THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

Treasury laws amendment (measures for a later sitting) bill 2018: Work test exemption for recent retirees

EXPLANATORY MEMORANDUM

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Glossary

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

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| Abbreviation | Definition |
| ITAA 1997 | *Income Tax Assessment Act 1997* |
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1. Work test exemption for recent retirees

## Outline of chapter

* 1. Schedule # makes amendments to the non-concessional contributions rules in the ITAA 1997 to complement proposed amendments to the contribution acceptance rules in the *Superannuation Industry (Supervision) Regulations 1994* and *Retirement Savings Accounts Regulations 1997* (proposed regulation changes).
	2. The proposed regulation changes provide a one-year exemption from the work test that applies as part of the superannuation contribution acceptance rules to allow recent retirees to boost their superannuation balances.

This Schedule ensures that the proposed regulation changes operate as intended by preventing an individual accessing a benefit up to the value of providing a three year work test exemption period. This unintended outcome could otherwise be the result of an interaction between the work test rules and the bring‑forward arrangements for non‑concessional contributions in the ITAA 1997.

All legislative references in this chapter are to the ITAA 1997 unless otherwise stated.

## Context of amendments

### Work test exemption provided by proposed regulation changes

Collectively, Schedule # and certain proposed regulation changes implement the measure announced in the 2018-19 Budget as ‘More Choices for a Longer Life — work test exemption for recent retirees’.

In order to keep making voluntary contributions to superannuation, individuals aged 65 to 74 are generally required to work a minimum number of hours during a particular period in the financial year (known as the work test). Proposed regulation changes will provide a one-year exemption from the work test for superannuation contributions to allow certain recent retirees to boost their superannuation balances, provided the individual satisfied the work test in the previous financial year. See the exposure draft explanatory statement for the proposed regulation changes for further information.

### Bring-forward rule for non-concessional contributions

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. Individuals may choose to make non-concessional contributions to their superannuation because future earnings on these contributions will be taxed at the concessional rate of 15 per cent.

To ensure superannuation is being used to increase individuals’ income in retirement, and not for tax minimisation or estate planning purposes, there are limits on the amount of non-concessional contributions individuals can make. There is an annual non-concessional contributions cap limiting the amount of contributions that can be made each financial year, as well as a general transfer balance cap limiting how much of an individual’s superannuation can be transferred into the retirement phase.

Individuals may be able to access a bring-forward non-concessional contributions cap of two or three times the general annual cap over a period of up to three years, depending, amongst other things, on their total superannuation balance.

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

Where an individual accesses the bring-forward cap, their non-concessional contributions cap for the first year is determined by reference to the difference between the general transfer balance cap and the individual’s total super balance before the start of the first year, and will be either 2 or 3 times the annual non-concessional contributions cap. The caps for the second and third years (if applicable) are determined by reference to the difference between the general transfer balance cap and the individual’s total super balance before the start of the second and third years respectively.

The bring-forward period is also effectively determined by reference to the difference between the general transfer balance cap and the individual’s total superannuation balance before the start of the first year.

Once the bring-forward period has expired, an individual may then access the annual cap or a new bring forward cap if eligible.

### Interaction between bring-forward arrangements and work test exemption (prior to the amendments proposed by this Schedule)

In order to access the bring-forward non-concessional contributions cap, an individual must be under 65 years of age at any time in the first year of the bring-forward arrangements.

Generally, members aged 65 to 74 must satisfy the work test during a financial year in order to make contributions. However, following the application date of the proposed regulation changes (1 July 2019), a member that satisfied the work test during the previous financial year may make contributions for a financial year without satisfying the work test in that year.

Currently, an individual may bring forward up to three times the annual non-concessional contributions cap in a financial year in which the individual satisfies the work test.

The interaction between the bring-forward arrangements and the work test exemption may allow some individuals (transitioning between age 64 and 65) to bring forward up to three times the annual non‑concessional contributions cap in a financial year in which the individual did not satisfy the work test. It is not intended that the work test exemption be used to provide benefits equivalent to providing an additional three years to make voluntary superannuation contributions.

* + - 1. – Individual using the bring-forward arrangements to obtain benefits equivalent to a three-year work test exemption (contrary to policy intent)

Jake turns 65 on 10 August 2019. Jake makes a voluntary contribution to his superannuation fund on 11 August 2019. As the contribution is made after 10 August 2019, in accordance with the rules that apply for members aged 65, before accepting the contribution Jake’s superannuation fund must be satisfied that either:

* Jake satisfies the work test for the 2019-20 financial year; or
* that Jake qualifies for the work test exemption (provided by the proposed regulation changes) for the 2019-20 financial year.

Jake was not gainfully employed during the 2019-20 financial year and therefore does not satisfy the work test for that year. Jake worked part-time for 12 hours a week during the 2018-19 financial year and meets the other criteria for qualifying for the work test exemption for the 2019-20 financial year.

Jake is 64 at some time during the 2019-20 financial year and is therefore eligible to access the bring-forward option for non-concessional contributions in that financial year (provided the other criteria for accessing those arrangements are satisfied). Jake could access the bring‑forward option for non-concessional contributions in the 2019-20 financial year, despite the fact that he did not work in that year.

## Summary of new law

Schedule # makes amendments to the eligibility criteria for accessing the bring‑forward arrangements for non-concessional contributions in the ITAA 1997 to complement proposed regulation changes to superannuation contribution acceptance rules.

The proposed regulation changes provide a one-year exemption from the work test that applies for superannuation contributions to allow recent retirees to boost their superannuation balances.

Individuals aged 65 to 74 must satisfy a work test by working a minimum number of hours during a particular period in the financial year in order to keep making voluntary contributions to superannuation. Following the proposed regulation changes, individuals aged 65 to 74 years with total superannuation balances below $300,000 can also make voluntary contributions to their superannuation for 12 months from the end of the financial year in which they last met the work test.

This Schedule ensures that the proposed regulation changes operate as intended by preventing an individual accessing a benefit up to the value of providing a three year work test exemption period as a result of an interaction between the work test rules and the bring‑forward arrangements for non-concessional contributions in the ITAA 1997.

* 1. This is achieved by amendments to ensure contributions made relying on the work test exemption are excluded when assessing eligibility for the bring‑forward arrangements for non-concessional contributions.

Comparison of key features of new law and current law

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| --- | --- |
| New law | Current law |
| An individual is only eligible to access the first year of the bring‑forward non‑concessional contributions cap in a particular financial year if their non‑concessional contributions ***excluding any work test exemption contributions*** for that financial year exceed their general non‑concessional contributions cap.‘Work test exemption contributions’ are any contributions accepted by a superannuation fund or an RSA institution in the financial year due to the operation of the proposed regulation changes (which provide a work test exemption).The other eligibility criteria for accessing the bring-forward arrangements remain the same. | An individual is eligible to access the first year of the bring‑forward non‑concessional contributions cap in a particular financial 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;
* the difference between the general transfer balance cap and their total superannuation balance (the first year cap space) is greater than the general non‑concessional contributions cap;
* they are under 65 years of age at any time in that financial year; and
* a bring‑forward period is not currently in operation in respect of the financial year.

Generally, in order for a regulated superannuation fund or RSA institution to accept voluntary superannuation contributions made in respect of individuals aged 65 to 74, the individual must satisfy a work test in the financial year in which the contributions are made. However, from the application date of the proposed regulation changes (1 July 2019), contributions may be accepted in respect of an individual who does not satisfy the work test if the contributions qualify for the work test exemption. |

## Detailed explanation of new law

This Schedule makes amendments to the eligibility criteria for accessing the first year of the bring‑forward arrangements in the ITAA 1997 to ensure contributions made relying on the work test exemption are excluded when assessing eligibility.

* 1. This ensures that individuals cannot access a bring‑forward non‑concessional contributions cap of up to three times the general concessional contributions cap if relying on the work test exemption to access the arrangements. The policy intent of the work test exemption is to provide an extra 12 months for voluntary contributions to be made in respect of a member transitioning to retirement. It is not intended that an individual be provided with the opportunity to access benefits up to the value of providing an extra three years for making voluntary contributions.
	2. The amendments achieve this outcome by providing that an individual is only eligible to access the first year of the bring‑forward non‑concessional contributions cap in a particular financial year if their non‑concessional contributions ***excluding any work test exemption contributions*** for that financial year exceed their general non‑concessional contributions cap. [Schedule #x, items 1 and 2, paragraph 292-85(3)(a) and subsection 292-85(3A) of the ITAA 1997]
	3. ‘Work test exemption contributions’ are any contributions accepted by a superannuation fund or an RSA institution in the financial year due to the operation of the proposed regulation changes (which provide a work test exemption).
	4. As is the case under the current law, an individual aged 65 to 74 must satisfy a work test in order to make contributions that affect their eligibility to access the bring‑forward arrangements for non-concessional contributions. This means that if an individual would be able to access the bring-forward arrangements under the current law without relying on the work test exemption, the individual is not precluded from accessing the bring-forward arrangements (even if they use the work test exemption in that year).
		+ 1. – Individual prevented from accessing the bring-forward arrangements by relying on work test exemption contributions

Jake turns 65 on 10 August 2019. Jake has not made any voluntary contributions in the 2019‑20 financial year prior to his 65th birthday. Jake makes a total of $123,000 of voluntary contributions to his superannuation fund on 11 August 2019. As the contributions are made after 10 August 2019, in accordance with the rules that apply for members aged 65, before accepting the contribution Jake’s superannuation fund must be satisfied that either:

* Jake satisfies the work test for the 2019-20 financial year; or
* that Jake qualifies for the work test exemption (provided by the proposed regulation changes) for the 2019-20 financial year.

Jake was not gainfully employed during the 2019-20 financial year and therefore does not satisfy the work test for that year. Jake worked part-time for 12 hours a week during the 2018-19 financial year and meets the other criteria for qualifying for the work test exemption for the 2019-20 financial year. As Jake’s voluntary contributions of $123,000 are only accepted by the fund due to the work test exemption, the contributions are ‘work test exemption contributions’.

In order to be eligible to access the bring-forward non‑concessional contributions cap for the 2019-20 financial year, amongst meeting other criteria:

* Jake must be under 65 years of age at any time in the 2019-20 financial year; and
* Jake’s non-concessional contributions for the financial year (excluding his work test exemption contributions) must exceed the general non-concessional contributions cap.

Jake is 64 at some time during the 2019-20 financial year and therefore meets the age criteria for accessing the bring‑forward option for non‑concessional contributions for the 2019-20 financial year.

For simplicity, assume the general non-concessional contributions cap for the 2019-20 financial year is $100,000 and that Jake’s voluntary contributions of $123,000 are treated as non-concessional contributions for the 2019-20 financial year.

Jake’s non-concessional contributions for the 2019-20 financial year exceed the general non-concessional contributions cap (that is, $123,000 exceeds $100,000).

However, under the amendments in this Schedule, Jake’s work test exemption contributions must be excluded. Jake’s non-concessional contributions excluding his work test exemption contributions do not exceed the general non-concessional contributions cap ($123,000 minus $123,000 does not exceed $100,000).

Therefore, Jake would not be eligible to access the bring-forward arrangements in the 2019-20 financial year. This outcome is appropriate because Jake has relied on the work test exemption to make contributions for that year and without the exemption, Jake would not have any contributions to trigger the bring-forward arrangements.

* + - 1. – Individual that has made work test exemption contributions in the financial year and can still access the bring-forward arrangements for the financial year

Boris turns 65 on 1 November 2019. On 10 October 2019 (before his 65th birthday), Boris made voluntary contributions of $167,000 to his superannuation fund. In accordance with the rules that apply for members aged 64, Boris’ superannuation fund may accept the contributions without requiring Boris to satisfy a work test for the financial year.

On 5 December 2019, Boris makes further voluntary contributions of $18,000 to his superannuation fund. As the contributions are made after his 65th birthday, in accordance with the rules that apply for members aged 65, before accepting the contribution Boris’ superannuation fund must be satisfied that either:

* Boris satisfies the work test for the 2019-20 financial year; or
* that Boris qualifies for the work test exemption (provided by the proposed regulation changes) for the 2019-20 financial year.

Boris was not gainfully employed during the 2019-20 financial year and therefore does not satisfy the work test for that year. Boris worked part-time for 30 hours a week during the 2018-19 financial year and meets the other criteria for qualifying for the work test exemption for the 2019-20 financial year. As Boris’ voluntary contributions of $18,000 are only accepted by the fund due to the work test exemption, the contributions are ‘work test exemption contributions’.

In order to be eligible to access the bring-forward non‑concessional contributions cap for the 2019-20 financial year, amongst meeting other criteria:

* Boris must be under 65 years of age at any time in the 2019-20 financial year; and
* Boris’ non-concessional contributions for the financial year (exlcuding his work test exemption contributions) must exceed the general non-concessional contributions cap.

Boris is 64 at some time during the 2019-20 financial year and therefore meets the age criteria for accessing the bring-forward option for non-concessional contributions for the 2019-20 financial year.

For simplicity, assume the general non-concessional contributions cap for the 2019-20 financial year is $100,000 and that Boris’ voluntary contributions of $185,000 ($167,000 plus $18,000) are treated as non-concessional contributions for the 2019-20 financial year.

Boris’ non-concessional contributions for the financial year (excluding his work test exemption contributions) exceed the general non-concessional contributions cap (that is,$185,000 minus $18,000, which is equal to $167,000 exceeds $100,000).

Therefore, Boris is eligible to access the bring-forward arrangements in the 2019-20 financial year. This outcome is appropriate because Boris has not relied on the work test exemption to make contributions to trigger access to the bring-forward arrangements.

* + - 1. – No change to eligibility to access bring-forward arrangements if individual satisfies work test

Rachael turns 65 on 21 September 2019. Rachael makes voluntary contributions of $150,000 to her superannuation fund on 23 September 2019.

Rachael was gainfully employed on a full time basis during the 2019‑20 financial year. Rachael therefore satisfies the work test for that financial year.

For simplicity, assume the general non-concessional contributions cap for the 2019-20 financial year is $100,000 and that Rachael’s voluntary contributions of $150,000 are treated as non-concessional contributions for the 2019-20 financial year.

Rachael’s non-concessional contributions for the financial year (excluding any work test exemption contributions) exceed the general non-concessional contributions cap ($150,000 exceeds 100,000). Rachael also meets the other criteria for accessing the bring-forward arrangements for non-concessional contributions.

Consistent with the current law, Rachael is able to access the bring-forward option for non-concessional contributions for the 2019-20 financial year. The amendments in this Schedule do not preclude this outcome.

## Application

* 1. The amendments made by this Schedule commence on a day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Act receives the Royal Assent, the provisions are repealed on the day after the end of that period. [Commencement table]
	2. This commencement rule ensures that once the proposed regulation changes come into effect, a Proclamation can be made to commence this Schedule. The amendments made by this Schedule are not required if the proposed regulation changes (which provide the work test exemption) do not commence.
	3. The amendments made by this Schedule apply in relation to working out an individual’s non-concessional contributions cap for the 2019-20 financial year and later financial years. [Schedule #, item 2]