Australian Government

The Treasury

Regulation impact statement – superannuation tax reform

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Background

Australia's retirement income system is made up of three pillars: the age pension, compulsory superannuation, and other private saving (voluntary superannuation and other household savings including the family home).

This regulation impact statement (RIS) focuses on the compulsory superannuation and voluntary savings pillars and examines how Australian's tax and superannuation system could be amended to improve sustainability, flexibility and integrity.

Compulsory superannuation requires most Australians to save at least 9.5 per cent of their ordinary time earnings throughout their working life for their retirement. This amount is legislated to rise to 12 per cent by 2025. Australians can also make additional voluntary contributions to superannuation. Both compulsory contributions made by employers and voluntary superannuation contributions made by individuals can receive concessional tax treatment to provide incentives for people to save for retirement. Australians can also choose to save for retirement outside superannuation.

As Australia's population ages and fiscal pressures increase, it is important to ensure that the tax concessions for superannuation are affordable and well-targeted. Additionally, it is important to ensure that Australia's superannuation system provides flexibility for individuals, especially those with broken work patterns or variable incomes, to enable them to make contributions when they can. It is also vital that confidence in Australia's superannuation system is maintained by taking action to improve the sustainability and integrity of the system to ensure it is being used for its core purpose of providing income in retirement to substitute or supplement the age pension.

The Government's *Re:think Tax discussion paper* (*Re:think*) released in March 2015 was certified by Treasury as the interim RIS for the superannuation tax package prior to consideration of the measures canvassed in this RIS. Additionally, the lifetime non-concessional cap measure (Sustainability (2)) was subject to a short form RIS process prior to the 2016-17 Budget as it was considered by Treasury to be 'fundamentally an integrity measure to protect revenue'.

1. The problem

1.1 As Australia's population ages it is becoming increasingly important to ensure that the superannuation system is based on a clearly stated objective, is providing the right incentives for individuals to save, and is flexible enough to ensure all Australians are given the opportunity to enjoy a fulfilling retirement.

1.2 The Government has agreed to adopt the recommendation of the 2014 Financial System Inquiry (FSI) to enshrine the objective of superannuation in legislation, which will provide a clear framework for superannuation policy and a way to assess whether the system is meeting its objective. The objective of superannuation, as recommended by the FSI, is to 'provide income in retirement to substitute or supplement the age pension'.

1.3 The proposed new objective has been an important anchor for the development of the other superannuation changes announced in the 2016-17 Budget and canvassed in this RIS.

1.4 The problems in the superannuation system that have been identified in this RIS have been grouped into three categories:

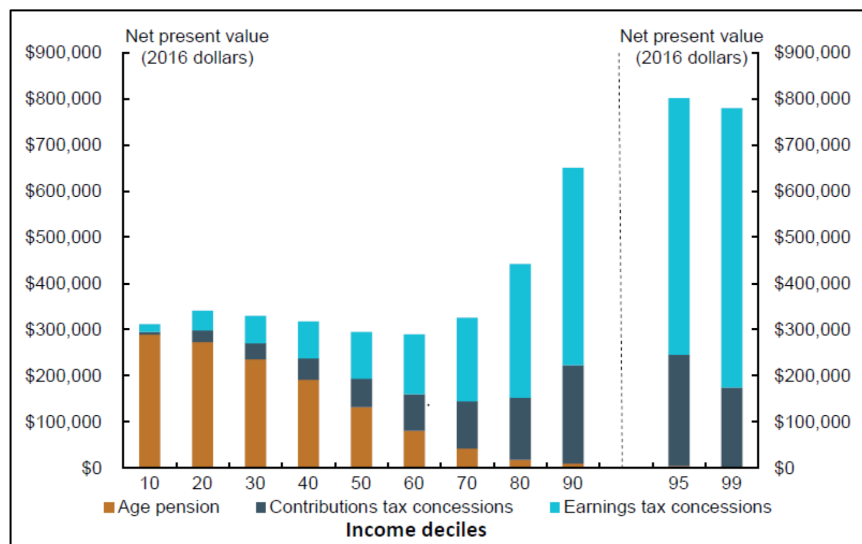
- *Sustainability:* Appropriately targeting tax concessions;
- *Flexibility:* Adjusting the settings for modern work patterns; and
- *Integrity:* Ensuring the system meets its core purpose.

Sustainability

1.5 At present, a number of superannuation tax concessions are poorly targeted – a significant proportion of these go to people who will save for their retirement regardless of the concessions, and who will never depend on the age pension. Improving the targeting of tax concessions will increase fairness and make the superannuation system more sustainable while fiscal challenges are ongoing and pressures from population ageing grow.

1.6 Superannuation tax concessions accrue disproportionately to high income earners as shown in Diagram 1.1, with significant revenue cost to the Government.

Diagram 1.1 Distribution of lifetime total Government support for retirement under current policy settings



1.7 The current superannuation tax concessions are poorly targeted and unsustainable. Many submissions in response to *Re:think* highlighted concerns in this regard, as did public commentary from industry bodies[1] and 'think tanks'.[2]

[1] Australian Superannuation Funds, *Submission response to the tax discussion paper.*

1.8 While there was diverging views on how the system should be changed, there was clear agreement amongst almost all stakeholders that something needed to change.

1.9 Issues with the current superannuation tax concessions were also identified by the FSI which noted that tax concessions in the superannuation system are not well targeted at improving retirement incomes.

1.10 The FSI outlined some of the consequences of this issue which included:

- increasing the cost of the superannuation system to taxpayers;
- increasing distortions due to higher levels of taxation elsewhere in the economy and due to the differences in the way other savings vehicles are taxed; and
- contributing to policy instability, which imposes unnecessary costs on superannuation funds and their members.[3]

Flexibility

1.11 The superannuation system currently offers little flexibility for those who take time out of work, work part time, or have 'lumpy' income and therefore have periods in which they make no or limited contributions to superannuation.

1.12 Superannuation is based on the premise that contributions will be made to superannuation throughout an individual's working life. As it is currently structured the superannuation system favours higher income earners who work full-time, without breaks, for the entirety of their working life. However, for a range of reasons, individuals are increasingly having broken work patterns and working flexibly resulting in, for example, women typically having less superannuation than men at the end of working life.[4]

1.13 In these cases, concessional contribution caps based on steady contributions can mean that superannuation is less likely to provide adequate retirement income for those whose working patterns do not fit this structure. For example in 2013-14, the average superannuation balance for males was around $120,000 compared to around $90,000 for women.[5] Whilst this difference is driven by a number of complex and interrelated factors, inflexibility in the superannuation system is a contributing factor.

1.14 Australians are also expected to live longer and do so in better health, and more Australians will continue to lead an active lifestyle and participate in the workforce after they reach traditional retirement age. Participation rates among those aged 65 and over are projected to increase strongly, from 12.9 per cent in 2014-15 to 17.3 per cent in 2054-55. Older people have been able to extend their labour force

[2] Grattan Institute, media release, 'For fairness and a stronger Budget, it is time to target super tax breaks', 24 November 2015.

[3] The Australian Government, The Treasury, *Financial System Inquiry: Final Report,* November 2014, p. 90.

[4] Senate Economics References Committee, *'A husband is not a retirement plan' Achieving economic security for women in retirement*, April 2016, p. xi.

[5] ABS, *Gender Indicators, Australia*, February 2016, cat. No 4125.0, Table 25.

participation as a result of the improvements that have led to longer life expectancy, the rise of less physically demanding work and new technologies.[6] The superannuation system is not sufficiently responsive to these changing work patterns.

Integrity

1.15 The Government will introduce legislation to provide that the objective of superannuation is ‘to provide income in retirement to substitute or supplement the age pension’. There are currently instances in which the superannuation system is used for estate planning and tax minimisation purposes, which is not consistent with the proposed objective of superannuation.

1.16 The FSI also cited the existence of a large number of accounts with assets in retirement in excess of $5 million, which could each receive annual tax concessions more than five times larger than the single age pension.[7] Individuals with very large superannuation balances are able to benefit from tax concessions on funds that are likely to be used for purposes other than providing retirement income, such as tax-effective wealth management and estate planning.

1.17 Confidence in the superannuation system risks being undermined when the system is being used for reasons other than its core purpose. Ensuring that superannuation is solely used to provide income in retirement to substitute or supplement the age pension, rather than for tax minimisation or estate planning purposes, will make the system more sustainable.

2. Why is Government action needed?

2.1 There is a strong case for changes to be made to the superannuation system to address identified problems and thereby improve the system’s sustainability, flexibility and integrity.

2.2 The superannuation system is a detailed regulatory framework established by the Government. Consequently, there are limited opportunities for the market to make changes to address these concerns; Government intervention is therefore necessary to address these issues.

2.3 In *Re:think*, the Government identified superannuation as a priority for tax reform. Submissions on the discussion paper also highlighted that Government intervention needs to be comprehensive and have a ‘whole of system’ approach. The breadth of concerns raised in the submissions indicated that comprehensive changes are needed rather than disjointed ad hoc reform.

[6] The Australian Government the Treasury, *2015 Intergenerational Report: Australia in 2055*, March 2015, p. ix.
[7] The Australian Government the Treasury, *Financial System Inquiry: Interim* Report, July 2015, p. 2-120.

3. Policy options

3.1 Three policy options were considered to address the various problems identified in the problem section of this RIS. The policy options considered a number of measures which targeted the three primary problems of sustainability, flexibility and integrity.

- Option 1 – No policy change.
- Option 2 – A suite of policy measures to address the problems of sustainability, flexibility and integrity.

  The packaging of one or more of the following measures

  To improve sustainability within the superannuation system:

  - Better targeting tax concessions;
  - Reforming the taxation of non-concessional contributions;
  - Reforming the taxation of concessional contributions;
  - Introduction of the low income superannuation tax offset (LISTO);

  To improve the flexibility of the superannuation system:

  - Improving access to concessional contributions;
  - Allowing catch-up concessional contributions;
  - Extending the spouse tax offset;
  - Harmonising contribution rules for older Australians;
  - Enhancing choice in retirement income products;

  To strengthen the integrity of the superannuation system:

  - Improving the integrity of transition to retirement income streams;
  - Abolition of the anti-detriment rule;
  - Streamlining administration.
- Option 3 – All of the measures announced in the 2016-17 Budget superannuation reform package.

3.1 Option 1 - No policy change

3.2 Under this option, no new actions would be taken by the Government and existing policy settings would continue to be relied upon.

3.2 Option 2 – A suite of policy measures to address the problems of sustainability, flexibility and integrity

3.3 Under this option, one or more of the measures which address the sustainability, flexibility and integrity issues identified in the problem section could be packaged together to form a suite of measures to meet the primary objective of the superannuation system.

3.4 This option would enable the Government to implement a suite of measures to achieve the highest net benefit while taking into consideration the Government's broader fiscal strategy.

3.5 This option would help to address the three key issues identified in the problem section, consistent with the objective of the superannuation system, helping to:

- strengthen the sustainability of the superannuation system by better targeting tax concessions;
- improve the flexibility of the superannuation system; and
- enhance the integrity of the superannuation system.

Consideration of the objective of the superannuation system in the analysis of the measures

3.6 The Government has determined that the primary objective of superannuation is 'to provide income in retirement to substitute or supplement the age pension.' The subsidiary objectives which support the primary objective provide a framework for assessing the compatibility of a measure with this primary objective. The subsidiary objectives are to: facilitate consumption smoothing over the course of an individual's life; manage risks in retirement; be invested in the best interest of superannuation provider members; alleviate fiscal pressures on Government from the retirement income system; and be simple, efficient and provide safeguards.

3.2.1 Measures to improve the sustainability of the superannuation system

3.7 The following measures would improve the sustainability of the superannuation system by improving the targeting of superannuation tax concessions to those who need incentives to save by reducing concessions for high wealth individuals, keeping concessions for other individuals unchanged and providing support to low income earners. These measures would ensure that tax concessions continue to encourage saving in retirement, boosting incomes in retirement and reducing the reliance on the age pension.

3.8 In effect these measures would be expected to improve the efficiency of the superannuation system, facilitate consumption smoothing for all individuals over their lifetime and reduce fiscal pressure on the Government from the retirement income system.

Better targeting tax concessions

3.9 To improve sustainability, the Government considered limiting the extent of the tax concessions that apply to superannuation accounts that have entered the retirement phase. Two different approaches were considered to achieve this goal.

3.10 The first approach involves introducing a cap on the total amount of superannuation that can be transferred into an earnings tax-free retirement account. This approach would limit the amount that high wealth individuals can benefit from the tax-free retirement phase. Under current policy settings, earnings on assets supporting a retirement income stream are not taxed. This disproportionately benefits people with high account balances, providing significant incentives for wealthy individuals to use earnings tax exempt retirement phase accounts as a tax minimisation vehicle to accumulate excessive amounts of wealth.

3.11 The transfer balance cap would be set at $1.6 million, and apply from 1 July 2017. A cap of $1.6 million is around twice the level of assets at which access to the age pension ceases. Superannuation savings accumulated in excess of the cap could remain in an accumulation superannuation account, where the earnings would be taxed at 15 per cent, or could be removed from the superannuation system. Individuals already in retirement as at 1 July 2017 with balances in excess of $1.6 million would need to either transfer the excess amount back into an accumulation superannuation account (where earnings would be taxed at 15 per cent); or withdraw the excess amount from their superannuation.

3.12 The cap would index in $100,000 increments in line with the consumer price index, just as the age pension assets threshold does. A proportionate method which measures the percentage of the cap previously utilised would determine how much cap space an individual has available at any single point in time. For example, if an individual transfers $800,000 when the cap is $1.6 million, they would have used 50 per cent of the transfer balance cap. If they wish to make another transfer at some point in the future they would only be able to do so up to 50 per cent of the level of the cap at that point in time. Individuals who breach the cap would be subject to appropriate consequences to ensure excess capital is not retained in the retirement phase.

3.13 The value of defined benefit pensions, and other pension and annuity products, would also be determined and credited against an individual's cap space. However, unlike account based products, many defined benefit pensions, and certain legacy pension and annuity products (that is, commenced prior to 1 July 2017), cannot be commuted. Consequently, an alternative approach would apply in these circumstances where excess capital cannot generally be removed from retirement phase. This approach would impose additional tax on individuals who receive pension payments over $100,000 per annum.

3.14 Members of unfunded defined benefit schemes and constitutionally protected funds (untaxed schemes) receiving defined benefit pensions would continue to be taxed at full marginal rates; however, the 10 per cent tax offset would be capped at $10,000

from 1 July 2017 (that is, it would not apply to any untaxed source benefits above the $100,000 threshold). Members of funded defined benefit schemes (taxed schemes) would have 50 per cent of their pension amount over $100,000 taxed at their marginal rate.

3.15 Other possible approach: tax retirement-phase earnings above a threshold (this was not progressed as outlined in paragraph 4.40). This approach would limit the extent of superannuation tax concessions in the retirement phase by imposing a tax on superannuation earnings in the retirement phase that exceed a particular earnings threshold. In contrast to a transfer balance cap there would be no cap on the amount a person could transfer into a retirement phase account but earnings over a certain threshold would be subject to taxation. This approach would be a more complex way of improving fairness and sustainability of the superannuation tax concessions without materially affecting retirement incomes.

Reforming the taxation of non-concessional contributions

3.16 Non-concessional contributions are generally voluntary contributions into superannuation made out of an individual's post-tax income. Earnings on these contributions are taxed at a flat-rate of 15 per cent in accumulation accounts and then become tax free when transferred into a retirement account.

3.17 Individuals can currently make non-concessional contributions of $180,000 per year (or $540,000 every three years for individuals under 65). These generous annual caps are poorly targeted and allow wealthy individuals the opportunity to contribute large sums to the concessionally taxed superannuation environment.

3.18 In the 2016-17 Budget, the Government announced that it would replace the current annual non concessional contributions caps with a $500,000 lifetime cap. The lifetime non-concessional cap would help improve the sustainability of the superannuation system by targeting the tax incentives and would strengthen public confidence that the system is being used to achieve the primary objective of increasing retirement incomes.

3.19 In assessing the amount of an individual's non concessional contributions as at 7:30 pm (AEST) on 3 May 2016, for lifetime cap purposes only non-concessional contributions made since 1 July 2007 would be taken into consideration, as this is the date from which the Australian Taxation Office (ATO) has reliable contribution records.

3.20 This approach was subject to a short form RIS process prior to the Budget which is at Appendix A.

3.21 On 15 September 2016, the Government announced it would replace the lifetime cap with a $100,000 annual cap, for a two or three year bring forward period, available to certain individuals with superannuation balances below the transfer balance cap (currently $1.6 million).

3.22 This approach was identified through consultation with the industry and other stakeholders. The approach retains the flexibility to accommodate lump sum contributions, for example from the sale of a property or an inheritance.

3.23 This approach would also target tax concessions to those Australians who have an aspiration to maximise their superannuation balances and reach the transfer balance cap (if implemented) for their retirement. Individuals with a balance of $1.6 million or more would no longer be eligible for non-concessional contributions. This would ensure those who have saved well in excess of what is required to be self-sufficient in retirement would not be able to continue to access further concessional tax treatment by making after-tax contributions.

Reforming the taxation of concessional contributions

3.24 Concessional superannuation contributions are taxed in the hands of the superannuation provider at a flat rate of 15 per cent. If an individual's concessional contributions exceed their annual concessional contribution cap (currently $30,000 for those aged 49 and under at the end of the previous financial year; $35,000 otherwise), the amount of the excess is included in the individual's assessable income and taxed at marginal income tax rates (and the individual receives a tax offset to account for the tax paid by the provider). Additionally at present, individuals with income exceeding $300,000 pay an additional 15 per cent Division 293 tax on their concessional contributions to the extent they are above the threshold for Division 293 tax to apply.

3.25 The current treatment means that high income earners disproportionately benefit from the concessions both because they have more savings and because the effective discount on their marginal rates for contributions taxed at the flat 15 per cent rate is greater. As high income earners generally save for their retirement, regardless of tax incentives, these concessions are poorly targeted.

3.26 This measure would lower the concessional contributions cap to $25,000 (indexed by Average Weekly Ordinary Time Earnings (AWOTE)) and the threshold for the Division 293 tax to $250,000, from 1 July 2017.

3.27 Both of these elements deliver targeted reductions in the tax concessions provided to those individuals who would not require additional income support in retirement.

3.28 Reducing the annual cap on concessional contributions would require high wealth individuals to hold a larger quantum of their retirement savings outside the concessional superannuation environment. This reduces the ability of these people to utilise the tax advantage of the superannuation system as a means of storing wealth in a concessional taxed environment.

3.29 Capping concessional contributions at $25,000 per year (indexed in $2,500 increments in line with AWOTE) would still allow individuals to contribute more than is needed for an adequate retirement income if they have the ability to do so, without providing excessive access to the concessional superannuation environment.

3.30 Additionally, lowering the Division 293 income threshold to $250,000 would ensure the relative tax concession provided to those on high incomes (compared to tax on other income) is more closely aligned to the concession provided to average income earners. Mercer have stated that they support this change on the grounds it will improve the fairness of the superannuation tax concessions.[8]

3.31 Existing processes for the administration of the concessional contributions caps and the imposition of the additional 15 per cent Division 293 tax on contributions (including the ability to withdraw the excess from superannuation to pay the additional liability), would be maintained.

3.32 This measure would apply in a broadly commensurate way to members of defined benefit schemes and constitutionally protected funds. Under existing treatment, the notional taxed contributions of members of taxed defined benefit schemes are used to assess liability for excess contributions tax. Individuals who were members of these schemes prior to May 2009 have these contributions capped at the level of the concessional contributions cap.

3.33 Members of untaxed defined benefit schemes and constitutionally protected funds would now have their defined benefit contributions included in assessing liability for excess contributions tax. However, for members of these schemes, their defined benefit contributions, and actual employer contributions to constitutionally protected accumulation funds, are effectively capped at $25,000. This therefore would effectively reduce their ability to access concessional superannuation above $25,000 a year, to the extent they are already in receipt of employer support.

Introducing the Low Income Superannuation Tax Offset

3.34 The superannuation system is designed to encourage Australians to save for their retirement. This is why concessional contributions are generally taxed at a lower rate than income outside of superannuation. However, for many low income earners, the 15 per cent tax on superannuation contributions means these individuals could be paying more tax on their superannuation contributions than on their income outside superannuation.

3.35 Currently, individuals with an adjusted taxable income of $37,000 or less are entitled to the low income superannuation contribution (LISC) for their eligible concessional superannuation contributions made between the 2012-13 income year and the 2016-17 income year. This contribution pays an amount equal to 15 per cent tax on concessional superannuation contributions up to $500. The contribution, in effect, largely offsets the tax paid on a low income earner’s concessional contributions. However, the LISC will be repealed from 1 July 2017 under the *Minerals Resource Rent Tax Repeal and Other Measures Act 2014*, meaning that from 1 July 2017, it will no longer be available to offset the tax disadvantage faced by low income earners.

3.36 In the 2016-17 Budget, the Government announced that it would introduce a low income superannuation tax offset (LISTO) from 1 July 2017 to replace the LISC.

[8] Mercer, 2016 Federal Budget: Implications for Superannuation Funds, Employers and Australians, page 15.

Under the LISTO, those with an adjusted taxable income up to $37,000 would receive an effective refund into their superannuation account of the tax paid on their concessional contributions, up to a cap of $500. Importantly, those who would benefit from the LISC could also benefit from the LISTO (all else equal).

3.37 The ATO would determine a person's eligibility for the LISTO and if eligible, the LISTO payment would be placed into the person's superannuation account. The LISTO would be provided directly to individuals (or their estates if they are deceased), if for example individuals do not have an eligible superannuation account because they have retired.

3.38 The LISTO measure announced in the Budget was a non-refundable tax offset, meaning that since superannuation providers pay the tax on superannuation balances the fund would be entitled to the tax offset, which it could then pass on to members. If the superannuation provider could not claim the full benefit of the offset (because, for example, its tax liability was less than the total amount of the offset), the non-refundable nature of the tax offset would mean that the superannuation provider would be required to seek a 'top-up' payment from the ATO to make up this difference. The LISTO measure announced in the Budget differs from the LISC, which is a payment made by the ATO to an individual's superannuation account through the individual's superannuation fund.

3.39 Feedback from superannuation providers during consultation indicated that this LISTO measure would be highly complex and costly to administer, with superannuation providers and the ATO requiring new systems, as well as amendments to superannuation funds' income tax returns. It would also likely result in delays in passing on the LISTO benefit to members.

3.40 As a result of this feedback, the Government announced it would adjust the LISTO model in the following way. The LISTO would be administered using a direct payment method where the benefit is determined by the ATO, based on information given to it by superannuation funds, and then contributed to the low income earner's superannuation account. The introduction of the LISTO reflects the objective of the policy – to provide an offset to the tax paid on the superannuation of low income earners. While superannuation providers and the ATO would incur some compliance costs in implementing this method this would be much less costly than implementing a new system of distributing the LISTO.

3.41 Under either approach, the LISTO would apply to defined benefit schemes in the same way as for the LISC. The LISTO would be paid to eligible members of funded defined schemes to the extent that that person receives concessional contributions (known as notional taxed contributions) in the year. The LISTO would not be paid where there have been no 'taxed' concessional contributions made – for example, to members of fully unfunded defined benefit schemes or constitutionally protected funds. Contributions for members of these funds are taxed at the benefit phase rather than at the contribution phase. To the extent that a member receives 'taxed' concessional contributions, the LISTO would be paid to an unfunded defined benefit scheme for these contributions only.

3.2.2 Measures to increase flexibility in the superannuation system

3.42 The following measures would improve the flexibility of the superannuation system by adjusting the current systems to reflect modern work patterns to make it easier for individuals to boost their retirement savings to provide equality of access to the concessional contribution arrangements and encourage retirement product innovation to provide greater choice to retirees to manage their risks.

3.43 These measures would increase flexibility and choice for individuals to make concessional contributions and improve consumption smoothing over the course of an individual's lifetime. Ultimately the measures would boost the superannuation savings of individuals and through greater choice in retirement products would help individuals manage their risks in retirement, which would reduce pressure on the age pension in the long-term.

Improving access to concessional contributions

3.44 This measure would improve access to concessional contributions by allowing all Australians under age 75 to claim an income tax deduction for eligible personal superannuation contribution into an eligible superannuation provider from 1 July 2017. These amounts would count towards the individual's concessional contributions cap and be subject to 15 per cent contributions tax.

3.45 To access the tax deduction, individuals would lodge a notice of their intention to claim the deduction with their superannuation provider or retirement savings provider. Generally this notice would need to be lodged before the individual lodges their income tax return. Individuals could choose how much of their contributions to deduct. The individual must receive an acknowledgement of this notice from the provider.

3.46 Certain untaxed and defined benefit superannuation providers would be prescribed, meaning members would not be eligible to claim a deduction for contributions to these funds. If a member of these funds wishes to claim a deduction, they must direct the personal contribution to another eligible superannuation fund. Prescribed funds would include Commonwealth defined benefit funds, funds that do not include an amount in assessable income due to receiving the contribution, and any other defined benefit scheme that is excluded from these arrangements.

3.47 This more flexible arrangement would benefit all Australians by allowing them to utilise more of their concessional cap if they have the capacity and choose to do so.

Allowing catch-up concessional contributions

3.48 Annual concessional contribution caps can limit the ability of people with interrupted work patterns—for example women or carers—to accumulate superannuation balances commensurate with those who do not take breaks from the workforce. Annual concessional contributions caps also limit people with lumpy or irregular income, for example small business operators, from fully utilising their available cap space.

3.49 This measure would allow individuals to access their previously unused concessional cap space to make additional concessional contributions. Access to unused concessional cap space amounts would be limited to those individuals with a total superannuation balance of less than $500,000, and only unused amounts accrued from 1 July 2018 could be carried forward.

3.50 Carried forward amounts from any year in which an individual did not contribute up to the maximum allowed under the concessional contributions cap would be available for a period of up to five consecutive years. If the unused concessional cap space for a particular year remained unused after five years, that component would no longer be available to the individual to make catch-up contributions.

3.51 This measure would ensure that only those people who have not had the capacity to contribute up to their concessional cap in prior years would be able to make catch-up contributions and targets it to those individuals who have been unable to accumulate large superannuation balances. People with higher incomes who have already contributed up to their concessional contributions cap each year or those who have made substantial non-concessional contributions would not be allowed access to any unused concessional cap space to carry forward.

Extending the spouse tax offset

3.52 Currently a tax offset is available for an individual if the individual makes a contribution to a complying superannuation provider or retirement savings account on behalf of their spouse and, amongst other things, the total of the spouse's assessable income, reportable fringe benefits, and reportable employer superannuation contributions for an income year is less than $13,800.

3.53 Under this measure the eligibility rules for claiming the tax offset for superannuation contributions partners make to their low income spouses would be extended, by increasing income qualifying thresholds for the recipient spouse. This measure would provide added flexibility to the superannuation system by providing a greater incentive for a larger population of qualifying individuals to contribute to the superannuation balance of their low income spouses and assist them in accumulating a higher balance.

3.54 The current 18 per cent tax offset (of up to $540) would be available for any individual, whether married or de facto, contributing to a recipient spouse whose income is up to $37,000. This would be an increase from the current $10,800. As is currently the case, the offset would be gradually reduced for income above $37,000 and would be completely phased out at income above $40,000 (currently phases out at income above $13,800).

Harmonising contribution rules for older Australians

3.55 Currently, people who are aged 65 to 74 are only able to make voluntary or non-concessional superannuation contributions if they meet a work test. The work test involves having worked for at least 40 hours over 30 consecutive days in the financial year the individual wishes to make a contribution.

3.56 Additionally, people are only permitted to make contributions for a spouse aged 65 to 69 if that spouse meets a work test. If their spouse is aged 70 or over no spouse contributions can be made.

3.57 Under this measure the Government would remove the requirement that an individual aged 65 to 74 must meet a work test before making voluntary or non-concessional contributions to superannuation. In addition, individuals would also be allowed to make contributions to a spouse aged under 75 without the need for their spouse to meet a work test. This measure would add flexibility for older individuals to accumulate higher superannuation balances, particularly in response to changing life events, such as leaving the workforce to care for family members or downsizing their home.

3.58 This measure would apply in a broadly commensurate way to members of defined benefit schemes and constitutionally protected funds. That is, members of defined benefit schemes would be able to accrue benefits until age 75.

Enhancing choice in retirement income products

3.59 The current rules restrict the ability of retirement income product providers to develop and bring to market new income stream products.

3.60 Under this measure, from 1 July 2017, the Government would extend the tax exemption on earnings in the retirement phase to products such as deferred lifetime annuities and group self-annuitisation products. These products seek to provide individuals with income throughout their retirement regardless of how long they live.

3.61 This measure would allow providers to offer a wider range of retirement income products to provide more flexibility and choice for Australian retirees, and help them to better manage consumption and risk in retirement, particularly longevity risk, where people outlive their savings.

3.2.3 Measures to strengthen the integrity of the superannuation system

3.62 The following measures would improve integrity of the superannuation system and build on the sustainability measures by reducing the extent to which the superannuation system is used for tax minimisation and estate planning.

3.63 These measures would also reduce fiscal pressure without impeding individuals' ability to save for their retirement.

Improving the integrity of transition to retirement income streams

3.64 Transition to retirement income stream (TRIS) arrangements were introduced in 2005 to provide limited access to superannuation for people wanting to move towards retirement by reducing their working hours and using their superannuation to supplement their income.

3.65 People who are still working can commence a TRIS arrangement once they reach preservation age. Individuals with a TRIS arrangement enjoy tax-free earnings on their superannuation assets. Recipients are also able to reduce their tax liability by salary sacrificing their income (that would otherwise be taxed at their marginal tax

rate) into superannuation and instead taking a superannuation income stream at a concessional tax rate.

3.66 This measure would involve removing the tax exempt status of income from assets supporting a TRIS from 1 July 2017. Earnings from assets supporting TRIS would be taxed concessionally at 15 per cent. This change would apply irrespective of when the TRIS commenced. In addition, individuals would no longer be able to treat certain superannuation income stream payments as lump sums for tax purposes, which are currently tax-free up to the low rate cap ($195,000).

3.67 Under this measure, reducing the tax concessional nature of TRIS would ensure they are fit for purpose and not primarily accessed for tax minimisation purposes and subsequently strengthen the integrity of the superannuation system.

Abolition of the anti-detriment provision

3.68 The current anti-detriment provision allows superannuation providers to increase lump sum death benefits by an amount equivalent to the tax the fund has paid on contributions for the member, and then claim a tax deduction for the increased death benefit amount. The provision is available for lump sum death benefit payments made to a spouse, former spouse or child of the deceased.

3.69 Not all superannuation providers offer this arrangement to their members. Whether a superannuation provider provides an anti-detriment payment depends on their governing rules. There is no legal requirement for the superannuation provider to make the payment and claim the associated tax deduction.

3.70 Under this measure the anti-detriment provision would be abolished. The lump sum death benefit paid to dependants would continue to be tax free; however, funds would no longer be able to receive a tax deduction in respect of the tax paid on contributions for the deceased. This measure would improve the fairness and integrity of the system to ensure all lump sum death benefits from superannuation providers are treated equally when paid to dependants and that there is consistency across the tax system.

Streamlining Administration

3.71 If changes to the contribution caps (annual concessional and non-concessional contributions caps) and to the Division 293 income threshold are legislated, the number of individuals who receive an assessment from the ATO for additional tax under these regimes would increase. This could lead to individuals receiving a greater number of notices of assessment and determinations from the ATO for excess contributions in an income year.

> Notifications from the ATO – Every superannuation product (Division 293 tax, excess contributions tax, refund of excess concessional contributions, fairer taxation of excess concessional contributions, and refund of excess non concessional contributions) has a separate notification process, which creates confusion for individuals as they can receive multiple notices in an income year relating to different tax regimes.

> Release Authorities – Release authorities (issued by the ATO when an individual has made excess contributions into superannuation or has a Division 293 tax liability) currently have different timeframes depending on the type of superannuation product that they relate to, go to different entities (either the provider or the individual) and are either compulsory or voluntary. This leads to complexity and confusion for both superannuation providers and individuals.

3.72 In addition, individuals do not currently have consistent objection rights across all superannuation products. In relation to excess non-concessional contributions, an individual can only object to a decision by the Commissioner not to exercise the Commissioner's discretion to disregard or reallocate the contribution where an assessment has been issued. This means that where an individual has elected to withdraw the excess non-concessional contribution from the superannuation system they do not have an objection right to the Commissioner's decision not to exercise the discretion.

3.73 In relation to the application of Division 293 tax, superannuation providers offering defined benefit schemes are required to perform an end benefit calculation for certain members to determine if the fund calculated amount is lower than the ATO held liability for Division 293 purposes.

3.74 Superannuation providers are required to advise the Commissioner of a member's end benefit cap amount if:

- the Commissioner had started keeping a Division 293 tax debt account for the superannuation interest for the member;
- the Commissioner had given notice to the superannuation provider that a Division 293 tax debt account was being kept for that member; and
- an end benefit became payable from that superannuation interest for that member.

3.75 This is intended to protect certain individuals who have incurred a Division 293 tax liability in circumstances where the actual employer benefits accrued are less than the estimated benefits reported for Division 293 purposes. However, the compliance costs for funds to administer the end benefit cap calculation is largely disproportionate to the benefits for a limited number of individuals.

3.76 For example, approximately 40 per cent of individuals who incur a deferred tax liability for Division 293 pay their debt up front (approximately 3500) so the end benefit cap calculation is not required. Only five per cent of individuals have an end benefit cap less than the deferred debt amount (approximately 200). At present defined benefit funds have to calculate an end benefit cap for all individuals with a Division 293 tax debt account irrespective of whether they have a deferred tax liability owing or not (approximately 7000).

3.77 A number of actions are being proposed to address the issues raised above. These actions would streamline the ATO's administration processes, and improve the client experience, by reducing confusion, churn, and complexity for individuals and

superannuation providers. The action to align objection rights would improve procedural fairness for individuals.

Proposed actions

3.78 Notifications from the ATO – Clarify in the law that the ATO can issue a single document that serves as a notice for any or all of an individual's different tax liabilities concerning notices of assessment, determinations, statements and other documents.

3.79 Release authorities – Replace the existing release authority requirements with standardised timeframes and processes (excluding release authorities relating to deferred debt account discharge liabilities for Division 293 tax). Introduce a default process for individuals who do not make an election (or who wish to undertake the default process) when dealing with all release amounts from superannuation. The default for each superannuation product would be set to the option that is most beneficial for the majority of individuals. Individuals would still have the ability to select other options if they wish, consistent with current arrangements.

3.80 Objection rights – Provide individuals with an objection right to any decision relating to the Commissioner exercising a discretionary power in respect of excess non-concessional contributions, as a matter of procedural fairness.

3.81 Division 293 (end benefit cap) – Remove the compulsory obligation for funds to calculate an end benefit cap for certain defined benefit members when they become entitled to an end benefit by only requiring funds to calculate an end benefit cap when an individual has a deferred Division 293 tax liability with the ATO. Under this option the Commissioner would advise the superannuation provider that the balance of an individual's Division 293 tax debt account is nil therefore removing the obligation for the fund to calculate an end benefit cap when it is not required.

3.3 Option 3 - All of the measures announced in the 2016-17 Budget superannuation reform package

3.82 This option would introduce all of the above mentioned measures for government action. This would maximise synergies within the package by introducing a set of measures that address the three issues identified in the problem section, helping to:

- strengthen the sustainability of the superannuation system by better targeting tax concessions;
- improve the flexibility of the superannuation system; and
- enhance the integrity of the superannuation system.

3.83 However, this option does not take into account any changes that may be made to the policy measures that would require further consideration of broader fiscal impacts.

4. Cost benefit analysis of each measure/Impact analysis

4.1 This section discusses the costs and benefits (including compliance costs) of each measure under the proposed options. The OBPR has agreed to the compliance cost estimates discussed in this section.

4.2 The cost benefit analysis for the individual measures is provided on the following pages. However, there are some common overarching costs and benefits that can be identified for individuals, financial professionals and financial market participants (businesses) across all or a number of the measures. These overarching costs and benefits are outlined below (these overarching costs are reflected in each individual measures' cost benefit analysis).

Individuals

4.3 The measures outlined below would all impose small costs on individuals. Most commonly these costs would be associated with the need for individuals to understand the changes that would result from the measures chosen. Some individuals (mainly high wealth individuals) may consider that some of the measures limit their ability to save for their retirement and obtain no or concessional tax rates to the same extent to which they had wished, notwithstanding the fiscal pressures such desires place on the taxpayer.

4.4 Additionally, depending on the financial literacy/proficiency, some individuals would incur costs associated with seeking financial advice or through unintentional non-compliance with the income tax law.

4.5 While individuals would incur costs in relation to these measures, depending on the option chosen, the superannuation system would become more flexible, sustainable and have an increased level of integrity which would likely benefit more Australians in the long-run.

Financial Professionals

4.6 Individuals often rely on financial professionals when making financial decisions and when seeking advice regarding superannuation taxation more broadly. As such, some of the costs identified for individuals would be passed onto financial advisers and accountants (tax agents). However, given the role that these professionals play in the financial services industry these costs would be expected to form part of business as usual practices and would be relatively insignificant.

4.7 Given some individuals would seek the assistance of financial professionals to understand and or comply with any of the proposed measures (if there were chosen as part of an option), financial professionals would be expected to benefit in the transition to the new arrangements through increased service and advice fees, and reduced operation costs (via economies of scale). The extent of the benefit cannot easily be estimated, as it would depend on the measures chosen and the behavioural responses of the affected individuals.

4.8 Note: the benefits provided to financial professionals through increased revenue would be obtained by imposing a cost (increased fees) on individuals.

Financial Market Participants (Businesses)

4.9 The measures outlined below cannot be seen to have overarching costs on businesses in general.

4.10 The measures which restrict amounts that individuals can contribute would however potentially result in a flow of funds out of superannuation and into other investment vehicles in the financial sector. This flow of funds would benefit other businesses within the financial services industry including life insurers, authorised deposit taking institutions, brokers, private equity funds, etc. The extent of this benefit cannot easily be estimated, as it would depend on the measures chosen and the behavioural responses of the affected individuals.

4.11 Note: the benefits provided through increased market access would be generally obtained through costs imposed (e.g. the limiting of tax concessions) on individuals.

Government

4.12 The ATO would face increased compliance and monitoring costs in respect to all of the measures outlined below. However, these increased costs would be largely absorbed by the ATO.

4.13 While there would be fiscal costs associated with some of the measures, these costs would be offset through improvements in flexibility; allowing more individuals to save for retirement. Other measures would result in increased government revenue, which could be directed to other measures that have a fiscal cost and to ensure the Government's fiscal strategy is maintained.

4.1 Option 1 - No policy change

4.14 This option involves no new actions by the Government and relies on existing policy settings. Consequently, it would introduce no new impacts on businesses, community organisations or individuals. At the same time, it would do nothing to address the issues outlined in the problem section.

4.2 Option 2 – A suite of policy measures to address the problems of sustainability, flexibility and integrity, combined or in isolation

4.15 Under this option, one or more of the measures which address the sustainability, flexibility and integrity issues identified in the problem section could be packaged together to form a suite of measures to meet the primary objective of the superannuation system.

4.16 The implementation of a suite of measures which takes into account costs, benefits, resulting net benefits and the Government's broader fiscal strategy, would directly affect individuals, financial professionals (such as tax agents and financial planners), superannuation providers and government.

4.17 The costs (including compliance costs) and revenue impacts would depend of the particular measures chosen and would broadly reflect their individual costs and impacts. The benefits of the chosen measures would also apply. However, depending on the final composition of the suite of measures further 'synergistic' benefits may be realised.

4.18 The final suite of measures (depending on which measures are chosen) could deliver net benefits, by addressing the issues of sustainability, flexibility and integrity. Due to the complementary nature of a number of measures the effectiveness of the final suite of measures would be expected to be more effective than implementing measures in isolation.

4.2.1 Measures to improve the sustainability of the superannuation system

4.19 These measures are consistent with the objective of the superannuation system, which makes it clear that the primary purpose of superannuation is to provide retirement income. The measures would improve sustainability of the system by improving the targeting of superannuation tax concessions to those who need incentives to save by reducing concessions for high wealth individuals, keeping concessions for others unchanged and providing support to low income earners.

Introduce a transfer balance cap

Costs

4.20 This measure would, as outlined above, result in costs for individuals, such as the loss of generous tax treatment and the need to understand and comply with the changes. The measure may also require some individuals to set up an accumulation account to accommodate excess amounts above the cap and potentially paying tax on the excess earnings. It is estimated that less than one per cent of high wealth individuals would be adversely affected by this measure.

4.21 The Industry Superannuation Australia (ISA) stated that ' the complexity of the detailed operation of these provisions is unlikely to be understood by most members, although few will accumulate balances high enough to be affected.'[9]

4.22 Superannuation funds, life insurance companies and self-managed superannuation funds (SMSFs) would be expected to incur compliance costs in comprehending the changes and planning for the implementation of this measure.

4.23 More broadly, this measure would require increased reporting by all superannuation providers. Superannuation providers may need to design and implement new systems to be able to report the value of assets used to commence a retirement income stream.

[9] ISA, Submission of 10 October 2016.

4.24 Superannuation providers may also need to report other retirement phase account transactions. For APRA funds, these reporting changes are expected to be built using existing processes while for other superannuation entities (such as SMSFs and life insurance companies) the changes may be more significant.

4.25 The Association of Superannuation Funds of Australia (ASFA) has indicated that superannuation providers would need to:

- invest in significant changes to IT systems, including system build to cater for:
  - existing members over $1.6 million who are invested in illiquid assets or in assets that incur a fee for disposal (e.g. term deposits);
  - additional tax payable on notional earnings based on excess cap amounts;
  - calculating penalty should 30 day SLA not be met;
- develop processes and procedures, disclosure material and training to reflect the proposed changes;
- provide for additional reporting (e.g. family law) and report more frequently to the ATO;
- undertake additional valuation calculations for the individual's total superannuation balance;
- provide more financial advice and information; and
- overcome additional operational challenges when ATO actions default fund option, including contacting member and determining which funds and assets are to be rolled back and in what they are to be invested should the client be uncontactable.[10]

4.26 The Australian Institute of Superannuation Trustees (AIST) has indicated that they estimate the largest part of the cost associated with system changes required to implementing the superannuation reforms in the 2016-17 Budget would be attributable to the transfer balance cap.[11]

4.27 For defined benefit and constitutionally protected schemes, there would be additional tax withholding and reporting requirements for benefits paid to members over the age of 60.

4.28 This measure would also reduce the volume of assets supporting retirement phase accounts. While capital in excess of $1.6 million could still be held in the superannuation system, it would now be subject to a 15 per cent tax on earnings. This may result in some reinvestment of assets out of the superannuation system. The

[10] ASFA, Submission of 11 October 2016.
[11] AIST, Submission of 10 October 2016.

concessional nature of the superannuation system means that any reinvestment out of superannuation would be small.

4.29 This measure would be expected to have a medium compliance burden with compliance costs estimated to be $317.5 million over ten years. This is based on estimated implementation costs of $153.9 million and ongoing compliance costs of $16.4 million per annum. The measure is estimated to have a positive impact on the underlying cash balance of $1.846 billion over the forward estimates.

Table 4.1 REGULATORY COST TABLE (1)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$153.9	$455
Ongoing (p.a.)	$16.4	$48
Aggregate impact over 10 year duration	$317.5	
Per year (10 years)	$31.8	

Benefits

4.30 This measure is designed to improve the sustainability of the superannuation system.

4.31 Superannuation tax concessions are intended to encourage people to save for their retirement. They are not intended to provide people with the opportunity for tax minimisation or for estate planning. It is important that the tax concessions are targeted at the accumulation of retirement savings for average workers.

4.32 The earnings from retirement phase superannuation accounts are tax-free which makes them a very desirable investment choice. High wealth individuals with large balances, who save for their retirement and do not rely on the age pension, disproportionately benefit from these concessions because they have more savings and because the discount on their marginal tax rates is greater.

4.33 Introducing a transfer balance cap would limit the ability for high wealth individuals to use the superannuation system for tax minimisation or estate planning purposes. However, the ability for individuals to benefit from tax concessions when seeking to save for their retirement would remain largely unchanged.

4.34 This measure, as outlined above, may also be beneficial for financial professionals and financial market participants. As the introduction of a transfer balance cap would require some individuals to seek financial advice in order to establish other avenues for investment. This would increase the need for financial advice (increasing the ability for financial professional to generate revenue) and the need for different types of investment vehicles to be made available (increased market access for financial market participants).

4.35 Compliance with the transfer balance cap would be measured at the time that an income stream becomes eligible for an earnings tax exemption. This means that

individuals would only need to assess their compliance once – there would be no need for ongoing reporting on the balance of their retirement phase account. This also means that effective trustees who are able to deliver strong growth for their members would not be subject to a tax on their efforts.

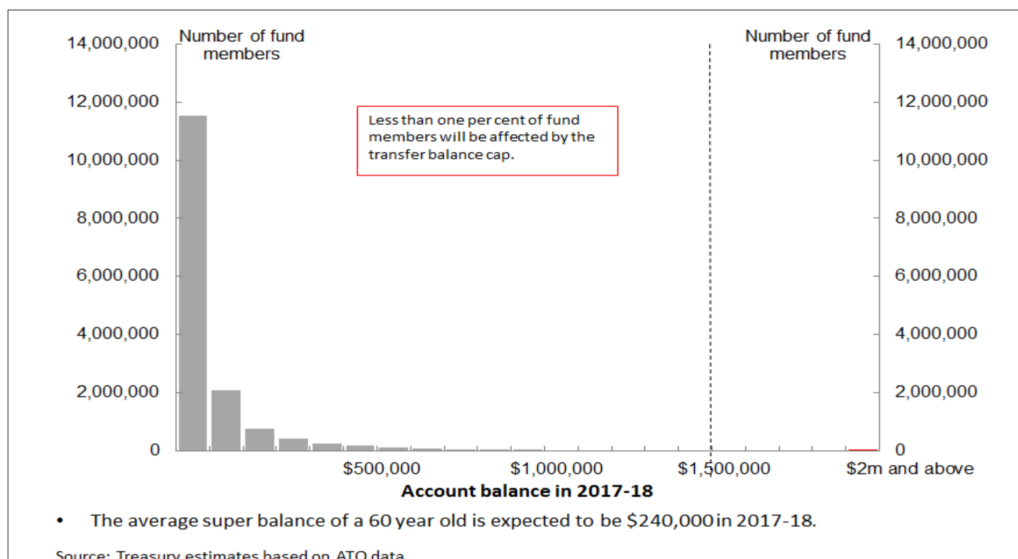
Net Benefit

4.36 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.37 Better targeting of tax concessions would improve the long-term fiscal sustainability of the superannuation system. The measure is estimated to affect less than one per cent of high wealth individuals and provides greater equity in the distribution of government concessions without unduly constraining the aspirations of most individuals to save for their retirement.

4.38 As shown in Diagram 4.1, this measure is expected to affect less than one per cent of fund members (55,000 individuals), who would never depend on the age pension. The average superannuation balance of a 60year old is expected to be $240,000 in 2017-18.

Diagram 4.1 Estimated distribution of individuals affected by the transfer balance cap



- The average super balance of a 60 year old is expected to be $240,000 in 2017-18.

Source: Treasury estimates based on ATO data.

4.39 This measure would reduce the ability for high wealth individuals to utilise the concessional taxed superannuation environment to facilitate tax minimisation and unlimited intergenerational wealth transfer.

4.40 Implementing a transfer balance cap is also a significantly less complex proposal than the approach of taxing earnings in the retirement phase above a certain earnings threshold. Taxing significant earnings in the retirement phase would likely

require superannuation providers to substantially alter their reporting and accounting systems leading to a significant increase in compliance costs. Furthermore, this compliance cost increase would likely be distributed across all members in the retirement phase, despite the tax being targeted at a small number of wealthy members.

Reforming the taxation of non-concessional contributions

Costs

2016-17 Budget approach

4.41 The regulatory implications and costs of this proposal have already been agreed by OBPR in the short form RIS attached to this document.

Post Budget approach

4.42 Under this measure individuals may incur costs when evaluating their current contribution strategy and how they would utilise additional savings that fall above the annual non-concessional cap under this approach (including the bring forward rules), which would have fallen below the current annual non concessional contribution cap.

4.43 This measure would, as outlined above, also result in compliance costs for individuals in seeking to understand the policy changes. Some individuals would need to become aware that they are no longer able to make non-concessional contributions into their superannuation account.

4.44 This measure would, as outlined above, have an impact on financial professionals.

4.45 Businesses such as superannuation funds, life insurance companies and SMSFs would be likely to incur compliance costs in comprehending the changes and planning for the implementation of this approach. This may require these businesses to design and implement new systems as a result of complying with this measure.

4.46 Superannuation providers may also see an increase in the number of individuals breaching the new cap. This would lead to an increase in the number of release authorities and payments.

4.47 Defined benefit funds would also incur additional reporting requirements.

4.48 This approach would be expected to have a low compliance burden with compliance costs estimated to be $21.8 million over ten years. This is based on estimated implementation costs of $6.4 million and ongoing compliance costs of $2.2 million per annum. The measure is estimated to have a positive impact on the underlying cash balance of $200 million over the forward estimates.

Table 4.2 REGULATORY BURDEN TABLE (2)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$6.4	$77
Ongoing (p.a.)	$1.6	$19
Aggregate impact over 10 year duration	$21.8	
Per year (10 years)	$2.2	

Benefit

4.49 This measure (under either approach) is designed to improve the sustainability of the superannuation system.

4.50 Improved targeting of the non-concessional cap ensures superannuation tax concessions are provided to those individuals who wish to make non-concessional contributions to provide for their retirement futures. Currently, the generous annual caps may be used for estate planning because they provide wealthy individuals with the opportunity to contribute large sums to the concessionally taxed superannuation environment every year.

4.51 The 2016-17 Budget approach would only adversely affect a small number of individuals; very few Australians make non-concessional contributions of more than $500,000 (less than one per cent of fund members since 1 July 2007).

4.52 This measure (under either approach) may also be beneficial for financial professionals and financial market participants as outlined above.

Net benefit

4.53 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.54 Better targeting of tax concessions would improve both the long-term fiscal sustainability of the superannuation system and while depending on the approach the measure is estimated to only impact a small number of individuals it would improve equity in the distribution of government concessions without unduly constraining individuals' aspirations to save for retirement.

4.55 As at 30 June 2015, under the 2016-17 Budget approach less than one per cent of fund members have made contributions above $500,000. Of those who have made non concessional contributions above $500,000, the average total non-concessional contribution amount is $720,000 and the average super account balance is more than $1.6 million. Similarly, under the post Budget approach, less than one per cent of fund members are expected to be affected in 2017-18.

4.56 This measure (under either approach) would improve the sustainability of the superannuation system as it would limit amounts that can be placed into superannuation by high income earners for estate planning purposes.

Reforming the taxation of concessional contributions

Lower annual concessional contributions cap

Costs

4.57 This component of the measure would result in compliance costs for individuals seeking to understand the implications of the policy changes, as outlined above. Extra compliance costs would be incurred for those individuals who would normally invest in superannuation but choose other investment options to reduce their contributions below the new cap. Other individuals may inadvertently breach the new cap.

4.58 Superannuation providers may incur additional compliance costs if their members decide to withdraw excess contributions from the fund. This impact is considered to be minimal as excess concessional contributions are taxed at an individual's marginal tax rate and can remain in the superannuation provider as non-concessional contributions (subject to the annual non-concessional cap). The impact of any increase in the withdrawal of excess contributions from the superannuation system is expected to also be mitigated by the streamlining of the release authority process. A reduced cap may also result in some allocation of funds to assets outside of the superannuation system.

4.59 The AIST indicated that the implementation of reduced concessional contribution caps involves relatively low system, process and compliance costs, and can be implemented relatively quickly. However, the lower caps are likely to result in superannuation providers receiving a greater number of pre-tax contributions that exceed the cap.[12]

4.60 The effect of reducing the annual concessional cap would also be offset by the measure that allows individuals to bring forward any unused concessional cap space amounts from the previous five years (from 1 July 2018) reducing the risk of individuals exceeding their annual concessional cap.

4.61 For superannuation providers offering defined benefit and constitutionally protected schemes, there would be additional reporting requirements in respect of notional and actual contributions.

4.62 This component would be expected to have a low compliance burden with compliance costs estimated to be $45.8 million over ten years. This is based on estimated implementation costs of $31.6 million and ongoing compliance costs of $1.4 million per annum.

4.63 The two components of this measure are estimated to have a positive impact on the underlying cash balance of $2.343 billion over the forward estimates.

[12] AIST, Submission of 10 October 2016.

Table 4.3 REGULATORY BURDEN TABLE (3)

Potential compliance costs	*Total ($m)*	*Per client*
Implementation	$31.6	$54
Ongoing (p.a.)	$1.4	$2
Aggregate impact over 10 year duration	$45.8	
Per year (10 years)	$4.6	

Note: this measure only changes a regulatory threshold. As such, the associated compliance costs would be minor.

4.64 According to the ISA, 'this measure is likely to impact on more individuals than any other measure which reduce concessions (approximately 380,000 people). Those most affected are those on higher taxable incomes (in receipt of higher SG contributions from employers), and those approaching retirement who tend to make additional salary sacrifice contributions. ISA modelling suggests the average balance of those affected is $650,000 which is around six times the average balance of all persons with super.'[13]

Division 293 threshold

Costs

4.65 This component of the measure is expected to have a one off increase in compliance costs associated with moving from the current taxation treatment of concessional contributions to the proposed treatment, typically occurring in the first year.

4.66 Some individuals would have a new type of tax liability they would need to pay either themselves, or to release from their superannuation account. As such, individuals would need to become aware that the Division 293 threshold had reduced and what actions they would need to take to avoid incurring a Division 293 tax liability, or paying the Division 293 tax.

4.67 ASFA have indicated that superannuation providers would need to invest in changes to processes and procedures, disclosure material and training to reflect the proposed changes and deal with a greater manual workload due to a likely increase in the number of assessment notices.[14]

4.68 Superannuation trustees offering defined benefit interests would see an increase in the number of members who have a deferred Division 293 tax liability with the ATO. Similarly, there would be a small increase in the number of members in respect of whom they need to calculate the end benefit cap; however, this impact is likely to be mitigated by the removal of the obligation for providers of defined benefit

[13] ISA, Submission of 10 October 2016.

[14] ASFA, Submission of 11 October 2016.

schemes s to calculate an end benefit cap for all of their defined benefit members that have a Division 293 tax debt account.

4.69 This component would be expected to have a low compliance burden with compliance costs estimated to be $41.6 million over ten years. This is based on estimated implementation costs of $21.5 million and ongoing compliance costs of $2.0 million per annum.

4.70 The two components of this measure are estimated to have a positive impact on the underlying cash balance of $2.343 billion over the forward estimates.

Table 4.4 REGULATORY BURDEN TABLE (3.1)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$21.5	$156
Ongoing (p.a.)	$2.0	$15
Aggregate impact over 10 year duration	$41.6	
Per year (10 years)	$4.2	

Note: this measure only changes a regulatory threshold. As such, the associated compliance costs would be minor.

Benefit

4.71 The superannuation system is designed to encourage Australians to save for their retirement. This is why contributions to, and earnings on, superannuation are generally taxed at a lower rate than income outside of superannuation.

4.72 The existing tax incentives in superannuation disproportionately benefit high income earners because they have more savings, are better able to fully utilise their contribution caps, and because the relative discount on their marginal tax rate is greater. As high income earners would generally save for their retirement regardless of tax incentives, these concessions are poorly targeted. For example, the average concessional contribution amount is approximately $6,000 per annum, well below the annual concessional cap.

4.73 This measure would ensure that tax concessions are more appropriately targeted. Reducing the annual cap on concessional contributions would require high wealth individuals to hold a larger quantum of their savings outside the concessional superannuation environment. This would reduce the ability of these people to utilise the tax advantage of the superannuation system as a means of storing wealth. However capping concessional contributions at $25,000 per year would still allow individuals to contribute more than is needed for their retirement income if they have the ability to do so, without providing excessive access to the concessional superannuation environment.

4.74 Additionally, lowering the Division 293 income threshold ensures that the relative tax concessions provided to those on high incomes (compared to tax on other

income) is more closely aligned to the concessions provided to average income earners.

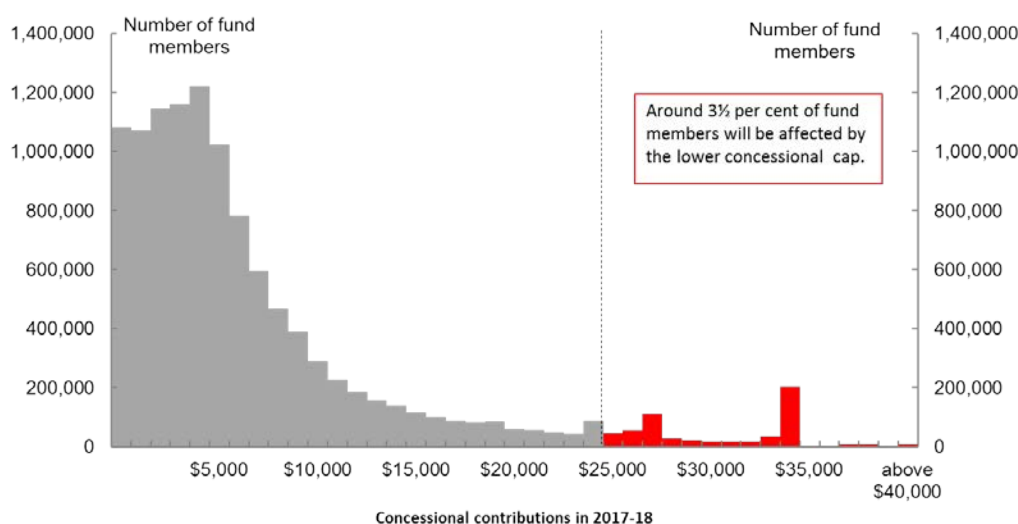
4.75 Proposed measures to streamline ATO administration processes, including a single notice for notices of assessment , determinations, statements, a streamlined release authorities process and a reduced requirement on funds to calculate end benefit caps for defined benefit members becoming entitled to end benefits would assist in offsetting the increase in compliance costs associated with this measure.

Net benefit

4.76 When considering the costs and benefits for both stakeholders and the superannuation system as a whole this measure would be expected to deliver a net benefit.

4.77 The impact of the lowering of the annual concessional cap on individuals is expected to affect only around three and a half per cent of superannuation provider members. Those affected are expected to have average taxable incomes of around $200,000, and average superannuation balances of around $760,000. These individuals have the ability to save for their retirement, if they wish to do so, outside the concessionally taxed superannuation system and are less likely to rely on the age pension. It is anticipated that a proportion of superannuation providers would also be impacted but this is expected to be limited because superannuation providers already have systems in place to monitor these caps.

Diagram 4.2 Estimated distribution of individuals affected by the lower concessional contributions cap



4.78 The reduction in the threshold for the Division 293 tax is estimated to impact around one per cent of high income individuals and would improve equity in the

distribution of government concessions without unduly constraining individuals' aspirations to save for retirement.

4.79 It is anticipated that a proportion of superannuation providers would also be impacted but this is expected to be limited because superannuation providers already have systems in place to monitor this threshold.

Introducing the Low Income Superannuation Tax Offset

Costs

2016-17 Budget approach

4.80 As announced at Budget this change would have moderate to significant compliance costs for funds. There would also be compliance costs for the ATO. There would be no compliance costs for individuals as interactions for this payment would occur between the fund and the ATO.

4.81 Superannuation providers would have medium to significant increase in compliance costs as new systems would have to be set up to manage the various interactions between the tax system and member payments required to deliver the LISTO benefit to members. It is also expected there would be a medium to significant ongoing impact due to the burden imposed from maintaining the interaction between the tax and payment systems. The ATO would also have to build new systems to accommodate the LISTO under this approach.

4.82 This approach would be expected to have a moderate to significant overall compliance burden with compliance costs, estimated to be $180.7 million over ten years. This is based on estimated implementation costs of $57.9 million and ongoing compliance costs of $12.3 million per annum. This approach is estimated to have a negative impact on the underlying cash balance of $1.455 billion over the forward estimates period.

Table 4.5 REGULATORY BURDEN TABLE (4A)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$57.9	$1,290
Ongoing (p.a.)	$12.3	$274
Aggregate impact over 10 year duration	$180.7	
Per year (10 years)	$18.1	

Post-Budget approach

4.83 Administering the LISTO using a direct payment method would result in much lower compliance costs to superannuation providers and for the ATO. In particular, both superannuation providers and the ATO would not have to adjust their systems significantly. There would also be no compliance costs associated with requiring superannuation providers to determine how much offset they could claim, the

processing of top-up payments and amendments to funds' tax returns as new LISTO-eligible individuals were identified.

4.84 This approach would be expected to have a low overall compliance burden with compliance costs, estimated to be $841,189 over ten years. This is based on estimated implementation costs of $8.4 million and no ongoing compliance costs. This approach is estimated to have a negative impact of $1.455 billion over the forward estimates period.

Table 4.6 REGULATORY BURDEN TABLE (4B)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$8.4	$188
Ongoing (p.a.)	$0.0	$0
Aggregate impact over 10 year duration	$8.4	
Per year (10 years)	$0.8	

Benefit

4.85 This measure is designed to improve the sustainability of the superannuation system. HESTA has strongly advocated for this important equity measure 'that ensures those on lower incomes enjoy the same tax benefits from super as other working Australians.'[15]

4.86 Introducing the LISTO (under either approach) would mean that low income earners would continue to receive a boost to their superannuation when the LISC ends. In effect, this means that most low income earners would continue to effectively pay no tax on their superannuation contributions.

4.87 Low income earners, who are disproportionately women, would benefit from the LISTO. This is important because women, on average, have lower superannuation balances than men despite having longer life expectancies. It is expected that in 2017-18, 3.1 million people (almost two-thirds of whom are women) would benefit from the LISTO (around 20 per cent of fund members).

4.88 The LISTO would also effectively avoid the situation in which low income earners would pay more tax on savings placed into superannuation than on income earned outside of superannuation.

4.89 Introducing the LISTO would help target tax concessions to where they are needed the most and ensures that low income earners have the opportunity to build their superannuation savings over the course of working life as much as possible. Better targeting tax concessions would be consistent with the objective of superannuation.

[15] HESTA, Fact Sheet, The 2016/17 Federal Budget – what it means for your super.

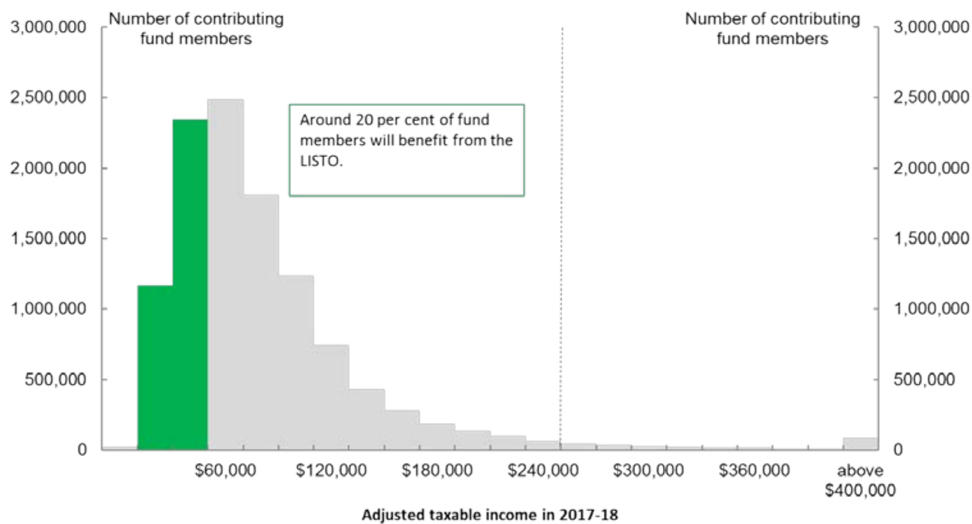
Net benefit

4.90 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.91 Under both models, the change gives low income earners a superannuation tax concession. Low income earners would otherwise receive little or no tax concessions from superannuation, therefore paying more tax on superannuation contributions than on their take-home pay.

4.92 This measure endeavours to improve equity by supporting low income earners in accumulating higher superannuation balances. About 20 per cent of fund members would receive this payment. Of the approximate 3.1 million low income earners that would receive the LISTO, around 1.9 million women are expected to receive this payment. This would have cumulative benefits for women who typically have lower superannuation balances than men.

Diagram 4.3 Estimated distribution of individuals benefited by the LISTO



4.93 The post-Budget approach would be expected to result in a higher net benefit for superannuation providers and the ATO (and indirectly, to members) as a result of the lower compliance cost required to implement the approach.

4.2.2 Measures to increase flexibility in the superannuation system

4.94 These measures are consistent with the objective of the superannuation system. The measures would improve the flexibility of the superannuation system by adjusting the current systems to reflect modern work patterns to make it easier for individuals to boost their retirement savings and encourage retirement product innovation to provide greater choice to retirees to manage their risks.

Improving access to concessional contributions

Costs

4.95 This measure would, as outlined above, result in compliance costs for individuals in seeking to understand the changes. This measure would be expected to result in more taxpayers becoming eligible to claim a deduction for personal superannuation contributions, which would require more taxpayers seeking to re-evaluate their tax affairs and review their tax structures yearly. As such, individuals would be expected to have increased levels of paperwork and record keeping.

4.96 This measure would, as outlined above, have an impact on financial professionals.

4.97 Superannuation providers would not incur any material increase in compliance costs in respect to this measure. However, superannuation providers would withhold more tax from increased personal concessional contributions claims. As such, superannuation providers may require additional resources to cope with the increased number of notices from individuals choosing to claim a deduction for their personal contributions.

4.98 ASFA have indicated that superannuation providers would need to invest in changes to processes and procedures, disclosure material and training to reflect the proposed changes, provide more financial advice and deal with a greater manual workload due to a likely increase in the number of notices.[16]

4.99 This measure would be expected to have a medium compliance burden with compliance costs estimated to be $327.8 million over ten years. This is based on estimated implementation costs of $44.1 million and ongoing compliance costs of $28.4 million per annum. The measure is estimated to have a negative impact on the underlying cash balance of $850 million over the forward estimates period.

Table 4.7 REGULATORY BURDEN TABLE (1)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$44.1	$52
Ongoing (p.a.)	$28.4	$33
Aggregate impact over 10 year duration	$327.8	
Per year (10 years)	$32.8	

Benefits

4.100 This measure is designed to improve the flexibility of the superannuation system.

4.101 Currently, an income tax deduction for personal superannuation contributions is only available to people who earn less than 10 per cent of their income from

[16] ASFA, Submission of 11 October 2016.

employment income. This means those who earn a small amount, but more than 10 per cent, of their income in salary and wages may be limited in their use of concessional contributions. It similarly means that some employees are prevented from fully utilising the concessional contributions cap simply because their employer does not allow them to make pre-tax contributions through salary sacrifice.

4.102 This measure would allow individuals, regardless of their employment circumstances, to make concessional superannuation contributions up to the concessional contributions cap. Individuals who are partially self-employed and partially wage and salary earners (for example contractors) and individuals whose employers do not offer salary sacrifice arrangements, would benefit from these changes, estimated to be around 800,000 individuals.

4.103 This measure may also be beneficial for financial professionals as outlined above.

Net benefit

4.104 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.105 Allowing access to tax deductions for all individuals would increase access to concessional contributions whether or not their employer offers salary sacrifice. This measure would allow approximately 800,000 individuals to make or increase their concessional contributions to superannuation. This measure would provide better access to superannuation for individuals who have multiple sources of income such as a business and part-time work.

Allowing catch-up concessional contributions

Costs

2016-17 Budget approach

4.106 Under this approach the measure would commence on 1 July 2017, with individuals being able to access their unused concessional contributions cap space amounts to make additional concessional contributions from the 2018-19 financial year onwards.

4.107 This measure would, as outlined above, result in compliance costs for individuals who would need to understand the proposed changes, for example individuals would need to decide if they want to utilise their unused concessional cap space in a particular financial year. Individuals would also need to maintain records and keep track of their concessional contributions, and their total superannuation balance, before this information is available on ATO online (which would be around the end of September each year).

4.108 This measure would, as outlined above, also have an impact on financial professionals.

4.109 Superannuation providers may incur increased compliance costs as a result of this measure; as individuals may be more likely to contact their fund to determine whether they are eligible to make additional concessional contributions in the current financial year. However, given this information would be made available on ATO online, these compliance costs are expected to be minor.

4.110 This approach would be expected to have a low compliance burden with compliance costs estimated to be $23.4 million over ten years. This is based on estimated implementation costs of $6.7 million and ongoing compliance costs of $1.7 million per annum. The option is estimated to have a negative impact of the underlying cash balance $350 million over the forward estimates period.

Table 4.8 REGULATORY BURDEN TABLE (2A)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$6.7	$69
Ongoing (p.a.)	$1.7	$17
Aggregate impact over 10 year duration	$23.4	
Per year (10 years)	$2.3	

Post-Budget approach

4.111 Under this approach the measure would commence on 1 July 2018, with individuals being able to access their unused concessional contributions cap space amounts to make additional concessional contributions from the 2019-20 financial year onwards.

4.112 The compliance costs associated with this approach would be consistent with the costs identified in the 2016-17 Budget approach (above). However, deferring the ability for individuals to make catch up contributions by a period of 12 months would result in a slight reduction in compliance costs over ten years, as the implementation costs would now be incurred from the 2018-19 financial year onwards.

4.113 Note: as a result of consultation, the assumptions underpinning Regulatory Burden Table 2A were revised prior to the costing on the post Budget approach. As such, while the compliance costs for the post Budget approach would be lower than the 2016-17 Budget approach the costs identified in Regulatory Burden Table (2B) can be seen to be higher.

4.114 This approach would be expected to have a low compliance burden with compliance costs estimated to be $55.5 million over ten years. This is based on estimated implementation costs of $15.9 million and ongoing compliance costs of $4.0 million per annum. The option is estimated to have a negative impact of the underlying cash balance $100 million over the forward estimates period.

Table 4.9 REGULATORY BURDEN TABLE (2B)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$15.9	$69
Ongoing (p.a.)	$4.0	$17
Aggregate impact over 10 year duration	$55.5	
Per year (10 years)	$5.6	

Benefits

4.115 This measure is designed to improve the flexibility of the superannuation system. Annual concessional caps can limit the ability of people with interrupted work patterns to accumulate superannuation balances commensurate with those who do not take breaks from the workforce.

4.116 Allowing people to carry forward their unused concessional cap would provide them with the opportunity to 'catch-up' if they have the capacity and choose to do so.

4.117 Both approaches outlined above would ensure that only those people who have not had the capacity to contribute up to their concessional contributions cap in prior years would be able to make catch-up contributions, and targets those individuals who have been unable to accumulate large superannuation balances. People with higher incomes who have already contributed up to their concessional contributions cap each year, or those who have made substantial non-concessional contributions, would not be allowed to access any unused concessional cap space.

4.118 This measure may also be beneficial for financial professionals, as outlined above.

Net benefit

4.119 When considering the costs and benefits for both stakeholders and the superannuation system as a whole these measures would be expected to deliver a net benefit. Allowing individuals to make additional catch-up contributions, under either approach, would enhance the flexibility of the superannuation system and ensure that individuals who have broken work patterns, 'lumpy' income have the same ability to utilise concessional contributions caps as other individuals.

4.120 These measures would be expected to benefit around 230,000 individuals in 2019-20.

Extending the spouse tax offset

Costs

4.121 This measure would, as outlined above, result in compliance costs for individuals in seeking to understand the changes. There would also be some minor compliance costs for individuals seeking to benefit from the spouse tax offset as they would be required to complete item T1 on their individual tax return. However,

changes are expected to be very minor as they draw on existing data and preparation processes. The method to calculating the tax offset for an income year has not changed.

4.122 Financial professionals would be unlikely to be affected by this measure.

4.123 Superannuation providers would not incur an increase in compliance costs in respect to this measure.

4.124 This measure would be expected to have a low compliance burden with compliance costs estimated to be $677,200 over ten years. This is based on estimated implementation costs of $433,600 and ongoing compliance costs of $24,400 per annum. The measure is estimated to have a negative impact on the underlying cash balance of $10 million over the forward estimates period.

Table 4.10 REGULATORY BURDEN TABLE (3)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$0.4	$15
Ongoing (p.a.)	$0.0	$1
Aggregate impact over 10 year duration	$0.7	
Per year (10 years)	$0.1	

Note: this measure only changes a regulatory threshold. As such, the associated compliance costs would be minor.

<u>Benefits</u>

4.125 This measure is designed to improve the flexibility of the superannuation system.

4.126 The superannuation system offers little flexibility for those who take time out of work, work part time, or have ‘lumpy’ income and therefore have periods in which they make no or limited contributions to superannuation. This measure would improve the flexibility of the superannuation system by encouraging more people to make superannuation contributions to their low income spouse.

4.127 Broadening the eligibility for the spouse tax offset would assist more low income individuals accumulate their own superannuation savings. An extra 5,000 families would be expected to make use of this measure. These people could include individuals taking a temporary break from the workforce, or individuals who work small amounts on a casual or part-time basis that currently have an assessable income exceeding $13,800 and less than $40,000. The measure would be expected to mostly benefit the superannuation balances of women, who are disproportionately represented among low income earners. This means that it would assist with reducing the superannuation gender gap for those with a spouse.

Net benefit

4.128 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.129 Allowing more families to benefit from the spouse tax offset would impose a minor compliance cost on those families seeking to accumulate higher superannuation balances for the low income spouse. However, the increased flexibility provided to families with low income spouses that are trying to save for their retirement more than offset these costs.

4.130 This measure would assist more couples to support each other in accumulating higher superannuation balances and better target superannuation tax concessions to low income earners and people with interrupted work patterns.

4.131 This measure would be expected to benefit around 5,000 families, which would ensure that the ability to benefit from the spouse tax offset is available to more families with spouses with low incomes; thus improving the fairness of the superannuation system.

Harmonising contribution rules for older Australians

Costs

4.132 This measure would, as outlined above, result in compliance costs for individuals in seeking to understand the changes. A proportion of taxpayers may seek financial advice to better understand the implications of the changes. As such, given individuals would likely seek advice on this measure, there would be expected to be an impact on financial professionals, as outlined above.

4.133 Superannuation providers would not incur any increase in compliance costs in respect to this measure.

4.134 This measure would be expected to have a low compliance burden with compliance costs estimated to be $20,940 over ten years. This is based on estimated implementation costs of $883,400 and a saving of ongoing compliance costs of $67,400 per annum. This measure is estimated to have a negative impact on the underlying cash balance of $130 million over the forward estimates period.

Table 4.11 REGULATORY BURDEN TABLE (4)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$0.9	$25
Ongoing (p.a.)	$-0.1	$-2
Aggregate impact over 10 year duration	$0.2	
Per year (10 years)	$0.0	

Note: this measure only changes a regulatory threshold. As such, the associated compliance costs would be minor.

Benefits

4.135 This measure is designed to improve the flexibility of the superannuation system.

4.136 This measure would provide flexibility and choice for those aged 65 to 74 by removing the need to be gainfully employed to make contributions, including for their spouse. In particular, this measure would assist individuals nearing retirement to increase the superannuation savings of themselves and their spouses. An estimated 40,000 individuals would be expected to benefit from this measure.

4.137 This measure which would remove existing regulatory burdens and compliance costs on funds and individuals would be relatively straightforward to implement, and as such, has system flexibility and simplicity benefits. There would also be an expected decrease in compliance costs for people currently restricted by the work test.

4.138 It would also benefit those people, later in life, that find themselves with additional available income as some costs diminish, such as paying a mortgage or family commitments. Finally, this measure would benefit people taking time out of the workforce (for example, to undertake caring responsibilities), who currently miss out on contributing to their superannuation. In particular, it would provide an opportunity for women to top up their retirement savings up to and including age 74 without restriction. 40,000 individuals would be expected to benefit from this change.

4.139 This measure may also be beneficial for financial professionals, as outlined above.

Net benefit

4.140 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.141 Harmonising the age rules, by removing the requirement for those aged between 65 and 74 to be gainfully employed to make contributions, would impose minor compliance costs on those individuals between 65 and 74 seeking to make contributions. However, the increased flexibility provided to those individuals trying to save for their retirement, later in life, more than offset these costs.

4.142 This measure would also assist those individuals that have taken time out of the workforce (such as carers); as families that are able to utilise the spouse tax offset, can continue to increase the superannuation balance of the low income spouse for a longer period of time.

4.143 This measure would be expected to benefit 40,000 individuals, which would ensure that the benefit of the making superannuation contributions is fairer; as the impediments stopping those between 65 and 74 from making contributions would be removed.

4.144 Older individuals would have substantial flexibility to contribute to their superannuation savings in response to changing life events. For example an individual may wish to downsize their home and top up their superannuation savings with any excess funds, or make a contribution to a spouse who has left the workforce to undertake caring responsibilities.

Enhancing choice in retirement income products

Costs

4.145 This measure would result in some increased compliance costs for those individuals seeking to consider options for their retirement; as they would need to learn about the different products available as a result of this measure.

4.146 Superannuation providers and life insurance companies who wish to develop a new product would incur compliance costs as they would need to learn how to meet the product requirements to enable them to qualify for the earnings tax exemption. They would need to seek confirmation from the ATO that the product qualifies as a 'superannuation income stream' and is eligible for the earnings tax exemption.

4.147 Compliance costs would also be incurred to ensure that record keeping systems and procedures cater for these new products.

4.148 This measure would be expected to have a medium compliance burden with compliance costs estimated to be $23.0 million over ten years. This is based on estimated implementation costs of $23.0 million and no change in ongoing costs. There is no underlying cash balance impact for this measure.

Table 4.12 REGULATORY BURDEN TABLE (4)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$23.0	$0.1
Ongoing (p.a.)	$0.0	$0.0
Aggregate impact over 10 year duration	$23	
Per year (10 years)	$2.3	

Benefits

4.149 This measure is designed to improve the flexibility of the superannuation system.

4.150 Many Australians receive income in retirement by drawing down regular amounts of superannuation from an account based pension. In doing so, they ensure that earnings on these savings are not subject to tax.

4.151 This measure would potentially open a new financial services market. Given the current value of the superannuation savings, opening up this market would be beneficial to all financial services participants.

4.152 Other, more tailored products could be made available to help individuals manage their income throughout their retirement years. These products do not currently receive the same tax treatment as account based pensions. This limits the ability of providers to competitively offer a wider range of products. This issue was highlighted in both the FSI and the Retirement Income Streams Review which recommended that barriers to the development of new products be removed.

4.153 Potentially all members of superannuation providers may be impacted by this measure. However, it is expected that members nearing or at retirement age are most likely to be impacted.

Net Benefit

4.154 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.155 Although this measure would have medium compliance costs, these costs would be outweighed by the net benefit this measure would deliver with new innovative products that deal with longevity risk for retirees. Extending the retirement phase tax exemption on earnings to a wider range of products would provide more choice and flexibility for retirees. It would also allow them to maintain a higher standard of living and give peace of mind to retirees that they have an income stream for life.

4.2.3 Measures to strengthen the integrity of the superannuation system

4.156 The following measures would improve integrity of the superannuation system and build on the sustainability measures by reducing the extent to which the superannuation system is used for tax minimisation and estate planning.

Improving the integrity of transition to retirement income streams

Costs

4.157 In complying with this measure individuals may incur costs in seeking information and advice to better understand the implications on their transition to retirement intentions. This would have an impact on financial professionals, as outlined above.

4.158 This measure would impact on individuals and businesses. Individuals, tax advisers (as outlined above) and superannuation providers would need to be familiar with the taxation changes to the treatment of TRIS.

4.159 At present, TRIS are treated by funds like other pension products that are exempt from tax on underlying earnings. Imposing a 15 per cent tax on earnings underpinning these products means they would have to be treated like accumulation products for tax purposes. This change would impose transitional compliance costs on superannuation providers that offer these products as they would have to move them to a different system that tracks tax events. In the longer term, these products may be less

attractive to clients and less cost-effective for funds. It is estimated that 110,000 people would be affected by this measure.

4.160 ASFA have indicated that superannuation providers will be required to restructure TRIS arrangements with respect to their underlying assets. IT system changes will take a number of providers significant time to build a new tax engine. As such there is little likelihood of being able to meet the 1 July start date.[17]

4.161 While it is recognised that system changes would be required, the extent of the changes would depend on the systems that superannuation providers currently have in place and the extent to which the new requirements could be incorporated into their current systems.

4.162 This measure would be expected to have a low compliance burden with compliance costs estimated to be $21.3 million over ten years. This is based on estimated implementation costs of $21.3 million and no ongoing compliance costs. The measure is estimated to have a positive impact on the underlying cash balance of $470 million over the forward estimates period.

Table 4.13 REGULATORY BURDEN TABLE (1)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$21.3	$125
Ongoing (p.a.)	$0	$0
Aggregate impact over 10 year duration	$21.3	
Per year (10 years)	$2.1	

Benefits

4.163 This measure is designed to improve the integrity of the superannuation system.

4.164 This measure would reduce the tax concessional nature of TRIS ensuring they are fit for purpose and not primarily accessed for tax minimisation purposes. In doing so, it would improve the sustainability and integrity of the superannuation system.

4.165 TRIS were intended to help older workers transition to retirement by allowing them to access their superannuation to supplement a reduction in their salary from working fewer hours. In practice these arrangements are used almost exclusively to reduce tax payable without a reduction in working hours, and to take advantage of the tax free earnings in retirement phase.

4.166 Reducing the tax concessional nature of TRIS would ensure they are fit for purpose and not primarily accessed for tax minimisation purposes.

[17] ASFA, Submission of 11 October 2016.

Net benefit

4.167 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.168 Whilst some individuals utilise TRIS for its intended objective, overwhelmingly the majority of individuals appear to utilise TRIS for tax minimisation purposes. This measure would improve the sustainability and integrity of the superannuation system by ensuring that TRIS are fit for purpose and help maintain confidence in the superannuation system.

4.169 The Productivity Commission also noted in a recent research paper that TRIS appear to be used much more often for tax planning purposes, than facilitating any change in work patterns in transitioning to retirement:

> … the tax concessions embodied in transition to retirement pensions — designed to ease workers to part-time work prior to retirement - appear to be used almost exclusively by people working full-time and as a means to reduce tax liabilities among wealthier Australians.[18]
>
> … though intended to encourage a gradual shift from full-time work to full-time retirement, the transition to retirement arrangements can be used to reduce a worker's tax liability. In essence, wage income is salary sacrificed into a superannuation account to not only reduce the tax paid on that income, but also to allow the earnings on those contributions to be taxed in the concessional superannuation environment, even though the account can be accessed immediately.[19]

4.170 In addition, a number of submissions to *Re:think* recommended reviewing overcome additional challenges, when the ATO and/or their tax treatment to ensure the policy objective behind TRIS is being met.

4.171 An estimated 110,000 individuals would be affected by this measure.

Abolition of the anti-detriment provision

Costs

4.172 This measure has no regulatory impact on individuals because the discretion of making the anti-detriment payment rests on the superannuation fund.

4.173 However, a consequence of this measure may be that the lump sum death benefit paid to some individuals is reduced. Additionally, some superannuation providers may not reduce the death benefit even though they would be unable to claim a deduction. In this case, the impact of the forgone tax deduction would likely fall on the superannuation fund's investment returns.

4.174 Financial professionals would not incur any increase in compliance costs in respect to this measure.

[18] Superannuation Policy for Post-Retirement, Volume 1 page 20.
[19] Superannuation Policy for Post-Retirement, Volume 1 page 39.

4.175 Superannuation providers would not incur a minimal one off increase in compliance costs associated with moving from the current taxation treatment to the proposed treatment. On an ongoing basis, the measure would be expected to result in a decrease in compliance costs for superannuation providers as they would no longer need to keep records and undertake processes related to making anti-detriment payments.

4.176 This measure would be expected to have a low compliance burden with compliance savings estimated to be $2.7 million over ten years. This is based on estimated implementation costs of $281,000 and a saving in ongoing compliance costs of $293,000 per annum. The measure is estimated to have a positive impact on the underlying cash balance of $350 million over the forward estimates period.

Table 4.14 REGULATORY BURDEN TABLE (2)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$0.3	$391
Ongoing (p.a.)	-$0.3	-$409
Aggregate impact over 10 year duration	-$2.7	
Per year (10 years)	-$0.3	

Note: this measure only removes a regulatory provision that can be used at the discretion of superannuation funds. As such, the associated compliance costs would be minor.

Benefits

4.177 This measure is designed to improve the integrity of the superannuation system.

4.178 Removing the anti-detriment provision better aligns the treatment of death benefits across all superannuation providers and the tax treatment of other bequests outside of superannuation for which no tax deduction is given for prior tax paid.

4.179 Furthermore, this provision is inequitable so removing it would enhance the fairness of the superannuation system. Not all individuals receive this benefit as it is inconsistently applied and not all superannuation providers offer this arrangement to their members. Whether a Superannuation provider provides an anti-detriment payment depends on their governing rules. There is no legal requirement for the superannuation provider to make the payment and claim the associated tax deduction.

Net benefit

4.180 When considering the costs and benefits, for both stakeholders and the superannuation system as a whole, this measure would be expected to deliver a net benefit.

4.181 It would improve the integrity of superannuation by better aligning the treatment of bequests from superannuation providers with the tax treatment of other bequests and gifts for which no rebate is given for prior tax paid. It ensures that all

superannuation members' dependants are treated equally when receiving death benefits.

4.182 There is no estimate on the number of individuals that would be affected by this measure since the anti-detriment payment is not offered by all superannuation funds. However, it is estimated that 150 APRA funds and 568 SMSFs will be impacted.

4.183 A number of submissions to *Re:think* also supported the abolition of the anti-detriment provision noting its removal reduces complexity in the superannuation system and improves fairness.

Streamlining Administration

Costs

4.184 Individuals and financial professionals would not incur any increase in compliance costs in respect to this measure. Most individuals would see a decrease in compliance costs as a result of this measure, and following initial compliance costs these measures would result in a decrease in compliance costs for superannuation providers.

4.185 This measure would require superannuation providers to learn about the changes to release authority processes, including the new electronic processes. Superannuation providers may need to design and implement new systems to implement the required changes. However, superannuation providers (including providers offering defined benefit interests) would see a decrease in compliance costs on an ongoing basis.

4.186 This measure would be expected to result in a reduction in compliance costs estimated to be reduced by $58.7 million over ten years. This is based on estimated implementation costs of $22.8 million and reduction in ongoing compliance costs of $8.2 million per annum. There is no underlying cash balance impact for this measure.

Table 4.15 REGULATORY BURDEN TABLE (3)

Potential compliance costs	***Total ($m)***	***Per client***
Implementation	$22.8	$54
Ongoing (p.a.)	-$8.2	-$19
Aggregate impact over 10 year duration	-$58.7	
Per year (10 years)	-$5.9	

Benefits

4.187 This measure is designed to improve the integrity of the superannuation system.

4.188 Streamlining the ATO's administration processes would improve the client experience, reduce confusion, churn, and complexity for individuals and

superannuation funds; thus improving the overall integrity of the superannuation system. The aligning of objection rights would also provide procedural fairness for individuals.

4.189 In particular:

- Clarifying that the ATO can issue a single document that serves as a notice of assessment, determinations, statements or other documents, would reduce confusion for individuals who may have previously received multiple notices over the same period. This change would also enable individuals to seek advice on all of their tax affairs at one time.
- Replacing the existing release authority requirements with common timelines and processes would reduce complexity and confusion for both individuals and superannuation funds.
- Changes to the process of release authorities would also provide individuals that do not make a choice about releasing excess contributions (or excess contributions and Division 293 tax) from superannuation with a default outcome that would place most individuals in a more beneficial position.
- Providing individuals with an objection right to any decision relating to the Commissioner exercising a discretionary power in respect of non-concessional contributions would ensure procedural fairness and provide consistent treatment for objection rights across all superannuation products.
- Ensuring that superannuation providers are only required to calculate an end benefit cap for individuals for which end benefits become payable if an individual has a deferred liability for the purposes of Division 293 tax would remove an unnecessary regulatory burden on impacted superannuation funds.

4.190 It is expected that the changes made under this measure would affect 360,000 notices provided to individuals, with 100,000 release authorities being impacted by the electronic channel. It is also expected that a significant proportion of APRA funds and SMSFs would also be impacted.

Net benefit

4.191 When considering the costs and benefits for both stakeholders and the superannuation system as a whole this measure would be expected to deliver a net benefit.

4.192 Streamlining the ATO's administration processes would improve the client experience by reducing the number of notices an individual receives in a financial year, and by standardising the requirements for releasing excess contributions (and excess contributions and Division 293 tax) from the superannuation system. This would reduce confusion, churn and complexity for both individuals and superannuation funds, and in doing so would improve the overall integrity of the superannuation system.

4.193 This measure would also ensure procedural fairness across all superannuation products and would remove unnecessary obligations from defined benefit funds by reducing the number of end benefit cap calculations a fund is required to complete.

4.3 Option 3 - All of the measures announced in the 2016-17 Budget superannuation reform package

4.194 The comprehensive package option incorporates all the proposals identified by measures 3.2.1 to 3.2.4, measures 3.3.1 to 3.3.5 and measures 3.4.1 to 3.4.3.

4.195 The comprehensive package would directly affect superannuation funds, some ancillary service providers (such as tax agents and financial planners), individuals and government.

Costs

4.196 Costs (including compliance costs) and revenue impacts for the comprehensive package would broadly reflect the costs and impacts of each measure, outlined above. However, when considering the fiscal impacts the comprehensive package may result in a reduction in the ability for the Government to pursue its strategy of returning the Budget to surplus by maintaining strong fiscal discipline, strengthening the Government's balance sheet and redirecting government spending to boost productivity and workforce participation.

Benefits

4.197 The benefit of implementing all of the measures outlined above would apply to the comprehensive package. In addition, there would be 'synergistic' benefits from a comprehensive package. Announcing the proposals as a comprehensive package is also more likely to address concerns that superannuation reform in Australia was developing on an ad hoc basis.

4.198 A comprehensive package should also reduce search costs for businesses and stakeholders as information about all the proposals could be promoted and made accessible through a single informational channel.

Net Benefits

4.199 A comprehensive package would deliver net benefits by addressing the issues of sustainability, flexibility and integrity in a holistic manner. Due to the complementary nature of a number of measures, the effectiveness of a package would be expected to be greater than if particular measures were implemented in isolation. Overall, only 4 per cent of Australia's 16 million superannuants, or around 700,000 people, would be adversely affected by this package.

4.200 The sustainability of the superannuation system is strengthened by realigning aspects of the superannuation framework where tax concessions are poorly targeted. This ensures those high wealth individuals with large balances that would not rely on the age pension; do not continue to disproportionately benefit from these concessions.

4.201 The various measures to improve flexibility would ensure Australian's such as part time workers, carers, older Australians and people with disrupted work patterns or variable incomes have a number of opportunities available to accumulate higher superannuation balances, than would ordinarily be the case if measures were implemented in isolation.

4.202 However, the comprehensive package may not provide the best opportunity for the Government to continue to pursue its strategy of returning the budget to surplus by maintaining strong fiscal discipline, strengthening the Government's balance sheet and redirecting government spending to boost productivity and workforce participation.

5. Consultation

Tax Discussion Paper: *Re:think*

5.1 The Government released *Re:think* in March 2015 which covered reform on the taxation system. Superannuation was considered as part of this process.

5.2 The development process for *Re:think* included extensive consultation with stakeholders on reform to the taxation system involving a number of key stakeholder engagements through face to face meetings, as well as an open submission process. In total, 882 formal submissions were received. The then Treasurer and the Treasury attended more than 130 meetings throughout Australia.

5.3 Of the 882 formal submissions received, around 310 identified superannuation as an area for reform. Many submissions indicated that current caps and contribution rules could be relaxed to allow more people, particularly women with broken work patterns, better access to concessional contributions.

5.4 Several submissions advocated lifetime concessional contributions caps, while others support applying caps on a carry forward basis, rather than an annual 'use it or lose it' basis.

5.5 Numerous submissions propose systemic changes to improve the integrity of the superannuation system (by defining the purpose of superannuation and adequacy of retirement income or reforming the taxation of contributions).

5.6 Some submissions have supported reducing the non-concessional contributions caps but have advocated that this be done on a lifetime rather than annual basis. Suggested lifetime caps for non-concessional contributions ranged from $500,000 to $1,000,000.

5.7 However, there were also some, albeit a minority, of submissions that argued that there should be no changes to the superannuation tax concessions.

5.8 Participants from stakeholder consultations roundtables had mixed views on superannuation. Some participants advised against changes to superannuation concessions, but other participants argued that concessions for very high income

earners are excessively generous and suggested the reduction of concessions for people with high superannuation balances.

Consultation on the objective of superannuation

5.9 On 9 March 2016, the Government released a discussion paper entitled The Objective of Superannuation for consultation on the objective of superannuation as recommended by the FSI.

5.10 Consultation was conducted over four weeks between 9 March 2016 and 6 April 2016. Over 90 written submissions were received. Additionally, a roundtable of 14 stakeholders was held on 18 March 2016 in Canberra and individual consultations were held with stakeholders in Sydney on 31 March 2016 and Melbourne on 5 April 2016.

5.11 Many submissions supported the FSI wording. Although many stakeholders proposed different wording, there was not broad support for any other form of words.

5.12 There was a general consensus that the objective of superannuation is to provide for retirement income, rather than wealth accumulation. There was also broad agreement that the primary objective should be concise and supported by subsidiary objectives.

Consultation following announcement of the measures

5.13 These measures were announced as a package in the 2016-17 Budget. As a result of this public announcement, representations were made to Treasury from the general public and interested stakeholders regarding the package.

5.14 Treasury also engaged in targeted consultation with stakeholders following the Budget announcement to get feedback on the implementation of the measures and ensure there were no unintended tax consequences. These included roundtables and bilateral discussions with Government regulators, industry associations, superannuation funds, financial services organisations and specific superannuation sector experts, such as in the SMSF sector.

5.15 Treasury also publicly released and consulted on exposure draft legislation and explanatory material following the Budget announcement, divided into three tranches in September and November 2016. Over 150 submissions were received, from across industry, academics, experts and individuals.

General views

5.16 Stakeholders indicated their broad support for the measures announced in the 2016-17 Budget. However, stakeholders noted the package of reforms represented a significant change to the way that some individuals view the superannuation system. In particular, stakeholders raised concerns regarding the impact the reforms would have on existing retirement planning positions.

Transfer balance cap

Initial views

5.17 While there was some support for the measure, a number of stakeholders indicated that the measure would result in technical drafting that may be significantly complex. For example, in support of the measure, AIST said that 'this cap will make the super system more sustainable, while also funding other important measures like the LISTO.'[20]

5.18 Concerns were also raised regarding the proposed 1 July 2017 start date, administration of measures, as the changes may result in increased reporting obligations, especially for SMSFs that tend to do manual changes. Mercer expressed concern 'at the proposed 1 July 2017 start date' for 'the $1.6 million pension transfer cap.'[21] The Self Managed Super Fund Association (SMSFA) said this 'is a complex measure and refining the concessions for retirement phase could be done more efficiently.'[22]

Views on exposure draft legislation

5.19 Submissions on the exposure draft legislation also tended to focus on the administration of the transfer balance cap, for example Mercer said that it considers 'it essential the ATO advise members of amounts such as an individual's transfer balance cap, personal transfer balance cap and unused cap space.'[23] The Tax Institute argued for extra flexibility: 'the Institute would submit that the Commissioner be given a broad discretion to remit excess transfer balance tax or disregard a certain period when determining the notional earnings where the delay in issuing a determination is beyond the control of the member.'[24] Industry Super Australia reiterated its support for the policy as key to better targeting superannuation tax concessions, but highlighted the complexity of the legislation: '[t]he complexity of the detailed operation of these provisions is unlikely to be understood by most members, although few will accumulate balances high enough to be affected.'[25]

5.20 Several stakeholders proposed changes to the operation of capital gains tax relief, which is part of the transitional arrangements for both the transfer balance cap and the changes to transition to retirement income streams arrangements. The final legislation removed the requirement for funds to potentially have to track two cost bases for assets over the time in response to stakeholder concerns about the compliance burden of such an approach.

[20] AIST, Media release, 3 May 2016.
[21] Mercer, Submission of 16 September 2016.
[22] SMSFA, Media release, 3 May 2016.
[23] Mercer, Submission of 10 October 2016.
[24] The Tax Institute, Submission of 10 October 2016.
[25] Industry Super Australia, Submission of 10 October 2016.

Reforming the taxation of non-concessional contributions

Initial views

5.21 While there was some support for the measure, some stakeholders believed that the cap of $500,000 was not high enough. For example, the AIST said that they were 'disappointed that the cap has been set this low.'[26] The SMSFA said 'the $500,000 balance limit…restricts people building truly adequate retirement incomes.'[27] In addition, stakeholders raised practical issues with the application of the lifetime non-concessional cap. In particular, the introduction of the lifetime cap would not take into consideration investment strategies that were already in place.

5.22 The SMSF Owners' Alliance raised concerned about the start date of the cap stating that: 'SMSFs [self-managed superannuation funds] in the process of buying an asset, e.g. a property, and had entered a legal contract prior to the 3 May budget, expecting to use non-concessional contributions to complete the purchase, would have been caught by the new back-dated contributions cap.'[28]

Post Budget approach

5.23 In light of initial views of stakeholders the Government sought to consider a different approach to reform the taxation of non-concessional contributions. The alternate approach was to revert back to current approach with a reduced threshold and a $1.6 million eligibility condition.

5.24 The FSC welcomed the announcement of the alternative approach 'The removal of the $500,000 cap gives Australians who can afford to save more, increased flexibility to do so and avoids administration that would have increased costs for superannuation savers.'[29]

5.25 SCOA also stated its support for the move to an alternative approach 'SCOA welcomes the Coalition's decision to scrap the $500,000 lifetime cap on non-concessional superannuation contributions and replace it with an annual limit of $100,000 for people with superannuation assets of less than $1.6 million.'[30]

Views on exposure draft legislation (reflecting the Post Budget approach)

5.26 Stakeholders generally supported this measure and its change in approach since the 2016-17 Budget. In their submission on the superannuation reform package's third tranche of legislation, the AIST said that 'this measure and its implementation is

[26] AIST, Media release, 3 May 2016.

[27] SMSFA, Media release, 3 May 2016.

[28] SMSF Owners' Alliance, Media Release, 30 June 2016.

[29] Financial Services Council, Media Release: 'Changes to non-concessional super caps' 15 September 2016.

[30] Superannuated Commonwealth Officers' Association (Federal Council) Inc. Press Release: *'No more $500,000 cap on super contributions'* 21 September 2016.

much simpler than the initial Budget proposal for a $500,000 lifetime non-concessional; contributions cap.'[31]

5.27 Some stakeholders continued to raise concerns with the proposed changes. 'We also continued to be concerned by the additional complexity which these reforms shall create in the superannuation system, particularly the operation of the 'bring forward' rule for non-concessional contributions and its tapered application in the context of the new $1.6 million transfer balance cap eligibility requirement.'[32]

Reforming the taxation of concessional contributions

Initial views

5.28 While there was broad support of this measure, some stakeholders indicated that lowering the cap would limit the ability for individuals to top up their superannuation balances in a timely manner. With the reduction of concessional caps to $25,000, the AIST raised concerns 'about the impact on people over 50 who are planning for their retirement.'[33] The SMSFA said that the 'decision to reduce the concessional contribution cap down to $25,000 is a backward step that will severely reduce the ability of people to save adequately for retirement.'[34]

5.29 Some stakeholders indicated that the current caps should continue to apply and that higher caps should apply for individuals above 60 years of age.

5.30 Concerns were also raised in respect to the administrative improvements to the administration of the Division 293 tax. Stakeholders were particularly concerned with the impact of the changes, as the process can be manually intensive and the volume of assessments is anticipated to increase under the measure.

Views on exposure draft legislation

5.31 Following the release of the legislation stakeholders tended to not raise concerns with the draft legislation itself but the policy. Some continued to raise concerns about the application of the cap to older Australians, for example BT Financial argued that the 'system is not yet fully mature, and many older Australians have not had the benefit of receiving SG contributions over their entire working life.'[35]

5.32 In relation to the lowering of the Division 293 threshold most were supportive, however Chartered Accountants Australia New Zealand said: 'it unfairly penalises higher income earners who are often ineligible for the aged pension and also pay the majority of income taxes whilst working.'[36] Some, such as Industry Super Australia, argued the threshold should be indexed saying that 'The threshold should be indexed to

[31] AIST, Submission, 21 October 2016.
[32] EY, Submission, 21 October 2016.
[33] AIST, Media release, 3 May 2016.
[34] SMSFA, Media release, 3 May 2016.
[35] BT Financial, Submission, 10 October 2016.
[36] Chartered Accountants Australia New Zealand, Submission 10 October 2016.

wages or set as a multiple of ten times the concessional contribution cap as indexed from time to time.'[37]

LISTO

Initial views

5.33 Although there was some support for this measure, stakeholders raised concerns regarding the potential compliance costs of building systems changes to accommodate the measure. In support of the measure, the SMSFA were 'pleased that the Government is going to maintain a more equitable treatment for low income earners by introducing the Low Income Superannuation Tax Offset to replace the Low Income Superannuation Contribution.'[38] Similarly, the ASFA 'welcomes the introduction of the Low Income Superannuation Tax Offset (LISTO). This will provide a benefit of up to $500 a year for over 3 million people, of whom around two-thirds are women.'[39]

5.34 Some stakeholders expressed strong support for continuing the LISC as opposed to changing the payment to the LISTO as the LISC could be supported by existing provisions.

5.35 Post Budget approach – in light of initial views of stakeholders the Government sought to consider a different approach to implement the LISTO. The alternative approach was to adopt a direct payment approach to the administering the LISTO.

Views on exposure draft legislation (reflecting the post budget approach)

5.36 Stakeholders were supportive of the draft legislation which avoids administrative burden concerns with the initial approach. ASFA stated it 'commended the government for listening to feedback about arrangements for the Low Income Super Tax Offset (LISTO) and simplifying administrative arrangements.'[40]

5.37 Many argued that it improved the fairness of the superannuation system. David Whitely from Industry Super Australia stated that the LISTO 'is critical to restoring the fairness and integrity of superannuation tax concessions. It starts the process of closing the superannuation gender gap, and making the super tax system more contemporary and in keeping with modern society.'[41]

5.38 Mercer, in its submission of 16 September 2016, said that 'we strongly support the Low Income Superannuation Tax Offset measure making full use of the administration and payment processes established and in operation for the Low Income

[37] Industry Super Australia, Submission 10 of October, 2016.
[38] SMSFA, Media release, 3 May 2016.
[39] ASFA, Media release, 3 May 2016.
[40] ASFA, Media Release of 7 September 2016.
[41] David Whiteley, Chief Executive of Industry Super Australia, 7 September 2016.

Superannuation Contribution. This will largely remove the implementation burden that would otherwise have been associated with the introduction of this measure.'[42]

5.39 While the majority of stakeholders support the LISTO and its operation as detailed in the draft legislation, some submissions raised concern that the LISTO is not keeping pace with the scheduled increase in the superannuation guarantee rate. In its 16 September 2016 submission, ISA suggested 'that…the maximum amount of LISTO increase in line with the increase in superannuation guarantee to 12 per cent ($670) for those eligible.'[43]

5.40 The LISTO was opposed by Chartered Accountants Australia New Zealand who opposed the measure on cost grounds, arguing that the 'cost for the Low Income Super Tax Offset is being funded by mostly higher income earners.'[44]

Improving access to concessional contributions

Initial views

5.41 Stakeholders generally supported this measure. For example, the SMSFA said 'the Government does deserve plaudits for its decisions to remove the 10% rule for personal deductible contributions.'[45]

5.42 However, some stakeholders were concerned about the way that the measure would be administered and timing gaps between the making of the concessional contribution and the claiming of the associated deduction.

Views on exposure draft legislation

5.43 'While the personal deductions measure seeks to achieve neutrality between members with different income sources, subject to behavioural responses the measure could be very costly over the long term and may not increase retirement savings unless individuals increase their personal contributions by 15 per cent to offset the additional fund level tax that will apply under this measure.'[46]

5.44 Stakeholders generally supported the flexibility of this measure, although a few expressed concerns about the new restriction preventing deductibility of personal contributions made to certain defined benefit schemes.

Allowing catch- up concessional contributions

Initial views

5.45 This measure was broadly supported by stakeholders. However, concerns were raised regarding the ability for individuals to fully understand how the cap carry forward would work and about the impact on specific groups. For example, the AIST

[42] Mercer, Submission of 16 September 2016.
[43] ISA, Submission of 16 September 2016.
[44] Chartered Accountants Australia New Zealand, Submission, 10 October 2016.
[45] SMSFA, Media release, 3 May 2016.
[46] ISA, Submission, 16 September 2016.

said that this measure 'will have little impact on low income earning women who will have limited capacity to fund catch up payments.'[47]

5.46 'It's disappointing that they're pursuing the 'catch-up' measure. Again, this undermines savings delivered by the lowering of the cap and largely benefits people on high incomes.'[48]

5.47 Post Budget approach – in consideration of the broader fiscal context the Government sought to consider a different approach to the implementation of the measure to allow catch-up concessional contributions. The alternate approach was to delay the commencement of the measure for a period of 12 months. This alternate approach was announced by the Government on 15 September 2016.

Views on draft legislation

5.48 Stakeholders remained supportive of the broader policy but raised concerns around the mechanism for calculating the cap space. For example, BT Financial recommended that 'an approach mechanism be explored that will enable the ATO to calculate an individual's total super balance at 30 June each year without funds having to report all rollovers to the ATO, which will significantly increase the compliance costs for the industry.'[49] Self-managed Independent Superannuation Funds Association (SISFA) also stated that it believes that the 'definition of "total superannuation balance" is overly complex.'[50]

Extending the spouse tax offset

Initial views

5.49 Stakeholders broadly supported this measure. For example, Industry Super Australia (ISA) 'supports extending eligibility for the tax offset for contributions to a low income spouse's super.'[51]

Views on exposure draft legislation

5.50 Most stakeholders recognised the policy merits of this measure, although some expressed concern that individuals will not be eligible for an offset if the receiving spouse has breached their non-concessional contributions cap. For example, in its 16 September 2016 submission on the reform package, AIST 'supports this measure' and noted 'that the arrangements in the Bill to raise the maximum spouse income eligibility for this measure are consistent with the announcement in the 2016 Budget.'[52]

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[47] AIST, Media release, 3 May 2016.
[48] ACOSS Statement: superannuation changes announced 16 September 2016.
[49] BT Financial Group, Submission of 10 October 2016.
[50] SISFA, Submission, 10 October 2016.
[51] ISA, Media release, 3 May 2016.
[52] AIST, Submission of 16 September 2016.

Harmonising contribution rules for older Australians

Initial views

5.51 Stakeholders broadly supported this measure. The SMSF Owners Alliance (SMSFOA) said that 'the good news is older Australians will not have to pass a work test to make super contributions.'[53]

5.52 However, to fund the cost of changes to the non-concessional cap, the Government announced on 15 September 2016 that this measure would not proceed.

Enhancing choice in retirement income products

Initial views

5.53 Stakeholders broadly supported this measure. For example, the AIST said that 'the extension of the earnings tax exemption on retirement products is a good start but there are other flexibility measures that are still needed.'[54]

Views on draft legislation

5.54 Whilst most stakeholders were supportive of this measure, the Tax Institute pointed out the measure 'excluding SMSFs [self-managed superannuation funds] from DSIS [deferred superannuation income streams] may significantly reduce the attractiveness of SMSFs' as the products cannot be issued by SMSFs.[55]

TRIS

Initial views

5.55 Some stakeholders supported this measure. For example, the AIST said that they 'support measures to ensure that Transition to Retirement arrangements are used by those who are genuinely transitioning to retirement as opposed to looking for a tax break.'[56] However, concerns were raised regarding the compliance costs of required system changes. There was support for keeping the current arrangements as those that benefit are mostly middle income earners.

5.56 Concerns were also raised about the impact the changes would have on individuals who had their retirement planning 'locked in'. For example, the 'TTR strategy that helped thousands of middle to low income earners has effectively been killed off by the Government, meaning almost all financial planners and clients will need to carefully review the circumstances of those approaching retirement.'[57]

[53] SMSFOA, Media release, 4 May 2016.

[54] AIST, Media release, 3 May 2016.

[55] The Tax Institute, Submission of 10 October 2016.

[56] AIST, Media release, 3 May 2016.

[57] Financial Planning Association of Australia, News, '*FPA calls 2016-17 Federal Budget changes Super Spaghetti*'3 May 2016.

Views on draft legislation

5.57 Most stakeholders who made substantive comments on this measure in the legislation stated that the start date of 1 July 2017 was not possible, due to administrative complexities. Several stakeholders proposed alternative mechanisms to try and avoid manipulation of the rules by people who are able to simultaneously contribute concessionally while also not paying earnings tax in their pension account.

Abolition of the anti-detriment provision

Initial views

5.58 Some stakeholders supported this measure as the anti-detriment provision is largely outdated and poorly targeted. For example, KPMG have said that 'broadly, the anti-detriment deduction...is grounded in certain historical circumstances and for the most part, the logic behind the anti-detriment deduction has ceased to be relevant. The deduction is not properly targeted. It is biased in favour of lump sum death benefits as it is not available for pensions, and it links poorly with terminal illness benefits. For all of these reasons, and as a simplicity measure, it should be abolished.'[58]

Views on draft legislation

5.59 There were limited substantive comments on this measure following the release of the exposure draft legislation. Most were supportive of the measure. Mercer argued that the transitional arrangements 'produce inequities and higher tax for funds where a member has died before 1 July 2017 but their beneficiaries have not received a benefit until after 1 July 2019.'[59]

Streamlining Administration

Initial views

5.60 No significant comments were raised during consultation.

Views on exposure draft legislation

5.61 Most stakeholders supported the proposed changes to release authorities and the standardised period that payment must be provided to the Commissioner after issue of the release authority. [60]

6. Recommended option

6.1 The recommended option is to implement a suite of measures that provides the greatest net benefit by taking into consideration broader fiscal considerations (Option 2). The recommended suite of measures includes all of the measures outlined in this RIS with the exception of the 'Harmonising contribution rules for older Australians' measure.

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[58] KPMG, '*Solving the structural deficit'*, April 2016 page 17.

[59] Mercer, Submission of 10 October 2016.

[60] AIST, Submission: 'Superannuation reform package – tranche three', 21 October 2016.

6.2 In addition, approaches for the 'Reforming non-concessional cap contributions', 'Introducing the Low Income Superannuation Tax Offset' (Sustainability (2) and (4)) and 'Allowing catch-up contributions' (Flexibility (2)) measures have been finalised and included in the recommended option.

6.3 As outlined above (cost benefit/impact analysis section), there are net benefits in proceeding with each of the measures contained in this RIS. These net benefit assessments take into consideration costs (including compliance costs), benefits, and the fiscal impact of each measure individually to determine if they address one or more of the issues identified in the problem section. The net benefit assessments include both the overarching costs and benefits and the costs and benefits of each specific measure.

Sustainability measures

6.4 It is recognised that high wealth individuals would incur additional costs associated with the inability to continue to benefit from the tax concessions that they are currently accessing and that all individuals would need to familiarise themselves with the changes. However, better targeting tax concessions to meet the new objective of superannuation will improve the overall sustainability of the superannuation system. We note that targeting tax concessions to a greater extent than proposed, could unduly and unintentionally constrain the aspirations of individuals to save for their retirement.

6.5 Like individuals, financial professionals such as tax agents and financial advisors would also need to familiarise themselves with the changes. However, as some individuals may seek to use their expertise, financial professionals may experience an increase in the number of individuals seeking their services particularly in the transition to the new arrangements.

6.6 Superannuation providers would, in addition to familiarising themselves with the changes, need to undertake system upgrades and may see the movement of investments (that would have normally flowed to superannuation) flowing to other investment vehicles (potentially benefiting the other financial market participants). However, a more sustainable superannuation system that reflects the objective of the superannuation system would benefit all stakeholders, including superannuation providers.

6.7 It is considered that while costs would be incurred (primarily relating to implementation – learning about the changes and IT system upgrades) the benefits provided through a more sustainable system through the better targeting of tax concessions outweigh these costs.

Flexibility measures

6.8 These measures are designed to improve the flexibility of the superannuation system to enable more individuals to save for their retirement. In particular, these measures will benefit individuals with lower incomes, interrupted work patterns and/or lumpy incomes. Providing individuals, especially for those individuals with low

incomes or with broken work patterns, with more ways to save for their retirement would enable them to be more likely to have higher retirement incomes.

6.9 While individuals will benefit from these measures, they will also incur costs in familiarising themselves with the changes and considering their current superannuation tax affairs.

6.10 Like individuals, financial professionals such as tax agents and financial advisors would also need to familiarise themselves with the changes. However, as individuals would need to consider their current superannuation tax affairs, financial professionals may experience an increase in the number of individuals seeking their services particularly in the transition to the new arrangements.

6.11 There would be no major cost implications for superannuation providers as a result of these measures. However, superannuation providers would need to familiarise themselves with the changes. Superannuation providers may also experience an increase in member engagement when their members would be seeking information in order for them to benefit from the changes.

6.12 It is considered that while costs would be incurred (primarily relating to implementation – learning about the changes) the benefits of increasing the ability for individuals to save for their retirement outweigh these costs.

Integrity measures

6.13 These measures do not impose any major costs on individuals. However, individuals would need to familiarise themselves with the changes.

6.14 Similar to the sustainability and flexibility measures, financial professionals would also need to familiarise themselves with the changes. However, given the nature of the integrity measures (with the exception of TRIS) financial professionals would be unlikely to see any increase in individuals seeking their service.

6.15 Superannuation providers would need to familiarise themselves with the changes and may also need to undertake system upgrades to implement the changes.

6.16 These measures will ensure that superannuation is not primarily used for tax minimisation purposes, increase alignment and streamline processes across the superannuation system to improve its overall integrity.

6.17 It is considered that while there is an increase in compliance costs (primarily relating to implementation – learning about and implementing the changes) the benefits associated with a stronger superannuation system outweigh these costs.

Broader considerations

6.18 Given all of the measures provide a net benefit individually and when grouped together to address specific issues, the recommended option has taken the broader fiscal context into consideration.

6.19 The broader fiscal context was also considered when establishing the approaches for the 'Reforming non-concessional cap contributions', 'Introducing the

Low Income Superannuation Tax Offset' (Sustainability (2) and (4)) and 'Allowing catch-up contributions' (Flexibility (2)) measures.

6.20 These approaches are the:

- introduction of a $100,000 annual non-concessional cap with a three year bring forward, with eligibility restricted to the $1.6 million threshold– this approach provides greater distribution of government concessions without unduly constraining the aspirations of most individuals to save for their retirement
- continuation of the current administration processes for providing a boost to the superannuation savings for low income earners while ensuring it is clear that the objective of the measure is to provide an offset to the tax paid on the superannuation of low income earners (LISTO)– this approach would reduce compliance costs, without having an impact on expected benefits; and
- 12 month deferral of the ability for individuals to make catch–up contributions – this approach would have a minimal reduction to compliance costs, without having an impact on the expected benefits over the medium to long-term.

6.21 It is recognised that the package of measures needed to take into consideration the Government's continuing strategy of returning the budget to surplus by maintaining strong fiscal discipline, strengthening the Government's balance sheet and redirecting government spending to boost productivity and workforce participation.

6.22 When considering the final composition of the suite of measures, the fiscal implications of the above approaches on the 2016-17 Budget fiscal strategy were taken into account. Given the fiscal impact of the recommended approach for reforming the taxation of non-concessional contributions (annual non-concessional contributions cap) and the requirement for new spending measures offset by reductions in spending elsewhere within the budget, one of the measures that incurred a fiscal cost was required to be removed from the package.

Consideration of the implications of the flexibility measures within the broader package and why the harmonisation measure was ultimately removed from the package

6.23 Allowing catch-up contributions: this measure offsets the impact of the reduction in the concessional contributions cap sustainability measure by allowing people who are eligible to bring forward their unused concessional cap space amounts for up to five years. Allowing catch-up contributions ensures that those individuals that are unable to take advantage of their concessional caps each year (those on 'lumpy' or lower incomes) can benefit from making concessional contributions when they are in a financial position to do so.

6.24 Improving access to concessional contributions: this measure also offsets the reduction in the concessional contributions cap sustainability measure and

compliments the allowing catch up contributions measure. Enabling individuals to claim a tax deduction for personal contributions, irrespective of their employment status, further helps those with lumpy incomes.

6.25 When looking at the complementary and offsetting nature of the concessional contribution measures with the lowering of the concessional cap measure, the inclusion of the catch-up contributions and access to concessional contributions measures in the broader suite of measures was considered to provide a higher net benefit.

6.26 Extension of the spouse tax offset: this measure improves the ability for families with a low income spouse to save for their retirement. 5,000 families may benefit from this measure at a negative impact on the underlying cash balance of $10 million over the forward estimates.

6.27 Harmonisation of the age rules: this measure improves the ability for older individuals to add to their superannuation prior to or during their retirement. 40,000 individuals between 65 and 74 may benefit from this measure at a negative impact on the underlying cash balance of $130 million over the forward estimates.

6.28 When looking at the spouse tax offset and harmonisation of age rules measures, it was recognised that both measures would increase flexibility and provide a net benefit. However, when considering the Government's broader fiscal strategy, the benefits associated with the harmonisation of the age rules measure were not considered to offset the associated revenue impact, when looking at the broader suite of measures. As such, the harmonisation measure was removed from the recommended option.

6.29 The compliance costs and fiscal impact across the forward estimates period for the recommended option are outlined below.

Table 6.1 Regulatory Costs (recommended option)

	Sustainability Measures					Flexibility Measures				Integrity Measures			Total
Measure	1	2	3(a)	3(b)	4	1	2	3	5	1	2	3	
Implementation Costs	317.5	6.4	31.6	21.5	8.4	44.1	15.9	0.4	23	21.3	0.3	22.8	513.2
Ongoing Costs	16.4	1.6	1.4	2	0	28.4	4	0	0	0	-0.3	-8.2	45.3
Aggregate over 10 years	317.5	21.9	45.8	41.6	8.4	327.8	55.5	0.7	23	21.3	-2.7	-58.7	802.1
Cost per year	31.8	2.2	4.6	4.2	0.8	32.8	5.6	0.1	2.3	2.1	-0.3	-5.9	80.3

Where the measures are:

Sustainability Measures

1 – Better targeting superannuation concessions

2 – Reforming the taxation of non-concessional contributions

3(a) – Lower annual concessional contributions cap

3(b) – Adjusting Division 293 threshold

4 – Introduction of LISTO

Flexibility Measures

1 – Improving access to concessional contributions

2 – Allowing catch-up concessional contributions

3 – Extending the spouse tax offset

5 – Enhancing choice in retirement income products

Integrity Measures

1 – Improving the integrity of transition to retirement income streams

2 – Abolition of the anti-detriment provisions

3 – Streamlining administration

Table 6.2 Impact on underlying cash balance (recommended option)

	Sustainability Measures					Flexibility Measures				Integrity Measures			Total
Measure	1	2	3(a)	3(b)	4	1	2	3	5	1	2	3	
Underlying Cash Balance	1,846	200	2,343		-1,455	-850	-100	-10	0	470	350	0	2,794

6.30 Using the regulatory burden measurement framework, it has been estimated that the measure would increase compliance costs by $80.3 million. This would be offset from elsewhere within the portfolio. For all reporting periods, Treasury has reported net compliance cost reductions and there is no reason why Treasury will not continue to deliver on its red tape reduction targets this year, in line with the Government's regulatory reform agenda.

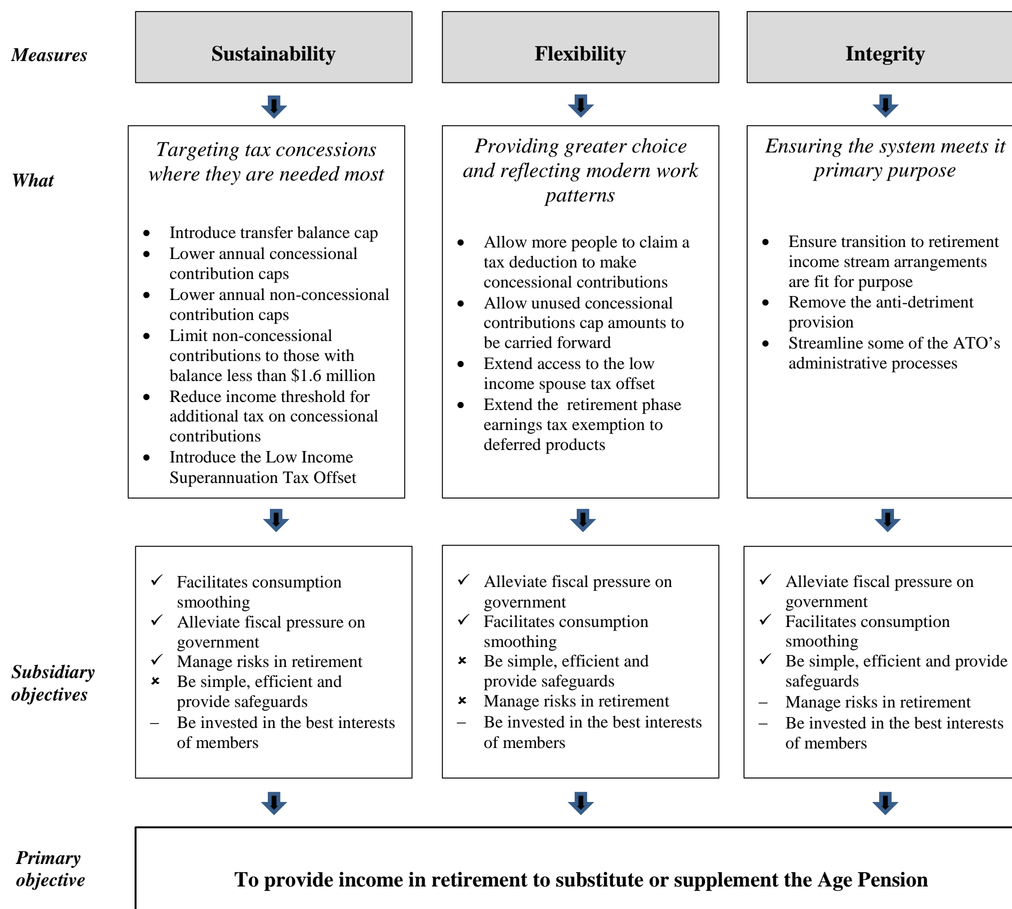
Table 6.3 Regulatory burden estimate (RBE) table

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Community organisations	Business	Individuals	Total change in cost
Total, by sector	$80.3			$80.3

6.31 When considering the costs, benefits and the broader fiscal context, for both stakeholders and the superannuation system as a whole, qualitative evidence indicates that the recommended option would be expected to deliver a net benefit.

6.32 As a package, these measures more closely align the superannuation system with the objective of the superannuation system (refer to diagram below). This is because these measures together have synergies that target sustainability, flexibility and integrity of the superannuation system in a way that no one measure can achieve.

Diagram 6.1 Recommended option (package of measures) and the objective of the superannuation system



6.33 By developing a package of changes following *Re:think*, the Government was able to listen to the concerns and suggestions of stakeholders and take these into account in developing its reforms. Implementing a package of reforms covering different aspects of the superannuation system reflects concerns raised in the submissions made during this process.

6.34 By implementing a balanced package of reforms now, the Government has also ruled out future piecemeal changes in response to *Re:think* that may have gradually eroded confidence in the system.

6.35 The decision to introduce a package of superannuation tax reforms (which was supported by the interim RIS) was made by Cabinet as a part of the 2016-17 Budget. The superannuation tax reforms have been shaped though consultation at all stages of development, to ensure that the issues outlined in the problem section (sustainability, flexibility and integrity) are addressed, in line with the objective of the superannuation

system. The final decision point which will be supported by this RIS is at the Government's decision on the final form of legislation to implement the superannuation tax reforms.

7. Implementation and evaluation / review

7.1 Legislation and regulation changes are required to implement the selected measure. Draft legislation and regulations were released for consultation.

7.2 When developing the legislation and regulation consideration was given to the interaction with, and technical aspects of the income tax law to ensure that the intended benefits of the recommended measures may be realised.

7.3 As part of the transitional arrangements for the transfer balance cap and the changes to transition to retirement income streams arrangements, capital gains tax relief will be offered to those affected by these changes. This relief seeks to ensure that only future capital gains are subject to taxation in respect of assets that shift from exempt pension phase back to accumulation phase as a result of these changes.

7.4 No significant challenges to implementation have been identified. Implementation will occur through individuals, financial professionals, superannuation providers and the ATO. In general, changes to policies and procedures will need to be implemented by superannuation providers and there is ongoing education and increases in record keeping for tax agents and financial advisors.

7.5 These changes occur within the context of the tax and superannuation system which is constantly changing. Superannuation providers, tax agents and financial advisors have processes in place to keep them abreast of changes and to adapt. These measures will be subsumed into this process.

7.6 While these changes are significant in targeting the superannuation system towards the objective of providing income in retirement, they impact only a small number of individuals within the superannuation system. High wealth individuals that are mainly affected by these changes typically seek professional advice in managing their affairs or are financially savvy enough to manage these changes.

7.7 The success of these changes will be monitored through a variety of processes. These changes are designed to result in a reduction and targeting of superannuation tax concessions.

7.8 On an informal basis, Treasury maintains close relationships with key stakeholders and the general public that can provide feedback on the changes, which will then be fed into future advice on possible further superannuation changes. Treasury will formally measure the impacts of some of these changes. Additionally, data may also be obtained on an ad hoc basis on superannuation tax concessions and payments on a variety of parameters from the ATO in response to requests from the Government. This data and information will feed into Treasury's superannuation policy advice to the Government.

Appendix A

Short Form Regulation Impact Statement

The Treasury, Australian Tax Office (ATO)

OBPR Reference number: ID 20591

Name of proposal: Introduce a lifetime cap on non-concessional superannuation contributions.

Summary of the proposed policy and any options considered

This proposal will replace, from announcement, the current annual non-concessional contributions caps with a lifetime cap. The lifetime cap of $500,000 will take into account all non-concessional contributions made after 1 July 2007. The cap will limit the access to superannuation tax concessions for wealthy individuals, improving integrity of the superannuation system and increasing revenue by around $550 million across the forward estimates.

Where an individual exceeds the lifetime non-concessional cap prior to the announcement, they will not be required to remove the excess provided they were acting within the relevant caps at the time their contributions were made. Non-concessional contributions to defined benefit schemes will count towards the cap but will not be removed if they exceed the cap.

The Government also considered implementing this policy from 1 July 2016 to simplify reporting requirements on funds however this option was not progressed as it created an opportunity for individuals to take advantage of current tax arrangements by bringing forward their contributions undermining the policy and the fiscal savings.

What are the regulatory impacts associated with this proposal?

Funds will need to continue to report non-concessional contributions to the ATO on an annual basis and will need to provide an additional report in the first year of the measure so the ATO can identify contributions made after announcement. Certain defined benefit schemes will need to further separately identify and report to the ATO on an ongoing basis some non-concessional contributions between defined benefit and accumulation accounts.

The Government will consult with industry on the timing of these additional reporting requirements post announcement.

The ATO will also need to improve its record keeping to track (and communicate) individuals' remaining cap balance over each persons' lifetime. We expect the ATO to display individuals' remaining balance on their my.Gov web account. The ATO will also need to alter their systems to take into account the contributions of defined benefit members protected from removal.

What are the regulatory costs/savings associated with this proposal?

Individuals and Superannuation providers will need to be aware of the lifetime cap, which is a shift from the existing annual caps and will require education and awareness-raising by the ATO.

Individuals who breach the lifetime cap may complete a release authority to access these funds. Superannuation providers already have systems in place to store and process these forms.

Tax practitioners and tax advisers will need to become familiar with the change but it is expected to form part of routine updates. Tax advisers would now need to understand all of the contributions that their clients had made in their lifetime, not just the last three years.

The change in regulatory burden has been estimated by the Treasury to result in a medium overall compliance cost impact (comprising a medium implementation impact and a medium increase in ongoing compliance costs) in the range of $2.8 million per year. Specific offsets have not been identified and offsetting regulatory savings within the Treasury portfolio will be settled at a later time.

Regulatory burden estimate (RBE) table

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Community organisations	Business	Individuals	Total change in cost
Total, by sector	$2.8			$2.8