

7 April 2026

Better Targeted Superannuation Concession Changes
The Treasury
Langton Crescent
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

Submission on *Building a Stronger and Fairer Super System Act 2026 – Draft Regulations*

The Institute of Financial Professionals Australia (IFPA) welcomes the opportunity to provide this submission on the draft regulations to the *Building a Stronger and Fairer Super System Act 2026 – Draft Regulations*.

This submission summarises our key concerns and outlines alternative options for consideration.

Key takeaway points

- The proposed deceased estate rules are impractical and may delay estate administration. The current approach can leave a deceased member's Division 296 position unresolved long after death and creates uncertainty for executors.
- The rules create an unfair mismatch between the person liable for tax and the person who receives the death benefit. This can produce inequitable outcomes and complicate estate administration.
- The actuarial certification requirement is unclear and does not reflect practical administration. Greater clarity is needed on what an actuary is being asked to certify.
- The small fund attribution formula can produce distorted outcomes where reserves exist. The current approach may attribute earnings unfairly and should be amended.

A detailed discussion of these issues and our recommended amendments are set out below.

1. Deceased estates – single final assessment model creates delay

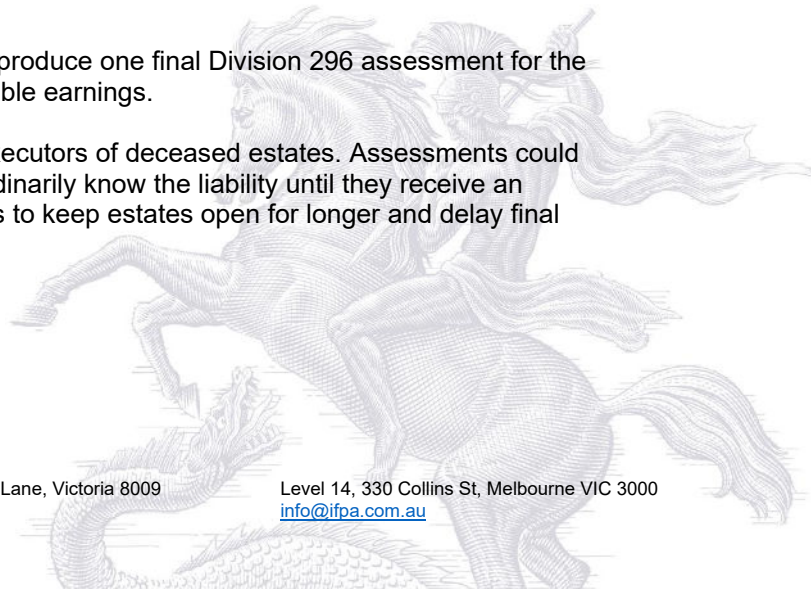
The proposed regulations may cause a deceased member's final Division 296 position to remain unfinalised long after death. Where death benefit payment is delayed, fund earnings and income post death may be brought back into the deceased's final Division 296 income year.

Draft regulation 296-70.04 provides that, where s 296-65 applies, relevant superannuation earnings for the deceased's final year can include later fund income years up to the earlier of:

- All death benefits being paid or distributed from the interest; or
- Another person becoming a retirement phase recipient of a superannuation income stream supported by that interest.

The explanatory material says this is intended to produce one final Division 296 assessment for the deceased's final year, incorporating later attributable earnings.

This approach creates practical uncertainty for executors of deceased estates. Assessments could arise well after death and executors would not ordinarily know the liability until they receive an assessment. This is likely to encourage executors to keep estates open for longer and delay final distributions to estate beneficiaries.



Recommendations

Treasury should not apply a Division 296 liability after the year a member dies.

Alternatively, Treasury should replace the current “single final assessment” approach with an annual assessment model for post-death periods. This will allow the Division 296 liability to be assessed progressively rather than deferred and bundled into one later assessment.

2. Deceased estates – mismatch between individual liable for tax and super beneficiary

The proposed regulations may produce unfair outcomes where the estate bears the deceased’s Division 296 liability, but the superannuation death benefit is received by a beneficiary who is not affected by the tax.

The Division 296 liability is ordinarily borne by the individual. Upon their death the deceased’s legal personal representative is responsible for the tax. To this end the tax can effectively sit with the estate while the super benefit may pass directly to another person. That is particularly problematic where the executor and the death benefit recipient are different people and there is no practical way to compel reimbursement. This can complicate an equitable distribution of the deceased’s estate.

Recommendation

Treasury should consider introducing a mechanism that better aligns the liability with the person who receives the super death benefit, to help members and testators achieve a more equitable outcome across their overall succession arrangements.

Under such an approach, the recipient of the super death benefit should have the option to meet the Division 296 liability by:

- Releasing amounts from a death benefit pension that they received from the deceased
- Paying the liability from outside the superannuation system (including from death benefits they received), or
- A combination of both, consistent with the options currently available to individuals who incur a Division 296 liability during their lifetime.

3. Actuarial certification – the regulations should clarify what is being certified

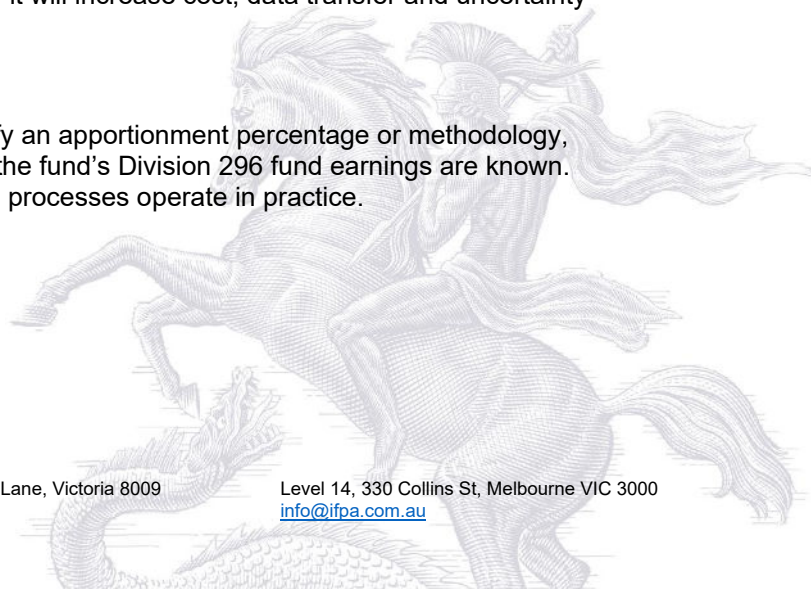
The regulations do not clearly state whether the actuary is expected to certify a final dollar amount, a percentage, or an attribution methodology.

Draft regulation 296-65.03(5) says the amount attributable to a superannuation interest in a small fund must be determined wholly by reference to an actuary’s certificate, unless a limited exception applies. The explanatory material repeats that requirement.

In practice, an actuary will not usually have the final tax-return inputs needed to certify the final attributable dollar amount. If this remains unclear, it will increase cost, data transfer and uncertainty for trustees, actuaries and administrators.

Recommendation

Treasury should clarify that the actuary may certify an apportionment percentage or methodology, with the final dollar amount then calculated once the fund’s Division 296 fund earnings are known. That would be more consistent with how actuarial processes operate in practice.



4. SMSFs – reserve balances distort the small fund formula

The prescribed formula for small superannuation funds can produce unfair attribution where a fund has reserves, because reserves do not have a total superannuation balance (TSB) value but may still contribute to fund earnings.

For small superannuation funds, draft regulation 296-65.03 replaces the general fair-and-reasonable attribution approach with a formula based on:

Division 296 fund earnings for the fund for the fund year × (average total TSB value of the relevant interest / average sum of the TSB values of all superannuation interests in the fund)

This may produce distorted outcomes. For example, where a fund has one member and a reserve, the reserve may contribute to fund earnings but not to the denominator, because it is not itself a superannuation interest with a TSB value. This could result in the member being attributed earnings economically associated with the reserve, even though the member may have no entitlement to it. That is an unfair outcome.

Recommendation

Treasury should amend the small fund formula so that reserve amounts do not distort attribution outcomes.

As an alternative, Treasury should consider reverting to an approach based on the average value of the fund, rather than only the TSB values of member interests, so reserve balances are properly reflected.

Closing comments

The draft regulations raise several practical and fairness concerns that should be addressed before they are finalised. In our view, the proposed rules dealing with deceased members, actuarial certification and small fund attribution risk creating unnecessary complexity, higher compliance costs and inequitable outcomes.

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If you have any questions in relation to this submission, please contact Phil Broderick on (03) 9611 0163 or pbroderick@sladen.com.au or Stuart Sheary on 03 8851 4523 or s.sheary@ifpa.com.au.

Yours faithfully,

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About the Institute of Financial Professionals Australia (IFPA)

The Institute of Financial Professionals Australia (originally known as Taxpayers Australia, and more recently Tax & Super Australia) has been serving members for over 100 years and is a leading financial professionals association dedicated to fostering excellence and professional development in the tax, accounting, superannuation, financial planning, and advisor fields. With a membership and supporter base of over 35,000 practitioners and a strong commitment to advancing knowledge, promoting ethical practices, and providing valuable resources, the Institute of Financial Professionals Australia empowers professionals to excel in their careers and make significant impact in the industry.

This submission is made by us on behalf of our members' interests.

