TREASURY LAWS AMENDMENT (FAIR AND SUSTAINABLE SUPERANNUATION) BILL 2016

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations, acronyms and concepts are used throughout this explanatory memorandum.

Abbreviation	***Definition***
AWOTE	Average Weekly Ordinary Time Earnings
Bill	Treasury Laws Amendment (Fairer and Sustainable Superannuation) Bill 2016
Commissioner	Commissioner of Taxation
CPI	Consumer Price Index
ITAA 1997	*Income Tax Assessment Act 1997*
RSA Regulations	*Retirement Savings Account Regulations 1997*
SIS Regulations	*Superannuation Industry (Supervision) Regulations 1994*
TAA 1953	*Taxation Administration Act 1953*

Chapters 1, 2, 4, 5, 6, 7, 8, 9 and parts of 10

An exposure draft Bill and Explanatory Material for these measures was released for public consultation as follows:

Bill Schedule	**Measure**	**Date**
1	Transfer balance cap	27 September 2016
2	Concessional superannuation contributions	27 September 2016
4	Low income superannuation tax offset	7 September 2016
5	Deducting personal contributions	7 September 2016
6	Catch-up concessional contribution	27 September 2016
7	Tax offsets for spouse contributions	7 September 2016
8	Innovative income streams and integrity	27 September 2016
9	Anti-detriment provisions	27 September 2016
10	Administration: • End benefit notifications for Division 293 tax • Combining notices	27 September 2016

Chapter 3
Annual non-concessional contributions cap

Outline of chapter

3.1 Schedule 3 to the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (this Bill) amends the annual non-concessional contributions cap to $100,000 and introduces criteria for an individual to be eligible to make non-concessional contributions up to the cap. Schedule 10 also amends the consequences of releasing money from superannuation and makes other amendments in respect of the non-concessional contributions rules.

3.2 All references to legislative provisions in this chapter are references to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated.

Context of amendments

3.3 This measure forms part of the Government's Reform Package originally announced in the 2016-17 Budget. The Government announced refinements to the non-concessional contribution caps on 15 September 2016. The measure will improve the sustainability and integrity of the superannuation system.

3.4 To ensure superannuation is being used for its primary purpose of saving for retirement, and not for tax minimisation, there are limits on the amount of non-concessional contributions individuals can make. By reducing the non-concessional annual caps and restricting their use to those with balances less than the transfer balance cap, this measure will better target the tax concessions to encourage those who have aspirations to build their superannuation balance up to the limit of the transfer balance cap while retaining the flexibility to accommodate lump sum contributions from one-off events such as receiving an inheritance or selling a large asset. These amendments are only expected to affect a small number of individuals who already have high superannuation balances.

Summary of new law

3.5 Schedule 3 to this Bill:

- amends the annual non-concessional contributions cap from $180,000 to $100,000 (which is subject to indexation based on average weekly ordinary time earnings (AWOTE));
- introduces a requirement that an individual must have a total superannuation balance each year of less than the general transfer balance cap ($1.6 million in the 2017-18 financial year) to be eligible to make non-concessional contributions up to the cap; and
- prevents payment of the government co-contribution in respect of an individual who is not eligible to make non-concessional contributions.

Comparison of key features of new law and current law

New law	*Current law*
Annual non-concessional contributions cap	
The annual non-concessional contributions cap is four times the annual concessional contributions cap. This equals $100,000 (4 x $25,000) in the 2017-18 financial year. Note: the annual concessional contributions cap has been reduced from $30,000 to $25,000 in Schedule 2 to this Bill.	The annual non-concessional contributions cap is six times the annual concessional contributions cap. This equals $180,000 (6 x $30,000) in the 2016-17 financial year.
An individual must have a total superannuation balance of less than the general transfer balance cap on 30 June of the previous financial year to be eligible to make non-concessional contributions up to the cap. The general transfer balance cap will be indexed in $100,000 increments in accordance with the Consumer Price Index (CPI).	There is no superannuation balance test to determine whether an individual is eligible to make non-concessional contributions up to the cap.
Individuals may be able access a bring forward period for their non-concessional contributions cap of two or three times the annual cap, depending on their total	Individuals can access a three year bring forward period for their non-concessional contributions cap of three times the annual cap. The individual must be under 65

New law	***Current law***
superannuation balance. In the 2017-18 financial year, the amount of the cap an individual may bring forward is three times the annual cap over three years if their total superannuation balance is less than $1.4 million, two times the annual cap over two years if their superannuation balance is above $1.4 million and nil if their superannuation balance is $1.5 million or above. The individual must be under 65 years of age at any time in the first year of the bring forward cap. Transitional arrangements apply to individuals who brought forward their non-concessional contributions cap in the 2015-16 or 2016-17 financial years.	years of age at any time in the first year of the bring forward cap.
Eligibility for government co-contribution	
In addition to the existing eligibility requirements, individuals are not eligible for the government co-contribution in an income year if: • their non-concessional contributions exceed their non-concessional contributions cap for that year; or • if, immediately before the start of the year, their total superannuation balance equals or exceeds the general transfer balance cap.	Non-concessional contributions and superannuation balances do not affect eligibility for the government co-contribution.

Detailed explanation of new law

Annual non-concessional contributions cap – $100,000

3.6 Individuals with a total superannuation balance of less than the general transfer balance cap ($1.6 million in the 2017-18 financial year) immediately before the start of the financial year will be able to make non-concessional contributions to their superannuation up to a cap of $100,000 in each financial year (general non-concessional contributions cap). ***[Schedule 3, item 2, subsection 292-85(2]***

3.7 The general non-concessional contributions cap is equal to four times the concessional contributions cap, which is $25,000 for the 2017-18 financial year. This does not include any increases in the concessional contributions cap due to the carry forward of unused concessional contributions cap. ***[Schedule 3, item 2, paragraph 292-85(2)(a)]***

3.8 The concessional contributions cap is indexed and increases in increments of $2,500 in line with AWOTE. Indexation of the concessional contributions cap will automatically flow through to the non-concessional contributions cap.

3.9 More information on the concessional contributions cap, including amendments to that cap made by this Bill, is contained in Chapter 2 of this explanatory memorandum.[1]

Non-concessional contributions

3.10 Non-concessional contributions are, generally, contributions made from an individual's after-tax income (that is from income that has been taxed at their marginal rate) and are therefore not included in the assessable income of the superannuation fund.

3.11 In contrast, concessional contributions are made from pre-tax income and generally included in the assessable income of the superannuation fund and taxed at the concessional rate of 15 per cent.

3.12 Individuals may choose to make non-concessional contributions to their superannuation because, although non-concessional contributions are not concessionally taxed in the financial year in which they are contributed, future earnings on these contributions within the superannuation system will be taxed at the concessional rate of 15 per cent.

Eligibility criteria

3.13 An individual may only make non-concessional contributions up to the cap of $100,000 in a financial year if, immediately before the start of that financial year, the individual's total superannuation balance was less than the general transfer balance cap. ***[Schedule 3, item 2, paragraph 292-85(2)(b)]***

[1] Released for consultation on 27 September 2016.

Total superannuation balance

3.14 Details of the concept of 'total superannuation balance' are explained in detail in Chapter 6, paragraphs 6.21 to 6.38 of the exposure draft explanatory materials to Treasury Laws Amendments (Fair and Sustainable Superannuation) Bill 2016, released on 27 September 2016. ***[Schedule 3, item 4, section 307-230]***

3.15 [As a result of that consultation process, the definition of 'total superannuation balance' has been amended to adjust for structured settlement amounts contributed to superannuation that are in the accumulation phase.

3.16 The updated definition for 'total superannuation balance' has been released for consultation as part of this exposure draft (Schedule 3 to the Treasury Laws Amendments (Fair and Sustainable Superannuation) Bill 2016, and it is proposed to apply across all measures in the Government's Superannuation Reform Package.]

3.17 For the purposes of determining an individual's total superannuation balance, the accumulation phase value of their superannuation interest (if any) is adjusted so that the value of any structured settlement contribution that is in the accumulation phase at the relevant time is deducted from their total superannuation balance (but not below zero).

3.18 The accumulation phase value is reduced by the sum of contributions that:

- are covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries); and
- have been made at or before that time to a complying superannuation plan in respect of that individual.

[Schedule 3, item 4, subsection 307-230(2)]

3.19 The amount of a structured settlement that is contributed to superannuation prior to the 10 May 2006 is also considered to be covered by section 292-95, removing the requirement that the individual make the contribution within 90 days and the requirement that the individual notify their superannuation provider. This reflects that it was not necessary to comply with these requirements before the start of the excess non-concessional contributions regime ***[Schedule 3, item 4, subsection 307-230(3)]***.

3.20 However, if an individual commences a superannuation income stream with only part of a structured settlement contribution, then their accumulation phase value is only reduced to the extent that part of the structured settlement contribution remains in the accumulation phase. ***[Schedule 3, item 4, subsection 307-230(2)]***

3.21 This adjustment is made to ensure that structured settlement contributions are treated in the same way in the accumulation phase as they are in the retirement phase under the transfer balance cap provisions. The treatment of structured settlement contributions for the purpose of the transfer balance cap is discussed in Chapter 1 of this explanatory memorandum.[2]

Example 3.1

Masayo is self-employed and has been making contributions to her account in her self-managed superannuation fund Couture Super, which is her only superannuation interest. At 30 June 2017 Masayo had not yet commenced any superannuation income streams and the total of her accumulation phase value is $1 million.

In the 2017-18 financial year Masayo is involved in an accident that results in her receiving a structured settlement of $2 million which she contributes to Couture Super on 15 May 2018.

To determine whether she is eligible to make non-concessional contributions in the 2018-19 financial year, Masayo calculates her total superannuation balance at 30 June 2018 as; accumulation phase value ($3 million) less the structured settlement contribution in accumulation ($2 million), equalling $1 million. As Masayo's total superannuation balance is below $1.6 million Masayo is eligible to make non-concessional contributions in the 2018-19 financial year.

General transfer balance cap

3.22 The general transfer balance cap is $1.6 million for the 2017-18 financial year and is subject to indexation on an annual basis in line with CPI. The general transfer balance cap is discussed in Chapter 1 of this explanatory memorandum.[3]

Example 3.2

Li has a total superannuation balance of $1.58 million on 30 June 2017. As this is below the general transfer balance cap for the

[2] Released for consultation on 27 September 2016.
[3] Released for consultation on 27 September 2016.

2017-18 financial year of $1.6 million, his non-concessional contributions cap for that financial year is $100,000.

If his total superannuation balance was instead $1.63 million on 30 June 2017, his non-concessional contributions cap for 2017-18 would be nil.

Bringing forward the non-concessional contributions cap

3.23 Individuals may be able to access a bring forward period for their non-concessional contributions cap equal to two or three times the annual cap, depending on their total superannuation balance (see calculation of the bring forward cap section below).

3.24 Once an individual has accessed the bring forward cap in a financial year (the first year), the bring forward cap and the bring forward period is calculated by reference to the difference between the general transfer balance cap and the individual's total superannuation balance in that first year. Once the bring forward period has expired, an individual may then access the annual cap or bring forward cap if eligible.

3.25 An individual will be eligible to access the bring forward non-concessional contributions cap in a particular financial year (the first year) if:

- their non-concessional contributions for that financial year exceed their general non-concessional contributions cap;
- their total superannuation balance is less than the general transfer balance cap;
- they are under 65 years of age at any time in that financial year;
- a bring forward period is not currently in operation in respect of the financial year; and
- the difference (the first year cap space) between the general transfer balance cap and their total superannuation balance is greater than the general non-concessional contributions cap.

[Schedule 3, item 2, subsection 292-85(3)]

Example 3.3

Maya is 43 years old, and her total superannuation balance on 30 June 2017 is $500,000. In the 2017-18 financial year, she makes $170,000 of non-concessional contributions.

Maya can access the bring forward non-concessional contributions cap in the 2017-18 financial year because:

- Maya's total superannuation balance is less than the transfer balance cap of $1.6 million; and
- she is under 65 years of age; and
- she does not currently have a bring forward period because of an earlier application of the bring forward rules; and
- the difference between the general transfer balance cap ($1.6 million) and her total superannuation balance ($500,000) is greater than the general non-concessional contributions cap ($100,000).

Example 3.4

Thomas is 63 years old and has a total superannuation balance of $1.55 million on 30 June 2017.

As the difference between the general transfer balance cap ($1.6 million) and Thomas' total superannuation balance ($1.55 million) is less than the general non-concessional contributions cap ($100,000), Thomas is not eligible to bring forward any future non-concessional contributions caps.

Thomas can make $100,000 of non-concessional contributions in the 2017-18 financial year.

Calculating the bring forward non-concessional contributions cap and the bring forward period

3.26 The amount of non-concessional contributions cap an individual may bring forward to a financial year and the bring forward period depends on their total superannuation balance immediately before that financial year.

$300,000 and three year bring forward period

3.27 If the first year cap space (the difference between the general transfer balance cap and an individual's total superannuation balance) is greater than two times the general non-concessional contributions cap, an individual's non-concessional contributions cap for the first year will be three times their general non-concessional contributions cap and their bring forward period will be three years. In 2017-18, that would equal $300,000 (three times $100,000) with a three year bring forward period. ***[Schedule 3, item 2, paragraph 292-85(5)(b) and subsection 292-85(3)]***

Example 3.5

Karen is under 65 years of age and has a total superannuation balance of $1.35 million on 30 June 2017.

The difference between the general transfer balance cap ($1.6 million) and Karen's total superannuation balance ($1.35 million) is $250,000 which is more than two times the general non-concessional contributions cap ($200,000).

If Karen wishes to make more than $100,000 of non-concessional contributions in the 2017-18 financial year her bring forward cap is $300,000 and her bring forward period is three years.

$200,000 and two year bring forward period

3.28 However, if the first year cap space (the difference between the general transfer balance cap and the individual's total superannuation balance) is between two times the general non-concessional contributions cap and the general non-concessional contributions cap, then the bring forward cap will be two times the general non-concessional contributions cap and the bring forward period will be two years. That is, someone with a total superannuation balance of $1.4 up to $1.5 million on 30 June 2017 will be able to access $200,000 over a two year bring forward period. ***[Schedule 3, item 2, paragraph 292-85(5)(a) and subsection 292-85(3)]***

$100,000 and no bring forward period

3.29 However, if the difference between the general transfer balance cap and the individual's total superannuation balance is less than the general non-concessional contributions cap, then the individual is not eligible to a bring forward cap but can make non-concessional contributions equal to the general non-concessional contributions ($100,000 in 2017-18).

3.30 If the individual's total superannuation balance is equal to or greater than the general transfer balance cap ($1.6 million in the 2017-18 financial year), they are not eligible for any non-concessional contributions cap. This eligibility criterion applies in every year of an individual's bring forward period.

3.31 Where an individual is eligible to bring forward their non-concessional contributions caps to the 2017-18 financial year, their cap for the first year is set out in the following table.[4]

Total superannuation balance on 30 June 2017	***Non-concessional contributions cap for the first year***	***Bring forward period***
Less than $1.4 million	$300,000	3 years
$1.4 million to less than $1.5 million	$200,000	2 years
$1.5 million to less than $1.6 million	$100,000	No bring forward period, general non-concessional cap applies
$1.6 million or more	Nil	N/A

Example 3.6

Sally has a total superannuation balance under $1.4 million on 30 June 2017. Sally's cap for the first year (2017-18) will be $300,000 and her bring forward period is three years.

Example 3.7

Elliot has a superannuation balance of $1.45 million on 30 June 2017. His bring forward cap for the (first year) 2017-18 is $200,000 and his bring forward period is two years.

Example 3.8

Gus has a superannuation balance of $1.58 million on 30 June 2017. He is not eligible for a bring forward cap but he can make a contribution up to the annual cap of $100,000.

3.32 Those individuals who have triggered their bring forward in the 2015-16 or 2016-17 financial year will be subject to transitional arrangements (see paragraphs 3.57 to 3.66).

Calculating the non-concessional contributions cap for the second year

3.33 An individual who has brought forward their non-concessional contributions cap will be able to make further non-concessional contributions in the second year of the bring forward period if:

[4] These values are subject to change in later financial years as the concessional contributions cap and the general transfer balance cap are subject to indexation.

- their total superannuation balance immediately before the start of the second year is less than the general transfer balance cap; and

- their non-concessional contributions for the first year fall short of their cap for the first year.

3.34 If both of these requirements are met, the individual's cap for the second year is the unused portion of their cap from the first year. That is, the difference between their cap in the first year and their non-concessional contributions made in the first year. ***[Schedule 3, item 2, paragraph 292-85(6)(a)]***

3.35 If the individual has a total superannuation balance immediately before the start of the second year that is equal to or more than the general transfer balance cap, or they used their entire cap in the first year, their cap in the second year is nil. ***[Schedule 3, item 2, paragraph 292-85(6)(b)]***

Example 3.9

Alvaro's total superannuation balance on 30 June 2018 is $700,000. Alvaro accesses the bring forward rules in the 2017-18 financial year by making non-concessional contributions of $170,000. Alvaro's bring forward cap was $300,000 and his bring forward period is three years.

Alvaro wishes to make further non-concessional contributions in the 2018-19 financial year. He meets the first requirement because his total superannuation balance immediately before the second year is less than the general transfer balance cap ($1.6 million).

Alvaro also meets the second requirement because his cap for the first year (2017-18) was $300,000, and he only made non-concessional contributions of $170,000.

Alvaro's cap for the second year is the difference between his cap in the first year and his non-concessional contributions for that year, $300,000 - $170,000 = $130,000.

Calculating the non-concessional contributions cap for the third year

3.36 If an individual has a three year bring forward period they may make further non-concessional contributions in the third year if their total superannuation balance immediately before the start of the third year is less than the general transfer balance cap and either:

- their non-concessional contributions for the second year fall short of their cap for the second year; or

- their cap for the second year is nil, and their non-concessional contributions for the first year fell short of their cap for the first year.

3.37 If those requirements are met, the individual's cap for the third year is:

- if their non-concessional contributions for the second year fell short of their non-concessional contributions cap for the second year – the amount of the shortfall; or

- if their cap for the second year is nil, and their non-concessional contributions for the first year fell short of their cap for the first year – the amount of the shortfall.

[Schedule 3, item 2, subsection 292-85(7)]

3.38 This test allows individuals to use up any unused portion of their cap from the second year or, if their cap in the second year was nil, any unused portion of their cap in the first year if they are eligible in the third year.

3.39 If an individual's total superannuation balance immediately before the start of the third year equals or exceeds the general transfer balance cap, or they have used up their non-concessional contributions caps for the first and second years, their non-concessional contributions cap for the third year will be nil. ***[Schedule 3, item 2, subsection 292-85(7)]***

3.40 Where an individual has a two year bring forward period, at the expiry of the two year bring forward period (i.e. in the third year) they may access the general non-concessional contributions cap (annual cap) or bring forward cap again, if eligible in this year.

Example 3.10

Natasha's total superannuation balance on 30 June 2017 is $820,000. Natasha made non-concessional contributions in 2017-18 of $120,000. Natasha's bring forward cap is $300,000 and she has a three year bring forward period (2017-18, 2018-19 and 2019-20).

On 30 June 2018 Natasha's total superannuation balance is $990,000 and in 2018-19, Natasha makes further non-concessional contributions of $110,000. On 30 June 2019 Natasha's total superannuation balance is $1.2 million.

Natasha's total superannuation balance immediately before the third year is less than the general transfer balance cap ($1.6 million), and she has $70,000 of her bring forward cap remaining in the 2019-20 financial year ($300,000 – ($120,000+$110,000)) = $70,000).

Release of excess non-concessional contributions and rate of non-concessional contributions tax

3.41 The tax rate payable on unreleased excess non-concessional contributions is 47 per cent.

3.42 Individuals who have excess non-concessional contributions and receive an excess non-concessional contributions determination may request the Commissioner release the excess amount, and 85 per cent of the associated earnings (together, being the total release amount), from their superannuation interests. If they do this, their excess non-concessional contributions are reduced by the released amount, allowing the individual to avoid liability for excess non-concessional contributions tax on that excess. Where the individual has been given an excess non-concessional contributions determination for the financial year and has released the total amount stated in the determination, the associated earnings will be included in the individual's assessable income.

3.43 Schedule 10 to this Bill amends the law relating to such requests for release, and the amendments are discussed in further detail at Chapter 10.

3.44 The Government is still considering the appropriate treatment of excess non-concessional contributions that result from compulsory non-concessional contributions made to defined benefit interests where no accumulation account funds are available for release.

Eligibility for government co-contribution

3.45 The Government makes superannuation co-contributions to superannuation interests of low or middle income earners who make personal contributions to their superannuation fund and meet other eligibility criteria.

3.46 Schedule 3 to this Bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to provide that, in addition to the existing eligibility criteria, government co-contributions will only be made in respect of a person for an income year if:

- the individual's non-concessional contributions for the financial year corresponding to the income year do not exceed their non-concessional contributions cap for that financial year; and

- immediately before the start of that financial year, the individual's total superannuation balance is less than the general transfer balance cap for that financial year.

[Schedule 3, item 6, paragraphs 6(1)(da) and (db) of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003]

Technical amendment – administrative alignment of objection rights

3.47 Schedule 3 also amends the law to ensure that the objection rights that apply to discretionary decisions made by the Commissioner in respect of non-concessional contributions align with the objection rights that apply to discretionary decisions in respect of concessional contributions.

3.48 Section 292-465 provides the Commissioner with discretion to disregard non-concessional contributions in working out the amount of non-concessional contributions for a financial year or to reallocate non-concessional contributions to another financial year, on application by a person. A similar discretionary provision exists in section 291-465 in respect of concessional contributions. A person should have the right to object against the application of this discretion in the standard manner set out in Part IVC of the *Taxation Administration Act 1953*.

3.49 The majority of individuals who receive an excess non-concessional contributions determination will have the excess amount released from superannuation unless they specifically request that no amount be released. As such most individuals will not receive an excess non-concessional contribution tax assessment against which, in the absence of this specific review provision, the individual could object.

3.50 The *Superannuation Legislation Amendment Act 2010* (No. 117 of 2010) provided for the objection rights in respect of non-concessional contributions by inserting subsection 292-465(9).

3.51 The terms of subsection 292-465(9) as originally enacted, *prima facie*, limit the grounds for review to being dissatisfied with a determination *that was applied for* under section 292-465. The intent of this provision was to provide an avenue for review for a taxpayer who was dissatisfied with the Commissioner's determination, or a decision not to make a determination.

3.52 Following the decision of the Administrative Appeals Tribunal in *Ward and Commissioner of Taxation* [2015] AATA 138, these amendments are being made to align the review provisions in respect of the Commissioner's discretion to disregard or reallocate non-concessional contributions with those in respect of concessional contributions. This ensures that if a person is dissatisfied with the Commissioner's exercise of the discretion under section 292-465 (either in respect of the determination made or a decision not to make a determination), the person may object in the manner set out in Part IVC of the TAA 1953. ***[Schedule 3, item 3, subsection 292-465(9)]***

3.53 For the avoidance of doubt, and also in alignment with the review provisions in respect of the Commissioner's discretion to disregard or reallocate concessional contributions, amendments are being made to clarify:

- the right to object under section 175A of the *Income Tax Assessment Act 1936* or section 97-35 in Schedule 1 to the TAA 1953; and
- the application of the *Administrative Decisions (Judicial Review) Act 1977*;

where a person is dissatisfied with the Commissioner's exercise of the discretion under section 292-465. ***[Schedule 3, item 3, subsection 292-45(10)]***

Consequential amendments

3.54 Schedule 3 to this Bill inserts a new subheading before subsection 292-85(1). ***[Schedule 3, item 1, subheading to subsection 292-85(1)]***

3.55 Schedule 3 to this Bill also amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to insert the definitions of 'total superannuation balance', 'general balance transfer cap', 'non-concessional contributions' and 'non-concessional contributions cap'. ***[Schedule 3, item 7, section 56 of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003]***

Application and transitional provisions

Application

3.56 The amendments in Schedule 3 commence on the day this Act receives the Royal Assent and apply to the financial year commencing on 1 July 2017 and later financial years. ***[Item 1 of the table in section 2 of the Bill; Schedule 3, item 8]***

Transitional

3.57 Transitional rules apply to individuals who have activated the bring forward in the 2015-16 or 2016-17 financial years, to ensure they do not retain the benefit of existing higher caps for the remainder of their bring forward period. The transitional provisions do not affect an individual's non-concessional contributions cap for any financial year that ended before 1 July 2017.

3.58 Individuals must have a total superannuation balance of less than the general transfer balance cap ($1.6 million) as at 30 June 2017 to continue to access their bring forward cap in 2017-18, and as at 30 June 2018 to continue to access their bring forward cap in 2018-19. Individuals with a total superannuation balance that equals or exceeds $1.6 million on 30 June 2017 will have a non-concessional contributions cap of nil in the remaining years of their bring forward period, due to the application of the standard rules which apply a non-concessional cap of nil for individuals with total superannuation balances over the general transfer balance cap.

3.59 After the bring forward period triggered in 2015-16 or 2016-17 ends, the individual will be subject to the general rules regarding future bringing forward of the non-concessional contributions caps (discussed at paragraphs 3.23 to 3.40).

Bring forward period triggered in 2015-16

3.60 Where an individual triggered their bring forward period in 2015-16, their non-concessional contributions caps for the first and second years will have been set by the rules that applied to those financial years. However, their cap for the third year will be set by the transitional rules put in place by this Schedule.

3.61 The third year cap, for 2017-18, will be determined under the standard calculation of the third year cap (under subsection 292-85(6) of the ITAA 1997), applied as if the first year cap had been $460,000. ***[Schedule 3, item 5, subsection 292-85(1) of the Income Tax (Transitional Provisions) Act 1997]***

3.62 The transitional rules modify the calculation of the second year cap for the purposes of ensuring the correct third year cap. This is necessary because the third year cap is based on the unused portion of caps from prior years. However, this modification does not affect the actual cap that applies to the individual in the 2016-17 financial year. ***[Schedule 3, item 5, subsection 292-85(1) and subsection 292-85(3) of the Income Tax (Transitional Provisions) Act 1997]***

3.63 This first year cap of $460,000 represents $180,000 for each of the first and second years (equal to the annual cap for 2015-16 and 2016-17), and $100,000 for the third year (equal to the annual cap for 2017-18).

Example 3.11

Henry made a non-concessional contribution to his superannuation fund of $200,000 in 2015-16 (the first year). Under the non-concessional cap rules applying to 2015-16, he exceeded his yearly cap of $180,000 and triggered the bring forward rules. These rules gave him a cap for the first year of $540,000.

In 2016-17 (the second year), Henry's cap was $340,000 ($540,000 - $200,000). He made a further $100,000 of non-concessional contributions in that financial year.

As Henry's bring forward period started in 2015-16, the standard rule for calculating his third year cap in 2017-18 will be modified by the transitional bring forward non-concessional contributions cap rules.

As Henry is eligible in 2017-18 for the transitional cap rules to apply, his cap is calculated by taking the amended bring forward cap of $460,000 less his contributions in years 1 and 2 ($200,000 plus $100,000). His cap for the 2017-18 year is therefore $160,000.

Bring forward period triggered in 2016-17

3.64 Where an individual triggered their bring forward period in 2016-17, their non-concessional contributions cap for the first year will have been set by the rules that applied to that financial year. However, their caps for the second and third years will be set by the transitional rules put in place by this Schedule.

3.65 The second and third year caps, for 2017-18 and 2018-19, will be determined under the standard calculation of those caps (under subsections 292-85(6) and (7) of the ITAA 1997), applied as if the first year cap had been $380,000. ***[Schedule 3, item 5, subsection 292-85(2) of the Income Tax (Transitional Provisions) Act 1997]***

3.66 This first year cap of $380,000 represents $180,000 for the first year (equal to the annual cap for 2016-17), and $100,000 for each of the second and third years (equal to the annual cap for 2017-18 and 2018-19, assuming the cap has not increased due to indexation by 2018-19).

Example 3.12

Molly has a total superannuation balance of $200,000 as at 30 June 2016. In September 2016 she makes a non-concessional contributions of $250,000. This triggers her three year bring forward.

From 1 July 2017, as the cap has been lowered, Molly would be able to make further non-concessional contributions of up to $130,000, taking her to the new bring forward amount of $380,000. Molly makes a non-concessional contribution of $110,000 in 2017-18 and $20,000 in 2018-19.

Molly is less than 65 years old and has a total superannuation balance of $675,000 on 30 June 2019. She can then access the new bring forward period and contribute up to $300,000 in non-concessional contributions in 2019-20.

Chapter 10
Release authorities

Exposure draft legislation and explanatory materials for other measures in Schedule 10 to the Bill were released for public consultation on 27 September 2016. While these measures have been separated for the purposes of consultation, they are expected to be combined in the final versions of the Bill and explanatory memorandum.

Outline of chapter

10.1 Schedule 10 to the exposure draft of Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (the Bill) amends the tax law to simplify and consolidate the range of existing processes for the release of amounts from individuals' superannuation using a release authority.

10.2 The amendments will replace existing release authorities (except those relating to deferred debt account discharge liabilities for Division 293 tax) with a new simplified release authority regime. This will ensure that the release of all such superannuation amounts is subject to common processes and timeframes.

10.3 All references to legislative provisions in this chapter are to Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) unless otherwise stated.

Context of amendments

10.4 In general, individuals are only entitled to withdraw amounts of superannuation held by superannuation providers if they have satisfied a condition of release (Division 6.3 and Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and Division 4.3 and Schedule 2 to the *Retirement Savings Account Regulations 1997* (RSA Regulations)). Conditions of release include retiring after attaining preservation age or attaining age 65.

10.5 The presentation of a release authority is a special condition of release for amounts held in complying superannuation funds and retirement savings accounts (see the tables in Parts 1 and 2 of Schedule 1 to the SIS Regulations and the table in Schedule 2 to the RSA Regulations.).

10.6 In conjunction with these regulations, the *Income Tax Assessment Act 1997* (ITAA 97) and Schedule 1 to the TAA 1953 allow (and in many cases require) the superannuation provider that receives a release authority to pay an amount and reduce the value of the member's superannuation interest despite the normal restrictions on such payments.

10.7 Prior to the amendments different types of release authorities were available if an individual had:

- excess concessional or non-concessional contributions;
- a Division 293 tax liability or a debt account discharge liability; or
- an excess non-concessional contributions tax liability.

10.8 There were a number of differences in the operation of these release authorities, including:

- the entity that provided the release authority to the superannuation provider:
  - which could be the Commissioner of Taxation (Commissioner) or the individual;
- the time for the provider to comply; and
- the entity to whom the amounts were released.

Policy background

10.9 As part of the Superannuation Reform Package announced in the 2016-17 Budget, the Government is revising the framework for release authorities to make it simpler, more consistent and easier for individuals and superannuation providers to comply with.

Summary of new law

10.10 Schedule 10 to this Bill amends the tax law to simplify and consolidate the range of existing processes for the release of amounts from individuals' superannuation interests using a release authority (except release authorities relating to Division 293 debt account discharge liabilities).

10.11 Under the new approach, release authorities will be issued by the Commissioner directly to superannuation providers. Superannuation providers will have a standard seven day period to comply. The Commissioner is able to allow further time, if appropriate.

10.12 Where the release of an amount is voluntary (for example the release of excess concessional contributions), individuals will have 60 days to request that the Commissioner arrange the release of the specified amount. The Commissioner will be able to allow further time, if appropriate. Where the release is mandatory (for example, the release of excess non-concessional contributions tax), the individual will not be involved in releasing amounts and instead the Commissioner will deal with funds directly.

Comparison of key features of new law and current law

New law	*Current law*
Individual to request the issue of a release authority	
Individuals that receive excess concessional or non-concessional contributions determinations or a notice of assessment for Division 293 tax may request, in the approved form, for the Commissioner to release amounts from superannuation. This request must be made in the approved form within 60 days of the issue of the notice or determination (or such further time as the Commissioner may allow). The amount that may be released in relation to each circumstance permitting release remains the same.	Individuals that receive excess concessional or non-concessional contributions determinations may elect in the approved form for the Commissioner to release amounts from superannuation. This request must be made within 21 or 60 days of receiving the determination (or such further time as the Commissioner may allow). Individuals that receive a notice of assessment for Division 293 tax, also receive a release authority that they may provide to funds within 120 days of receiving the notice.
Commissioner's obligation to issue release authorities to superannuation providers	
The Commissioner must provide a release authority to a superannuation provider in respect of an interest upon receiving a valid request. The Commissioner may provide a release authority to a fund without a	The Commissioner must provide a release authority to a superannuation provider in respect of an interest upon receiving a valid election. The Commissioner may provide a release authority to a fund without an

New law	***Current law***
request if: • the individual is liable for excess non-concessional contributions tax; • the individual is liable for assessed Division 293 tax and has neither paid the tax nor released the amount of the tax from superannuation in 120 days; or • the individual has been issued with an excess non-concessional contributions determination and has not made a request to the Commissioner within 120 days of the issue of the determination (or been allowed more time by the Commissioner).	election if: • the individual is liable for excess non-concessional contributions tax; or • the individual is liable for assessed Division 293 tax and has neither paid the tax nor released the amount of the tax from superannuation in 120 days.
Superannuation providers required to action release authorities	
A superannuation provider that receives a release authority must pay the lesser of the amount specified in the release authority and the value of the individual's specified superannuation interests (except interests that are defined benefit interests within the meaning of the tax law). Payment must be provided to the Commissioner within seven days of the issue of the release authority (or such further time as the Commissioner may allow). The superannuation provider must also notify the Commissioner in the approved form of the payment (or lack of a payment) in the same timeframe.	A superannuation provider that receives a release authority must generally pay the lesser of the amount specified in the release authority, a lesser amount specified by the entity providing the release authority or the value of the individual's specified superannuation interests. The amount of time the fund has to pay, the entity to which payment must be provided, the reporting requirements for payment and the circumstances in which funds need not comply with a release authority differ.
Character of amounts received from superannuation due to release authorities	
Amounts released from superannuation because of a release authority are non-assessable non-exempt income and are exempt from the proportioning rule. Amounts released to the Commissioner are generally credited	Amounts released from superannuation because of a release authority are generally non-assessable non-exempt income and exempt from the proportioning rule. Amounts released to the Commissioner are generally credited

New law	Current law
against an individual's tax liability, with any excess refunded to the individual. Interest is available for any undue delay in the payment of a refund. Amounts released to the Commissioner in relation to Division 293 tax liabilities that are deferred to a debt account are treated as a voluntary payment towards the debt account.	against an individual's tax liability, with any excess refunded to the individual. For some, but not all types of release authorities, interest is available for any undue delay in the payment of a refund. However, amounts released to the Commissioner in relation to Division 293 tax liabilities that are deferred to a debt account are treated as a voluntary payment towards the debt account.

Detailed explanation of new law

10.13 This measure will introduce a common legislative framework for the release of amounts from superannuation in relation to excess contributions and the related tax liability (excluding amounts relating to Division 293 tax debt account discharge liabilities).

10.14 Amounts will still be able to be released from superannuation in similar circumstances as they were previously, but this will occur under a common simplified framework for individuals and superannuation providers.

10.15 Where an individual chooses to release an amount, they will have a uniform 60 days to make a request to the Commissioner for the release of an amount from specified superannuation interests (and the Commissioner may extend this time).

10.16 Similarly, in all cases when superannuation providers receive a release authority under the new framework they will have seven days to pay the amount to the Commissioner.

When amounts may be released

Release on request

10.17 Under the new release authority framework, individuals have 60 days after the issue of a release authority or such further time as the Commissioner may allow, to request the release of an amount from superannuation for a financial year, including a nil amount if they are issued:

- a determination that they have excess concessional or non-concessional contributions for that financial year; or
- a notice of assessment of assessed Division 293 tax for the income year corresponding to the financial year.

[Schedule 10, Part 1, item 1, subsection 131-5(1)]

10.18 These circumstances are the same as those in which individuals could choose for the amounts to be released under the prior law (see sections 96-5, 96-7 and 135-10 in Schedule 1 to the TAA 1953).

10.19 However, in place of the range of existing timeframes for making or using a release authority, the individual will always have at least 60 days from when the determination or notice is issued in which to make a request. ***[Schedule 10, Part 1, item 1, subsections 131-5(3) and (5)]***

10.20 To be valid, a request must be in the approved form. It is expected that the Commissioner will specify that requests relating to excess non-concessional contributions will need to include information about whether an individual has any superannuation interests. This will facilitate the Commissioner's consideration of whether it is appropriate to issue a direction that an individual has no superannuation interests under section 292-467 of the ITAA 1997. ***[Schedule 10, Part 1, item 1, subsection 131-5(3)]***

10.21 The request must specify a valid release amount and identify the superannuation interests from which it could be released. A valid release amount is:

- for determinations of excess concessional contributions, an amount up to 85 per cent of the excess contributions;
- for determinations of excess non-concessional contributions, an amount which is either the full amount of the excess contributions and 85 per cent of associated earnings (referred to as the total release amount) or nil; and
- for assessed Division 293 tax, an amount up to the amount of the liability.

[Schedule 10, Part 1, item 1, subsection 131-5(2) and section 131-10]

10.22 The amounts that can be released are also the same as the amounts that could be released previously.

10.23 Once made, a request is final and irrevocable. However, in some situations such as, for example, where insufficient funds remain in the superannuation interest, while an individual may make a valid request for the release of an amount from a superannuation interest, the identified amount will not be released, or will only be released in part. ***[Schedule 10, Part 1, item 1, subsection 131-5(6)]***

10.24 In this situation the Commissioner will notify the individual, who may then make a further request within 60 days or such further time as the Commissioner may allow for the release of the remaining amount from another superannuation interest. ***[Schedule 10, Part 1, item 1, subsection 131-5(4)]***

Example 10.1: Request for release

Isaac receives an excess non-concessional contributions determination from the Commissioner on 18 November 2019 specifying that the total release amount in respect of his excess non-concessional contributions (the amount of the excess contribution plus 85 per cent of the associated earnings) is $10,000 for the 2018-19 financial year. He receives notice of an assessment of Division 293 tax, which states he has assessed Division 293 tax liabilities of $5,000 for the same period.

Isaac has 60 days to request that the Commissioner arrange the release of either $10,000 (the total release amount for his excess contributions and associated earnings) or a nil amount in respect of his excess non-concessional contributions. Alternatively, Isaac may choose not to make a request.

In respect of his assessed Division 293 tax, Isaac also has 60 days to request the release of any amount from nil up to $5,000 (the total amount of his assessed Division 293 tax liability). Alternatively, Isaac may choose not to make a request.

Issac does not make a request to the Commissioner in respect of either his excess non-concessional contributions or his Division 293 tax liabilities. The consequences of his choice under the amended law are discussed in Example 10.2.

Release without a request

10.25 The amendments also provide for the Commissioner to issue release authorities to superannuation providers without a request by the individual if:

- the individual is liable for excess non-concessional contributions tax;
- the individual is liable for assessed Division 293 tax in relation to contributions to an interest that is not a defined benefit interest and 120 days after the notice of the liability,

the liability has not been paid and amounts equal to the liability have not been released from superannuation; or

- the individual has:

  – received a determination that they have excess non-concessional contributions or a notice from the Commissioner that a superannuation provider was not able to release all or part of an amount identified in a prior request relating to such a determination: and

  – 120 days after the issue of the determination or notice, not requested the release of an amount, including a nil amount.

[Schedule 10, Part 1, item 1, section 131-15]

10.26 The first two cases – release relating to excess non-concessional contributions tax and Division 293 tax – are the same circumstances in which involuntary release currently occurs. In both of these cases, the amount to be released is also not changed – it remains the amount of the relevant tax liability. ***[Schedule 10, Part 1, item 1, section 131-20]***

10.27 The amendments make a minor change to simplify the process for release for excess non-concessional contribution tax liabilities.

10.28 Previously, individuals who were liable for excess non-concessional contributions tax were issued with a release authority for the amount of the tax. If they did not release the amount within 90 days, they were liable for an administrative penalty under section 288-90 in Schedule 1 to the TAA1953 and the Commissioner would directly arrange for the release of the amount from superannuation.

10.29 The amendments simplify this process, removing the obligation from individuals and instead making the release of the amounts for excess non-concessional contributions tax the responsibility of the Commissioner.

10.30 The amendments also introduce a new circumstance in which mandatory release may occur – where the individual has excess non-concessional contributions and has not notified the Commissioner about the amount that they want to be released.

10.31 Previously, if an individual did not make any election about the release of an amount upon receiving an excess non-concessional contributions determination, no amount would be released from their superannuation at that time.

10.32 This was almost always to the individual's detriment. If the amount is not released, the whole value of the contribution is subject to excess non-concessional contributions tax at a specified rate (generally 47 per cent in 2017-18). Further, as outlined above, the amount of this excess non-concessional contribution tax liability would then need to be released from the individual's superannuation interests.

10.33 Given the seriousness of this consequence, it is preferable that it only apply to an individual that has specifically chosen this outcome, rather than applying by default.

10.34 The amendments change this default position, allowing the Commissioner to release the amount of an individual's excess non-concessional contributions in the absence of a request by the individual. ***[Schedule 10, Part 1, item 1, subsection 131-15(2)]***

10.35 This position is only the default. An individual may still choose for no amount to be released by requesting the Commissioner not release any amount. This request will prevent the Commissioner from seeking the release of the full amount of the excess non-concessional contributions. However, it will not affect any subsequent mandatory release relating to the consequential excess non-concessional contribution tax liability.

Example 10.2: Release without a request

Following on from example 10.1, Isaac does not request the release of any amount from his superannuation interests.

As Isaac has not made a request for the release of an amount (including a nil amount) in relation to his excess non-concessional contributions, 120 days after the issue of the determination of excess non-concessional contributions, the Commissioner may issue release authorities to superannuation providers holding superannuation interests for Isaac to seek the release of the full amount of his excess non-concessional contributions and 85 per cent of associated earnings.

Without this new default rule, if Isaac had inadvertently failed to notify the Commissioner of his intention to withdraw his excess non-concessional contribution he would have been subject to excess non-concessional contributions tax of 47 per cent (in 2017-18) on the full amount of his excess contribution ($10,000).

Further, unless Isaac has paid the amount of his assessed Division 293 tax liability or it has been deferred to a debt account, the Commissioner may also issue release authorities to superannuation providers holding superannuation interests for Isaac to seek the release of the full amount of his assessed Division 293 tax ($5,000).

Complying with release authorities

Superannuation providers

10.36 The framework establishes a consistent timeframe and process for superannuation providers to release amounts from superannuation interests using this type of release authority and also creates a new type of release authority.

10.37 A release authority can only be issued by the Commissioner to a single superannuation provider and will either state the amount to be released from each superannuation interest or the total amount to be released for the superannuation interests under the release authority. It must also include the date of issue and contain any other relevant information the Commissioner considers relevant. The Commissioner may also vary or revoke an issued release authority, so long as it occurs before the Commissioner is given notice by the superannuation provider that they have released the amount. ***[Schedule 10, Part 1, item 1, sections 131-25 and 131-30]***

10.38 Superannuation providers that have been issued with a release authority by the Commissioner are required to pay to the Commissioner the lesser amount of either:

- the amount stated in the release authority; or
- the sum of the maximum available release amounts for each of the superannuation interests held by the superannuation provider for that individual in their superannuation plans.

[Schedule 10, Part 1, item 1, subsection 131-35(1)]

10.39 The maximum available release amounts for each superannuation interest will include the total amount of all the superannuation lump sums that could be payable from the interest at that time. ***[Schedule 10, Part 1, item 1, section 131-45]***

10.40 The superannuation provider will have seven days after the date of issue of the release authority to pay this amount to the Commissioner, unless a further period has been allowed by the Commissioner. ***[Schedule 10, Part 1, item 1, subsection 131-35(1)]***

10.41 By default, defined benefit interests will not be included when calculating the sum of the maximum available release amounts for an individual's superannuation interests. This is consistent with the current approach for release authorities relating to excess non-concessional contributions and Division 293 tax. The new approach preserves this outcome and ensures that superannuation providers of defined benefit interests will not be required to comply with a release authority. ***[Schedule 10, Part 1, item 1, subsection 131-35(2)]***

10.42 This approach differs slightly from the prior approach for excess concessional contributions. Previously subsection 96-20(2) provided that certain other kinds of superannuation interests (interests in non-complying superannuation funds and interests treated as a separate interest under section 307-200 of the ITAA 1997 that were supporting a superannuation income stream) were also not included in working out the maximum available release amount in relation to excess concessional contributions. This change has been made to make the release process simpler and more consistent, noting that the release of amounts from such interests has not given rise to issues in the context of other release authorities.

10.43 However, superannuation providers of defined benefit interests will have the option of complying with the release authority if it is practical in the circumstances and consistent with the provider's rules.

10.44 If the superannuation provider chooses to release an amount from a defined benefit interest, it must pay the same amount to the Commissioner as if the interest was not a defined benefit interest. ***[Schedule 10, Part 1, item 1, section 131-40]***

10.45 For all superannuation interests, the superannuation provider will have seven days after the date of issue of the release authority to pay this amount to the Commissioner, unless a further period had been allowed by the Commissioner. ***[Schedule 10, Part 1, item 1, section 131-40]***

10.46 When a payment is made, the superannuation provider must notify the Commissioner of the payment in the approved form within seven days after the date the release authority is issued. ***[Schedule 10, Part 1, item 1, subsections 131-50(1) and (3)]***

10.47 If the provider is not required to make the payment, or the amount it is required to pay is less than the amount stated in the release authority, the superannuation provider must also notify the Commissioner that it is not required to comply with the release authority. The notification must be made in the approved form within seven days after the date the release authority is issued. ***[Schedule 10, Part 1, item 1, subsections 131-50(2) and (3)]***

The Commissioner

10.48 The Commissioner will be required to notify the individual if the superannuation provider has given a notice to the Commissioner or has not paid the full amount stated in the release authority within the applicable time. This will allow the individual to make a further request to release the amount from another superannuation provider or take other steps to meet any outstanding liabilities. ***[Schedule 10, Part 1, item 1, subsection 131-55(1)]***

10.49 The notice provided to the individual must be in writing, identify the superannuation provider and state how much of the amount stated in the release authority was not paid within the applicable time. ***[Schedule 10, Part 1, item 1, subsection 131-55(2)]***

10.50 Generally issuing and acting upon a release authority will not involve any acquisition of property by the Commonwealth. However, for the avoidance of doubt and consistent with other release authority provisions, the Bill provides for the payment of compensation should the operation of the release authority provisions result in an acquisition of property. ***[Schedule 10, Part 1, item 1, section 131-60]***

Consequences of release

10.51 The consequences when an amount is released have generally not changed as a result of these amendments.

10.52 Consistent with the prior regime under Division 96, released amounts are generally paid to the Commissioner and applied as a credit against the tax liabilities of the individual. To the extent the released amount exceeds the individual's liabilities, it is refunded to the individual. ***[Schedule 10, Part 1, item 1, subsection 131-65(1)]***

10.53 The individual will be entitled to the payment of interest if there is an unreasonable delay between the Commissioner receiving an amount from a superannuation provider and the payment of any refund to the individual. ***[Schedule 10, Part 1, item 1, section 131-70]***

10.54 The exception to these rules is amounts released to the Commissioner in relation to Division 293 tax liabilities that are deferred to a Division 293 tax debt account. Consistent with the prior rules for these amounts in subsection 135-90(2), they are treated as a voluntary payment towards the Division 293 tax debt account under section 133-70. Without this special rule, crediting the amount to the individual would not reduce the Division 293 tax debt account as the relevant liability has been deferred to a Division 293 tax debt account. ***[Schedule 10, Part 1, item 1, subsection 131-65(2)]***

10.55 All released amounts are non-assessable non-exempt income for the individual and are not subject to the proportioning rule (which prescribes how the components of a superannuation benefit are to be determined). ***[Schedule 10, Part 1, item 1, section 131-75 and Part 2, item 21, sections 303-15 and 303-17 of the ITAA 1997]***

10.56 The release of an amount in response to an excess concessional or excess non-concessional contributions determination still reduces an individual's non-concessional or excess non-concessional contributions in the same way as it did previously.

10.57 However, a number of minor changes have been made to account for the changes to the release authority framework.

10.58 First, as the Commissioner will be responsible for issuing release authorities to superannuation providers, the provisions that penalised individuals that misused release authorities to release excess amounts are no longer necessary. ***[Schedule 10, Part 2, item 23, section 304-15 of the ITAA 1997]***

10.59 Secondly, previously if an individual elected to release the amount of their excess non-concessional contributions and 85 per cent of associated earnings for a financial year (the total release amount), the amount of the associated earnings was included in their assessable income.

10.60 As the total release amount may now be released from an individual's superannuation interest even if they do not request the release, the amendments ensure that the amount of the associated earnings are included in the individual's assessable income regardless of whether the individual has made a request to the Commissioner in relation to the release. ***[Schedule 10, Part 2, item 9, section 292-20 of the ITAA 1997]***

10.61 However, consistent with the current law, an individual does not need to include an amount of associated earnings in relation to contributions if the individual must pay excess non-concessional contributions tax on those contributions. ***[Schedule 10, Part 2, item 9, section 292-20 of the ITAA 1997]***

10.62 Finally, the Commissioner was also previously unable to issue a direction that an individual has no superannuation interests or no further superannuation interests if the individual had not made an election in response to a determination they had excess non-concessional contributions. As this direction prevents any further liability for excess non-concessional contributions tax for the relevant financial year from arising, this disadvantaged individuals who had no superannuation interests and failed to make that election.

10.63 The amendments allow the Commissioner to issue such a direction, regardless of whether the individual has made a request to the Commissioner. ***[Schedule 10, Part 2, item 19, paragraphs 292-467(1)(b) and (c) of the ITAA 1997]***

Consequential amendments

10.64 This Schedule also makes consequential amendments to the ITAA 1997 and TAA 1953 to update various provisions, including guidance material, to account for the introduction of the new arrangements for release authorities and to repeal provisions that would otherwise have become inoperative. ***[Schedule 10, Part 2, items 2 to 8, 10 to 18, 20, 22 and 24 to 38, items headed "superannuation" in the tables in sections 10-5 and 11-55, subsections 280-15(3) and (4), note 3 to section 291-15, sections 292-1 and 292-15, paragraph 292-25(2)(a), note 2 to subsection 292-25(2), paragraphs 292-85(1)(b), 292-85(1A)(a) and 292-90(1A)(b), sections 292-405, 292-410 and 292-415, paragraphs 292-467(1)(b) and (c), note 1 to subsection 292-467(1), the headings to sections 303-20 and 304-20 and the definitions of maximum available release amount and total release amount in subsection 995-1(1) of the ITAA 1997 and Division 96, sections 135-1 and 135-5, subsection 135-10(1), sections 135-35 and 135-45, subsection 135-75(3), the note to section 135-85, subsections 135-90(1), (2) and (3), item 135R in the table in subsection 250-10(2) and subsection 288-95(3) in Schedule 1 to the TAA 1953]***

Application and transitional provisions

10.65 The amendments in Schedule 10 commence on the first day of the next quarter following the day of Royal Assent. ***[Item 2 of the table in subsection 2(1) of the Bill]***

10.66 The new release authority regime and the other related amendments made by this Schedule apply to financial years commencing on or after 1 July 2017. ***[Schedule 10, Part 3, item 39]***

10.67 This means that from 1 July 2017, release authorities under the prior provisions will no longer be issued, even in relation to liabilities for earlier periods.

10.68 Nothing in this Schedule affects the validity of release authorities issued prior to the application date.