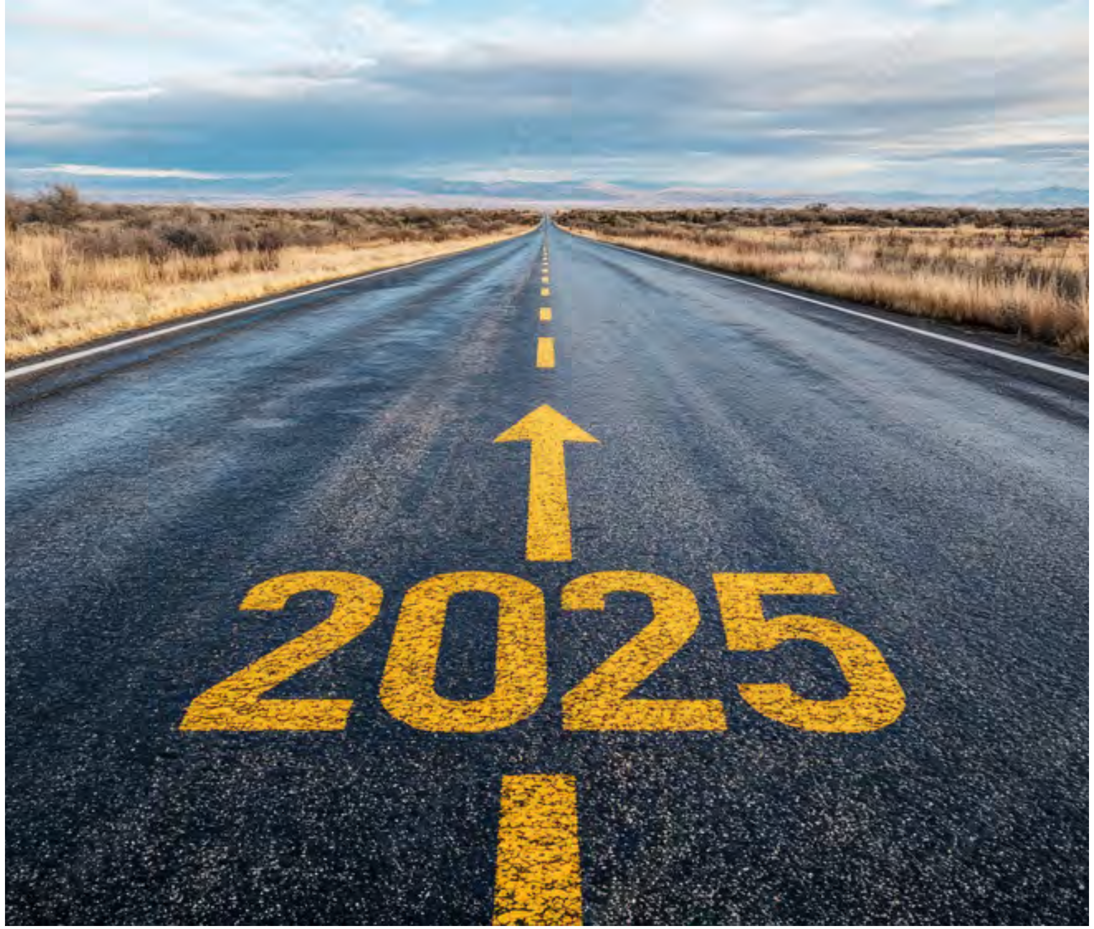
THE SUPER PLAYBOOK 2025

REGULATORY ROADMAP: NAVIGATING SUPER LAW AND REGULATIONS

NATASHA PANAGIS

Agenda

- Legislative update
- Other developments



Legislative update

Div 296 tax

- *Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023*
- Status: Bill lapsed on 28/3/25
- Start date: 1/7/25
- Key measures: impose extra 15% tax on a proportion of earnings for individuals whose TSB exceeds $3m
- To proceed, the Bill must be reintroduced into the HOR and go through the full parliamentary process again

Parliamentary sitting dates

- 2025 parliamentary sitting dates:

Month	Both Houses	House of Reps
July	22nd – 31st	
August	25th – 28th	
September	1st – 4th	
October	27th – 30th	7th – 9th
November	3rd – 6th 24th – 27th	
December	N/A	N/A

- Division 296 tax Bill likely to be one of the first pieces of legislation tabled
- Government has majority in the HOR
- Government only needs support from the Greens for Bill to pass the Senate

Senate composition – support for Bill

Senate crossbenchers

Senate composition	Senator numbers	Support for Bill
Australian Labor Party	30	Support
Coalition	27	Don’t support
Australian Greens	9	Support but want amendments
Independents (Fatima Payman, David Pocock, Lidia Thorpe, Tammy Tyrrell)	4	Won’t support without amendments
Pauline Hanson’s One Nation (Pauline Hanson, Malcolm Roberts, Warwick Stacey, Tyron Whitten)	4	Don’t support
Jacqui Lambie Network (Jacqui Lambie)	1	Don’t support
United Australia Party (Ralph Babet)	1	Don’t support
Total	**76**	**Govt needs 39 votes in Senate to pass the Bill → highly likely with Greens support**

Div 296 tax – IFPA's submission

Oppose the Div 296 tax measure as drafted	Consider alternative measures:	If Div 296 structure is retained, changes must be made:
• Due to taxing of unrealised gains and unindexed limit	• Remove unrealised earnings and tax actual taxable income/earnings above $3m, or • Back to the drawing board – undertake a holistic review of super system, eg: tax member withdrawals over $3m (indexed)? Bring back compulsory cashing?	• Remove unrealised earnings and tax actual taxable income/earnings above $3m • Index the $3m threshold • Address other issues with measure to ensure it operates as intended (eg, refund losses, exclude certain amounts from a member's adjusted TSB, etc)

Legacy pension and reserve exits

- From 7/12/24, regulations* permit two key changes:

1. Full commutation of legacy pensions for up to 5 years:

- Lifetime annuities and pensions
- Life expectancy annuities and pensions
- Market-linked annuities and pensions

* *Treasury Laws Amendment (Legacy Retirement Product Commutations and reserves) Regulations 2024*

Legacy pension and reserve exits

2. Flexible reserve allocations:

(no time limit)

Cap free reserve allocation if:

(s292.90.02 ITAR 2021)

Other 'non-pension' reserve allocations (ie, anti-detriment, self-insurance, etc) count towards NCC cap (instead of CC cap)

- Fair and reasonable allocation (ie, <5% and on a fair and reasonable basis) – no change to this rule
- Pension reserve allocation used to satisfy pension liability
- Pension commuted or ceased and reserve allocation paid to pension recipient
- Pension commuted due to death of pensioner and reserve allocation used to satisfy pension liability (ie, for reversionary beneficiary)
- Pension commuted due to death of pensioner and reserve allocation paid to beneficiary as lump sum death benefit 'as soon as practicable'

Legacy pension and reserve exits – considerations

1
- Cap free reserve allocation not available if pension has ceased (ie, life expectancy pension reaches end of its term) and former pensioner died some time ago, but a reserve amount remains
- Any reserve allocation to beneficiary after pensioner's death will count towards beneficiary's NCC cap (unless allocated under the 'fair and reasonable' approach)

2
- Impact on TBC – a 'special value' applies (ie, TBA debit value not equal to market value)

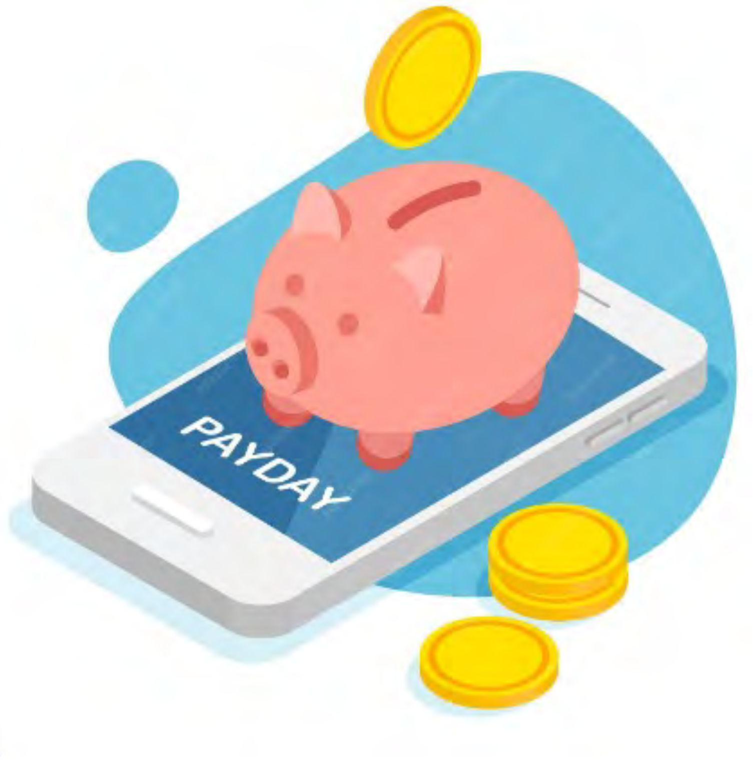
3
- Legislative instrument* tabled to provide social security debt relief for any social security debts arising from the commutation of legacy pensions

4
- Regs subject to disallowance period

** Social Security (Waiver of Debts – Legacy Product Conversions) Specification 2025*

Payday super

- *Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super*
- Status: draft legislation – consultation period ended on 11/4/25
- Start date: 1/7/26
- Key measures:
  - ➢ Require employers to pay their employees' SG contributions at the same time as their salary and wages
  - ➢ Update penalties and charges for late or missed super payments



Payday super – key measures

	Proposed new law	Current law
Frequency	SG paid with salary and wages from 1 July 2026	SG paid quarterly
SG 'on-time' if paid within	7 days after payday (and received by fund within this period)	28 days after the end of the relevant quarter
Employer's total SG shortfall comprises	• Total SG shortfall for relevant day • Daily compounding GIC (11.17% for June 2025) • Admin uplift amount of 60% of total shortfall (including notional earnings) • Employer choice loading (if any)	• Total SG shortfall for the quarter • Nominal simple interest of 10% pa x SG shortfall amount for the quarter • Admin fee of $20 per employee, per quarter

Payday super – key measures

	Proposed new law	Current law
Late payment penalties	• 25% - 50% penalty for late SG payments not made within 28 days • Penalty not remittable	Penalties start at 200% of the SG charge amount and can be remitted by ATO
Tax deductibility for employer	• On-time and late SG payments deductible • SG charge payments also deductible • Any applicable GIC or late payment penalty related to SG charge not deductible	• On-time SG contributions deductible • SG charge payments not deductible

Payday super – IFPA's submission

Key recommendations:

1. Exempt micro businesses (10 or fewer employees)
2. Adopt a 'pay date' model (rather than 'due date' or receipt model)
3. Regulate super clearing houses
4. Introduce a standardised extended due date for SG payments in exceptional circumstances
5. Retain the SG statement option
6. Simplify SG opt-outs for employees with multiple employers
7. Apply flexibility for SMSFs that are temporarily removed from SFLU

Other developments

TR 2013/5 – when an income stream starts and stops

ATO TR 2013/5 updated – covers when an income stream starts and stops

Changed view on minimum pension requirement – clarifies treatment when minimum payments aren't met

Old rule – if min payment rule failed, pension ceases at start of FY for tax purposes.

Meeting pension rules again meant a new pension automatically commenced on 1 July (for tax purposes)

New rule – if min payment rule failed, pension ceases at start of FY for tax purposes.

Must be formally commuted and restarted to claim ECPI again

ATO won't allocate compliance resources to investigating old cases of non-compliance (ie, 2023/24 and earlier) with updated view. Applies from 1 July 2024

TR 2013/5 – so what has changed?

Old rules	New rules
If minimum payment fails, pension ceases from start of FY for tax purposes	If minimum payment fails, pension ceases from start of FY for tax purposes
Meeting pension rules again restarted pension automatically on 1 July	Pension cannot regain SISR compliance – must commute and restart pension to claim ECPI
Tax components recalculated when new pension starts	Tax components recalculated when new pension starts and for each payment from failed pension
TBAR recommencement credit value on 1 July matched commutation debit value on 30 June	TBAR commutation debit value on 30 June but recommencement credit value will be a future date when member realises pension has failed
Debit and credit values align – no impact on personal TBC	Debit and credit may not align – may lead to excess TBA amount

TR 2013/5 – Example: Eva’s pension failure

Pension ceases for tax purposes

No ECPI in 2024/25

How will Eva’s pension be treated under TR 2013/5?

Pension rules met

Pension rules not met – treated as accumulation account

1 July 2024

$1m ABP balance

1 July 2025

Min pension payment $40k → BUT only paid $2k (treated as lump sum)

As minimum not paid and ATO discretion does not apply, pension fails for the 2024/25 FY

Eva's pension – pre TR 2013/5 update

Pension ceases for tax purposes

No ECPI in 2024/25

30 June 2025
<u>$1.1m</u> ABP balance
TBA debit value

As the TBA debit and credit are the **<u>same</u>** amount, there's no net effect on Eva's TBA

Pension rules met | Pension rules not met ($2k treated as lump sum) | ECPI restarts

1 July 2024

$1m ABP balance

1 July 2025

<u>$1.1m</u> ABP balance
TBA credit value

- If min pension rules met again in 2025/26, pension automatically recommences on 1 July 2025 → can claim ECPI again in 2025/26
- Tax components recalculated as at 1 July 2025

Eva's pension – post TR 2013/5 update

Pension ceases for tax purposes

Eva realises min pension not paid. Must formally commute and restart it to claim ECPI again

No ECPI in 2024/25 and for 6 months in 2025/26

TBA debit value $1.1m on 30/6/25 but TBA credit arises on 1/12/25 for $1.125m. Debit and credit values don't align

Pension rules met	Pension rules not met ($2k treated as lump sum)		ECPI restarts
1 July 2024 $1m ABP balance		1 July 2025 **$1.1m ABP balance**	1 Dec 2025 **$1.125m ABP balance**

- Pension formally recommences on 1 Dec 2025 → can claim ECPI again in 2025/26
- Tax components recalculated as at 1 Dec 2025 and for each payment from failed pension

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TR 2013/5 – issues to consider

Failed pension ends for TBA purposes on 30 June

Timing issue – only recommences when member realises pension has failed

TBA credit arises when member restarts pension → may result in different amounts and lead to an excess TBA amount

Tax impacts

Failed pension stops being a separate interest from 1 July

Tax components of pension will mix with tax components of any accumulation account

Recalculate tax components for restart of failed pension and for each benefit payment from failed pension

New docs needed to stop and restart pension

New process! Previously did trustee minute/resolution to record the circumstances

New SOA needed?

TR 2013/5 – issues to consider

Death benefit pensions

Payments made during year of a failed pension treated as lump sums

Breach cashing rules → death benefit lump sums limited to two payments!

TRIS

TR 2013/5 also applies to TRIS

Failed TRIS results in breach of preservation rules. Accessing 'lump sum' payments → early access!

ATO discretion to overlook pension shortfall

1
- Shortfall due to:
  - Honest mistake (ie, a small underpayment of 1/12th of the required min annual pension payment), or
  - Circumstances outside of control

2
- If RPIS, ECPI exemption would have continued had trustee not failed to pay the minimum

3
- Catch up payment made within 28 days of trustee becoming aware

4
- Had catch up payment been made in prior year, min pension amount would have been met

5
- Trustee treats catch up payment as if it were made in prior year

1/12th provision can only be applied once per fund, not once per member, or pension interest or year!

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ATO withdraws 6-mth death benefit guidance

ATO has removed the informal 6-month rule for "as soon as practicable" payments

(QC 45254)

SIS Reg 6.21(1) still applies – benefits must be cashed promptly after death

Previous timeframe was often unachievable, especially during periods of grief

Where trustees failed to explain and document why the delay exceeded 6 months, this forced auditors to qualify their audit report for breach of payment standards

6-month removal provides more flexibility, but greater need for trustee documentation

Auditors must apply professional judgment when assessing timeliness

Audit guidance issued by ATO – SISA areas

- ATO released detailed expectations for SMSF auditors when conducting Part B of the audit process

- 19 SIS Act compliance audit checks include:

  - ❑ s17A: definition of an SMSF
  - ❑ s35AE: accounting records
  - ❑ s35B: accounts and statements
  - ❑ s35C(2): giving documents to auditors
  - ❑ s62: sole purpose test
  - ❑ s65: loans or financial assistance to members
  - ❑ s66: acquisitions from related parties
  - ❑ s67, 67A and 67B: borrowings
  - ❑ s82, 83, 84 and 85: in-house assets
  - ❑ s82: in-house assets – market value ratio
  - ❑ s83: in-house assets – acquisition
  - ❑ s84: in-house assets – take reasonable steps to comply
  - ❑ s85: in-house assets – anti-avoidance
  - ❑ s103: record keeping – minutes
  - ❑ s104: record keeping – change of trustees
  - ❑ s104A: record keeping – trustee declarations
  - ❑ s105: record keeping – member or beneficiary reports
  - ❑ s109: investments made and maintained on an arm's length basis
  - ❑ s126K: disqualified persons

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Audit guidance issued by ATO – SISR areas

- 11 SIS Reg compliance audit checks include:
  - ❑ Reg 1.06(9A): pension payments
  - ❑ Reg 4.09: investment strategy
  - ❑ Reg 4.09A: separation of assets
  - ❑ Reg 5.03: investment returns
  - ❑ Reg 5.08: minimum benefits
  - ❑ Reg 6.17: restriction on payments
  - ❑ Reg 7.04: acceptance of contributions
  - ❑ Reg 8.02B: assets must be valued at market value
  - ❑ Reg 13.12-13: recognition, encouragement or sanctioning of assignments and charges
  - ❑ Reg 13.14: charges over assets
  - ❑ Reg 13.18AA: collectables and personal use assets

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Market valuation of SMSF assets – auditor's role

ATO findings and concerns:

- 16,000+ SMSFs reported the same asset values for 3 years in a row
- 80% updated property values – only 48% updated unlisted trust values after ATO contact
- ATO reviews found auditors often lacked sufficient evidence to support valuations
- Outdated practices (eg, 3-yearly valuations) are non-compliant and may lead to penalties or compliance action
- Reminder that SMSF trustees must value assets at market value each FY

ATO reminders – auditors must:

- Verify asset valuations
- Obtain objective evidence
- Consider a modified audit opinion and/or lodge an ACR if evidence is lacking

LRBA safe harbour rate changes

New LRBA rates for 2025/26:

- Real property: 8.95% (from 9.35%)
- Listed shares/units: 10.95% (from 11.35%)

If related party LRBA uses safe harbour terms (PCG 2016/5), SMSF trustees must:

- Update loan documents and repayment schedules to reflect new rates
- Ensure adherence to ATO's PCG 2016/5 to avoid NALI issues
- Maintain thorough documentation for audit purposes

Exception – no rate adjustment needed if within initial fixed-rate period:

- Up to 5 years for real property
- Up to 3 years for shares/units

Auditors' role:

- Verify updated loan terms and repayment schedules
- Confirm documentation supports compliance with safe harbour provisions

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LRBA offset account guidance

ATO updated guidance on offset and redraw facilities under LRBAs (QC 103937)	Genuine offset accounts from banks (ADIs) are generally acceptable and don't amount to a borrowing or charge (as operates as a separate bank account)	Non-bank offsets need scrutiny – may be deemed loan sub-accounts and could trigger breaches under the SIS Act	Redraw facilities may be treated as new borrowings if not part of original LRBA terms	Non-compliant arrangements may result in contraventions and audit or enforcement action	Trustees should seek evidence (eg, ATO Product Ruling or legal opinion) to confirm compliance

Melissa Caddick case – audit lessons

- Federal Court approved a $3.54m class action settlement for 32 SMSF victims
- Auditors failed to detect fraudulent SMSF documents and verify assets
- Caddick fabricated portfolio statements and redirected funds to her own accounts
- Auditors missed red flags, eg: fake ASX holdings, inconsistent statement dates
- Claims of negligence, misleading conduct, and breaches of audit obligations
- Combined with receiver recovery (~39¢/dollar), some SMSF victims will recoup up to 50% of their losses
- Key takeaway: rigour in audit checks and document verification is critical

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THANK YOU