the minimum pension standards in a particular income year. This could be achieved, for example, by allowing the proportioning rule as determined on 1 July to apply to all withdrawals from the failed pension interest for the entire income year. This approach would not materially affect tax outcomes and preserves the integrity of the proportioning rules while removing a substantial administration burden.

For example, assume a member had a \$1 million pension with a 30% tax-free and 70% taxable split, and an accumulation balance of \$500,000 that was fully taxable. Due to a pension underpayment, their interests merge from 1 July in the year of the underpayment.

Rather than requiring recalculation for each withdrawal from the failed pension, the trustees would apply the proportioning rule as determined on 1 July for the entire income year. The combined interest would have a new 20% tax-free and 80% taxable split, which could be used consistently across all withdrawals in that income year.

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.

AFCA determinations²⁷ 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 a policy issue that needs to be addressed quite separately and distinct 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

²⁷ Examples include: *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).

- 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 have come to a head following AFCA's determinations. Despite numerous reviews and inquiries over the last 15 years, there have been no outcomes and no changes 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

While the legislative amendments which became law in June 2024²⁸ provided a partial remedy on the operation of the non-arm's length expenditure (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 is 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 incurrance 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.

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

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 guidelines²⁹ 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.

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 Determination³⁰ highlights a serious issue arising from the misalignment of the NALI/NALE³¹ provisions with the calculation, treatment, and classification of capital gains³² as statutory income.³³

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.

²⁹ 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.

³⁰ 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).

³¹ *Income Tax Assessment Act* (n 4) s295-550.

³² *Ibid* s 102-5: 'Capital gains tax- Method statement'.

³³ *Ibid* s295-10: 'Tax payable by superannuation entities – Method statement'.

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.

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 alone cannot entirely prevent poor and misleading advice. However, education together with continuing professional development,³⁴ the implementation of other policy measures, including targeting those providing unlicensed advice, 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.³⁵

ASIC's Report 575³⁶ observed:

³⁴ Australian Securities and Investments Commission, *Review of SMSF establishment advice* (Report No REP 824, 6 November 2025) 28

³⁵ Australian Securities and Investment Commission, *Improving the quality of advice and member experiences* (Report No REP 575, 28 June 2018).

³⁶ Ibid.

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

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.³⁷

We welcome the opportunity to further discuss these concerns with Government and Treasury to achieve the right policy settings for the profession and for the benefit and protection of current and potential future SMSF trustees.

MODERNISATION AND SIMPLIFICATION

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 \$1.6 million to \$2.1 million (from 1 July 2026), 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 and confusion. This is compounded by the lack of access for financial advisers and SMSF administrators to the ATO reports needed to obtain an individual's TBC³⁸.

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.

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

³⁷ Productivity Commission 2018, *Superannuation: Assessing Efficiency and Competitiveness*, Report no. 91

³⁸ Also refer to discussion at: [Tax \(Financial\) Advice - Access to Client Tax Reports](#)

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 1: TSB threshold tests

TSB Threshold ³⁹	Applicable Measure
\$300,000 ⁺	Work-test exemption – concessional contributions
\$500,000 ⁺	Catch-up concessional contributions
\$1.76m, \$1.88m, \$2.0m*	Bring forward non-concessional contribution caps
\$2.0m*	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

³⁹ Thresholds shown are those applicable as of 30 January 2026 and excludes any indexation amounts which may apply from 1 July 2026. Indexation is subject to CPI or AWOTE (as applicable).

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. This can result in indexation occurring at different time. This increases complexity and 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 grow their superannuation savings 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 two or three year bring forward cap applies.

Proposed Solution:

Simplify the NCC contribution rules by adopting a single contribution threshold through the removal of the current tiered approach. Doing so would permit members to utilise the NCC three year bring forward rule where the member's TSB is below the TSB threshold applicable to the year the contribution is made. Doing so would remove complexity and improve efficiency, ease administrative burden and costs across the superannuation system.

Table 2: 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 to 30 June 2026
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:

- 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.
- It brings consistency and simplicity to the operation of the caps.
- 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 deductible concessional contributions.

Despite these reforms, one element has continued unchanged - the notice of intent to claim a deduction⁴⁰ form (NOI) 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.

⁴⁰ Income Tax Assessment Act (n 4) s290-170.

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 occur 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 deductible. 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 the withdrawal of the 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.

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.

⁴¹ *Taxation Administration Act 1953* (Cth) sch 1 s 284-75(1).

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.

Member Notices and Elections – Other Contributions

Other aspects of the superannuation system require members to document and supply to fund trustees an election to classify certain contributions. These include downsizer contributions or contributions made under the small business capital gains concessions. These provisions require that the relevant notice be provided on or before the time the contribution is made. Noting that the contributions must be made within strict legislated time frames.

The current legislative design is adequate for a cheque-based payment systems whereby the contribution in the form of a cheque would have been sent to the fund with the relevant election form attached.

Payment systems have undergone significant modernisation, with very few cheque payments processed. Many bank accounts no longer provide cheque payment facilities, and members are actively encouraged or expressly limited to making payments electronically. While the electronic payment of contributions to a superannuation fund is more efficient and expedient, we now have a disconnect between the time a person actively makes an election, facilitates payment and supplies an election notice to the fund trustee.

Contributions and election notices are now received and processed separately. A significant disconnect occurs where an election must be posted, given the protracted times involved in the delivery, receipt and processing. However, timing issues do still arise where notices are provided electronically to their fund. The processing of elections is not immediate, and it is a common issue that the timing of payment and election do not align.

For members, the risk is high that the contributions will be received and processed before the election is separately received and processed by the fund. The consequences of this mismatch are significant as the member will be denied the opportunity to use these provisions and likely penalised for excess contributions.

Recommendations:

While employer contributions are required to be processed more quickly, the general proposition that other contributions need to be allocated to a member's account by the 28th day of month following contribution remains⁴².

Amendments are required to enable members sufficient time for trustees to receive and process member election notices and remove the timing mismatch between contributions made and elections received and processed.

Members should be permitted to have until the 21st day of the month following a contribution for the fund to receive their election notice. Funds would then have until the 28th day to correctly classify and allocate the member's contribution in accordance with the member's election notice.

⁴² *Superannuation Industry (Supervision) Regulations* (n 23) r 7.08

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. 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 manner. The modernisation of the temporary absence rules and the abolition of the active member test align 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.