Treasury Laws amendment (2017 Measures no. 2) Bill 2017: superannuation reform package amending provisions

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

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

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| Abbreviation | Definition |
| Amending Act | *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* |
| ITAA 1997 | *Income Tax Assessment Act 1997* |
| IT(TP) Act 1997 | *Income Tax (Transitional Provisions) Act 1997* |
| RSAR 1997 | *Retirement Savings Accounts Regulations 1997* |
| SISR 1994 | *Superannuation Industry (Supervision) Regulations 1994* |
| TRIS | Transition to retirement income stream |

1. Superannuation reform package amending provisions

## Outline of chapter

* 1. The amendments in Schedule 1 make technical corrections and minor changes to certain measures enacted through the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*.
	2. These amendments relate to the transfer balance cap, the concessional contributions cap, the requirement to prepare a statement of compatibility with the objectives of superannuation and the transition to retirement income stream rules.
	3. All legislative references in this Chapter are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise stated.

## Context of amendments

* 1. The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (the Amending Act) legislated the Government’s superannuation reform package that was announced in the 2016-17 Budget.
	2. The amendments contained in Schedule 1 relate to the following measures that were included in that package:
* the transfer balance cap;
* changes to the concessional contribution rules;
* objectives of superannuation; and
* changes to the transition to retirement income stream rules.

### Transfer balance cap

* 1. The transfer balance cap was enacted through Division 294 and limits the total value of capital that can be transferred into the tax exempt ‘retirement phase’ of superannuation in respect of an individual.
	2. It does this by requiring individuals to commute one or more of their superannuation income streams where they have ‘excess transfer balance’. An individual has excess transfer balance when the transfer balance in their transfer balance account exceeds their transfer balance cap ($1.6 million for the 2017/18 financial year) (see section 294-30).
	3. Individuals who have excess transfer balance are also liable to pay excess transfer balance tax to neutralise the benefit that was obtained from transferring capital in excess of their transfer balance cap into the retirement phase (see Subdivision 294-F).
	4. Individuals are also required to reduce the value of their retirement phase interests by at least the amount of the excess. Subdivision 136-A of Schedule 1 to the *Taxation Administration Act 1953* sets out the determination process that initiates a mandatory reduction of an individual’s retirement phase superannuation interests.
	5. The transfer balance in an individual’s transfer balance account changes according to the transfer balance credit and transfer balance debit entries made to the account. A credit reduces the amount of available cap space that an individual, whereas as a debit increases the amount available.
	6. For superannuation income streams that commence on or after 1 July 2017, an individual will receive a ‘transfer balance credit’ equal to the value of the interest that supports the superannuation income stream when they start to be the ‘retirement phase recipient’ of the income stream (see item 2 of the table in subsection 294-25(1)). For most superannuation income streams, this will be when superannuation income stream benefits from the income stream first become payable to the individual (see section 294-20). Individuals also receive a transfer balance credit equal to the value of the superannuation interest that supports a superannuation income stream of which they are a retirement phase recipient just before 1 July 2017 (see item 1 of the table in subsection 294-25(1)).
	7. The transfer balance in an individual’s transfer balance account is reducible by ‘transfer balance debits’ (see section 294-80). An individual’s transfer balance account is debited when they commute capital from the retirement phase of superannuation. Providing a debit facilitates roll-overs and ensures that an individual’s transfer balance reflects the net amount of capital that has been transferred into the retirement phase in respect of them. Individuals also receive debits for other events that reduce the value of the capital they have in the retirement phase.
	8. Special rules apply to certain defined benefit interests. These rules reduce the tax concessions that apply to defined benefit income streams where the total income provided by those income streams exceeds the defined benefits cap ($100,000 for the 2017/18 financial year) (see Subdivision 303-A). Special rules for transfer balance credits and transfer balance debits also apply in relation to capped defined benefit income streams to ensure that they are appropriately accounted for under the transfer balance cap (see sections 294-135 and 294-145).
	9. As part of the changes that introduced the transfer balance cap, the class of benefits that are roll-over superannuation benefits in paragraph 306-10(a) was also redefined. As a result of those changes, individuals who are entitled to receive death benefit income streams can roll over the superannuation lump sum death benefit without the benefit being included in their assessable income.

### Concessional contribution cap

* 1. Schedule 2 to the Amending Act reduced the concessional contributions cap to $25,000 per year (subject to indexation) from the 2017‑18 income year.
	2. The concessional contributions cap is defined in Division 291. That Division limits the concessional treatment for concessional contributions in a financial year by including an amount in an individual’s assessable income equal to any concessional contributions that exceed the ‘concessional contributions cap’ (see paragraph 291‑15(a)).
	3. Including that amount in an individual’s assessable income neutralises the deduction that they or their employer receive under Division 291 for making the contribution. However, the contribution can remain in the superannuation system and on an ongoing basis will be subject to the concessional arrangements that apply to superannuation funds. Also, as the amount of the contribution is also included in the assessable income of the fund, the individual receives a 15 per cent tax offset in recognition of the tax that applied to the contribution at the fund level (see paragraph 291-15(b)).
	4. In addition, Schedule 6 to the Amending Actintroduced rules that permit individuals to increase their concessional contributions cap for a particular year by unused amounts of their concessional contributions caps from earlier years. These rules are generally referred to as the ‘unused concessional cap carry forward’ rules and will apply from the 2019-20 income year.
	5. Individuals can only use the unused concessional cap carry forward rules in an income year if their total superannuation balance immediately before the start of that year is less than $500,000.

### Objectives of superannuation

* 1. The Superannuation (Objective) Bill 2016 was introduced as part of the Superannuation Reform Package and sets out the objectives of the superannuation system. This Bill is currently before the Parliament.
	2. Part 5 of Schedule 10 to the Amending Act made changes to the *Legislation Act 2003* to require that a statement of compatibility with objectives of superannuation be included in the explanatory statement for legislative instruments that relate to superannuation. This change was made in anticipation of the Superannuation (Objective) Bill 2016 being enacted at the same time as the Amending Act and began applying from 1 January 2017.

### Transition to retirement income streams

* 1. The *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994) and the *Retirement Savings Accounts Regulations 1997* (RSAR 1997) permit individuals who have reached preservation age to draw down on their superannuation interests before they retire from the workforce or turn 65.
	2. To do so, individuals can commence a transition to retirement income stream, a transition to retirement pension, a non‑commutable allocated pension or non-commutable allocated annuity (TRIS) (although TRIS specifically refers to the first of these products, the term is commonly used to refer to them collectively).
	3. The earnings tax exemptions that applied in respect of TRISs will no longer apply from 1 July 2017. This change was introduced by Schedule 8 to the Amending Act by placing an additional requirement on superannuation income streams.
	4. In broad terms, the new requirement means that an entity can only claim an earnings tax exemption in relation to its assets that support a superannuation income stream if the income stream is in the ‘retirement phase’ (see for example sections 295-385, 295-390 and 295-407). In conjunction with these changes, TRISs were specifically excluded from being income streams that could be in the retirement phase (see subsection 307-80(3)).
	5. As a result of the changes introduced by the Amending Act, a TRIS continues to be excluded from being in the retirement phase even where an individual satisfies a condition of release after the TRIS commenced. To have an earnings tax exemption apply to a TRIS, the individual would have to commute the interest and commence a new superannuation income stream that satisfies a different pension or annuity standard under the SISR 1994 or RSAR 1997.
	6. As well as removing the earnings tax exemptions for TRISs, ‘CGT relief’ was provided to superannuation funds with assets supporting TRISs prior to the TRIS changes applying on 1 July 2017. These rules preserve the tax exempt status of any unrealised capital gains that the fund would have been eligible to receive had they disposed of the assets before 1 July 2017 (see sections 294-110 and 294-115 of the *Income Tax (Transitional Provisions) Act 1997*) (IT(TP) Act 1997).

## Summary of new law

### Transfer balance cap amendments

* 1. Schedule 1 makes a number of changes to the transfer balance cap provisions. These changes:
* enable additional transfer balance credits and transfer balance debits to be prescribed;
* clarify the matters covered by the assumption about compliance with pension or annuity rules and standards and for which the consequences of not complying with a commutation authority are disregarded;
* enable the correct value for a debit that arises for failures to comply with rules and standards to be calculated for a failure that occurs part-way through an income year;
* bring forward the application of the changes to the death benefit roll-over rules to facilitate individuals rebalancing their superannuation interests in anticipation of the transfer balance cap applying from 1 July 2017; and
* bring forward the application of the rules about the transfer of assets by life insurance companies to facilitate those companies accounting for and rebalancing their assets in anticipation of the transfer balance cap applying from 1 July 2017.

### Concessional contributions cap amendments

* 1. Schedule 1 updates the Guide Material for the concessional contributions cap to ensure that it accurately describes the way that the unused concessional cap carry forward rules apply.
	2. Minor amendments are also made to the IT(TP) Act 1997 and the *Superannuation Guarantee (Administration) Act 1992* to ensure that references to the concessional contributions cap within those Acts continue to apply to the basic annual cap rather than a cap that is modified by the unused concessional cap carry forward rules.

### Amendments in relation to the objectives of superannuation

* 1. Schedule 1 amends the *Legislation Act 2003* to repeal the requirement to prepare a statement of compatibility with the *Superannuation (Objective) Act 2016*. The requirement to prepare a statement of compatibility is also reinserted with application that is contingent upon Bill being enacted. These amendments recognise that the *Superannuation (Objective) Act 2016* was not enacted in 2016.

### Amendments in relation to TRISs

* 1. The amendments in relation to the TRIS rules relax the existing prohibition on TRISs ever being in the retirement phase. As a result, a TRIS will now be in the retirement phase if the member has satisfied a condition of release with a nil cashing restriction.
	2. The amendments also modify section 294-110 of the IT(TP) Act 1997 to ensure that a fund can apply CGT relief in respect of assets that cease to be segregated current pension assets when the broader TRIS changes come into effect.

## Detailed explanation of new law

### Amendments in relation to the transfer balance cap

#### Regulation making power for credits and debits

* 1. The tables in subsections 294-25(1) and 294-80(1) prescribe the circumstances in which transfer balance credits and transfer balance debits arise, the amount of the credit or debit, and the time at which they arise.
	2. Schedule 1 inserts additional items in those tables to enable regulations to prescribe additional circumstances in which a transfer balance credit or transfer balance debit arises in an individual’s transfer balance account. As with the other items in the tables, any such regulation must identify the condition for the credit or debit arising, the amount of the credit or debit, and the time at which the credit or debit arises. [Schedule 1, items 2 and 6, item 4 in the table in subsection 294-25(1) and item 8 in the table in subsection 294-80(1)]
	3. This regulation-making power ensures that transfer balance credit and transfer balance debit rules can be updated to ensure that they continue to apply appropriately in respect of new superannuation income stream products or to address unforeseen issues that arise under the transfer balance cap.
	4. An example of new superannuation income stream products that are likely to require special credit and debit rules are the ‘innovative income stream products’ that are currently being developed.
	5. An exposure draft setting out the proposed standards for these products was released for public consultation on 21 March 2017 and in the course of developing those draft standards, it was identified that the standard credit and debit rules may not sufficiently take into account the particular features of deferred income stream products.
	6. For example, one of the proposals for deferred income streams is to allow additional instalments to be made after a deferred product enters the retirement phase but before it commences paying benefits to a member. Increases in the value of an income stream from transfers of funds from accumulation phase interests would not be captured by the current transfer balance credit rules (for example, the main credit rule in item 2 in the table in subsection 294-25(1) only applies to the value of an income stream at the time it enters the retirement phase). If instalment payments of this kind are ultimately permitted, an additional transfer balance credit would need to be created to capture any payments that are made in respect of a superannuation income stream after it enters the retirement phase.
	7. As well as enabling additional transfer balance credit and transfer balance debit categories to be prescribed, the amendments in Schedule 1 allow regulations to provide that particular items in the tables in subsections 294-25(1) and 294-80(1) do *not* apply to a class of income streams. [Schedule 1, items 3 and 7, subsection 294-25(3) and subsection 294-80(3)]
	8. Excluding particular items in this way may be required to prevent a superannuation income stream from being covered by multiple transfer balance credit and transfer balance debit categories. If more than one item category were to apply at the same time, the individual would receive credits or debits under each category, resulting in inappropriate double counting.

#### Assumption about compliance with rules and standards and disregarding failures to comply with a commutation authority

* 1. Schedule 1 amends the rules that provide an assumption that a superannuation income stream complies with the rules and standards under which it was provided and which disregard the consequences of a failure to comply with a commutation authority. These changes:
* clarify that while the rules apply at a particular time before a failure occurs, they do apply from the time of the failure.
* modify the matters to which the rules apply to ensure that they are only relevant to the transfer balance cap and can be applied in working out whether an individual gets a transfer balance debit.

 [Schedule 1, item 4, section 294-50]

* 1. The assumption about compliance with rules and standards was introduced as part of the transfer balance cap. The assumption ensures that a failure to comply with particular rules and standards does not affect the validity of a transfer balance credit that had arisen prior to the failure, or an assessment of whether an individual was the retirement phase recipient of a superannuation income stream that had occurred prior to the failure.
	2. This assumption ensures that a breach of the pension or annuity standards set out in the SISR 1994 and RSAR 1997 that occur in respect of an income stream do not re‑characterise the income stream as having never been a superannuation incomes stream in the year in which the breach occurs. The requirement that an interest be a superannuation income stream is a necessary condition for the transfer balance credit and retirement phase recipient rules.
	3. Similarly, if a superannuation income stream provider fails to comply with a commutation authority issued to them in relation to a superannuation income stream, the superannuation income stream ceases to be in the retirement phase. This treatment applies to the entire income year in which the end of the period that the provider had to comply occurred, and all later income years (see subsection 307-80(4)). Re‑characterising an income stream in this way would also invalidate any transfer balance credits that applied in respect of the superannuation income stream in that year, as well as other considerations that were based on the income stream being in the retirement phase. To prevent this from occurring, section 294-50 as it was originally enacted disregarded subsection 307-80(4) in working out whether an individual is the retirement phase recipient of a superannuation income stream, or whether they receive a transfer balance credit. These rules did not specify the time at which they apply.
	4. For simplicity, the assumption about compliance and disregarding the consequences of failing to comply with a commutation authority are referred to collectively in the following paragraphs as ‘the assumptions’.

##### Assumptions apply at a time

* 1. The amendments reframe the assumptions so that they apply at a point in time. [Schedule 1, item 4, section 294-50]
	2. The amendments modify the assumption about compliance with rules and standards so that it specifically applies in working out whether an income stream is a superannuation income stream at a particular point in time. In making this assessment, the revised rules state where, based upon the facts and circumstances that exist at that time, it is not possible to determine if a requirement for the income stream being a superannuation income stream will be met, then the requirement is treated as having been met. [Schedule 1, item 4, subsection 294‑50(2)]
	3. The reframed assumption means that for the purposes of the transfer balance cap, requirements that apply in respect of a period are taken to be satisfied at a time during the period.
	4. The revised approach also ensures that the assumption about meeting the requirements for being a superannuation income stream stop applying from the time a failure actually occurs. This is because based on the facts and circumstances that apply at the time of the failure, it can be determined that the income stream has actually failed to satisfy the requirements for being a superannuation income stream.
	5. However, the assumption continues to be effective in relation to the times that occurred prior to the failure. This means that for the purposes of the matters to which the assumption applies, the failure to actually comply will not affect the times that occurred before the failure (which can happen where a failure affects the character of an income stream for a period).
	6. An example of a requirement that applies in relation to a period is the requirement to pay a minimum amount of superannuation income stream benefits from a superannuation income stream in a year. While a failure to meet the annual payment requirements would generally only occur at the end of a year, the consequence of that failure means that an income stream is not a superannuation income stream for the year.
	7. The term ‘income stream’ is undefined and is intended to capture the arrangements that, if complied with, would give rise to a superannuation income stream. If the rules or standards under which an income stream are offered are not sufficient to cause it to be a superannuation income stream, then the assumption would not have any effect.
	8. The revised rule about disregarding subsection 307‑80(4) applies in relation to a superannuation income stream at a time if that time occurs before the end of the 60-day period in which a commutation authority issued in relation to the income stream had to be complied with. [Schedule 1, item 4, subsection 294-50(3)]
	9. The requirement that the time occurred prior to the end of the 60-day period reflects the fact that a failure to comply with a commutation authority occurs at the end of the period.
	10. This means that for the purposes of the transfer balance cap, the effect of subsection 307‑80(4) can be disregarded in respect of any actions that were taken in relation to a superannuation income stream up to the point that 30-780(4) is applied. However, from that point the rule in subsection 294-50(3) will cease treating the superannuation income stream as being in the retirement phase.

##### Matters to which the assumptions apply

* 1. The amendments clarify that the assumptions apply in working out whether an individual has a transfer balance account and the transfer balance in a transfer balance account. [Schedule 1, item 4, subsection 294‑50(1)]
	2. This approach moves away from the general reference to ‘retirement phase recipient’ (which is a term used outside of the transfer balance cap rules in Division 294) and clarifies the extent to which the assumptions apply for credits. It also ensures that the assumptions can be applied in working out whether an individual gets a transfer balance debit.
	3. The question of whether an individual has a transfer balance account relies on an individual being the retirement phase recipient of a superannuation income stream. Ensuring that a transfer balance account was maintained after an individual first begins to have one was the primary reason that the assumptions were extended to retirement phase recipients. This revised scope of the matters better targets the assumptions and ensures that there are no unintended consequences from the assumptions applying more broadly in other provisions that relate to whether an individual is the retirement phase recipient of a superannuation income stream.
	4. The more general approach to working out the transfer balance in an individual’s transfer balance account also ensures that there is no ambiguity about whether the assumptions apply to each of the elements of working out the transfer balance credit that an individual gets.
	5. This approach also ensures that the assumptions apply in working out whether an individual gets a transfer balance debit, as well as the amount of the debit and the time at which it arises. There are a range of debits covered by the table in subsection 294-80(1) and not all of them would be affected by the matters to which the assumptions apply.
	6. The debits for which the assumptions are relevant are those covered by items 1, 3, 4, and 6 in the table in subsection 294-80(1) because those items all involve questions about whether an individual is the retirement phase recipient of a superannuation income stream. Applying the assumptions in determining whether those items apply will mean that a later failure to comply with a requirement or a commutation authority will not affect a debit that has already arisen because of an earlier commutation of an income stream, an earlier loss from fraud or dishonesty, or an earlier payment split.
	7. In contrast, the debits that are covered by items 2, 5, and 7 in the table in subsection 294-80(1) will not be affected by the assumptions because they can continue to apply irrespective of whether the assumptions had applied to an income stream.
	8. In this respect, item 2 applies because of contributions that are made from structured settlements – it does not apply because of something happening in relation to a superannuation income stream. Similarly, item 7 is essentially balancing adjustment that the commissioner can make where an individual has an excess transfer balance but no longer has any superannuation income streams that can be commuted.
	9. Although item 5 requires a superannuation income stream to stop being in the retirement phase because of subsection 307-80(4), the point in time approach to applying the assumptions means that subsection 307-80(4) stops being disregarded at the end of the 60-day period if a commutation authority is not complied with. Because of this timing, the requirement in item 5 about subsection 307-80(4) applying will be met at the end of 60‑day period.

#### Transfer balance debit for failure to comply with rules and standards

* 1. Item 6 in the table in subsection 294-80(1) provides a debit when an individual stops being the retirement phase recipient of a superannuation income stream because of a failure to comply with the rules and standards under which the income stream was provided.
	2. The amendments make changes to the time at which a debit under item 6 in the table in subsection 294-80(1) arises, as well as the time at which the value of the superannuation interests that supported the relevant superannuation income stream is relevant. The basic conditions about an income stream ceasing to be a superannuation income stream that is in the retirement phase and the requirements that other debits do not apply remain unchanged.
	3. The time that such debits arise is the time at which the income stream stops being a superannuation income stream that is in the retirement phase. The amount of the debit is the value, just before that time, of the superannuation interest that supported the income stream. [Schedule 1, item 5, item 6 in the table in subsection 294-80(1)]
	4. The amendments better target the way that transfer balance debit rules account for failures that to comply with the pension or annuity standards that occur part-way through an income year. They achieve this by changing the point at which the superannuation interests that supported the income stream are valued from the end of the year to the time immediately before the income stream stops being a superannuation income stream that is in the retirement phase (this is also the time that any assumptions stop applying).
	5. An example of a failure that could occur part-way through an income year is where a superannuation income stream is fully commuted before the end of the year without the pro-rata annual payment requirements for the income stream having first been met. The failure to meet the payment requirements would occur immediately before the commutation takes place (being the time up until which the payments must be made). Because of this, the member would not be able to receive a debit for the commutation under item 1 in the table in subsection 294-80(1). However, the member will still receive a debit equal to the value of the superannuation interests that supported their income stream immediately before the commutation because of item 6.
	6. Because the value that is identified for the purposes of this debit is the value of the superannuation interests that supported the income stream immediately before the failure, the assumptions continue to apply in identifying that value. This means that for the purposes of valuing the interests at the relevant time, it can still be assumed that they supported a superannuation income stream. This means, for example, that for the purposes of working out the amount of the debit, the rules in regulation 307‑200.05 of the *Income Tax Assessment Regulations 1997* would continue to treat the interests that supported the income stream as being separate from the other superannuation interests in the fund.

#### Death benefit roll-overs

* 1. Schedule 1 brings forward the application date for the changes that were introduced in relation to death benefit roll-overs. Those changes now apply from the time at which the Bill containing these amendments was introduced into the House of Representatives. [Schedule 1, items 17 and 18, subitems 36(1) and (1A) of Schedule 1 to the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016]
	2. The death benefit roll-over changes expanded the class of benefits that are roll-over superannuation benefits in paragraph 306‑10(a). The expanded definition now includes death benefits that are paid to any beneficiary who is eligible to receive a death benefit income stream. The amendments provide greater flexibility to dependants and, subject to the cashing rules, allow them to commute and roll-over their death benefit income streams without having them assessable as a member benefit.
	3. The death benefit roll-over changes were originally to apply from 1 July 2017. This start date means that beneficiaries who are currently in receipt of death benefit income streams and who wish to reduce the total value of their superannuation income streams in anticipation of the transfer balance cap applying from 1 July 2017 may be better off waiting until 1 July 2017 to take advantage of the expanded scope of the roll-over rules. Although waiting until after the transfer balance cap applies could mean that an individual that breaches their cap will be subject to excess transfer balance cap, they may still have an incentive to do so if the amount of the tax is less than the liability they face from having the death benefit assessable as a member benefit.
	4. Bringing the application date forward for the death benefit roll‑over changes assists individuals who wish to take action in anticipation of the transfer balance cap coming into effect on 1 July 2017. Applying the changes from the time the Bill containing these amendments is introduced into Parliament recognises that individuals are unlikely to be willing to take such action without being able to refer to the legislation that amends the application date. Although the application date will only be effective once the Bill commences, individuals will be able to initiate the action required to take advantage of the new application date in anticipation of the amendments being enacted.

#### Application date for the transfer of assets by life insurance companies

* 1. Schedule 1 also brings forward the application date for the rules that were introduced about the transfer of assets by life insurance companies. Those changes now apply from the time at which this Bill was introduced into the House of Representatives. [Schedule 1, item 19, item 28 of Schedule 8 to the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016]
	2. Item 26 in Schedule 8 of the Amending Act inserted subsection 320‑250(1A) into Division 320. The new provision allows life insurance companies to transfer assets from their segregated current exempt assets to their complying superannuation asset pool without triggering the various tax consequences that would otherwise apply to the transfer. The change was made in recognition of the fact that the transfer balance cap (and TRIS changes) would result in currently exempt life insurance policies being reclassified, and that such reclassification would require changes to a life insurance company’s asset allocations.
	3. However the new provision for life insurance companies originally applied in relation to the 2017-18 income year. As with the death benefit roll-over changes, this start date does not assist life insurance companies that seek to account for and rebalance their asset pools during the period between the time that the Amending Act commenced and the start of the 2017-18 income year.
	4. Bringing forward the application of subsection 320-250(1A) allows such life insurance companies to take action in anticipation of the transfer balance cap and TRIS changes applying. Applying the changes from the time the Bill containing these amendments was introduced into the House of Representatives recognises that life insurance companies are unlikely to be willing to take such action without being able to refer to the legislation that amends the application date. Although the application date will only be effective once the Bill commences, individuals will be able to initiate the action required to take advantage of the new application date in anticipation of the amendments being enacted.

### Amendments in relation to the concessional contributions cap

#### Guide Material

* 1. The Guide Material for the concessional contributions cap is amended so that it refers to an individual’s total superannuation balance that ‘equals or exceeds’ (rather than just ‘exceeds’) $500,000. [Schedule 1, item 1, section 291-1]
	2. This change aligns the wording of the Guide with the condition about an individual’s total superannuation balance in paragraph 291‑20(3)(b). That condition states that in order to use the unused concessional cap carry forward rules, an individual’s total superannuation balance must be ‘less than’ $500,000.

#### References to the concessional contribution cap

* 1. The amendments also clarify that existing references to the concessional contributions cap in the IT(TP) Act 1997 and the *Superannuation Guarantee (Administration) Act 1992* continue to relate to the ‘basic’ concessional contributions cap, rather than an individual’s concessional contributions cap as modified by the unused concessional cap carry forward rules. [Schedule 1, items 12 and 16, section 291‑170 of the Income Tax (Transitional Provisions) Act 1997 and subsection 15(5) (definition of concessional contributions cap) of the Superannuation Guarantee (Administration) Act 1992]
	2. These amendments update existing references to the concessional contributions cap in other parts of the tax and superannuation law to clarify that the unmodified concessional contributions cap continues to be the only cap that is relevant for the purposes of those other provisions.
	3. Prior to the introduction of the unused concessional cap carry forward rules, fixed concessional contributions caps applied to individuals each year. However, an individual’s concessional contributions cap for an income year can now be increased by unused amounts from previous years, provided that they have a total superannuation balance of less than $500,000 at the end of the previous year.
	4. To facilitate this change, the amendments insert the definition of ‘basic concessional contributions cap’. This definition refers to the concessional contributions cap in subsection 291-20(2) but disregards any increases to that cap that can occur for an individual because of the unused concessional cap carry forward rules. [Schedule 1, item 11, subsection 995-1(1) (definition of basic concessional contributions cap)]
	5. The updated references to the concessional contributions cap now refer to the ‘basic concessional contributions cap’.

### Amendments in relation to the objectives of superannuation

* 1. Schedule 1 repeals the existing requirement in the *Legislation Act 2003* to prepare a statement of compatibility with the objectives of superannuation, as set out in the *Superannuation (Objective) Act 2016*. The requirement is reinserted with commencement that is contingent upon the Bill becoming an Act. [Schedule 1, items 14 and 15, paragraph 15J(2)(fa) of the Legislation Act 2003]
	2. The Superannuation (Objective) Bill 2016, if enacted, will legislate the objectives of the superannuation system. The Bill also sets out the requirement that any new bills relating to superannuation must be accompanied by a statement of compatibility with the stated objectives. An equivalent requirement was introduced through the Amending Act in respect of regulations relating to superannuation. This requirement was contained paragraph 15J(2)(fa) of the *Legislation Act 2003* and commenced on 1 January 2017. However, the requirement was inoperative because it refers to the *Superannuation (Objective) Act 2016*.
	3. Rather than maintain an inoperative provision, the amendment repeals the requirement with effect from the time it commenced (1 January 2017) and remakes it with commencement that is contingent upon the Superannuation (Objective) Bill 2016 being enacted. If the Superannuation (Objective) Bill 2016 is not ultimately enacted, the requirement in paragraph 15J(2)(fa) will not commence.

### Amendments in relation to TRISs

#### Enabling TRISs to be in the retirement phase

* 1. The amendments modify the rules that provide the circumstances in which a superannuation income stream is in the retirement phase.
	2. These amendments enable TRISs (as well as the other superannuation income streams referred to in subsection 307-80(3)) to be in the retirement phase where the recipient of the superannuation income stream has satisfied a condition of release with a nil cashing restriction. [Schedule 1, item 9, subsection 307-80(3)]
	3. The conditions of release that are relevant in this context are retirement, terminal medical conditions, permanent incapacity and attaining age 65 (see paragraph 30-80(2)(c), which refers to items 101, 102A, 103 and 106 of the table in Schedule 1 to the SISR 1994).
	4. As noted above, a TRIS is one form of superannuation income stream that is payable to a person before they retire from the workforce or attain age 65. Individuals can also commence a transition to retirement pension, a non-commutable allocated pension or non‑commutable allocated annuity. While a ‘TRIS’ specifically refers to a transition to retirement income stream, the term is also commonly used to refer the various products collectively.
	5. The Amending Act introduced the requirement that, from 1 July 2017, a superannuation income stream must be in the retirement phase in order for an entity to claim an earnings tax exemption in relation to income from the assets it uses to meet the liabilities it has in relation to the income stream. To implement the Government’s decision in the 2016-17 Budget, the rules about when a superannuation income stream is in the retirement phase specifically exclude TRISs (see subsection 307-80(3)).
	6. Because a superannuation income stream that is established as a TRIS will always retain its character as a TRIS, the restriction introduced as part of the Amending Act would always prevent TRISs from being in the retirement phase even after the holder later satisfies a condition of release with a nil cashing restriction. Because of this, an individual who has met a condition of release with a nil cashing restriction (including those who had met such a condition prior to 1 July 2017) and who wishes to take advantage of the earnings tax exemptions available in respect of superannuation income streams would need to commute and rollover their TRIS benefits to a replacement superannuation income stream (such as an account-based pension).
	7. To avoid individuals having to restructure their interests in this way, the amendments enable a TRIS to enter the retirement phase once the holder has satisfied a condition of release with a nil cashing restriction.

#### CGT relief for assets supporting TRISs

* 1. The period in which an asset supporting a TRIS can cease to be a segregated current pension asset of a fund and still qualify for ‘CGT relief’ under section 294‑110 of theIT(TP) Act 1997 is extended to include the start of 1 July 2017. [Schedule 1, item 13, paragraph 294-110(1)(b) of the Income Tax (Transitional Provisions) Act 1997]
	2. The change ensures that the CGT relief provisions apply as intended to segregated assets that support TRISs prior to the TRIS changes applying coming into effect. Extending the period in paragraph 294‑110(1)(b) to the start of 1 July 2017 recognises that the change for TRISs will apply from 1 July 2017 without any action being taken by the holder of the TRIS or the entity that provides it.
	3. Section 294-110 of the IT(TP) Act 1997 provides CGT relief to preserve the tax exempt status of unrealised capital gains on segregated current pension assets held by superannuation funds prior to the transfer balance cap and the TRIS changes applying. Transitional relief is also available to funds that use the ‘proportionate method’ in respect of non‑segregated assets.
	4. The CGT relief rules allow the trustee of a fund to reset the cost‑base of assets that cease being segregated current pension assets (that is, assets solely used or set aside to meet current pension liabilities) during the ‘pre-commencement period’. It achieves this by deeming such assets to have been sold and reacquired for their market value. Because income from segregated current pension assets is exempt, a fund that elects to use this treatment does not have a CGT liability in respect of the deemed disposal.
	5. In contrast to income streams that need to be actively commuted for an individual to prevent a breach of their transfer balance cap, it was not intended that individuals or funds would be required to proactively re-characterise TRISs or the assets that supported them in order to claim CGT relief. However in their original form the CGT relief rules for segregated assets required an asset to cease being a segregated asset during the ‘pre-commencement period’. The issue with this approach was that the end of the pre-commencement period (being 30 June 2017) ceases immediately before the time that the TRIS changes apply (being 1 July 2017).
	6. These amendments address this timing issue by making additional provision for assets supporting TRISs that cease to be segregated current pension assets at the start of 1 July 2017. The amendments do not alter the ‘pre-commencement period’ but instead expand the circumstances in which the CGT relief for segregated assets can apply.
	7. The original pre‑commencement period condition can still be satisfied by assets that were supporting a TRIS that was commuted during the pre-commencement period (although in this case the TRIS specific condition would also be satisfied). Similarly, that condition would still be satisfied where an asset supported a TRIS and other superannuation income streams, and those other income streams were commuted during the pre-commencement period.
	8. The amendment also extends the concept of ‘cessation time’ to the start of 1 July 2017 in respect of assets supporting TRISs. The cessation time concept is relevant for determining the time over which a fund must be a complying superannuation fund, and for applying the assumptions about a fund selling and repurchasing the asset (see subsection 294-110(3)).
	9. For the deemed sale of an asset covered by the new condition for TRISs, the time at which it is taken to be sold is the very end of 30 June 2017 (being the time immediately before the start of 1 July 2017). Because of this timing, any gain from the deemed sale will have been made from a segregated current pension asset and will therefore be exempt.
	10. For the deemed repurchase of the asset, the time at which it is taken to be repurchased is the start of 1 July 2017.

## Application and transitional rules

* 1. Most of the amendments apply from the same time that the provisions that they are amendment apply (largely 1 July 2017 or the 2017-18 income year).
	2. However, the changes in relation to death benefit roll-overs and the transfer of assets by life insurance companies bring forward the application of those provisions to the time that the Bill containing these amendments was introduced into the House of Representatives.