

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

YEAR	CHANGE
<b>2021</b>	
Indexation of Transfer Balance Cap	From 1 July 2021, the Transfer Balance Cap will increase to \$1.7m, although the full increase will not be available to all members, meaning individual Transfer Balance Caps will apply for the first time The Total Superannuation Balance limit will also increase to \$1.7m from 1 July 2021
Contribution cap increases	Concessional and Non-concessional contribution caps increase to \$27,500 and \$110,000, respectively, from 1 July 2021, with bring forward non-concessional contributions maximum increasing to \$330,000 over 3 years
Bring forward contributions - 65 & 66 years of age	Treasury Laws Amendment (More Flexible Superannuation) Act 2021 - extends 3-year non-concessional contributions bring forward rule to those under 67 years (i.e., aged 65 & 66), effective from 1 July 2020. Also: - removed excess concessional contribution charges from 1 July 2021; and - permits recontribution of COVID-19 early release of super amounts as non-concessional contributions without impacting caps
6 member SMSFs	Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021 - increases maximum number of SMSF members from 4 to 6, applicable from 1 July 2021
Best financial interests of beneficiaries	Treasury Laws Amendment (Your Future, Your Super) Act 2021 - mostly related to public offer funds, but also impacts SMSFs. Changed SIS Act s 52B(2)(c) requirement for SMSF trustees, from acting in the best interests of beneficiaries to act in the best <u>financial</u> interests of beneficiaries. Introduced new SIS Act s 52B(2A) - payments to be in best financial interests of beneficiaries
Minimum pension 50% reduction	Reduction to continue for 2021/22 financial year
ATO releases	Some ATO releases impacting SMSF trustees are: - What and when to report (QC 57300) mainly relating to transfer balance cap events - Valuation guidelines for SMSFs (QC 26343) which updates the ATO requirements concerning the valuation of SMSF investments - Collectables and personal use assets (QC 42462), an update and reminder of the compliance requirements, such as insurance - SuperStream changes for SMSFs (QC 64222) - includes SMSF roll-overs from 1 October 2021
Exempt current pension income (ECPI) calculations	Treasury has released exposure draft legislation which aims to simplify the process, and provide a choice to trustees, in calculating ECPI
Super Guarantee Rate Increase	SG rate increases from 9.5% to 10% from 1 July 2021

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

May 2021 Budget Announcements	The Government announced, as part of the May 2021 Budget, that it planned to: <ul style="list-style-type: none"> <li>- permit the commutation of lifetime, life expectancy and market linked pensions for a limited time;</li> <li>- extend the central control and management test safe harbour period from two to five years for SMSFs with non-resident members;</li> <li>- abolish the active member test for non-resident SMSF members;</li> <li>- remove the work test for people aged 67 to 74, and to allow them to use the bring forward rule for non-concessional contributions</li> </ul>
SMSF Financial Statements	The Australian Accounting Standards Board released an amended accounting standard effective from 1 July 2021. SMSFs must ensure their trust deed does not require compliance with the AAS standard, if they wish to continue with Special Purpose Financial Statements
<b>2020</b>	
COVID-19 Superannuation Relief Measures	Three major superannuation related relief measures announced are: <ul style="list-style-type: none"> <li>- Temporary early release of superannuation. Subject to meeting certain conditions and obtaining approval from the ATO in the form of a determination, members may access a single payment of up to \$10,000 from their super in each of the 2019/20 and 2020/21 financial years. ATO released Super CRT Alert 004/2020 regarding early access processes;</li> <li>- Temporary reduction of the minimum pension drawdown amount. For account based pensions, transition to retirement income streams and market linked pensions, the minimum drawdown amount has been halved for both the 2019/20 and 2020/21 financial years; and</li> <li>- Temporary relief from certain compliance requirements regarding rental arrangements where an SMSF leases an asset to a related party, and that party has incurred financial difficulties as a result of COVID-19</li> </ul>
Bills introduced to Parliament	Three superannuation related Bills still before Parliament, having passed the Lower House but not yet the Senate covering: <ul style="list-style-type: none"> <li>- Death Benefit rollovers which include an untaxed element;</li> <li>- Commutation of Capped Defined Benefit Income Streams and Transfer Balance Account adjustment;</li> <li>- Defined Benefit Pension reversions and Transfer Balance Account impact when income reduces after initial period;</li> <li>- ATO to transfer Eligible Retirement Fund balances to member's fund - possibly an SMSF; and</li> <li>- Enterprise agreement workers to have the right to choose fund to which superannuation guarantee contributions are made</li> </ul>
Exposure Draft Bill & Regulations	Released for consultation (expired 3 April 2020), a draft Bill to permit members aged 65 & 66 to utilise the non-concessional contribution 3 year bring forward rule, and draft Regulations amending the first year for the work test to age 67, and moving the maximum age for spouse contributions from 69 to 74
2020 Budget	Deferred from May 2020 to 6 October 2020
ATO SMSF Regulator's Bulletin SMSFRB 2020/1	ATO issued SMSF Regulator's Bulletin, SMSFRB 2020/1, titled 'Self-managed superannuation funds and property development', providing guidance where SMSFs plan to enter into arrangements, with related or unrelated parties, involving the purchase and development of real property for subsequent disposal or leasing

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

ATO Legislative Instrument SPR 2020/1	ATO issued a Legislative Instrument, SPR 2020/1, titled 'Superannuation Industry (Supervision) In-house Asset Determination - Intermediary Limited Recourse Borrowing Arrangement Determination 2020' which effectively excludes a type of limited recourse borrowing arrangement from being an in-house asset
<b>2019</b>	
SMSF Investment Strategies	ATO writes to 17,700 SMSF trustees, and auditors of those funds, regarding limited diversification of assets, reminding that they must have considered the risks of such limited diversification. ATO subsequently issued guidance as to requirements for investment strategies
SMSF Non-Arm's Length Expenses (NALE)	Legislation to introduce NALE to be added to NALI requirements. Royal Assent 2 October 2019. ATO released draft Law Companion Ruling LCR 2019/D3 - potentially impacts SMSFs where related parties prepare financial statements etc at below market rates
Case Law and Defective Trust Deeds	Further case law has evolved, mostly relating to superannuation death benefit issues and lack of proper guidance in the Trust Deed
Superannuation Guarantee	Government has introduced legislation to permit individuals with multiple employers to nominate specific employers to be exempt from Superannuation Guarantee obligations  Also, legislation setting the base amount on which Superannuation Guarantee is calculated, when the employee salary sacrifices. ATO subsequently releases a Guidance Note GN 2020/1 - Salary sacrifice and super guarantee
Work Test and Contributions	Regulations permitting certain individuals to make contributions in the first year they do not meet the work test (provided total super balance is under \$300k)
Limited Recourse Borrowing	Legislation introduced to include a portion of loans arranged post 1 July 2018 in a Member's Total Superannuation Balance. ATO updated LCR with addendum LCR 2016/12A5 to include TSB impact. ATO also updated its LRBA Q&As on 28 August 2019
Anti-detriment deductions cease	Ability to 'claw back' taxes previously paid, following the death of a member who died before 1 July 2017, ceased on 30 June 2019
2019 Budget announcements	Include changes to actuarial certificate requirements, as well as removing some segregation rules, extending spouse contributions to age 74 and allowing members aged 65 & 66 to make voluntary contributions without needing to meet the work test
<b>2018</b>	
Downsizer Contributions & First Home Saver Contributions	Commenced 1 July 2018
Personal Deductible Contributions	'10% Rule' removed for 2017/18 financial year and subsequent years, enabling personal deductible contributions regardless of extent of employment income
Reaching Preservation Age	Minimum age for reaching Preservation Age after 1 July 2018 is 57 years

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

Conversion of Transition to Retirement Income Streams from Accumulation Phase to Retirement Phase	Automatic conversion of a Transition to Retirement Income Stream from Accumulation Phase to Retirement Phase when the Member reaches age 65. In other instances, conversion will occur when the Member meets a Condition of Release with a Nil Cashing Restriction before age 65 and notifies the Trustee. In each instance, the Trustee will need to report the conversion through the Transfer Balance Account Report (TBAR)
Reversion of Transition to Retirement Income Streams	Removal of requirement for nominated reversionary beneficiaries of Transition to Retirement Income Streams to have personally met a Condition of Release with a Nil Cashing Restriction before reversion could occur
ATO SMSF Regulator's Bulletin	ATO issued the first of its SMSF Regulator's Bulletins, SMSFRB 2018/1, titled 'The use of reserves by self-managed superannuation funds', providing guidance on the types of reserves acceptable for an SMSF
Exempt Current Pension Income & Actuarial Certificates	ATO has directed a segmented approach when calculating Exempt Current Pension Income entitlements for SMSFs with segregated and unsegregated periods within a year
<b>2017</b>	
Superannuation Reform Legislation	Action required in respect to pension balances, asset segregation, capital gains and other matters prior to 30 June 2017. Post 1 July 2017, various restrictions apply, with penalties in the form of taxes for exceeding limits. SMSF trust deeds need to provide sufficient powers to enable compliance with new legislation
ATO Law Compliance Guidelines (later converted to Law Companion Rulings)	ATO issued guidelines following the passing of the Superannuation Reform legislation including coverage of Transfer Balance Caps, TRISs and other income streams, CGT relief, contributions issues and matters concerning Total Superannuation Balance Caps
Total Superannuation Balance Caps	Introduced as part of the Superannuation Reform legislation, Total Superannuation Balance Caps impact the ability of a super fund member to make non-concessional and some other types of contributions to superannuation in a particular year
Transfer Balance Caps	Introduced as part of the Superannuation Reform legislation, Transfer Balance Caps limit the amount an individual may have in superannuation income streams (excluding Transition to Retirement Income Streams)
Electing to treat payments not as an income stream	The Superannuation Reform legislation included removal of the ability to elect to treat payments as lump sum instead of as an income stream, but have those payments meet the minimum pension requirements
Transition to Retirement Income Streams	From 1 July 2017, Transition to Retirement Income Streams may continue but the income generated by assets supporting the income stream will cease to be exempt from tax, for Transition to Retirement Income Streams in Accumulation Phase
Removal of anti-detriment deductions	Ability to 'claw back' taxes previously paid, limited to death of a member prior to 1 July 2017, provided benefits paid by 30 June 2019
Limited Recourse Borrowing deadline	Deadline of 31 January 2017 imposed by ATO to ensure loans to SMSF by a related party are brought under safe harbour provisions or are otherwise deemed to be on commercial terms

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

<b>2016</b>	
Superannuation Reform Legislation	Legislation to implement the first two tranches of the May 2016 Budget announcements received assent on 29 November 2016
ATO Case Studies	ATO issues a range of case studies aimed at ensuring SMSF trustees and their advisers are aware of legislative and regulatory requirements in a range of SMSF compliance and investment scenarios
Qualifying Recognised Overseas Pension Scheme (QROPS)	Requirement for transfers from UK funds. SMSF trust deed must meet new requirements of UK to enable transfer of benefits
Collectables and Personal Use Assets	Exemption from storage and insurance rules for some assets ceased 1 July 2016
Self Insurance by superannuation funds	Superannuation funds not able to self insure from 1 July 2016
Limited Recourse Borrowing Safe Harbour guidelines	ATO issued guidelines in respect to when Limited Recourse Borrowing arrangements with related party lenders would effectively be considered to be at arm's length
Electing to treat payments not as an income stream	ATO issued a Private Binding Ruling which indicated election to treat payment as a lump sum was possible. SMSF trust deed needs to enable such election
<b>2015</b>	
Superannuation Income Streams following death of pension recipient	Regulations introduced to permit the income on assets supporting an income stream to remain tax free for a period of time after the death of the pension recipient. SMSF trust deeds should contain sufficient flexibility
SuperStream	Commences from July 2015 (delayed from 2014). Provisions in SMSF trust deeds should be reviewed to ensure trustees are permitted to correspond by electronic means
Various cases decided regarding effectiveness of Binding Death Benefit Nominations	Cases covered a variety of scenarios. Trust deeds should provide for different circumstances of individuals providing Binding Death Benefit Nominations
Refund of excess non-concessional contributions	Legislation passed. SMSF trust deed should permit refund of excess non-concessional contributions
<b>2014</b>	
Tax and Superannuation Laws Amendment (2014 Measures No 1) Act 2014 receives royal assent	Provides powers to the ATO to direct rectification of breaches, education for SMSF trustees and/or for the imposition of administrative penalties on SMSF trustees
Self Managed Superannuation Funds (Limited Recourse Borrowing Arrangements – In-house Asset Exclusion) Determination 2014	ATO legislative instrument created to ensure assets acquired under SMSF borrowing arrangements do not become in-house assets if they continue to be held by the bare trustee following repayment of the loan

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

Insurance in SMSFs	Restrictions introduced on types of insurance able to be obtained for members of some SMSFs from 1 July 2014. Some 'grandfathering' available for existing members, so specific provisions are required in the SMSF's trust deed
Segregation of pension assets in SMSF	ATO Tax Determinations TD 2013/D7 (withdrawn but to be re-introduced) and TD 2014/7 regarding requirements when segregating fund assets to ensure availability of pension tax concessions
Superannuation Guarantee contributions	Superannuation Guarantee Contribution rates increased from 1 July 2014
<b>2013</b>	
Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013 receives royal assent	Changes introduced in relation to excess contributions and the ability to refund them. SMSF trust deed should permit refund of excess non-concessional contributions
Private Binding Ruling released by ATO regarding related party SMSF Borrowing transactions	Clarified in some respects the requirements relating to the terms of related party loans to SMSFs
Binding Death Benefit Nomination court rulings	Outcomes of two court cases, Ioppolo & Hesford v Conti and Wooster v Morris provide greater guidance on what a deed should contain in relation to the ability for members to utilise a BDBN, and the deed requirements of a non-lapsing BDBN
Tax Office Ruling TR 2013/5 regarding SMSF Pensions	Tax Office Ruling outlines what documentation should be in place for a pension to be effective, including deed provisions
Pension and tax following death of a member	Proposed legislation deeming an income stream as continuing for a period of time after the death of the recipient
Superannuation Guarantee contributions	Maximum age of 70 for Superannuation Guarantee contributions removed from 1 July 2013 Contribution rates increase from 1 July 2013
Registration of SMSF Auditors	Audits of SMSFs after 1 July 2013 must only be conducted by an auditor registered with ASIC
SMSF Regulatory Levy	Adjustment to amount of levy and timing of payment
<b>2012</b>	
SMSF investment Strategy Changes	Change to SIS Regulations require Investment Strategies to be reviewed regularly and for trustees to consider insurance for members
Valuation of assets in SMSF accounts	Assets must be valued at market value each year, commencing from 2012/13 year
Share trading losses	Legislation directing that share trading gains and losses are a capital in nature and not to be treated as income for tax purposes
<b>2011</b>	
Deductibility of TPD Premiums – ATO Tax Ruling TR 2012/6	Changes introduced to the ability of a Fund to claim a deduction for TPD premiums, with full deduction for 'any occupation' and partial for 'own occupation'

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

Collectables and Personal Use Assets	Changes to rules for ownership of Collectables and Personal Use Assets by SMSFs
<b>2010</b>	
SMSF Borrowing	Changes to legislation governing SMSF Borrowing removed section 67(4A) and replaced with new legislative provisions outlined in sections 67A & 67B of the SIS Act
<b>2009</b>	
Limit on Concessional Contributions	Reduced from \$50,000 to \$25,000 if under 50 years of age for 2009/10 and later years
Limit on Non-Concessional Contributions	Changed to 6 times the limit for under 50 years of age Concessional Contributions (e.g. 6 x \$25,000 = \$150,000)
Pre 1999 Unit Trusts	Ability to acquire units through re-investment of distributions or otherwise, without becoming in-house assets, ceased

## LEGISLATIVE AND REGULATORY SMSF CHANGES 2007-2021

<b>2008</b>	
Removal of Same-Sex Discrimination	Includes Superannuation Acts & Regulations
Superannuation Guarantee Contributions	Further Relief for Late Payment of SG Contributions
Temporary Residents' Benefits	If permanently departed Australia for 6 months, unclaimed benefits to be paid to ATO
<b>2007</b>	
Simpler Super/Better Super	Commenced 1 July 2007
Contributions Splitting	Limited to Concessional Contributions. Non-Concessional Contributions no longer able to be 'split' between Spouses
Tax on Benefits	No tax on benefits paid to individuals over age 60 - part of Simpler Super
Transferring Super	Transferring between Funds made easier
Pensions and Annuities	New Minimum Standards as part of Simpler Super
Account Based Pensions	Introduced - Deeds must be updated to permit payment
Transition to Retirement Income Streams	Changed from Transition to Retirement Pensions - Deeds must be updated to permit payment
Market Linked Pensions	Only able to commence in SMSFs from 20 September 2007 if rolled over from another Complying Pension
Allocated Pensions	Unable to commence from 20 September 2007
Contributions Caps	Introduced as part of Simpler Super. Penalty for exceeding Contributions Caps
Superannuation Balance Components	Streamlined as part of Simpler Super. Calculation of Tax Free Component comprising pre 1983 amount & other redundant Components
Government Co-Contribution	Extended to Self-Employed
Terminal Illness	Tax Free Benefits able to be paid to those with a Terminal Illness
Superannuation Death Benefits	Changes to tax treatment if paid to Non-Dependants
Transfers from Overseas Superannuation Funds	Changes to treatment. Generally included under Non-Concessional Contributions Cap
SMSF Borrowing	SMSFs able to borrow under 'Instalment Warrant Arrangement' (s 67(4A) of SIS Act)