Australian Government
The Treasury

Impact Analysis

Better Targeted Superannuation Concessions

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Introduction

On 28 February 2023, the Treasurer and Prime Minister announced the Government's intention to better target superannuation concessions by applying an additional 15 per cent tax to future earnings of balances above $3 million from 1 July 2025. This will bring the headline tax rate of these earnings to 30 per cent for most affected individuals, which is still concessional when compared to the top marginal tax rate. Earnings relating to assets below the $3 million threshold will continue to be taxed at 15 per cent or 0 per cent if held in a retirement pension account. As is the case currently, there will be no limit imposed on the amount of money an individual can hold within superannuation, subject to the existing contribution limits. At its commencement date, this measure is expected to apply to around 80,000 people or 0.5 per cent of Australians with a superannuation account.

Treasury drew heavily from the Retirement Income Review (the Review) published in November 2020 covering the state-of-play of Australia's superannuation system. Extensive research and stakeholder engagement was undertaken to produce the Review; over 430 submissions were received and over 100 meetings with stakeholders were held. Specifically, the Review found that "the design of superannuation tax concessions increases inequality in the system" due to concessions providing "greater benefit to people on higher incomes".[1] The Review acknowledged that the nature of retirement and life expectancy have changed over the years and so too does the superannuation system need to change to improve intergenerational equity. The cost of superannuation needs to be "consistent with the Australian economy's capacity to pay".[2] Also, to be fiscally sustainable, the system "has to be adaptable to changing circumstances".[3] This includes changes in demography as well as economic shocks such as those generated by the COVID-19 pandemic.

During consultation, several stakeholders expressed support for the measure provided that it imposes minimal compliance burden on funds, affected taxpayers and members of superannuation funds more broadly. For instance, the Association of Superannuation Funds of Australia (ASFA), a policy body for Australia's superannuation industry, emphasised that "efficient and cost-effective administration of the proposed new tax" is critical. Treasury agrees with this notion, "to avoid imposing a cost burden on superannuation funds that would indirectly be borne by fund members whose total superannuation balances are below" $3 million. The measure has been constructed with this in mind.

System Overview

More than 15 million Australians are now benefiting from having a superannuation account and better retirement outcomes. Australia's superannuation pool has grown from around $148 billion in 1992 to $3.5 trillion in 2023, and will continue to grow. Total superannuation balances as a proportion of gross domestic product (GDP) are projected to almost double from 116 per cent in 2022–23 to around 218 per cent of GDP by 2062–63.[4]

The superannuation system provides flexibility for individuals to choose a superannuation arrangement that best suits their personal circumstances. Superannuation interests are predominantly held across APRA-regulated funds, Small APRA funds, Self-Managed Super Funds (SMSFs) and Exempt Public Sector Superannuation Schemes.

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1 *Retirement Income Review,* Treasury, July 2020, page 20.

2 Ibid, page 51.

3 Ibid.

4 *Intergenerational Report 2023*, Treasury, August 2023, page 167.

On 20 February 2023, the Treasurer and Assistant Treasurer announced that the Government is taking steps towards legislating the following objective of superannuation:

- 'The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way'.[5]

The objective will provide stability and confidence to policy-makers, regulators, industry, and the community, that changes to superannuation policy will be aligned with the purpose of the superannuation system. The inclusion of 'sustainable' signifies that the superannuation system should be robust to demographic and economic change and cost-effective in achieving its objective. It also reflects the Australian economy's capacity to support the system and the need for it to be fiscally sustainable for the Commonwealth Government in terms of budgetary cost from both tax expenditures and government contributions. A sustainable superannuation system will ensure that Government support, which can substitute or complement individual's superannuation and private savings, will help Australians achieve a dignified retirement.

The objective is separate to the existing conditions within the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994* that set out requirements for trustees of superannuation funds.[6] This includes the obligation of trustees to maintain the fund for the sole or primary purpose of holding superannuation benefits on behalf of members. These benefits must be preserved until a member has reached preservation age and is retired, or until the member has reached the age of 65. In addition, trustees must adhere to covenants including duties to act honestly and with diligence and care in all matters concerning the fund, as well as acting in members' best financial interests. Under existing law, all superannuation funds, including both APRA regulated and SMSFs, are required to consider diversification and liquidity when making investment decisions. These requirements provide protections for members and ensure superannuation is managed consistent with the purpose of providing income in retirement.

There are several existing mechanisms for promoting equity and sustainability in the retirement income system. These include rules relating to superannuation contributions and withdrawals, the amount of tax-free superannuation that can be transferred to the retirement phase, as well as additional tax for high-income earners and tax offsets for low-income earners.

Superannuation taxation

Australia's superannuation system is unique, as is its taxation. Australia taxes contributions and earnings in accumulation at a headline rate of 15 per cent. In the retirement phase, benefits and earnings are generally tax-free.

The effective earnings tax rate may be lower than 15 per cent in the accumulation phase. This is because superannuation assets are eligible for franking credit tax offsets and a one-third capital gains discount if the assets have been owned for at least 12 months. The effective tax rate in the accumulation phase averages around 7 per cent.[7]

A comparison of how certain other countries tax private pensions is provided below. The majority of OECD countries adopt a tax arrangement where contributions and investment returns are exempt from tax, while pension payments are taxable income at the time of withdrawal. This is known as the "Exempt-Exempt-Taxed" (EET) regime.

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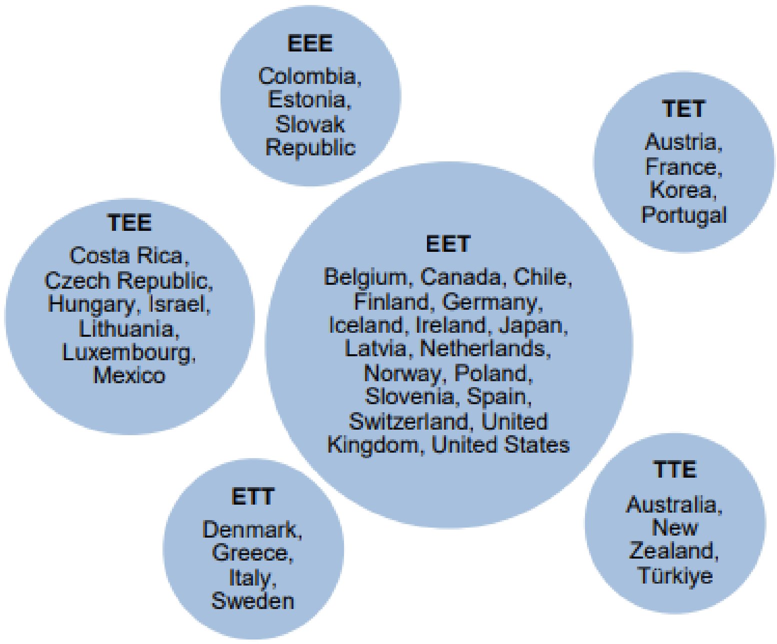
5 *Legislating the objective of superannuation*, Treasury, February 2023, page 9.

6 The objective is not intended to change the operation or interpretation of existing superannuation law, prudential standards or governing rules of superannuation entities.

7 *Retirement Income Review*, July 2020, The Treasury, page 81.



Note: Main pension plan in each country. "E" stands for exempt and "T" for taxed. Countries offering tax credits on contributions are considered as taxing contributions, as the tax credit may not cover the full amount of tax paid on those contributions.

Source: Annual Survey on Financial Incentives for Retirement Savings, OECD, 2022 (page 7).

Contributions

There are two main types of contributions that can be made in the superannuation system, with different tax treatments – concessional (made before tax) and non-concessional (made after tax).

- Concessional contributions are taxed at the fund level at a rate of 15 per cent and are permitted up to a general cap of $27,500 per year. They generally include Superannuation Guarantee (SG) contributions, salary sacrifice contributions, and voluntary deductible contributions. However, there is already some progressivity on the tax of contributions.
  - For low-income earners, 15 per cent tax is higher than their effective marginal tax rate. The low-income super tax offset (LISTO) provides a 15 per cent tax offset (paid into the individual's super fund) for individuals who earn $37,000 or less each year.
  - Division 293 is an additional 15 per cent tax that applies to part or all of a member's concessional contributions where their income and 'low tax contributions' for a financial year exceeds $250,000.
- Non-concessional contributions are capped at $110,000 per year and include personal voluntary contributions, spouse contributions, and other contributions made by an individual which are not employment related. An individual's non-concessional contributions are not taxed upon entry into a fund as the contributions have already been taxed at their marginal tax rate.

Benefit payments

If an individual is retired and has reached age 60, withdrawals from superannuation are generally not taxed. For individuals under age 60, tax treatment of withdrawals varies based on whether the withdrawal is received as a pension or a lump-sum, as well as the basis on which the withdrawal is made.

Fund earnings

Superannuation funds are taxed on the earnings from their assets that support individuals' superannuation interests.

- For assets that support accumulation (pre-pension) interests, earnings are taxed at a flat headline rate of 15 per cent, with realised capital gains eligible for a 1/3 discount if held for more than 12 months (an effective tax rate of 10 per cent).
- For assets that support retirement phase (pension) interests, earnings (including capital gains) are tax exempt.

The value of superannuation assets that can be transferred to retirement phase interests and become eligible for tax-exemptions on earnings is limited by the Transfer Balance Cap (TBC), which is currently set at $1.9 million and is indexed in line with the Consumer Price Index.

Defined benefits

Special tax treatment also exists for interests held in defined benefit schemes. Defined benefit interests are found in both the public and private sectors, and include a range of fully unfunded, partially funded and fully funded arrangements.

Unfunded arrangements, and unfunded components within schemes, exist in many public sector arrangements and reflect that the eventual benefits payable to interest holders will be at least partly financed directly from a government's consolidated revenue. As such there are no contributions invested that are attributable to these components, no earnings upon which tax concessions are received, and no tax payable until the benefit stage.

Instead, pension payments attributable to these components are taxable in an individual's hands at their personal marginal tax rate, with a 10 per cent offset provided for some pensioners aged 60 or over. Lump sums attributable to these components paid to an individual aged 60 or over are also taxable in the individual's hands, with an offset ensuring an effective tax rate of 15% up to a cap (currently $1,705,000).

For fully funded arrangements, and the funded components within schemes in relation to which actual employer or member contributions are made, the earnings received from investments are taxed like any other accumulation interest at a headline rate of 15 per cent.

The TBC imposed additional taxation on defined benefit pensions as the method to extend commensurate treatment to the limitations placed on retirement phase tax exemptions for accumulation interests. This involved removing the 10 per cent tax offset for any unfunded components above an annual payment threshold of $118,750 and including 50 per cent of the funded components above that threshold in an individual's assessable income.

Retirement Income Review

In September 2019, the previous Government commissioned an independent panel to review the retirement income system following a recommendation by the Productivity Commission in its report, *Superannuation: Assessing Efficiency and Competitiveness*. The Retirement Income Review (the

Review) developed an evidence base of the operation of the retirement income system to improve the understanding of how the system operates and the outcomes it delivers for Australians. While it did not directly provide recommendations, the findings of the Review have informed the policy development for this measure.

1. The problem

The need for better targeted concessions.

Superannuation plays an important role in enabling Australians to save for their retirement, reducing reliance on the Age Pension. Tax concessions have a role in incentivising Australians to save for retirement but come at a significant and growing cost to the revenue required to fund services.

Some existing features of the superannuation system such as contribution limits and the TBC seek to more effectively target the distribution of superannuation tax concessions. The Retirement Income Review made the case for further adjustments.

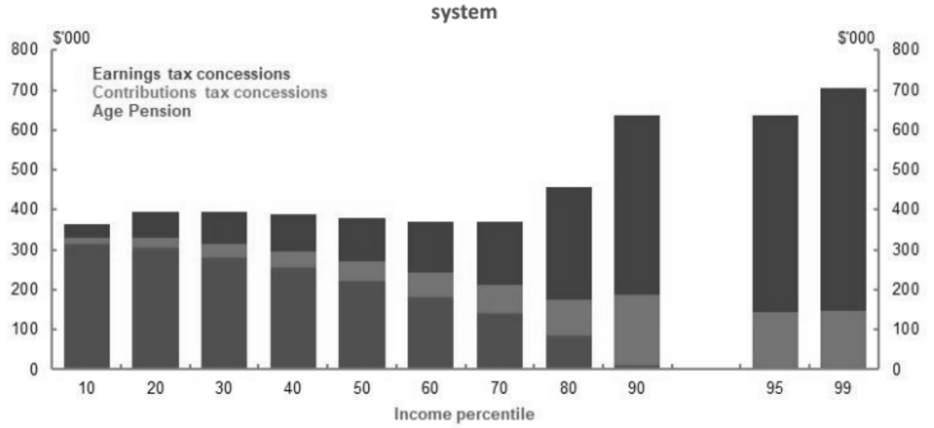
The OECD's 2021 Economic Survey of Australia recommended a reduction in concessions provided to private pensions that favour high income earners.[8]

Income Decile

Distributional analysis in the Tax Expenditure and Insights Statement (TEIS) shows that the top 20 per cent of income earners continue to receive over 55 per cent of the total benefit from earnings tax concessions, with 39 per cent of the tax benefit going to the top 10 per cent of income earners.[9]

As outlined in the chart below, individuals in the top income decile receive substantially more government support over a lifetime across the retirement income system with the largest benefits provided through earnings tax concessions.

Chart 3A-11 Projected lifetime Government support provided through the retirement income system



Note: Values are in 2019-20 dollars, deflated using the review's GDP deflator and uses review assumptions (see *Appendix 6A. Detailed modelling methods and assumptions*). Middle-income earners receive less support when superannuation is drawn down in line with the minimum legislated rates (see *Annex — stakeholders' issues with lifetime Government support analysis*, below). Source: Cameo modelling undertaken for the review.

Source: Retirement Income Review, Treasury, July 2020, page 247.

Fund balance

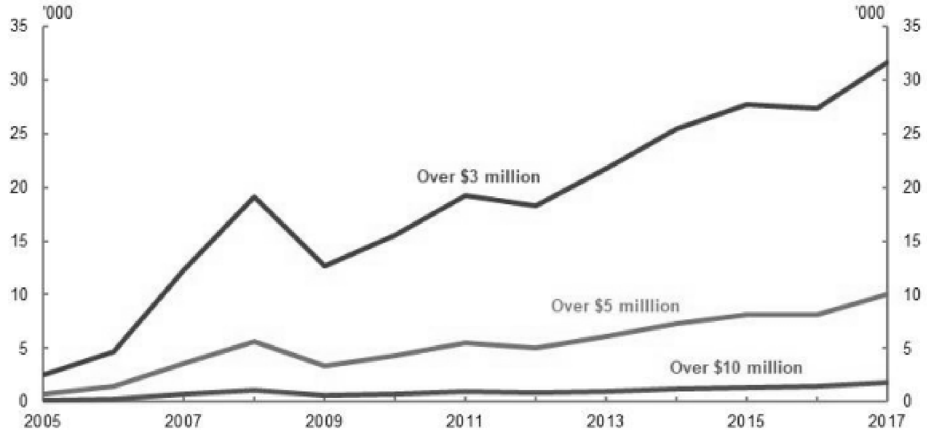
Between June 2005 and June 2017 the number of people with a superannuation balance larger than $10 million increased from 151 to 1,839. The number of people with a superannuation balance larger than $3 million increased from less than 5,000 in 2005, to over 30,000 in 2017.[10]

8 *OECD Economic Surveys: Australia 2021*, OECD, September 2021, page 35

9 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 17.

10 *Retirement Income Review,* Treasury, July 2020, page 243.

Chart 3A-8 Number of people with superannuation balances above selected thresholds



Note: Thresholds use 2017 dollars. Historical balances have been inflated using average weekly ordinary time earnings to 2017 dollars, to be comparable to the 2017 figures. Source: Analysis using data provided by the ATO for the review.

Source: Retirement Income Review, Treasury, July 2020, page 243.

The Review estimated the superannuation earnings tax concessions for a representative fund of $5 million and $10 million. With a net earnings rate of 6 per cent, the $5 million fund benefits from around $70,000 in earnings tax concessions, while a $10 million fund benefits from more than $165,000.[11]

The Review noted that large balances built up under previous settings, with balances above $10 million, are expected to remain in the superannuation system for many decades, with around 30 per cent of these accounts still likely to be in existence in two decades.[12]

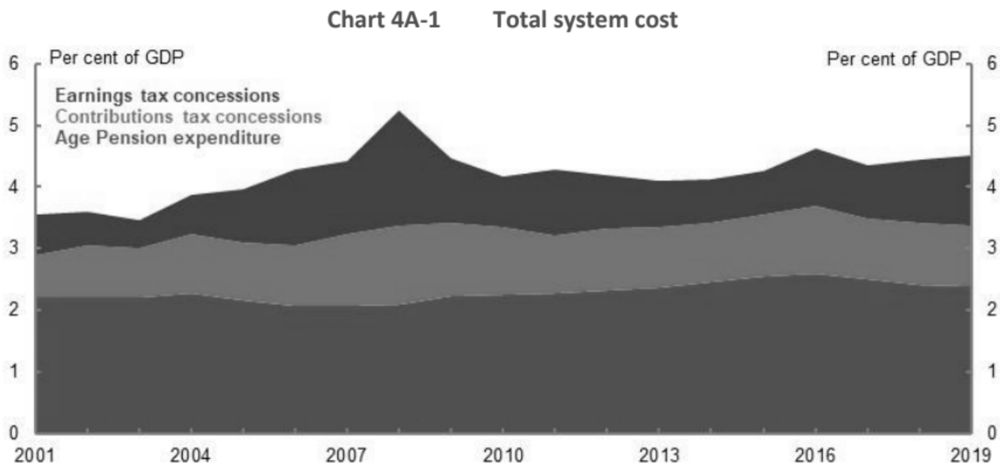
By 2025-26, the number of people with balances larger than $3 million is expected to reach approximately 80,000. These superannuation accounts with large balances are primarily a legacy of past superannuation policy settings, namely generous and in some cases no contribution caps, no restrictions on balance amounts, and uncapped tax exemptions on retirement phase assets.

The broader retirement income system context

The two largest costs associated with Australia's retirement income system are direct expenditure on the Age Pension and the cost of superannuation tax concessions, the latter representing forgone tax revenue to the Government. Superannuation tax concessions are comprised of concessions on both contributions and earnings.

The total cost of Age Pension expenditure and superannuation tax concessions (both contributions and earnings concessions) has risen from 3.55 per cent of GDP in June 2001 to 4.52 per cent of GDP in June 2019.[13]

11 *Retirement Income Review,* Treasury, July 2020, page 244.
12 Ibid
13 *Retirement Income Review,* Treasury, July 2020, page 376.

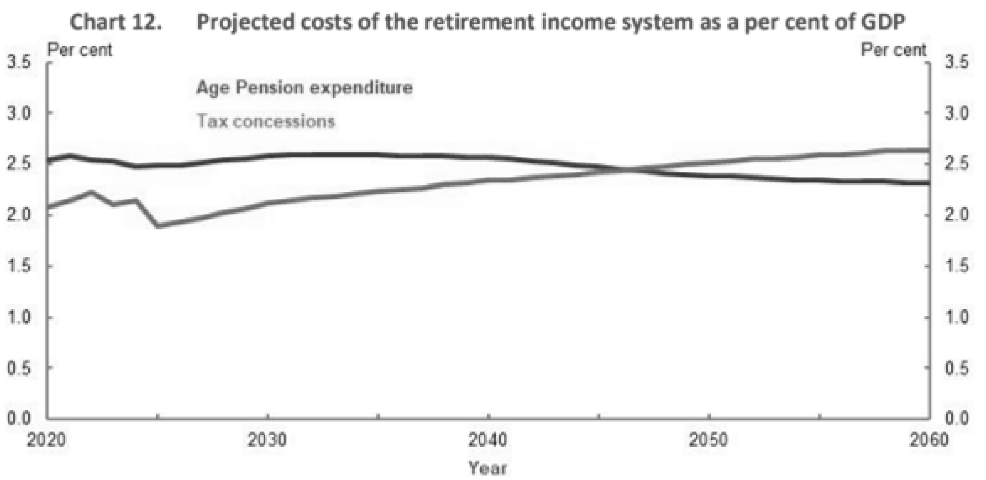


Source: Retirement Income Review, Treasury, July 2020, page 376.

While all components increased as a percentage of GDP over the period, superannuation tax concessions have grown by more than Age Pension expenditure. Age Pension expenditure grew by 0.2 percentage points, while superannuation tax concessions grew by 0.8 percentage points over the period.[14] Earnings tax concessions have been the predominant driver of this increase with contributions tax concessions having been tightened in recent years through lower contributions caps and a reduced Division 293 tax threshold.[15]

In 2022-23, the TEIS estimated that the revenue forgone from superannuation tax concessions amounts to approximately $50 billion. Of this, $21.5 billion is attributed to earnings tax concessions.[16]

Looking to the future, the cost of Age Pension expenditure as a percentage of GDP is estimated to fall, but this is in direct contrast to projections for superannuation tax concessions, which is driven primarily by earnings tax concessions. While the TBC introduced in 2017 has partly constrained the growth in superannuation earnings tax concessions, these concessions are still expected to grow faster than the economy. As demonstrated in the following chart the cost of superannuation tax concessions is projected to exceed the cost of the Age Pension by 2050.[17]



Source: Retirement Income Review, Treasury, July 2020, page 52.

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14 Ibid

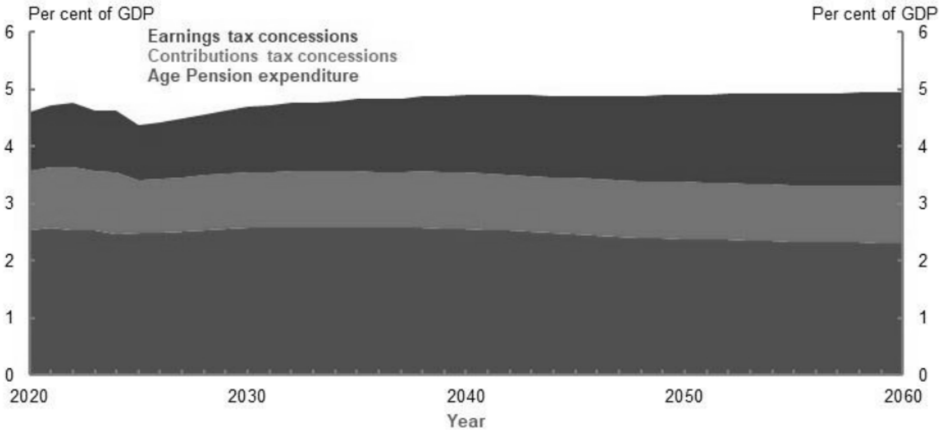
15 Ibid, page 380.

16 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 5.

17 *Retirement Income Review,* Treasury, July 2020, pages 20, 51

While this intersection of costs is expected as the superannuation system matures and reduces pressure on Age Pension expenditure, the Review also projects a long-term increase in the cost of the overall system from 4.6 per cent of GDP in 2020 to 5.0 per cent of GDP in 2060.[18] This system-wide cost increase is not indicative of sustainability, and suggests the increase in superannuation earnings tax concessions will outpace the reduction in Age Pension expenditure.

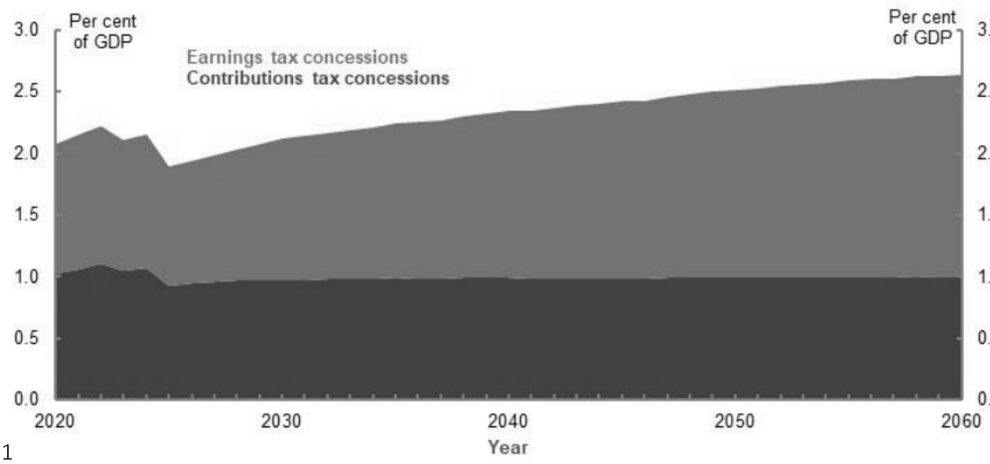
Chart 4A-12 Total projected system cost



Source: Retirement Income Review, Treasury, July 2020, page 387.

Currently, according to the TEIS, over the forward estimates, contributions concessions are projected to grow at 3.2 per cent, while earnings are projected to grow at 1.5 per cent.[19] However, the cost of earnings tax concessions as a percentage of GDP is projected to grow due to growth in the size of the superannuation system and projected rate of return, while the cost of contributions tax concessions as a percentage of GDP is forecast to remain stable over the next 40 years.[20] Particularly, the cost of "earnings tax exemption in the retirement phase is likely to grow as the superannuation system matures".[21]

Chart 4A-17 Projected cost of superannuation tax concessions



Source: Retirement Income Review, Treasury, July 2020, page 391.

18 Ibid, page 387,

19 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 5.

20 *Retirement Income Review,* Treasury, July 2020, page 390, 391.

21 Ibid, page 391.

Consistency with the objective of superannuation.

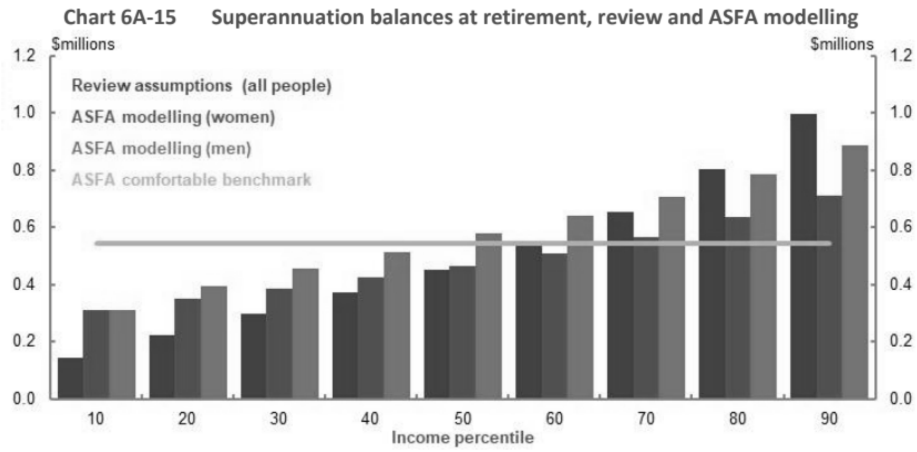
The Government's proposed objective for superannuation places a focus on preserving savings to deliver income for a dignified retirement.

It also acknowledges that the superannuation system can only deliver on its objective in the long term if it is economically and fiscally sustainable.

Tax concessions have a role in incentivising Australians to save for retirement but come at a significant and growing cost to revenue. In the accumulation phase tax concessions are designed to encourage the accumulation of additional savings. In retirement, the earnings tax exemptions encourage individuals to move their assets into the draw-down phase.

In the context of the objective of superannuation, 'dignified' denotes a standard of financial security and wellbeing in retirement which allows the person to participate economically and socially in their community[22]. The concept of a 'dignified retirement' is subjective and may reflect different levels of income for different individuals depending on their circumstances. The retirement income that can be sustained from a superannuation balance of $3 million at the point of retirement far exceeds conventional estimates of a comfortable or dignified level of retirement income.

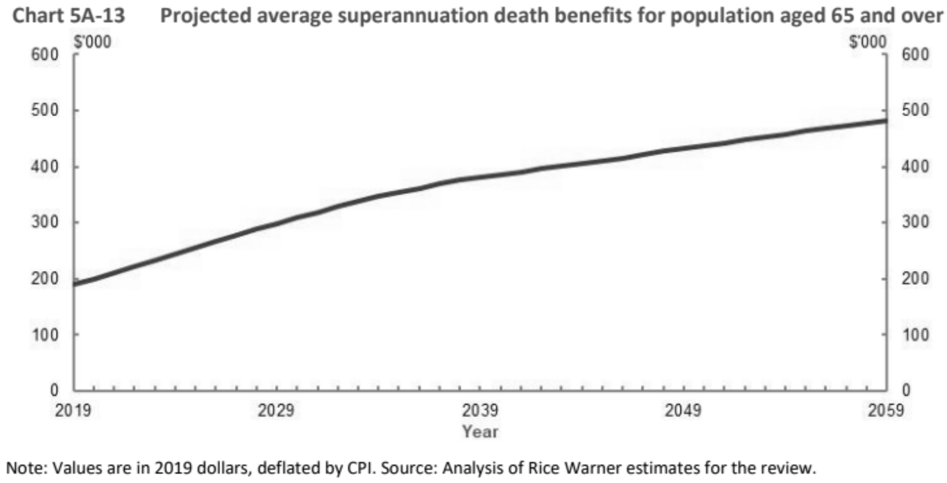
While the Review concluded the ASFA Comfortable Retirement Standard was not an appropriate benchmark for the overall adequacy of retirement outcomes in the superannuation system, it did note the relevance of the standard in gauging outcomes for higher-income earners.[23] A $3 million balance at retirement represents more than 5 times the expected balance required for an individual to maintain retirement income at the ASFA Comfortable Retirement Standard.[24]



Source: Retirement Income Review, Treasury, July 2020, page 501.

Conversely, the review found that a majority of individuals do not consume their retirement savings, with an average member leaving behind 90 per cent of their superannuation when they die.[25] On average, the value of death benefits for individuals over age 65 are estimated to increase from an average of $190,000 in 2019 to more than $480,000 in 2059.[26]

22 Superannuation (Objective) Bill 2023 Draft Explanatory Materials, Treasury, 2023, page 8.
23 *Retirement Income Review,* Treasury, July 2020, pages 163, 499.
24 Ibid, page 501.
25 Ibid, page 432.
26 *Retirement Income Review,* Treasury, July 2020, page 435.



Source: Retirement Income Review, Treasury, July 2020, page 435.

Consequently, the Review concluded that the 'provision of tax concessions for very large superannuation balances are not required for retirement income purposes, as they are unlikely to encourage additional savings, and that large balances are held in the superannuation system mainly as a tax minimisation strategy, separate to any retirement income goals'.[27]

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27 Ibid, page 244.

2. Case for government action

Why should the Government intervene?

The Government has responsibility for Australia's retirement income policy and tax settings.

Superannuation tax settings directly impact the Government's fiscal position. Concessional taxation of superannuation entity earnings is the 6th largest category of forgone revenue with estimated revenue forgone in 2022-23 of $21.5 billion.[28]

As this represents a tax expenditure for the Government, the market is not capable of implementing change that would address the problems outlined in section 1.

What is the Government trying to achieve?

The objective for Government action is to improve the long-term sustainability and cost-effectiveness of the superannuation system and better target concessions to improve equity. This is consistent with the Government's proposed objective of superannuation:

> *'The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way'.*[29]

Specifically, the Government is seeking to achieve this objective by:

1. Reducing the future rate of growth of superannuation earnings tax concessions

Slowing the rate of growth of the cost of superannuation earnings tax concessions will assist in reducing the long-term cost of the superannuation system, relative to current settings. The total cost of earnings tax concessions is still expected to continue to grow as the system continues to mature and the superannuation guarantee reaches its legislated level of 12 per cent, however this growth will occur at a more sustainable rate. The TEIS forecasts that superannuation earnings concessions are projected to grow by 1.5 per cent over the forward estimates period.[30]

2. Better targeting the distribution of superannuation earnings tax concessions

Generous tax concessions continue to apply to large superannuation balances despite the Review finding that these large balances exist primarily for tax minimisation and estate planning, rather than for genuine retirement income. The proposed reforms will ensure that superannuation tax concessions are appropriately targeted to encourage individuals to save for retirement.

High-income individuals have the capacity to save more, which means that they can contribute larger amounts to superannuation and reduce their effective tax rate through a flat tax rate in superannuation receiving greater benefits than low-income individuals.

Given that superannuation is deferred income, individuals should be taxed on superannuation at the rate that would apply if their income had been spread over their entire life rather than merely over their working life.[31] Hence, it follows that high-income people should be subject to a higher effective tax on superannuation than low-income people.

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28 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 5.
29 *Superannuation (Objective) Bill 2023 – Exposure Draft*, Treasury, September 2023, page 3.
30 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 5.
31 *Australia's future tax system: Report to the Treasurer, Part Two,* December 2009, page 97.

What steps have been taken previously?

Significant steps towards improving the sustainability and equity of the superannuation system were taken most recently, via the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*, which contained a suite of changes to contribution limits and saw the introduction of the transfer balance cap.

- Contribution limits – the concessional contributions cap was reduced to $25,000 per annum, the threshold at which high-income earners pay additional tax on their concessional superannuation contributions was lowered to $250,000 and the ability to make non-concessional contributions to superannuation was restricted to individuals who have a total superannuation balance less than the general transfer balance cap.
- Transfer Balance Cap – this imposed a cap on the amount of capital that can be transferred into the retirement phase of superannuation where earnings are tax-exempt. This cap was introduced to "reduce the extent to which superannuation is used for tax minimisation and estate planning".[32]

These changes were designed to prevent the future accumulation of large superannuation balances, however, they do not address the existing stock of large superannuation balances which have accumulated in the system under previous settings. The existing stock of large superannuation balances is what the Government is seeking to address via the reforms considered in this analysis.

What is the effect of no Government action?

Without intervention, the existing stock of large balances would likely remain in the system for decades to come, and the cost of the superannuation system will continue to grow with a high proportion of concessions provided to high-income earners and high-wealth individuals. The problems outlined in section 1 will continue to persist. Over the long-term the increasing cost of the superannuation system may restrict opportunities for Government expenditure to support other priorities.

32 *Superannuation (Objective) Bill 2016, Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016, Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016, Explanatory Memorandum,* Commonwealth Australia, 2016*,* Page 36.

3. Policy options

Option 1 – Maintain the status quo

This option would involve no changes to current superannuation tax settings.

Option 2 – Tax actual earnings

This option would reduce the tax concessions for individuals with a total superannuation balance (TSB) over $3 million. This would be achieved by applying an additional 15 per cent tax on the portion of earnings attributed to their balance over $3 million.

An individual's TSB is the combined value of all their superannuation interests. Where an individual has multiple superannuation interests, it will be based on their combined value, including the value of defined benefit interests in both the pre-pension and pension phase. The $3 million threshold would apply to each member individually, meaning members of the same fund, or spouses, cannot combine their thresholds.

Option 2 would apply the tax to the individual member's share of taxable income generated by the superannuation fund. Currently superannuation funds calculate and report taxable income on a fund level. This option would require changes to these arrangements to calculate and report taxable income generated inside superannuation and attribute these amounts to each individual member.

A new method of calculating tax liabilities for individuals, based on their share of the taxable income of their superannuation funds, would need to be developed, legislated and administered by funds.

The tax would be levied directly on the individual on an annual basis. This tax would be separate from personal income tax, to restrict the ability of individuals to use deductions and other offsets to further minimise their tax payable. Imposing the tax separately to an individual's personal income tax reflects the policy intent to reduce or neutralise the concessional tax rate applied to superannuation fund earnings. While there would be changes to how a superannuation fund reports taxable income, there would be no change to the superannuation fund tax payable.

The Australian Taxation Office (ATO) will collect the relevant information and calculate the tax liability for all individuals with a TSB greater than $3 million at the end of the financial year. The tax is only applicable to the portion of earnings generated from their TSB greater than $3 million. The proportion of taxable earnings will be calculated by reference to the proportion of the individual's TSB greater than $3 million at the end of the financial year. The tax will be applied to the gross value of taxable income, before the application of any offsets and regardless of whether the superannuation fund itself is eligible for a tax refund (for example a refund of franking credits). In the event the individual members' share of taxable fund income is zero or negative, then no additional tax under this measure would be payable.

$$Tax\ Liability = 15\ per\ cent\ \times\ Members'share\ of\ taxable\ fund\ income \times \left(\frac{TSB - \$3\ million}{TSB}\right)$$

Individuals would have the option to pay the tax out of pocket, or by releasing funds from superannuation. The option to pay using money from superannuation would be available, even if the individual does not ordinarily have access to their superannuation savings (i.e. the individual has not met a condition of release). Where an individual has multiple superannuation interests, they can choose which interest to release the money from (noting defined benefit accounts may have limitations). In line with the existing arrangements for Division 293 tax liabilities, individuals would have 21 days from receiving the notice of assessment to pay the tax liability, after which interest would accrue at the rate of the general interest charge. The option to release funds from superannuation would be available for 60 days.

Option 3 – Tax an estimate of earnings based on change in value

This option adapts Option 2 to apply the tax to an estimate of earnings. All elements of the tax as outlined in Option 2 would apply, however taxable earnings would be calculated based on the difference between an individual's opening and closing total superannuation balance, adjusting for withdrawals and contributions.

The earnings calculation would involve three key components:

- Total Superannuation Balance – An individual's TSB is the total value of accumulation phase and retirement phase interests plus in-transit rollovers and certain outstanding limited recourse borrowing arrangements (LRBA) less structured-settlement contributions.
- Withdrawals – This would capture amounts which have been removed from superannuation and are not reflected in the closing TSB.
- Net Contributions – This would capture amounts that were added to superannuation and are reflected in the closing TSB, net of any contributions tax.

$$Tax\ Liability = 15\ per\ cent\ \times\ Earnings \times \left(\frac{TSB_{Closing} - \$3\ million}{TSB_{Closing}}\right)$$

where

$$Earnings = \left(TSB_{Closing} + Withdrawals - Net\ Contributions\right) - TSB_{Opening}$$

The adjustments for withdrawals and contributions would be made to the closing TSB to reflect what the individual's TSB would have otherwise been if those transactions had not occurred during the year. This would ensure that the difference between the opening and closing balance more accurately reflects investment returns generated inside superannuation.

To reflect that this is an approximation, this option will provide for negative earnings to be carried forward indefinitely and offset against future earnings. Similarly net capital losses would not be quarantined and instead would be available to offset current or future earnings. The ATO would have responsibility for tracking the carry forward of negative earnings.

In order to capture years where an individual has negative earnings, the ATO would be required to collect the relevant information and calculate the earnings for individuals where their TSB is greater than $3 million at the end of the financial year, or the prior financial year.

This option would provide greater flexibility to pay tax liabilities than other taxes in superannuation. Individuals would have 84 days to pay a liability and any late payment would attract a concessional rate of interest.[33]

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33 Late payments would attract interest at the shortfall interest charge, which is concessional in comparison to the general interest charge which applies to the late payment of tax liabilities. The shortfall interest charge uses a base interest rate and an uplift factor of 3 per cent, rather than the general interest charge uplift factor of 7 per cent.

Option 4 – Tax an estimate of earnings using a deeming rate

This option adapts Option 2 to apply the tax to a deemed earnings amount. The balance above the $3 million threshold would be multiplied by a prescribed rate of return to determine the notional earnings. The same deeming rate would apply for all individuals impacted by this measure. The deemed rate of return would be 7.5 per cent in line with long term historical investment returns.

$$Tax\ Liability = 15\ per\ cent\ \times 7.5\ per\ cent\ \times (TSB - \$3\ million)$$

This option would not result in the calculation of negative earnings, and therefore there would not be losses to carry forward. Similar to Option 2, the tax would be separate to the personal income tax system, to restrict the ability of individuals to use deductions and other offsets to further minimise their tax payable. There would be no change to the superannuation fund tax payable.

However, while a deemed earnings model would be the simplest, it would also provide the least accurate method of calculating earnings, as a deemed rate would be applied to an individual's earnings, regardless of their actual returns for the year. Further, in years where actual losses are realised, the fund would still receive a tax liability.

Other options not pursued

Options 2, 3 and 4 above reflect alternative approaches to delivering the specific policy objective of uplifting the tax on superannuation earnings attributable to balances exceeding $3 million by 15 per cent.

There are other possible pathways to achieve the broader policy objective of targeting the superannuation earnings tax concessions, however these were viewed as less appropriate than the direct avenue of adjusting the earnings tax rate for balances exceeding $3 million. In summary:

- A 'hard cap' could be imposed on superannuation balances, with individuals being required to withdraw any superannuation above that cap. This option was not pursued given the disproportionate compliance burden and transactional cost of requiring amounts to be removed from the superannuation system, particularly if balances near the threshold continued to grow and exceed it repeatedly. In addition, there may be legal issues with this approach that mean it could not be implemented.
- The superannuation fund earnings tax rate could be universally changed, rather than applying an uplift on balances over $3 million. This was not pursued as it would not achieve the objective of better targeting the distribution of superannuation earnings tax concessions; the flat tax rate would still deliver a disproportionate benefit to the largest superannuation balances and for some low to medium income earners could largely remove the benefit of the superannuation earnings tax concessions almost entirely.
- A 'combination' approach of offering optionality to choose the earnings base between those offered in any of options 2, 3 and 4 was not pursued. This approach was discounted as it would create system distortions and undermine sector neutrality; superannuation funds that could administer one option over the other may obtain tax advantages over another fund that could not, where the underlying assets, transactions and behaviour were otherwise equal.

4. Impact analysis

Who is impacted?

With the exception of Option 1, the threshold for determining whether an individual is in scope for the tax under each option is $3 million. Individuals with a TSB over $3 million the end of the financial year will be subject to an additional tax of 15 per cent on earnings, attributable to balances above this threshold. This will bring the headline tax rate on earnings attributable to balances above $3 million to 30 per cent. Earnings attributable to balances below $3 million will continue to be taxed at a concessional rate of 15 per cent.

The additional tax on earnings imposed by this change is expected to impact around 80,000 individuals from 2025-26, or approximately 0.5 per cent of Australians with a superannuation account. As the $3 million threshold will not be subject to indexation, the number of individuals impacted is expected to increase over time.

All three options are expected to impact the same individuals, with primary differences through ongoing compliance costs and implementation costs. Data on the specific characteristics (e.g., current/previous employment or specific investments) of individuals with TSBs above $3 million is not available.

Affected population statistics

- Approximately 77,400, or 93 per cent of all affected individuals, have a total superannuation balance between $3 million and $10 million. The remaining 7 per cent of affected individuals have balances between $10 million and $50 million.
- Approximately 100 individuals, or less than 1 per cent of affected individuals, have balances in excess of $50 million.
- Approximately 65 per cent of affected individuals are in the retirement phase, with the remaining 35 per cent of individuals still in the accumulation phase.
- The total value of balances impacted will be approximately $425 billion in 2025-26.
- Approximately 10,000 members with defined benefit interests will be impacted by Division 296 tax in 2025-26, representing approximately 1 per cent of the total population with DB interests.

What are the impacts?

Better alignment with the objective of superannuation

Despite the significance of the superannuation system, there has never been a legislated objective for the superannuation system. This has led to mixed messages, with some consumers seeing the superannuation system as a general wealth management vehicle and developing large superannuation balances far in excess of what is required for retirement, including balances in the tens and hundreds of millions of dollars.

The government is proposing to provide clarity and a shared purpose by legislating the objective of superannuation: to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way. The Better Targeted Superannuation Concessions measure is consistent with this objective.

Additionally, as noted above ("What steps have been taken previously?") legislation has already been introduced in 2007 and 2016 with the express purpose of limiting the future accumulation of large superannuation balances. Balances above $3 million are generally expected to have been accumulated under historical policy settings.

These proposed changes to superannuation tax concessions provide a broader benefit to all Australians by improving the cost effectiveness and fairness of the superannuation system. Importantly, it will allow people to continue to save for retirement through superannuation but improves equity of the superannuation system and its fiscal sustainability over time through limiting the level of taxpayer support available to a small number of individuals with large balances.

Changes to wealth management

Individuals close to or above the $3 million threshold may look to adjust their overall wealth management structure and strategies to invest outside the superannuation system, rather than facing the additional taxation applied by the measure.

Where an individual has not yet met a condition of release (for example because they are under age 65 and have not retired), they will not be able to pre-emptively reduce their superannuation balance to avoid the application of the measure. However, they will still be able to meet any liability from the measure out of their superannuation balance (unless they have a defined benefit interest, in which case their liabilities will be deferred until they have access to their superannuation).

Those who have met a condition of release can make withdrawals to pre-emptively reduce their balance below $3 million. This may involve the sale of assets held by superannuation funds, with these amounts to be re-invested in alternative structures outside the superannuation system.

There may be a resulting increase in usage of alternative investment structures such as corporate vehicles, family or other investment trusts. However, as these structures do not receive the same earnings tax concessions as those enjoyed by a superannuation fund, the transfer of wealth into these structures is expected to produce the same improvement in the targeting of the superannuation concessions.

Impact on superannuation investment strategies and liquidity

An individual who is impacted by the measure may pay the additional tax directly, or choose to have it paid out of their superannuation interests. The latter category need to ensure that they have sufficient liquidity in their superannuation fund to meet these payments; this may require a higher level of liquidity than they previously needed. If funds are complying with existing legal requirements to consider diversification and liquidity requirements when making investments, then they should have adequate liquid assets to meeting any additional tax liabilities. Option 3 and 4 are expected to have a higher impact on liquidity.

Option 3 may result in taxable earnings where a superannuation fund's assets have increased in value, even where gains have not been realised. This may mean a tax liability arises without a corresponding injection of liquidity into a fund (that would occur, for example, if a fund had sold an asset, realised a capital gain, and held cash proceeds from the sale).

Option 4 would also effectively tax unrealised capital gains as the fund would have a notional earnings rate regardless of whether it realised any assets in the year. The impact could be more acute with Option 4, as it would also generate a tax liability in years where actual investment returns are negative.

As members of APRA-regulated funds have little control over the investment strategies of their fund it is unlikely the proposal will have a significant impact on the APRA-regulated fund sector, with regard to influencing investment strategies. However, there may be a greater impact on the SMSF sector, where members have direct control over investment strategies and asset allocation.

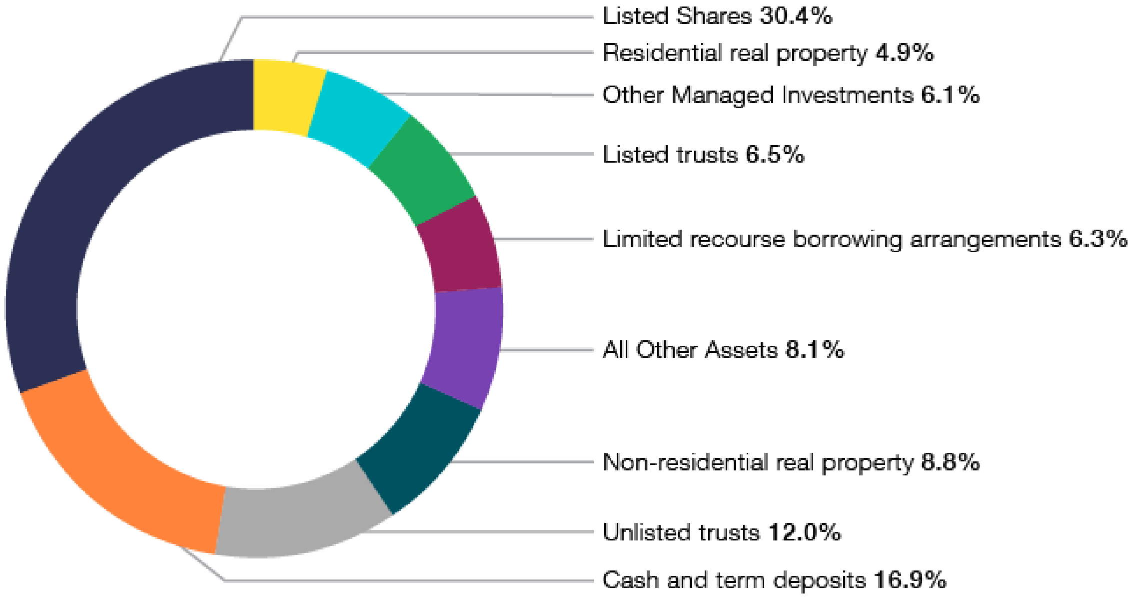
Data from the ATO (as at 30 June 2021) shows that:

- SMSFs held 25% of their assets in indirect investments (trusts and managed investments)
- SMSFs held 47% of their assets in either Australian listed shares or cash and term deposits
- 75% of all SMSF assets are held in one of the following 5 investments: Australian listed shares, cash and term deposits, listed trusts, unlisted trusts, and non-residential real property.

As demonstrated below, asset concentration in SMSFs is low. Further, according to the ATO, for SMSFs with 100 per cent of assets in a single class, the most common class to hold is cash or term deposits.

Less than five per cent of the impacted population of SMSFs (i.e., members with balances above $3 million) have a concentration of greater than 80 per cent of their assets in non-residential retail property. This reflects the fact that most SMSFs have diversified portfolios.

SMSF asset allocation at 30 June 2021:



Source: Graph 9: SMSF asset allocation (30 June 2021), *Self-managed super funds: A statistical overview 2020-21*, Australian Taxation Office.

As a result of the proposed changes, there may be a shift away from investments in more illiquid assets, such as property, in favour of assets which can more easily be divested in order to either ensure an individual's superannuation remains below the threshold, or to pay tax liabilities.

However, it is noted that in managing a superannuation fund's liquidity, including for both SMSFs and APRA-regulated funds, trustees must understand and comply with requirements in the superannuation laws. This includes the requirement to formulate, review regularly and give effect to an investment strategy which takes into account diversification of assets in the fund and the liquidity of the fund's investments, having regard to its expected cash flow requirements and the ability of the fund to discharge existing and prospective liabilities.[34]

34 Sections 52 and 52B respectively of *Superannuation Industry (Supervision) Act 1993* set out the requirements for APRA regulated and self-managed superannuation funds respectively.

There may also be a consequential impact on future investment choices within the superannuation system, including that stakeholders may argue that this will discourage investment in start-ups/growth companies and encourage people to invest in 'blue-chip' stock due to the taxation of unrealised capital gains.

Some stakeholders have noted that as a result of the changes, there may be a greater focus on investing in income generating assets, such as shares and bonds, as opposed to property and other more illiquid assets. This could represent a positive shift as it would better align with the intention of superannuation to provide income in retirement.

Revenue impact

Option 1 would have had no associated revenue implications. It is expected that there would be little variation in the estimated revenue implications across options 2, 3 and 4.

Option 3 is estimated to increase revenue by $950 million over the 5 years from 2022–23. Following commencement of the changes, revenue will increase by $325 million in 2025-26.

In 2027–28, the first full year of revenue collection, the measure is expected to increase revenue by $2.3 billion.

This estimated impact to revenue is based on several key assumptions including:

- The majority of SMSFs are only required to report on fund balances by 15 May of the following financial year, therefore tax revenue from those with SMSFs will be received two years after the earnings occur.
- APRA-regulated funds report by 31 October in the following financial year, therefore tax revenue for those only within APRA-regulated funds will be received one year after the earnings occur.
- Individuals are assumed to remove excess balances from the superannuation system if they can pay a lower amount of tax in the personal income tax system on these excess balances.
- The population of members with defined benefit interests does not grow.

However, there are several areas of uncertainty with the estimated impact to revenue. The estimates depend on projections of balances and returns, as well as the extent that those with excess balances remove them from the superannuation system and into the personal income tax system. Further, the Treasury does not have the necessary data to accurately value the TSBs for individuals with defined benefit interests, as each individual's valuation will depend on their scheme's specific rules, and can also depend on age, length of service and salary. These estimates also depend on the extent that those with defined benefit interests lower their voluntary contributions, in response to the proposal.

Fairness of system

Options 2, 3 and 4 seek to better target tax concessions in superannuation by reducing the tax concession on earnings for individuals with high superannuation balances. Tax concessions within superannuation are intended to encourage and incentivise individuals to accumulate additional savings to support their retirement goals and it is important that these concessions are in place and are targeted in a way to be equitable.

However, as outlined in section 1 of this analysis, the current tax settings provide a significant level of government support to high-wealth and high-income individuals, many of whom have accumulated large superannuation balances under previous regulatory settings.

Each of options 2, 3 and 4 would still provide a tax concession on superannuation earnings, however, they would reduce the level of tax concessions (and therefore level of government support) provided to these higher wealth cohorts.

Cost to Government

Option 1 would not result in any additional government costs (but also no additional revenue).

All three of options 2, 3 and 4 have a baseline cost to Government for the ATO to:

- develop information and communications technology (ICT) develop Information and Communications Technology (ICT) systems to request and receive superannuation fund reporting data and calculate the tax liability under the measure for impacted individuals,
- add functionality to ATO Online systems in myGov to view superannuation earnings and Division 296 liabilities,
- communicate assessments and liabilities,
- facilitate an individual's request to have their superannuation fund pay the liability via release authority processes,
- Implement functionality to adjust for required exclusions, and give commensurate treatment to defined benefit funds, including the maintenance of deferred debt accounts for defined benefit members, and
- Implement functionality to update the calculation of Total Superannuation Balance from the year prior to the start of the Better Targeted Superannuation Concessions measure.

These costs are expected to be minimised where possible by leveraging the design and implementation of existing regimes, namely the Division 293 tax, which reduces the level of tax concession on superannuation contributions for individuals above an income threshold.

Incidental costs would also be borne by the ATO to create new and updated advice and guidance to help individuals and superannuation funds understand how the measure works – in particular, given the measure's focus on the total superannuation balance, and changes required to defined benefit funds, existing guidance on those topics will need to be revised.

Further incidental costs would also include front line client engagement and support, payment processing and debt recovery, objection and dispute resolution services, and governance and assurance activities.

Option 2 would likely present significant further costs to government for:

- the ATO's ICT systems and reporting infrastructure for superannuation fund taxable income to be updated to be able to receive member-level income data, and match it to fund-level taxable income, and
- the ATO's potential need to invest resources into investigating discrepancies between member-level and fund-level income.

Without further exploration of design detail for a member-level taxable income reporting solution for funds it is difficult to estimate these implementation costs. However, it is likely that the implementation costs for the ATO would be materially greater than those forecast for option 3 below, due to several key assumptions:

- while both options require the consumption of additional/changed fund reporting data to calculate the quantum of tax based on legislated formulae, the reporting changes for Option 2 would be at a far greater scale as they would need to encompass all 22.5 million member accounts in large APRA-regulated funds[35], rather than only requiring exception reporting for members impacted by the new tax. As such, the ultimate ICT system build requirements would be fundamentally different as they would likely require revisions to core reporting frameworks,

35 APRA Quarterly Superannuation Industry Publication, Table 1, June 2023.

- similarly, the actual volume of new data required to be ingested by ATO systems would be orders of magnitude larger, increasing capital costs for data storage and stress on ATO's data management solutions,
- there is a greater need for operational resources to assure and/or investigate the reconciliation between member-level and fund-level taxable income values, and the added complexity increases the likelihood of future resource costs addressing disputes, including where a trustee and impacted individual disagree on reported income,
- the added legislative complexity would carry greater incidental implementation costs for the ATO updating its advice and guidance and addressing queries and requests from funds and individuals where uncertainties in application of the law arise.

Option 3 also requires further costs to government, for the ATO to implement the additional fund reporting required to gather the contributions/withdrawals data not captured under existing frameworks, and to factor in the ingestion of that new reporting into system design.

Total ATO expenditure in implementing option 3 (including both the expenditure that is universal to all three options as well as option 3-specific costs) has been forecast as $45.5 million over the forward estimates period. This includes $28.6 million for ICT system build and implementation. It also includes $16.9 million for other implementation and delivery costs including:

- consultation and co-design with the superannuation industry to ensure additional fund reporting is fit-for-purpose and minimises superannuation fund compliance costs,
- additional compliance and support activities with superannuation funds in the first years of implementation to ensure new reporting requirements are correctly understood and complied with, and
- updating guidance and communications products to advise impacted individuals on the calculation methodology and any changes to existing concepts of total superannuation balance.

Option 3 –Forecast ATO costs over forward estimates ($million)

Type	2023-24	2024-25	2025-26	2026-27	Total
ICT					
- Operating	1	4.1	4.9	2.4	12.4
- Capital	1.6	6.5	6.5	1.6	16.2
Non-ICT	1.9	3.7	4.6	6.7	16.9
Total	**4.5**	**14.3**	**16**	**10.7**	**45.5**

Option 4 may require comparatively less implementation cost to government as it would not require the ATO to build or upgrade ICT systems to collect and consume any new data from superannuation funds in order to identify earnings upon which the tax is levied.

However, the ATO has predicted that this ICT cost saving would only reflect a small portion of the $45.5 million ATO implementation cost forecast for Option 3. The basis for this is that:

- while the tax calculation logic would be simpler, a new ICT build would still be required to calculate and assess tax liabilities, including design functionality for the release authority mechanism and treatment of defined benefit debts. The base requirement for system build comprises a significant portion of the ICT costs, and scaling the build for additional functionality to handle a more complex calculation method does not materially increase costs,

- the need to provide commensurate treatment for defined benefit schemes would still require changes to ICT systems to correctly receive and utilise reporting from those schemes, irrespective of the earnings calculation method.

Compliance Cost

APRA-regulated funds have reporting obligations to the ATO in relation to member accounts and transactions, including account balances, contributions, and some withdrawal information using the Member Account Transaction Service (MATS) form. Funds must generally report contributions within 10 business days of the transaction and have annual obligations to report account balances, retirement phase values and accumulation phase values using MATS. However, APRA funds do not currently report all withdrawals to the ATO such as withdrawals that include a tax-free component or most payments to members over age 60.

Relevant fund transactions in a financial year are largely captured by SMSF trustees in their SMSF annual return (SAR). The SAR includes reporting on fund income and expenses, and member specific information including end of year account balance and all sources of contributions into the fund. Lump sum benefits and income stream payments from a member's account, are reported as separate, aggregate amounts. SMSFs can report the type of income stream and lump sums withdrawn, however where more than one benefit type applies in a financial year (e.g. a release authority payment and death benefits) funds report the benefit type with the largest total payment amount. Thus, specific types of benefit payments from a member's superannuation are challenging to identify from existing reporting requirements.

SMSFs must also submit a Transfer Balance Account Report (TBAR) to the ATO on a quarterly basis where there is a retirement phase event, and this information is updated to the member's transfer balance account. These include some relevant information for the purposes of calculating the tax liability for individuals in scope of this measure such as the balance of the transfer balance account, lump sum withdrawals from a retirement phase pension and personal injury settlement contributions.

Information is also reported by members in retirement phase in the Transfer Balance Event Notification (TBEN) form for family law payment splits, fraud and dishonesty, and bankruptcy.

Option 1 would not result in any additional compliance costs for private entities in the superannuation industry or individuals with total superannuation balances of over $3 million.

Each of options 2, 3 and 4 will involve compliance burdens in implementation, additional to current regulatory systems for superannuation funds and members. The ATO currently collects data to calculate individual TSBs, however additional reporting may be required to ensure adequate data is collected from all interests to appropriately calculate TSBs and tax liabilities.

Changes would be required to suitably value defined benefit interests in each of options 2, 3 and 4. Defined benefit interest are often not re-evaluated as benefits are drawn down and may currently also be allocated a nil or nominal valuation which would not be appropriate when seeking to identify and impose an additional earnings tax on individuals with TSB's of over $3 million.

Option 2 would involve a substantial burden on the superannuation industry to implement as it would involve developing and maintaining complex new accounting and reporting regime to calculate taxable income at a member level. This would require the taxable income generated by an individual member's superannuation interests that exceed $3 million to be separately identified for the purposes of calculating the additional tax.

Superannuation funds currently calculate and report taxable income at the fund level and not at the member level. This presents significant complexities as actual earnings, such as income and realised capital gains, are calculated, and taxed at the fund level. A simple allocation of a superannuation fund's overall taxable income in proportion to members' balances would also be inappropriate, as a single fund can offer a diverse array of investment options and products to its membership, which would carry different shares of the fund's overall income and expenditure.

Regulatory costs for Option 2 have not been estimated due to the high levels of uncertainty about the substantial changes to legislation and administration of taxable income calculations for superannuation funds which would be required, and the varying scope of changes that may be required for different funds depending on their investment options, structures, and membership.

Consultation on Option 2 with the superannuation industry, Government agencies and other stakeholders demonstrated that the burden to implement these changes for the superannuation industry and individuals would be at a scale which is larger than any recent reform to taxation in the superannuation system as it would require the re-construction of foundational principles in tax administration. This significant compliance costs would be borne across all 22.5 million member accounts in large APRA-regulated funds[36], not just the 0.5 per cent of account holders with a TSB exceeding $3 million.

To undertake a regulatory burden estimation Option 2 would require a substantial detailed legislative and administrative design process which is beyond the scope of the policy intent being to adopt a modest re-targeting of superannuation concessions.

Option 2		
Impact	**Explanation**	**Level of Impact**
Business process changes Entities affected: Large APRA funds, public sector schemes, accounting firms, legal firms, financial advisers	Funds would be required to attribute assets to individual members to distribute their earnings accordingly. This would require substantial changes to their information technology and administrative systems. It would be considerably harder for large APRA funds which utilise pooled investment structures and have millions of members. Additional challenges arise due to the different kinds of interests members can hold, including differences in investment strategies, fees, costs and timing of capital gains. Accounting firms would need to construct new systems to appropriately calculate the taxable income for each superannuation interest. Accounting firms which provide services to SMSFs would need to change their processes to enabling reporting of member level taxable income to the ATO. Accounting firms will also need to undertake staff training and internal compliance activities. Legal firms which work with superannuation funds and members would need to invest in staff training and resources to ensure they can provide services to clients related to the tax. This would involve review of the new tax framework for calculating and reporting income attributable to each member of a fund.	Introducing a tax on the actual taxable earnings of a fund for an individual member would have **substantial implementation costs for APRA-regulated funds.** These significant compliance costs would be borne across all funds and all members, including the 99.5 per cent of account holders who are not impacted by this policy, despite this proposal impacting only approximately 30,000 high balance members with accounts in APRA-regulated funds. There will also be **substantial costs for accounting and legal firms and financial advisers** in preparation to undertake work supporting SMSFs and individuals with more than $3 million in superannuation, particularly with respect to the calculation of member level taxable income. Substantial changes to the tax law for superannuation funds and their members would need to be reviewed, advised upon and implemented by these entities.

36 APRA Quarterly Superannuation Industry Publication, Table 1, June 2023.

	Financial advisers would also need to undertake changes to their processes in providing advice to SMSFs on investment strategies, and clients with high superannuation balances.	
Additional reporting Entities affected: Superannuation funds and schemes with members with more than $3 million in superannuation	Additional reporting by superannuation funds of individual level taxable income will be required to support the ATO in calculating the tax liabilities. The ATO would request information from APRA fund trustees in relation to affected members only to minimise compliance costs. For SMSFs new additional reporting requirements would be included in the SAR for the amount of taxable earnings attributable to each member.	There would be **substantial additional reporting requirements** for large APRA regulated funds. The administrative burden for SMSFs in additional reporting of member level taxable income would also be significant, however this may be lower per member than large APRA funds given similar processes are currently undertaken.
Changes to defined benefit valuations Entities affected: Superannuation funds and public sector schemes	Many DB schemes are unfunded and do not have underlying assets on which there are taxable earnings which could be deemed applicable to each member of the scheme. Therefore, the compliance impact on DB schemes would be highly uncertain, and dependent on the design parameters of how equivalent treatment would be applied to incorporate these schemes. System changes would be required for all DB schemes.	There would be **modest to high additional burden for superannuation entities** in adjusting their valuations defined benefit interests. The level of compliance cost for schemes is highly uncertain.
Individuals responding to tax assessments Entities affected: Individuals with more than $3 million in superannuation	Burden on individuals to understand how their individual level taxable income is calculated and respond to tax assessments from the ATO.	There would be a **higher burden on individuals than existing tax assessment processes** given the need to understand their member level taxable income for each of their interests.

Option 3 would utilise existing reporting requirements to assess annual changes in superannuation balances to minimise the regulatory impact on superannuation funds and members.

All superannuation funds currently report a wide range of information to the ATO which will be used to calculate individual earnings under the change in value approach. Some additional reporting would be required to support the ATO in calculating the tax liabilities. The ATO would receive this information directly from superannuation trustees and no self-reporting will be required by members.

Where possible, targeted reporting obligations in relation only to members affected by the tax will be preferred to ensure that the costs of complying with the new proposal are not borne by all superannuation members. Further, it should be noted that where a superannuation fund has no members with a TSB greater than $3 million, there should generally be no additional reporting requirements for that fund.

Longer term considerations may be given to updating the MAAS/MATS reporting services at a time when other updates are being required to the systems. Gradual transition to automated reporting will be considered as part of the post-implementation review in the context of broader changes to these services, for example updates required for Payday Super.

Option 3		
Impact	**Explanation**	**Level of Impact**
Business process changes Entities affected: Large APRA funds, public sector schemes, accounting firms, legal firms, financial advisers	Large APRA funds and public sector schemes would need to adjust their systems to allow for updated reporting requirements for affected members and amounts to be released to pay tax liabilities. This would require updates to their information technology and administrative systems. Funds and schemes would not be required to calculate tax amounts for affected members as this would be conducted by the ATO. Accounting firms would need to update their systems to appropriately account for the tax payable by affected individuals. Accounting firms which provide services to SMSFs would need to change their processes to enabling a minor amount of additional reporting of member level activities to the ATO. Accounting firms will also need to undertake staff training and internal compliance activities. Legal firms will need to ensure they can provide services to clients related to the tax. Financial advisers would also need to undertake changes to their processes in providing advice to SMSFs on investment strategies, and clients with high superannuation balances.	Option 3 is intended to require **minimal process changes for large APRA funds and public sector schemes** to implement. The 67 licensees of large APRA funds and 17 exempt public sector schemes would need to implement once-off process changes. Each entity would apply approximately 200 labour hours, involving a team of 4 staff contributing 50 hours each. It is assumed each staff member will contribute 25 hours to update systems to enable reporting for affected members, and 25 hours to allow amounts to be released to pay tax liabilities. There will also be **minor costs for accounting and legal firms and financial advisers** in preparation to undertake work supporting SMSFs and individuals with more than $3 million in superannuation. This would involve around 36,900 affected accounting firms, applying approximately 15 labour hours on average to undertake business once-off process changes. Around 1,400 legal firms would need to apply approximately 30 labour hours on average to undertake once-off process changes. There would also be around 14,800 financial advisers which may provide advice on superannuation and need to apply approximately 10 labour hours on average to undertake once-off process changes.
Additional reporting Entities affected: APRA-regulated funds and public sector schemes with members with more than $3 million in superannuation, SMSFs	The approach is intended to leverage existing reporting requirements as much as possible to support the ATO in calculating tax liabilities. This is intended to minimise the regulatory impact on superannuation entities. Additional reporting would only be required for member's identified by the ATO as having TSBs in excess of $3 million. There will need to be additional reporting to the ATO of inflows and outflows not currently	There are expected to be **minor costs imposed on APRA-regulated funds and public sector schemes** due to additional reporting. There would be minimal compliance obligations for APRA-regulated funds given the expected small cohort of impacted members. On an ongoing basis additional reporting would be required for around 31,800 affected members of large APRA-regulated and public sector schemes, requiring

	reported through existing frameworks. Some additional information may be required annually, while other information may only be required by exception when a specified event occurs. SMSFs currently report most relevant member transactions in the SAR and certain other SMSF transactions are reported via the TBAR and TBEN, and any additional reporting could also be done efficiently through the existing reporting mechanisms on a member specific basis.	approximately one additional half hour of labour for each member each year. There are expected to be **limited costs imposed on a small proportion of SMSFs** due to additional reporting, as additional information would be acquired using existing mechanisms. This would affect around 6,100 SMSFs, which would need approximately an additional hour of labour each year on an ongoing basis for additional reporting.
Changes to defined benefit valuations Entities affected: Superannuation funds and public sector schemes	System changes will be required for all DB schemes to ensure balances of each member is appropriately valued on an annual basis. As defined benefit members may also have interests with other superannuation plans, valuation changes will need to be considered for all schemes. The extent of the change required for re-valuation will vary between defined benefit schemes, given differences in the individual nature of each scheme. DB interests held in SMSFs would also need to be re-valued.	There would be **modest additional burden for superannuation entities** in adjusting their valuations defined benefit interests. The extent of the changes will depend on various factors including the specifics of scheme parameters, the appropriateness of standard valuation methods and the characteristics or scheme members. This would affect the 127 DB schemes currently offered. In the first year, each scheme would need to make initial process changes using on average approximately 1,000 additional hours of labour, involving 5 staff contributing 200 hours each. On an ongoing basis each DB scheme would need on average approximately 5 additional hours of labour each year to update the valuations of DB interest of members. This would affect 16,900 SMSF members with interests in actuarially-valued DB income streams. Each SMSF would need on average approximately 5 additional hours of labour to undertake the initial update of affected DB valuations. On an ongoing basis each actuarially-valued DB scheme interest in each SMSF would need on average approximately 5 additional hours of labour each year to update valuations.
Individuals responding to tax assessments Entities affected: Individuals with more than $3 million in superannuation	There would be a compliance burden on affected individuals with a TSB of more than $3 million to understand how their additional tax liability is calculated and respond to tax assessments from the ATO.	The **compliance burden on affected individuals would be minimal**. Responding to tax assessment will be similar to existing processes for Division 293 tax and excess contributions. This would affect 80,000 individuals who with a TSB of more than $3 million. On an ongoing basis each affected individual would need on approximately one and a half additional hours responding to tax assessments.

The regulatory costs for Option 3 have been estimated as follows:

Option 3 – Regulatory costs over the first year (from business as usual)

Change in costs ($ million)	Business	Superannuation fund	Individuals	Total change in costs
Once-off implementation	$74.91	$21.94	nil	$96.84
Ongoing annual	nil	$9.59	$4.32	$13.91
Total, by sector	**$74.91**	**$31.52**	**$4.32**	**$110.75**

Option 4 would require lower compliance costs in implementation and reporting as the ATO would calculate TSB at the end of financial year, using information which is currently reported to the ATO on an annual basis. There are similar approaches in the tax and superannuation systems to use a deemed rate for earnings such as the income tax shortfalls and associated earnings rate for excess non-concessional contributions.

Option 4		
Impact	Explanation	Level of Impact
Business process changes Entities affected: Large APRA funds, public sector schemes, accounting firms, legal firms, financial advisers	Large APRA funds and public sector schemes would need to adjust their systems to allow amounts to be released to pay tax liabilities. This would require updates to their information technology and administrative systems. They would not need to calculate tax amounts for affected members as this would be conducted by the ATO. Funds and schemes would not be required to update their reporting requirements as the ATO will base their assessment of current balance reporting. Accounting firms would need to update their systems to appropriately account for the tax payable by affected individuals. Accounting firms will also need to undertake staff training and internal compliance activities. Legal firms will need to ensure they can provide services to clients related to the tax. Financial advisers would also need to undertake changes to their processes in providing advice to SMSFs on investment strategies, and clients with high superannuation balances.	Option 4 would involve **minor process changes for large APRA funds and public sector schemes** to implement. The 67 licensees of large APRA funds and 17 exempt public sector schemes would need to implement once-off process changes. Each entity would apply approximately 100 labour hours, involving a team of 4 staff contributing 25 hours each. It is assumed each staff member will contribute 25 hours to update systems to allow amounts to be released to pay tax liabilities. There will also be **minor costs for accounting and legal firms and financial advisers** in preparation to undertake work supporting SMSFs and individuals with more than $3 million in superannuation. This would involve around 36,900affected accounting firms, applying approximately 15 labour hours on average to undertake once-off business process changes. Around 1,400 legal firms would need to apply approximately 30 labour hours on average to undertake once-off process changes. There would also be around 14,800 financial advisers which may provide advice on superannuation and need to apply approximately 4 labour hours on average to undertake once-off process changes.

Additional reporting Entities affected: Superannuation funds and schemes with members with more than $3 million in superannuation	The approach would leverage existing reporting requirements currently used by the to calculate individual level TSBs to support the ATO in calculating tax liabilities.	As there will be no additional reporting required by superannuation entities, Option 4 would involve **no additional reporting compliance costs**.
Changes to defined benefit valuations Entities affected: Superannuation funds and public sector schemes	Consistent with Option 3, system changes will be required for all DB schemes to ensure balances of each member is appropriately valued on an annual basis.	Consistent with Option 3, there would be **modest additional burden for superannuation entities** in adjusting their valuations defined benefit interests. This would affect the 127 DB schemes currently offered. In the first year, each scheme would need to make initial process changes using on average approximately 1,000 additional hours of labour, involving 5 staff contributing 200 hours each. On an ongoing basis each DB scheme would need on average approximately 5 additional hours of labour each year to update the valuations of DB interest of members. This would affect 16,900 SMSF members with interests in actuarially-valued DB income streams. Each SMSF would need on average approximately 15 additional hours of labour to undertake the initial update of affected DB valuations. On an ongoing basis each actuarially-valued DB scheme interest in each SMSF would need on average approximately 5 additional hours of labour each year to update valuations.
Individuals responding to tax assessments Entities affected: Individuals with more than $3 million in superannuation	Consistent with Option 3, there would be a compliance burden on affected individuals with a TSB of more than $3 million to understand how their additional tax liability is calculated and respond to tax assessments from the ATO.	Consistent with Option 3, the **compliance burden on affected individuals would be minimal**. This would affect 80,000 individuals who with a TSB of more than $3 million. On an ongoing basis each affected individual would need on approximately one and a half additional hours responding to tax assessments.

The regulatory costs for Option 4 have been estimated as follows:

Option 4 – Regulatory costs over the first year (from business as usual)

Change in costs ($ million)	Business	Superannuation fund	Individuals	Total change in costs
Once-off implementation	$74.91	$21.18		$96.09
Ongoing annual		$7.62	$4.32	$11.94
Total, by sector	**$74.91**	**$28.81**	**$4.32**	**$108.03**

Assumptions, data sources and explanations of the calculations are in Appendix C.

Impact of Option 2 – Tax actual earnings

Advantages

- This option would be the most accurate method for determining taxable earnings.
  - Tax is only applicable to net realised capital gains and net capital losses would be quarantined and not available to offset other forms of income. As the tax is applied to realised gains, there would be commensurate levels of liquidity within the superannuation fund to assist individuals in paying the tax.
- There would be no requirement to make adjustments for withdrawals and other non-investment transactions as these movements in capital are not captured in the calculation of taxable income. This would reduce the need to report certain new transaction information to the ATO, compared to Option 3. This is particularly relevant for large APRA-regulated funds noting that the majority of withdrawal information is not reported at a member level.
- This option could be implemented by the SMSF sector with relatively low cost. SMSFs already report allocated earnings and losses to individual member's interests in the end of financial year reporting. This would require only a small change for an SMSF to report taxable income for each members' interest in the fund.
- It is expected to have a lower time cost for affected individuals, along with accountants and financial advisers as the existing tax principles are well understood.
- Likely to have the lowest impact on confidence in the sector relative to other options.

Disadvantages

- This option is the most complex of the options considered.
- Requires a total overhaul of how large APRA-regulated funds calculate and report taxable income. There is significant complexity with this approach given the pooled nature of investments and large funds may have millions of members in a single investment product.
  - Variations across investment strategies, fees, timing of capital gains, deductible insurance costs, distribution of franking credits and whether funds are held in accumulation or retirement phase would need to be considered.
  - Critically, it is expected that an APRA-regulated fund would need to implement these changes across their entire member base in order to identify and report member-level taxable income figures that reconcile with the fund's overall taxable income.
- These changes to taxable income calculation and reporting for superannuation funds would also lead to greater costs for the ATO, who would be required to consume and administer the complex array of data that reconciles individual member-level income shares with whole-of-fund income reporting. Further compliance costs may also be borne by the ATO in investigating any discrepancies between fund and member-level income reporting.
- There may be additional complexities with identifying the correct taxable income to target where individuals have their superannuation spread across multiple funds and interests, and particularly if the member is in the retirement phase. Due to the TBC, it is expected impacted

individuals who have met a condition of release will have a combination of retirement phase interests deriving exempt income, and accumulation phase interests deriving taxable income.

- These additional complexities and required changes for superannuation funds would require a significantly longer implementation lead time, which is likely to delay the measure's targeted commencement of 1 July 2025.
- There are integrity risks with handing fund trustees the responsibility to determine how their taxable income is apportioned across their membership.
  - There are no explicit accounting standards that apply to such an apportionment, and no methodology that readily applies to the diverse range of fund investment structures and product designs.
  - As such, trustees may be motivated to attribute a disproportionately low amount of its taxable income to members who are impacted by the measure, to minimise the additional tax those members are subjected to.
  - This behaviour would likely be difficult to detect, as the distribution of taxable income could legitimately vary across cohorts of members (for example, because high-balance members' have chosen investment options which have primarily grown through unrealised gains or derived concessionally taxed income like franked dividends or discounted capital gains).
- Defined Benefit interests often do not have actual earnings or taxable income that can be identified. As such, it is very difficult to identify a method that can deliver commensurate treatment to individuals holding those interests. Options 3 and 4, comparatively, can incorporate defined benefit interests more effectively as they leverage the existing total superannuation balance concept which accounts for defined benefit interests.

Impact of Option 3 – Tax an estimate of earnings based on change in value

Advantages

- This option balances simplicity (compared to option 2) and accuracy (compared to option 4), allowing for a shorter implementation time frame that accommodates a targeted start date of 1 July 2025.
- The approach retains sector neutrality as it leverages the existing total superannuation balance concept (which is utilised by all varieties of superannuation funds). This neutrality ensures the measure does not distort a member's decision to pursue one form of superannuation fund over another.
- While additional superannuation fund reporting will be required for contribution/withdrawal information that is not currently captured in existing reporting regimes, it is expected that additional reporting can be appropriately targeted to fund members who are impacted by the measure.
  - It is expected that the ATO not seek to modify its existing fund reporting frameworks, and instead implement a bespoke reporting regime that only seeks additional information

from funds that have members impacted by the measure, and seeks the information only for those members.

  - Only approximately 30,000 individuals with a balance over $3 million hold an account in an APRA-regulated fund. Many APRA-regulated funds will have no impacted members, and will not have any material compliance or implementation costs.
  - This can be contrasted with Option 2, where member-level taxable income reporting would need to be ascertained across a fund's entire member base, even if the measure only affects a small proportion of the fund's members.

- Uses a methodology that is transparently visible in legislation, without relying on superannuation funds' ascertainment of member-level income. Leveraging the existing total superannuation balance concept also provides transparency for impacted members as the ATO makes that balance available for members to view via myGov.
- It also provides a pathway to commensurate treatment for defined benefit interests despite their complexity and diversity, as all interests must provide annual total superannuation balance values meaning their movement can be tracked.

Disadvantages

- This option has the effect of recognising unrealised gains and losses on the assets in a superannuation fund – as funds are required to revalue their assets to ensure they continue to be reported at market value, growth in a member's total superannuation balance that occurs due to increases on asset revaluation will be captured as earnings and likewise decreases in asset values will be recognised as losses. The approach is consistent with how large superannuation funds currently reflect unrealised capital gains and expected tax liability in the account balance of their members. This ensures they get a fair share of the value of assets and pay a fair share of the expected tax if they switch funds or withdraw an amount.
  - In recognition of this, option 3 includes a carry forward of negative earnings to offset positive earnings in a future year. Similarly capital losses are not quarantined and instead are able to offset other earnings.
  - The ability to carry forward losses is similar to the existing personal income tax settings. It provides more equitable long-term treatment, without distorting the system by allowing tax refunds in negative earning years.
- The effective tax rate will reflect the circumstances of a fund's arrangements, for example:
  - Where a fund receives franked dividends and is entitled to an offset for the associated franking credits, the resulting growth in a member's total superannuation balance will reflect the net impact of the dividend, tax and offset. In contrast, Option 2 would target the taxable income including the dividend and franking credit gross-up, in effect delivering the 30% headline rate before considering the franking credit offset (and resulting in a lower earnings figure).
  - If a fund has non-deductible outgoings, such as capital expenditure, these amounts will reduce a member's total superannuation balance for the year, lowering earnings, even though they do not reduce the fund's taxable income.
- The formula requires adjustment for all 'contribution'/'withdrawal' transactions that do not reflect a fund's investment performance, in order to isolate the movement in the total superannuation balance. This requires law design that comprehensively captures the diverse

range of transactions and events that may occur to a superannuation interest. Consultation has been undertaken on the formula and a regulation making power will enable updates as required.

- As with all the options, changes to the valuation method for defined benefit superannuation interests when calculating TSB would be required.

Impact of Option 4 – Tax an estimate of earnings using a deeming rate

Advantages

- This option is the simplest option and could be implemented on a faster time frame at a lower cost than the other options considered.
- This option would be similar to the calculation of notional earnings in other aspects of superannuation. For example, when calculating the associated earnings for a release of benefits under the First Home Superannuation Saver Scheme (FHSS Scheme) or when an individual has made excess non-concessional contributions, a deemed earnings rate is applied.
  - It is worth noting that the deemed earnings used in those provisions appear in a different policy context. The excess contributions deemed earnings are used to approximate earnings attributable to those specific contributions over a fixed (and time-limited) period to neutralise the tax benefit of those excess contributions having remained inside the superannuation system.
  - Under the FHSS Scheme, the amount an individual is able to release incorporates a deemed earnings amount, again approximating earnings attributable to the specific contributions that will be released, to reflect the policy that those contributions and their accompanying earnings are releasable.
  - Neither regime has a policy target of reflecting a superannuation fund's overall investment performance at the member level.
- This option would be sector neutral and apply equally to individuals, regardless of whether they hold their superannuation interests in an SMSF or APRA-regulated fund or both.
- Reporting changes would be limited to updated valuations for defined benefit interests only. The deemed earnings rate would be applied to the excess of an individual's TSB above the $3 million threshold, and TSB is already reported to the ATO on an annual basis.

Disadvantages

- This option is the least accurate of the options considered, it has no relationship to actual earnings. Further, there would likely be a diversity of views on what an appropriate rate of return is.
- The approach would lead to inequitable tax outcomes where some people are overtaxed and others are undertaxed. Applying a deemed earnings rate does not reflect the diverse range of investment strategies which vary across individuals and funds. Investment returns may underperform relative to the deemed rate of return in a given year, which would result in additional tax payable. Conversely, investment returns may out-perform the deemed rate of return providing individuals with a tax benefit.

- This option has the effect of recognising unrealised gains and losses on the assets in a superannuation fund. A deemed rate of return would still be applied to the excess of an individual's TSB above $3 million. Similarly to Option 3, this would include the notional value of any gains or losses, and could result in tax being applied to unrealised capital gains. Tax would be payable even where there has been a loss in an income year.
- No adjustments are expected to be made for withdrawals and contributions which occur over the year, meaning different outcomes may be generated for individuals with the same rate of return on investments. As a result, additional tax would be payable by the individual who has contributed to their fund and less tax would be payable by the individual who withdraws a portion of their balance before the end of the financial year.
- As with all the options, changes to the valuation method for defined benefit superannuation interests when calculating TSB would be required.

5. Consultation

Treasury has undertaken extensive public consultation in relation to the implementation of this measure to ensure consideration is given to the likely reporting and compliance impacts of any potential regulatory change for each policy alternative.

Consultation process

Pre-announcement

The Government's announcement to introduce the additional earnings tax for individuals with more than $3 million in superannuation was informed by the significant work that was completed by the Retirement Income Review, supported by additional work from Treasury and ongoing engagement with stakeholders.

Consultation specific to this measure was undertaken on 24th February and 28th February 2023, prior to the announcement. This consultation was undertaken with a number of representatives from the superannuation industry covering a range of experience across APRA-regulated funds, SMSFs and Defined Benefit schemes. Due to the market sensitivity of the proposed changes, consultation prior to announcement was of a limited and confidential nature.

Consultation paper

On 31 March 2023, the Government released a consultation paper titled *'Better Targeted Superannuation Concessions'* on the Treasury website inviting submissions until 17 April 2023. The paper outlined the proposed method of implementing Option 3, seeking views on issues specific to this option including:

- Do you consider any further modifications are required to the TSB calculation for the purposes of estimating earnings? If so, what modifications should be applied?
- What types of outflows (withdrawals) should be adjusted for and how?
- What types of inflows (net contributions) should be adjusted for and how?
- Do you consider any modifications are required to the proposed proportioning method? If so what modifications should be applied?
- Does the proposed methodology for determining the tax liability create any unintended consequences?
- Do the existing valuation methods for defined benefit interests in the pre-pension phase (under the existing TSB definition) work appropriately for the purposes of calculating superannuation balances over $3 million?
- Do the existing valuation methods for defined benefit interests in the pension phase provide the appropriate value for calculating earnings under the proposed reforms?
- What would be the cost-effective method for collecting the required information? What are the benefits and disadvantages for the method identified, including a consideration of compliance costs, complexity, and sector neutrality?

The consultation paper also sought views from stakeholders more generally on alternative implementation options. These questions included:

- Do you have an alternative to the proposed method of calculating earnings on balances above $3 million? What are the benefits and disadvantages of any alternatives proposed including a consideration of compliance costs, complexity and sector neutrality?
- What changes to reporting requirements by superannuation funds would be required to support the proposed calculation or any alternative calculation methods?
- Do you have any alternative to the proposed proportioning method? What are the benefits and disadvantages of any alternatives, including a consideration of compliance costs, complexity and sector neutrality?
- Do the proposed options for paying liabilities create any unintended consequences?
- Are there any alternative valuation methods that should be considered for either pre-pension or pension phase defined benefit interests?
- Are there any preferred options in providing commensurate treatment for defined benefit interests? What are the benefits and disadvantages to any alternatives?
- 80 written submissions were received, six of which were made on a confidential basis. Submissions were received from individuals, superannuation funds, accounting and advice firms and various industry associations both related to superannuation and external industries. A list of consultation participants is included at Appendix A.

Technical working groups

Noting the complexity of the technical detail involved with each of the options, Treasury established three technical working groups for further targeted consultation with individuals who have industry expertise in tax, law, accounting and actuarial matters; representatives from the SMSF industry; representatives from APRA-regulated funds; and representatives from defined benefit funds.

These working groups were tasked with refining the implementation options for this measure across three key areas:

- Calculating earnings – provide feedback on the key components of the formulas applied to calculate the tax liability including consideration of tax transactions, withdrawals, contributions and specific transactions such as treatment of death benefits, insurance and family law splits.
- Defined benefit interests – provide feedback on how the measure could apply on a commensurate basis to defined benefit members including consideration around appropriate valuations and options for calculating notional earnings.
- Reporting requirements – consider the practical elements of how APRA-regulated funds and SMSFs will report the required information to the ATO and how affected individuals will comply with the tax.

The technical working groups met multiple times over consecutive weeks in March and April, coinciding with the release of the consultation paper.

Each group was comprised of a different membership, determined based on relevant policy expertise, while ensuring representation across industry and retail funds, SMSFs and defined benefits.

Roundtables

During the public consultation period, Treasury extended invitations to key industry associations, providing an opportunity for members to attend roundtable discussions. Across the consultation period, a total of eight roundtables were held. This provided a forum for stakeholders to discuss the issues outlined in the consultation paper and share views on potential consequences, compliance costs and alternative options.

Exposure draft legislation

On Tuesday 3 October 2023, the Government released exposure draft legislation on the Treasury website inviting submissions from interested parties until Wednesday 18 October 2023. 68 submissions were received, of which 10 are confidential. A list of parties who provided written submissions during this process are provided at Appendix B.

Feedback from consultation

Policy intent

Throughout consultation on the proposal, there was consistent support from a majority of stakeholders across the industry and community to improve the sustainability and equity of superannuation tax concessions.

Value and indexation of the threshold

A majority stakeholders do not support non-indexation of the threshold citing concerns that this will diminish the real value of the threshold for younger generations. Alternative suggestions for the threshold included applying a higher threshold without indexation, allowing the threshold to index, or linking the threshold to two times the transfer balance cap. Some stakeholders raised concerns that in the absence of indexation at a point in the future the transfer balance cap may exceed the $3 million threshold.

However, other thresholds exist within the tax system which are not indexed, including personal income tax thresholds, as well as Division 293 tax, which applies to high income earners whose combined income and superannuation contributions exceed $250,000 per year. While these thresholds are not subject to indexation, they are ultimately determined by the Parliament and are subject to change.

Stakeholder suggestions for the appropriate threshold range from $2 million (Grattan Institute), to double the transfer balance cap (Mercer), to $5 million (Australian Superannuation Funds Association).

Treatment of negative earnings

There was significant criticism of the proposed treatment of negative earnings, with stakeholders arguing this represents a departure from current tax settings. Stakeholders argued that to the extent unrealised gains are taxed, losses should be refundable. Suggestions included the ability to carry back losses to offset previously paid tax and spreading out the tax liability of a number of years.

Other concerns were raised about the expiry of losses once an individual falls out of scope of the measure for example if their balance falls and remains below $3 million or in the event of an individual’s death. In these instances, stakeholders called for the full refund of these losses or the ability to pass accumulated losses to beneficiaries.

Notional gains and losses

The inclusion of notional gains and losses in the earnings calculation attracted significant attention from stakeholders in all rounds of consultation. The key themes included concerns about the departure from existing tax principles, the impact of these calculations on fund cash flow and liquidity, the creation of perverse incentives for trustees when valuing assets and concerns regarding double taxation.

Alternative methods for calculating earnings were suggested by a number of stakeholders which included providing SMSFs with the option to report a taxable income amount at the member level or applying a deemed rate of return. Submissions from the APRA-regulated fund sector appreciated the simplicity of the formula supporting an implementation method that minimises compliance costs.

Adjustments to the formula

Stakeholders provided a range of examples of different transactions which should be adjusted for as a withdrawal or contribution in the earnings calculation. There were varying views in relation to the treatment of insurance proceeds with some stakeholders calling for their exclusion entirely in the same manner as structured settlement contributions. There was general support for withdrawals to recognise family law payment splits following a relationship breakdown.

Some stakeholders called for the exclusion of benefit payments for anyone over the age of 60 while other suggestions involved excluding the value of a reversionary pension following the death of a spouse.

Superannuation funds supported the use of a proxy rate of 15 per cent contributions tax on concessional contributions in lieu of separately reporting a net concessional contribution figure for each individual member.

There was support for maintaining flexibility in the drafting of the legislation and regulations to enable these transactions to be modified and updated in the context of future changes to the superannuation system.

Withdrawals for individuals who have not met a condition of release

Many stakeholders called for transitional arrangements to allow individuals who are unable to withdraw amounts from superannuation (for example, because they have not reached preservation age), but have a TSB of more than $3 million, to make withdrawals from their accounts for the purposes of bringing their balances below the threshold.

However, by not creating a new condition of release for affected individuals below preservation age, it will prevent large amounts being removed from the superannuation system, which would also result in these individuals incurring potentially significant transactional costs, such as stamp duty and legal fees.

Commensurate treatment for defined benefit interests

There was a broad consensus amongst stakeholders that the value of defined benefit interests could be combined with defined contribution interests and agreement that this would require changes to the way defined benefit interests are valued for TSB purposes.

Stakeholders had mixed views on the appropriate alternative valuation methods to apply, with some support for a level of optionality depending on the nature of the specific schemes. Suggestions for valuation methodologies from stakeholders included using scheme based values, applying individual calculations based on existing capital access schedules, adopting a family law valuation approach or using the vested benefit calculations.

Compliance impact on superannuation funds

There was consistent feedback that superannuation funds do not want costs borne by majority of members.

Superannuation fund stakeholders had a strong consensus that compliance impacts should be reduced to a minimum, supporting a targeted request for information for affected members only, rather than through wholesale changes to the existing automated reporting systems. Superannuation fund stakeholders agreed that the effectiveness of the information collection and reporting process should be a strong focus of the post-implementation review for this measure.

Legacy pensions

Stakeholders raised that there may be complexity under this measure where reserves resulting from legacy pensions are held within an SMSF and have not been allocated to a particular member (and therefore do not count towards their TSB).

How stakeholder feedback informed the development of options

In response to the feedback from the various forms of consultation, including confidential consultation prior to the announcement, some features of this measure have been further refined:

- Recognising the inclusion of notional gains in the earnings calculation, notional losses are similarly recognised and not quarantined. Notional losses will be eligible to be carried forward and applied to offset against future gains. The ability to carry forward of losses is consistent with the personal income tax settings.
- Additional time has been provided for individuals to pay a notice of assessment under this measure. Ordinarily individuals are required to pay a notice of assessment within 21 days. To mitigate stakeholder concerns around liquidity, individuals will now have 84 days (or 12 weeks) to pay a notice of assessment.
- To provide even further payment flexibility, a lower rate of interest charge will be applied to any liabilities which remain outstanding beyond the 84 day period. Ordinarily outstanding liabilities would attract interest at the rate of the General Interest Charge which is currently 11.15 per cent. For outstanding liabilities under this measure, individuals will attract interest at a rate equivalent to the shortfall interest charge, of 7.15 per cent, which represents a discount of 4 per cent.
- The method for calculating an individual's TSB will be simplified by removing the link to the transfer balance account. For most individuals their total superannuation balance will be based on a withdrawal value, with updated valuation methods for defined benefit interests to be valued on an annual basis. Additional clarification will also be provided to confirm that an individual's TSB does not include an interest in a foreign superannuation fund.
- Individuals with limited recourse borrowing arrangements who ordinarily have their outstanding loan amounts added to their TSB when determining eligibility for contribution purposes will not

have these amounts included for this measure. This will ensure that all limited recourse borrowing arrangements are treated consistently, irrespective of whether an individual has met a condition of release or when the loan arrangement was first established.

- Certain individuals will be excluded from the measure entirely which includes child recipients of a superannuation income stream at the end of the income year, an individual who dies before the last day of the income year, and individuals who have made a structured settlement contribution at any time.
- Certain types of superannuation interests will also be excluded from the earnings however will still be counted for the purposes of determining the extent to which an individual exceeds the $3 million threshold. This includes interests in constitutionally protected funds held by State Higher Level Office Holders and interests in the Judges Pensions Scheme. These interests will be excluded on the basis of constitutional limitations. In addition, interests in non-complying funds which are subject to significant tax penalties will also be excluded from the taxable earnings calculation.
- Consistent with the feedback, a targeted calculation and reporting approach will be implemented with no updates to the automated fund reporting systems in the short term.

6. Option Selection

In the absence of Government action, the problems outlined in Section 1 of this analysis would continue to persist. Noting the broad range of support from stakeholders in taking steps to improve the equity and sustainability of the superannuation tax settings, the option of maintaining the status quo was discounted.

Option 2 was also discounted as it was identified at a very early stage in the policy development process, including in confidential consultation with industry stakeholders, that any costs associated with an overhaul of the method for superannuation fund tax calculation and reporting would outweigh the revenue associated with the measure. Given the policy intent is to improve the cost-effectiveness of the superannuation system and improve the targeting of tax concessions to those who need it most, an option that imposes significant costs on all superannuation fund members, even if they are not intended to be captured by the measure is not appropriate. For the reasons outlined in earlier in this analysis, costs to government and compliance cost of this option were not calculated as the complexities of re-designing the entire tax system within superannuation is beyond the scope of the policy intent.

The level of compliance costs for Options 3 and 4 are of a comparable magnitude in the first year of implementation at $110.75 million and $108.03 million respectively. These compliance costs are relatively less than the estimated $2.3 billion increase in revenue in the full year of revenue collection (2027-28).

Each of these options would involve once-off implementation costs for businesses and superannuation funds of $96.84 million for Option 3 and $96.09 million for Option 4. Although option 3 would be expected to have higher ongoing annual compliance costs of $13.91 million, compared to $11.94 million for Option 4, the additional compliance burden should be considered in the context of other impacts including fairness of the system and superannuation investment strategies.

Recommended Option

Treasury recommends Government implement Option 3, being to apply the tax to an estimate of earnings based on the change in balance at the start and end of the financial year. In our view this option strikes the appropriate balance between accuracy, simplicity and minimising compliance cost. While the costs for the government and private sector of Option 3 are slightly higher than Option 4, Treasury considers that this is outweighed by the fairness that Option 3 provides. There are two key fairness advantages that Option 3 provides, over and above Option 4, namely:

- The calculation approach reflects the diversity of individual's investment strategies. This ensures that those with greater investment returns and growth in their superannuation pay a higher rate of tax than those individuals who generate lower investment returns, for example through a lower risk investment strategy. This more closely aligns with the option of applying the tax to actual investment earnings, without changing the calculation of tax at the superannuation fund level.
- The calculation approach also ensures that the additional tax is only applied where an individual has experienced positive growth in their superannuation interests (or would have in the absence of any contributions or withdrawals). The alternative approach in Option 4 would otherwise always result in a tax liability for individuals with a total superannuation balance of more than $3 million, even if actual losses were realised.

The chosen option also allows the earnings calculation to be applied consistently across all different types of superannuation interests. Individuals have the option to choose a superannuation arrangement that best suits their personal circumstances, and this option is designed to ensure that flexibility and choice is maintained. This is particularly relevant for individuals who have multiple superannuation interests across different types of funds (for example to diversify their investments or due to insurance arrangements). While the SMSF sector has called for the option for members in SMSFs to report taxable income at the member level to remove the effect of notional gains and losses, this would provide those individuals with an unfair advantage over those members in APRA-regulated funds and may distort decision making with impacts on both investment strategies and retirement outcomes.

Choice of tax rate

Applying a combined maximum headline tax rate of 30 per cent for earnings on large balances is consistent with how superannuation contributions made by high income earners are taxed under Division 293. If an individual has combined income and contributions greater than $250,000, they are charged an additional 15 per cent tax relative to the excess. An alternative option would be to apply a 30 per cent tax rate which would broadly bring the headline rate for affected individuals in line with the top personal marginal tax rate of 45 per cent.

The lower 15 per cent additional tax rate ensures that impacted individuals still benefit from superannuation tax concessions, however, the level of concession will be reduced for individuals with large superannuation balances. The lower 15 per cent additional tax rate also reflects that notional gains are included in the earnings calculation.

Choice of threshold

A threshold of $3 million far exceeds the balance that research by Super Consumers Australia and the Australian Superannuation Funds Association suggest is required to provide for a comfortable standard of living in retirement.

The $3 million non-indexed threshold strikes a balance between ensuring Australians have incentives to save for retirement and strengthening the sustainability of the superannuation system. This is consistent with many other existing thresholds in the superannuation system which are not indexed such as the Division 293 threshold.

7. Implementation and Review

Method of Implementation

Legislative

The policy will be implemented through a new imposition Act to impose a new tax, targeted towards the annual earnings of superannuation balances over the $3 million threshold. The tax will be levied at the individual level.

Amendments will be made to the *Income Tax Assessment Act 1997* to prescribe the methodology used to ascertain an individual's exposure to the tax (that is, whether they have a TSB over $3 million), and the earnings and proportion of earnings that are subjected to the tax.

Amendments will be made to the *Taxation Administration Act 1953* to provide for the tax assessment process for the new tax, and the machinery for an impacted individual to have the ability to request their tax be paid by their superannuation fund. This machinery will align with the current release authority framework that facilitates a similar release from super for other superannuation-related taxes.

Regulations will be developed to deliver commensurate treatment for members of defined benefit funds, including ensuring they have appropriate valuation methodologies for TSB purposes that provide an appropriate point-in-time value that can be tracked annually.

Administrative

The Commissioner of Taxation will have responsibility for calculating and assessing the new tax liability for impacted individuals; it will not be a self-assessed tax and individuals will not need to complete a return or other lodgement.

The ATO will use information provided by superannuation funds to determine TSB values and contribution/withdrawal adjustments in order to calculate the tax liability in line with the legislated formulae, and issue a notice of assessment.

The ATO will require ICT system upgrades and additional functionality to:

- Consume additional fund reporting data
- Perform the calculations in line with the legislative formula
- Identify individuals who are excluded from the tax and treat them correctly
- Issue assessments and produce associated correspondence guiding the individual on their payment and release options
- Expand the existing release authority and deferred debt account functions to cover the new tax

Superannuation funds will need to report some additional information to enable the ATO to calculate the tax. This additional reporting is intended to be confined to impacted individuals and not be required for anyone else. Some reported items relate to transactions that occur infrequently or only in isolated events, and it is expected they would be reported via exception rather than routinely.

An impacted individual will not have direct administrative requirements; once the ATO calculates the tax they will be issued with a notice of assessment and have the ability to pay it directly or seek a release from their superannuation fund. The ATO will administer the request for release, issue it to the fund, and apply the released amounts to extinguish the individual's tax liability.

Risks to implementation

Lead time to design and deploy systems and processes

As this would be a new tax it would represent a significant administrative undertaking for the ATO. A sufficient lead time is required to allow time for the ATO to successfully build and test a new system for administering the tax (this includes compliance, processing, reporting and correspondence activities). In addition, enhancements would be required to ATO online services, together with the development of a communications strategy to prepare individuals and funds for the introduction of the tax. Administration of the tax on excess balance earnings will likely have increased workforce requirements, including specific training for ATO staff to deal with enquiries and processing.

Similarly, funds required to engage in additional reporting will need sufficient lead time to understand their new reporting requirements and build and deploy systems to provide reporting before the first due date.

Defined benefit schemes that need to change valuation/calculation methodologies similarly need a lead time to understand their new valuation requirements and engage with actuaries to develop their new methodologies.

To mitigate the risk of these deliverables not being ready for the commencement of the measure, the implementation timeframe includes an extended period between the passage of amending legislation and commencement.

Lead time for behavioural change in response to the measure

There is a risk of criticism of the measure's implementation if impacted individuals are not afforded sufficient opportunity to restructure their affairs (to the extent permitted by law) to avoid the application of the new tax once it commences.

High balance members above preservation age may choose to withdraw funds from the superannuation system (and potentially reinvest them outside that system) would potentially require a minimum of 12 months to transfer ownership of assets (whether divesting entirely or shifting to a non-superannuation structure) and to manage any associated costs including stamp duty, brokerage and legal costs.

This risk is again mitigated by the extended lead time for the measure's commencement. On the proposed implementation timeframe members who are eligible to make withdrawals from superannuation would have around two years to implement these arrangements.

Quality of data and treatment of data errors

As the ATO's calculation of the tax relies on information that is reported by superannuation funds, there is a risk that incorrect reporting (or a failure to report) will lead to incorrect assessments of the tax.

As with other tax assessments the Commissioner of Taxation will have the power to amend assessments, which could be used to correct a calculation if subsequent reporting is provided that indicates the originally assessment was calculated incorrectly. However, a successful implementation of the measure would limit the incidence of this re-assessment being required.

To mitigate this risk, it is expected the Commissioner of Taxation will consult extensively with representatives across the SMSF and APRA-regulated superannuation fund industries, to ensure that the design of additional reporting is fit-for-purpose, and the timeframes for reporting are appropriate, to minimise the likelihood of incorrect or failed reporting by funds.

Evaluation and review of the effectiveness of the reform

Evaluation

The objective of this policy reform is to improve the sustainability and equity of superannuation earnings tax concessions, and to better target those concessions towards additional savings in superannuation for a dignified retirement.

Success will be measured through reduced levels of government support provided to high income and wealth individuals. The share of benefit of superannuation earnings tax concessions by income decile will be measured and tracked in the TEIS. Currently 39% of superannuation tax concessions benefit the top income decile – more than double the next decile.[37]

A redistribution of the share of benefit will indicate the reform has been effective in 'retargeting' those concessions and that they are being provided more equitably.

These metrics are already captured in the TEIS and do not require additional reporting to measure.

Review

As per the requirements of the Australian Government's Impact Analysis framework requirements, Treasury will perform a post-implementation review of the measure within two years of implementation. This post-implementation review is expected to be completed prior to 1 July 2027.

37 *Tax Expenditures and Insights Statement,* Treasury, February 2023, page 17.

Key terms/Glossary

APRA – Australian Prudential Regulation Authority

ASFA – Australian Superannuation Fund Association

ATO – Australian Taxation Office

GDP – Gross Domestic Product

LISTO – Low Income Super Tax Offset

OECD – Organisation for Economic Co-operation and Development

SG – Superannuation Guarantee

SMSF – Self-managed Superannuation Fund

TEIS – Tax Expenditures and Insights Statement

TBAR – Transfer Balance Account Report

TBEN – Transfer Balance Event Notification

TBC – Transfer Balance Cap

TSB – Total Superannuation Balance

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Appendix A – List of Submissions to Consultation Paper

80 Submissions were received in response to the consultation paper. 6 of these submissions were made on a confidential basis. A further 11 submissions were made by participants who wish to remain anonymous. The following tables outlines the names of the remaining 63 participants in the consultation process.

A Wyburn
Accru
ACPSRO
Actuaries Institute
Australian Institute of Superannuation Trustees
Andrew Gale
Andrew Skinner
Anne Pryor
Australian Retirement Trust
Association of Superannuation Funds of Australia Limited
Association of Independent Retirees
Assured Super
Australian Shareholders' Association
AustralianSuper
Ben Blackburn Racing
Business Council of Australia
Chartered Accountants Australia and New Zealand
Centre for Independent Studies
Certified Independent Financial Advisers Association
CPA Australia
Darren Wynen
David Berry
David Busoli
David Jeffery
Diane O'Flaherty
Financial Advice Association Australia
Fiducian
Financial Services Council
Glen Trenton
Institute of Financial Professionals Australia
Institute of Public Accountants
Industry Super Australia
John Church
John Rogan
Ken Mansell
Law Council of Australia
Lime Actuarial
Lorraine Perera Asoka Perera
Manoj Abichandani
Mark Bradbury
McEwen Investment Services
Mercer
Member of the Advice Exchange
mSmart
National Farmers' Federation
National Foundation for Australian Women
National Tax and Accountants' Association
NSW Farmers
Plato
PricewaterhouseCoopers
Robert Reid
Ross Fabian
Satish Bhat Bantwal
SMSF Association
SMSF Auditors Association of Australia
Suzanne Mackenzie
Terrence O'Brien
Terry Dwyer
The Tax Institute
Trevor Nock
UniSuper
Vision Super
Women in Super

Appendix B – List of submissions to Exposure Draft Legislation Consultation

ACT Government
Actuaries Institute
Ahmet Ozaydin
Alex Bender
Association of Superannuation Funds of Australia Limited
Atlus Financial
Australian Judicial Officers Association
Australian Super
Bentleys Newcastle
Boyce
Business Council of Australia
Chartered Accountants Australia and New Zealand
Christine Rogers
CLASS
CPA Australia
Daniel Surjenko
Daniel Traylen
David Marks
David Owen
Deloitte
Douglas Ritchie
Dr Jeffrey Carmichael
Duncan Fairweather
Edward Youds
Ernst & Young
Financial Advice Association Australia
Financial Services Council
Grant Thornton
Graydon Smith
Greg Field
Howard Bolling
Ian Kempe
Ian Wallis
Institute of Financial Professionals Australia
Institute of Public Accountants
John Kallinicos
Jonathan Caplan
King & Wood Mallesons
Lorraine Graham
Lucas Garner
Mark Serry
Martin Hickling
Mary Curran
Matthew Carpenter
Mercer
Nicholas Heath
National Tax & Accountants' Association Ltd
Peter Cass
Rocklands Capital
Scott Henry
SMSF Association
St Vincent de Paul
Super Members Council of Australia
The Tax Institute
Uniting Church of Australia
Wilson Asset Management
Women in Super

Appendix C – Regulatory costs calculations

Business process changes

Large APRA regulated funds and exempt public sector schemes

There are expected to be 84 superannuation entities required to undertake once-off business process changes to implement Option 3 or Option 4 in the first year. This would require updates to information technology and administrative systems.

Registered Superannuation Entity (RSE) licensees are organisations which generally provide multiple APRA regulated superannuation funds and products through centralised administration. For this analysis of compliance costs for large APRA-regulated funds were assumed to be aggregated at the RSE licensee level.

There were 73 RSE licensees registered with APRA in October 2023. Of these licensees, 67 were listed as the trustees of RSEs which were complying at this time.[38]

There were also 17 public sector schemes which were exempt from APRA regulation operating in June 2023.[39] These exempt public sector schemes would be expected to have similar compliance burdens to each RSE licensee organisation in implementing business process changes.

The costs of implementation would be incurred through internal operations or amounts paid to their administration providers.

Staff of large APRA regulated funds and exempt public sector schemes involved in business process changes are assumed to be renumerated at an hourly labour cost of $89.43. This is based on the average ordinary time cash earnings of a full-time non-managerial employee in the occupational grouping of accountants, auditors and company secretaries,[40] scaled up by a multiplier of 1.75.[41]

Option 3

Under **option 3**, it is assumed each superannuation provider will be required to commit 4 staff members to 50 hours of work each to upgrade business processes involving:

- System updates to enable reporting for affected members (25 hours).
- System updates to allow amounts to be released to pay tax liabilities (25 hours).

This is estimated to involve $1,502,340 in compliance costs for large APRA regulated funds and exempt public sector schemes, which would be incurred in the first year.

Option 4

Under **option 4**, it is assumed each superannuation provider will be required to commit 4 staff members to 25 hours of work each to upgrade business processes involving:

- System updates to allow amounts to be released to pay tax liabilities (25 hours).

This is estimated to involve $751,170 in compliance costs for large APRA regulated funds and exempt public sector schemes, which would be incurred in the first year.

38 Analysis of APRA data on active RSEs as on 9 October 2023.
39 APRA Quarterly Superannuation Performance Statistics, Key Statistics, June 2023.
40 Australian Bureau of Statistics (ABS), Employee Earnings and Hours, Australia, May 2021.
41 As recommended in the Office of Impact Analysis Regulatory Burden Framework.

Accounting firms

There are expected to be 36,900 accounting firms required to undertake once-off minor business process changes to implement Option 3 or Option 4 in the first year. This is based on the estimated number of accounting services offered in Australia in May 2023.[42]

While the level of impact would likely be varied between accounting firms depending on their clients, areas of expertise and market segment, for the purposes of this analysis the average compliance cost is assumed to apply to all accounting firms as there is a lack of data on accounting firms which operate in superannuation tax and it is expected the changes will affect the vast majority of firms as the changes affect taxation of superannuation funds and individuals. Costs incurred by accounting firms may be passed onto funds and individuals through higher fees.

As was assumed for large APRA regulated funds and exempt public sector schemes, staff involved in business process changes for accounting firms are assumed to be renumerated at an hourly labour cost of $89.43, based on average earnings rates for accountants.

Under both Option 3 and Option 4, it is assumed each accounting firm will be required to commit an average of 15 hours of work each to upgrade business processes involving:

- Review of administration arrangements for the new tax (5 hours).
- System updates to appropriately account for the tax payable by affected individuals (5 hours).
- Internal compliance activities (5 hours).

This is estimated to involve $49,496,738 in compliance costs for accounting firms, which would be incurred in the first year.

A proportion of these estimated compliance costs may be incurred by accounting firms through outsourcing required system upgrades to digital service providers.

Optional costs that have not been factored in but may apply include businesses implementing communication or client education programs at additional costs.

Legal firms

There are expected to be 1,400 legal firms required to undertake once-off minor business process changes to implement Option 3 or Option 4 in the first year. This is based on 10% of the estimated number of legal services offered in Australia in June 2023, in the market segments of commercial law or personal legal and industrial relations.[43]

There is a lack of data on legal firms which operate in superannuation tax. However, it assumed that only 10% of total legal firms in the commercial or personal legal fields will be retained to provide advice or services given the assumptions that:

- there is only a small population of impacted individuals relative to the national client base for legal firms operating in those fields, and
- legal advice or services will only be obtained in response to the measure on matters of legislative uncertainty or controversy.

42 IBISWorld data for May 2023.

43 IBISWorld data for June 2023. There were 23,124 legal services, 34.6 per cent of which were in commercial law and 24.8 per cent in personal legal and industrial relations.

Costs incurred by legal firms in may be passed onto funds and individuals through higher fees.

Staff of legal firms involved in business process changes are assumed to be renumerated at an hourly labour cost of $101.15. This is based on the average ordinary time cash earnings of a full-time non-managerial employee in the occupational grouping of legal professionals,[44] scaled up by a multiplier of 1.75.[45]

Under both Option 3 and Option 4, it is assumed each legal firm in these broad segments will be required to commit an average of 30 hours of work each to upgrade business processes involving:

- Review of a new tax legislation (5 hours).
- Development of resources to ensure they can provide services to clients related to the tax (20 hours).
- Training of staff (5 hours).

This is estimated to involve $4,248,300 in compliance costs for legal firms, which would be incurred in the first year.

Financial advisers

There are expected to be 14,800 financial advisers required to undertake once-off minor business process changes to implement Option 3 or Option 4 in the first year. This is based on the estimated number of financial advisers which provide advice on superannuation products in Australia in October 2023.[46]

While the level of impact would likely be varied between financial advisers depending on their clients, for the purposes of this analysis the average compliance cost is assumed to apply to all financial advisers which provide advice on superannuation products. Costs incurred may be passed onto individuals through higher fees.

Financial advisers involved in business process changes are assumed to be renumerated at an hourly labour cost of $142.98. This is based on the average ordinary time cash earnings of a full-time non-managerial employee in the occupational grouping of financial brokers and dealers, and investment advisers,[47] scaled up by a multiplier of 1.75.[48]

Under both Option 3 and Option 4, it is assumed each financial adviser providing advice on superannuation products will be required to commit an average of 10 hours of work each to upgrade business processes involving:

- Review of a new tax legislation (3 hours).
- Development of resources to ensure they can provide updated advice to clients, including SMSFs investment strategies and clients with high superannuation balances (7 hours).

This is estimated to involve $21,160,300 in compliance costs for financial advisers, which would be incurred in the first year.

Optional costs that have not been factored in but may apply include businesses implementing communication or client education programs at additional costs.

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44 Australian Bureau of Statistics (ABS), Employee Earnings and Hours, Australia, May 2021.

45 As recommended in the Office of Impact Analysis Regulatory Burden Framework.

46 ASIC Financial Advisers Dataset extracted on 5 October 2023. Count of registered financial advisers with a 'Current' status.

47 Australian Bureau of Statistics (ABS), Employee Earnings and Hours, Australia, May 2021.

48 As recommended in the Office of Impact Analysis Regulatory Burden Framework.

Changes to defined benefit valuations

Large APRA regulated funds and exempt public sector schemes

There are expected to be 144 DB scheme products provided by large APRA regulated funds and exempt public sector schemes which would be required to undertake change their valuation methodologies to implement Option 3 or Option 4. This is based on the estimated number of DB products provided by large APRA-regulated funds (127),[49] plus the number of exempt public sector superannuation schemes (17).[50]

The costs of changing DB scheme valuations would be incurred through internal operations or amounts paid to their administration providers.

As was assumed for business process changes, staff involved in changes to DB scheme valuations are assumed to be renumerated at an hourly labour cost of $89.43, based on average earnings rates for accountants, auditors and company secretaries.

Under both Option 3 and Option 4, it is assumed each superannuation provider will be required to commit 5 staff members to 200 hours of work each to change their DB scheme valuations in the first year. This would involve an approximately 12-month process on average of moderate system updates to enable new valuation methodologies which are appropriate for annual revaluation of these interests.

It is assumed that there would be an additional 5 hours work by one staff member each year on an ongoing basis to manage any additional data curation and validation associated with the valuation method once it has been implemented.

This is estimated to involve $12,877,200 in compliance costs for large APRA regulated funds and exempt public sector schemes, which would be incurred in the first year, along with $64,400 arising in the first year and subsequent years.

Self-managed superannuation funds

There are expected to be approximately 16,900 SMSF member DB income stream accounts which would be required to undertake change their valuation methodologies to implement Option 3 or Option 4.

All SMSFs with actuarially-valued DB income streams will be required to update valuation methodologies to ensure that correct values are calculated across the system. The population is based on the total number of individuals who hold a DB income stream and are a member of an SMSFs, discounted by 20 per cent to account for individuals who may hold DB interests with a superannuation provider other than their SMSF, and discounted by another 50 per cent due to the fact that a significant proportion of DB income streams are not actuarially-valued and will not require any change to valuation (namely ‘term allocated’ or ‘market-linked’ income streams).[51]

The costs of changing DB scheme valuations would be incurred through professional trustee-commissioned providers of accounting or actuarial services.

As was assumed for large APRA-regulated fund schemes, each SMSF would be assumed pay a service provider an hourly labour cost of $89.43 to implement the changes in DB valuations, based on average earnings rates for accountants, auditors and company secretaries.

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49 APRA Quarterly Superannuation Industry Publication, Table 1a, June 2023.

50 Analysis of APRA data on active RSEs as on 9 October 2023.

51 Treasury analysis of ATO tax data.

Under both **Option 3** and **Option 4**, it is assumed each affected SMSF will be required to commission 10 hours of work each to update their DB scheme valuations in the first year. This would comprise a baseline 5 hours required for a service provider to provide valuations each year, with an additional 5 hours of once-off work in the first year to change valuation methodologies.

This is estimated to involve $15,112,825 in compliance costs for SMSFs, which would be incurred in the first year. This comprises $7,556,413 once-off costs arising in the first year only, and additional $7,556,400 in ongoing costs arising in the first year and subsequent years.

Additional reporting

Large APRA regulated funds and exempt public sector schemes

There are expected to be 31,800 affected members of APRA-regulated funds and exempt public sector schemes for which these entities would be required to undertake additional annual reporting to implement Option 3 or Option 4 on an ongoing basis. [52]

Additional reporting would only be required for members identified by the ATO as having TSBs in excess of $3 million. Each option is intended to leverage existing reporting requirements as much as possible to support the ATO in calculating tax liabilities. This is intended to minimise the regulatory impact on superannuation entities.

As was assumed for business process changes, staff involved in additional reporting are assumed to be renumerated at an hourly labour cost of $89.43, based on average earnings rates for accountants.

Optional costs that have not been factored in but may apply to superannuation funds wishing to implement automated reporting systems depending on the number of individual members impacted.

Option 3

Under **option 3**, it is assumed each superannuation provider will be required to commit an additional half hour of work each for reporting on each affected member. There will need to be additional reporting to the ATO of inflows and outflows not currently reported, but which should currently be recorded by each fund, including:

- Certain types of contributions including rollovers benefits, spouse contribution splitting, and family law splits.
- Benefit payments that do not currently have tax withheld from them.
- Reduction in superannuation balances due to fraud or bankruptcy.

This is estimated to involve $1,421,858 in compliance costs for large APRA regulated funds and exempt public sector schemes incurred in the first year updated reporting is required, and in subsequent reporting years.

Option 4

Under **option 4**, it is assumed large APRA regulated funds and exempt public sector schemes will not be required to incur additional compliance costs.

Self-managed superannuation funds and small APRA funds

There are expected to be approximately 610,300 SMSFs in Australia in the first year of reporting.[53] SMSFs currently report most relevant member transactions in the SAR and certain other SMSF transactions are reported via the TBAR and TBEN. Any additional reporting required to implement

52 Treasury analysis of ATO tax data.

53 APRA Quarterly Superannuation Performance Statistics, Key Statistics, June 2023.

Option 3 or Option 4 on an ongoing basis could be done efficiently through existing reporting mechanisms on a member specific basis.

However, it is expected that very limited additional reporting would be required for the calculation under Option 3, and that additional data will pertain to events that only need to be reported by exception if and when they occur. Given the expected rarity of these events, it is assumed that only 1% of SMSFs will have any additional reporting in a given year.

Any additional reporting would likely be paid from the fund to an accounting firm and/or through increased fees paid to a digital service provider (also known as a platform) which facilitates the fund's annual reporting. As was assumed for large APRA-regulated fund schemes, each SMSF would be assumed pay a service provider an hourly labour cost of $89.43 to additional reporting, based on average earnings rates for accountants.

Option 3

Under **option 3**, it is assumed 6,100 SMSF will be required to commit one additional hour of work each for reporting each year. There may need to be additional reporting to the ATO of inflows and outflows not currently reported, but which should already be recorded by each SMSF.

This is estimated to involve $545,493 in compliance costs for SMSFs incurred in the first year updated reporting is required, and in subsequent reporting years.

Option 4

Under **option 4**, it is assumed SMSFs will not be required to incur additional compliance costs.

Responding to tax assessments

There are expected to be 80,000 affected individuals with a TSB of greater than $3 million would be issued tax assessment by the ATO under Option 3 or Option 4 in the first year.[54] Individuals would incur compliance costs to understand how their additional tax liability is calculated and respond to these tax assessments.

Each affected individual would be assumed to incur an hourly non-work-related labour cost of $36.00 to undertake this activity.[55]

Under both **Option 3** and **Option 4**, it is assumed each affected individual will be required to undertake an average of 1.5 hours to comply with tax assessments issued for an income year in which they have a TSB of over $3 million and related superannuation earnings.

This is estimated to involve $4,320,000 in compliance costs for individuals, which would be incurred in the first-year tax assessments are issued by the ATO.

Optional costs that have not been factored in but may apply include obtaining financial advice from a financial adviser or seeking guidance from a tax accountant.

54 Treasury analysis of ATO tax data.
55 As recommended in the Office of Impact Analysis Regulatory Burden Framework.