Super Bill provides super opportunities in 2022

4 March 2022

Significant advice opportunities have been created, particularly for older clients, as a result of the passing of 2021 Federal Budget super proposals. We summarise the changes to help you navigate the new rules, as well as highlight key advice opportunities to maximise client outcomes in 2022 and beyond.

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Overview

Legislation has finally been passed to give effect to several of the key super changes proposed in the 2021 Federal Budget.

The changes provide significant strategic advice opportunities from 1 July 2022, particularly in relation to older clients and super contribution strategies. The legislated changes include[1]:

- removal of the work-test requirement for non-concessional contributions (NCCs) and salary sacrifice contributions, for individuals aged between 67 and 75[2]
- extending eligibility to make NCCs under the bring-forward rule to individuals aged under 75 at the beginning of the financial year
- extending eligibility to make downsizer contributions to those age 60 or over, and
- an increase to the maximum amount of voluntary contributions made to super that can be released under the First Home Super Saver Scheme (FHSSS).

The amendments may provide a range of new advice opportunities for clients who thought the super door was permanently closed to them. The strategic opportunities surpass simply boosting an individual's super balance. At a glance, the changes may help to provide the following client outcomes:

In this article, we explain the changes and highlight some of the key advice opportunities and strategies that may be available. We also provide a checklist to help you identify which of your clients could benefit from the changes.

Note: The proposal to provide an opportunity to exit certain legacy pensions was not part of this Bill and at the time of publication these changes were not yet law.

1 The Bill also included the removal of the $450 a month threshold for super guarantee support, and changes to the way in which exempt current pension income is calculated when an SMSF has had both accumulation and retirement phase interest for part, but not all of the year.
2 Contributions must be received no later than 28 days after the month in which the person turns 75

Removal of the work test

Commencement date: 1 July 2022

Summary of change	The work test will no longer need to be met by individuals aged between 67 and 75 when making: ▪ salary sacrifice contributions, and ▪ personal contributions. The work test will still need to be met (or work test exemption applied) to claim a tax deduction for personal contributions.
Important to note	▪ Contributions will need to be received no later than 28 days after the month the person turns 75. ▪ Validation of having met the work test requirement will no longer be part of the super contribution acceptance rules. Trustees of super funds will not be required to ensure the work test has been met in relation to personal deductible contributions (PDCs). From 1 July, the work test will instead become a requirement under Tax Law, should a person wish to claim a deduction in respect of a personal contribution that was made when they were aged 67 to 75.[3]

Changes to bring-forward NCC eligibility

Commencement date: 1 July 2022

Summary of change	Individuals aged less than 75 at the prior 1 July will be eligible to access the NCC bring forward arrangement, subject to meeting all relevant eligibility criteria.
Important to note	▪ There is not expected to be a tapering of the bring-forward for those approaching 75. This means that provided a person is aged <75 on the prior 1 July (and meets the ordinary eligibility criteria, including that relating to total super balance) the bring-forward may be triggered (subject to the below timing requirement).[4] ▪ Contributions will need to be received no later than 28 days after the month the person turns 75. However, where a person turns 75 in June, this will not permit them to trigger the bring-forward arrangement in July the following financial year. Despite having a 28 day window in which to make personal contributions after the month in which they've turned 75, this doesn't change the requirement that the individual must be 74 or under at some time during the financial year to be eligible to trigger the bring-forward rule.

Key advice opportunities - work test and NCC changes	▪ The removal of the work test could help facilitate spouse contributions, contributions under the small business CGT cap and transfers from foreign funds. ▪ Cash out and recontribute to a spouse's account to maximise their combined Transfer Balance Account (TBA), or to manage Total Super Balance (TSB). ▪ Contribute family home sale proceeds to super as NCCs to preserve the downsizer contribution opportunity for a future eligible disposal, or to maximise total contributions if sale proceeds exceed downsizer limit. ▪ Build super savings after the sale of shares, investment properties or other assets,[5] or receipt of an inheritance. ▪ Complete recontribution strategies to manage death benefit tax. ▪ Recontribute death benefits to facilitate holding funds in accumulation, or in a single pension combined with the member's own benefits. ▪ Increase the value of non-estate assets as part of an estate planning strategy.

3 Contributions must be received no later than 28 days after the month in which the person turns 75.
4 While the Explanatory Memorandum indicated that the intention is not for a person approaching 75 to access NCC cap space that they wouldn't otherwise have had available, the wording in the legislation does not support this approach and the Government has confirmed (albeit not publicly) that there is no further tapering of the bring-forward limit based on age.
5 A personal deductible contribution (PDC) under the catch-up rules may provide a favourable tax outcome, subject to cap limits, total super balance limits, and work-test requirements.

Recontribution opportunities and benefits

Removal of the work test and the extension of the bring-forward rule to older clients will provide opportunities to take advantage of several variations of the recontribution strategy including:

- recontributions to manage future death benefit tax when proceeds are expected to be paid to a non-tax dependant
- where a death benefit becomes payable to a beneficiary and they wish to either hold the funds in accumulation[6], or run a single account-based pension (where they also have their own member pension), cashing the death benefit from super before recontributing to super
- where one member of a couple has or is likely to fully utilise their TBC, withdrawing funds from accumulation and recontributing to a spouse's account to maximise combined retirement phase interests, and
- withdrawal and recontribution to an older spouse's account to manage TSB and maintain contribution eligibility for a younger spouse.

Managing death benefit outcomes

The resulting recontribution opportunity for older clients could have a significant impact on the ability to manage death benefit tax for non-tax dependants. Depending on the total amount held in super, a recontribution strategy could almost completely eliminate the taxable component of the interest[7] over a number of years, making superannuation even more attractive as an estate planning investment. There may also be an opportunity to streamline super death benefit outcomes for clients who wish to maximise super investments and would otherwise need to:

- maintain multiple pension accounts to simultaneously run an income stream with their own member benefits separate from a death benefit pension, or
- receive a lump sum death benefit.

Cashing out a death benefit and recontributing to super could enable a death benefit to effectively be:

- maintained in accumulation[8]
- consolidated with the member's own interest, or
- consolidated with other member benefits to commence a single account-based pension.

The effectiveness of this strategy and the extent to which it can be applied to the total death benefit will depend on the value of the death benefit relative to contribution caps, as well as total super balance limitations.

Example: Using recontribution to maximise super investments and simplify outcomes

Tony (72) passed away in January 2022 leaving a super death benefit of $450,000 to his wife Carmela (70). Carmela has an account-based pension with a current balance of $310,000, and a small accumulation account receiving superannuation guarantee contributions. Carmela also owns two investment properties which are generating around $85,000 pa in net income. She retired from her part time job in February after Tony died.

Carmela has no upcoming expenses to consider and maximising super investments is appropriate from a tax perspective. She likes simplicity and would prefer to minimise the number of financial accounts she has. Until the recently legislated changes, she thought this financial year would probably be her final opportunity to contribute to super.

As a result of the changes to the work test and the bring-forward rule, Carmela has a range of options to consider, including:

- receiving the death benefit as a tax-free cash lump sum
- making a PDC before 1 July 2022, utilising any available catch up concessional cap available (if appropriate)
- contributing up to $110,000 this financial year, and triggering the bring-forward from 1 July, contributing up to $330,000 the following year under the bring-forward rule), or
- after recontributing the death benefit funds, consolidating the interest with her existing pension and commencing a single account-based pension.

6 A death benefit pension always retains its identity, which means it must remain separate from a member's own super interests. This may mean multiple pensions need to be maintained. This also means that a death benefit must be 'cashed', which means that funds cannot be rolled back into accumulation

7 Growth on earnings forms a taxable component so if an accumulation interest is retained, there is likely to be growth and therefore a relatively small taxable component at death. The exception would be if a recontribution is performed and the resulting interest in 100% tax free component, and a pension is immediately commenced.

8 Alternatively, the member could commute their own member pension back to accumulation and continue to run the death benefit pension if appropriate, which may be the case where they are constrained by the transfer balance cap and total super balance limits.

Other considerations should include:

- any estate planning benefits that may arise from isolating tax-free components
- tax on earnings at her marginal tax rate if the death benefit is taken in full as a lump sum and contributions staggered over two years
- benefit of a partial death benefit lump sum and recontribution of $110,000 in year one, leaving the balance as a death benefit pension in the tax-free retirement phase, and commuting and recontributing the balance the following financial year, and
- whether a recontribution strategy would reduce her capacity to contribute any funds already held outside of super.

☑ **Advice tip: SMSFs and illiquid funds**

A death benefit cannot be paid simply by completing a journal entry to allocate funds from a deceased member to a beneficiary.[9] Care should be taken to consider any liquidity issues that a fund may have paying the death benefit as a lump sum.

Extension of downsizer contributions to age 60

Commencement date: 1 July 2022

Summary of change	▪ Downsizer contributions will be able to be made by individuals aged 60 or over. ▪ In 2021/22 and prior years, downsizer contributions can only be made by a person 65 or older at the time of the contribution.
Key advice opportunities	▪ Provide additional contribution opportunities for individuals aged 60 to 64 who are constrained by their TSB in relation to NCCs or have already maximised their NCC cap. ▪ Increase total super investments without impacting the NCC cap. ▪ Increase the total amount that can be contributed to super from the sale of an eligible dwelling (including NCC cap available). ▪ Complete a recontribution strategy of up to $630,000[10], including an NCC bring-forward if eligible. ▪ Invest sale proceeds from the home in super accumulation to maximise any social security entitlements (while the contributor(s) is under Age Pension age). ▪ Where a client has more than one dwelling in respect of which they are likely to satisfy the downsizer rules upon sale, provide advice that best utilises the client's current and future contribution caps and maximises total contribution opportunities, while considering any CGT implications of a sale.
Important to note	**Settlement date** ▪ The rules require that contributions are made within 90 days of settlement. Eligibility is based on the person's age at the time of the contribution. ▪ Depending on circumstances, it may be worth discussing with clients the implications of the date of settlement in relation to contribution opportunities. Eligible clients may wish to consider taking this into account when making arrangements to sell a qualifying dwelling. ▪ Legal guidance will be required particularly in relation to contract terms. It may be appropriate to discuss the timing of settlement and the impact on eligibility to make a downsizer contribution based on their age. ▪ While the ATO can exercise discretion to provide an extension of time for downsizer contributions, they have stated that an extension will not be granted where the only basis for the application relates to the person or their spouse meeting the age requirements.

9 ATO ID 2015/23

10 Based on contribution caps in 2022/23, and assuming the person is eligible for a 3 year bring-forward

Is there really a downsizer opportunity?

Many were surprised that **total downsizer contributions exceeded $1 billion** within the first 12 months after the contributions became available.[11] Typically, Australians do not have a desire or intention to sell their home for the purpose of retirement funding.[12]

Although a desire to downsize in retirement is not something that the majority of retirees aspire to historically, statistics indicate that where downsizing does occur, in over 85% of cases it happens prior to age 70. An extension of the downsizer opportunity to younger pre-retirees and retirees may see an increased uptake of the contribution opportunity.

Even where sale proceeds are required to fund replacement housing or other expenses, a downsizer contribution can still be utilised to implement a recontribution strategy without impacting NCC caps. Downsizer opportunities may also come as the result of a sale where the client isn't actually downsizing at all. Downsizer contributions could also be made using the sale proceeds of current investment properties. This is because the downsizer rules do not require that the dwelling being sold is occupied as the main residence at the time of sale.

It is sufficient that a property that has been owned for at least 10 years qualifies for at least a partial main residence CGT exemption. This means that an investment property that has been the main residence during the ownership period and will qualify for a partial main residence CGT exemption may provide a downsizer opportunity.

Downsizer, NCC or PDC? Choosing the best way to contribute

A client may have more than one dwelling that they intend to sell in the lead up to or during retirement that may qualify for the downsizer rules. Alternatively, it may be the case that the property being disposed of qualifies only for a partial main residence CGT exemption. In these scenarios, consideration should be given to which type of contribution to make to maximise super investments over the longer term, and to manage tax.

Where eligible, consideration may be given to the benefit of contributing sale proceeds as an NCC to preserve the downsizer opportunity for a later time. As downsizer contributions are not subject to a work test, upper age limit or TSB test, holding off on making use of the downsizer contribution cap until the sale of an eligible property in the future may help to maximise total contributions to super.[13] This might occur for example, where the person knows the subsequent sale will be at a time where they are constrained by TSB or age, and would be ineligible to make an NCC at that time.

The downsizer rules do not require that the dwelling being sold is occupied as the main residence at the time of sale. Provided the other eligibility rules are met, it is sufficient that a property that has been owned for at least 10 years qualifies for at least a partial main residence CGT exemption. As tax deductions cannot be claimed for downsizer contributions, it is important to consider whether, for example, a combination of PDCs and downsizer contributions should be made to manage both CGT and contributions caps.

☑ Advice tip: Implications of removal of work test for failed downsizer contributions

An invalid downsizer contribution is a personal contribution. This may occur where eligibility, timing, or notification requirements[14] are not met. Where an invalid downsizer contribution is made, currently a trustee needs to determine whether it can accept a personal contribution for the member in accordance with SIS Reg 7.04. This generally relates to whether the work test has been met. A contribution cannot be rejected based on total super balance or contribution caps. If the contribution could be accepted by the trustee, it is an NCC.

As the work test will no longer apply to NCCs (and a super trustee will no longer have an obligation to ensure the work test has been met to accept contributions in any case), this means that for a member aged up to 75[15], a failed downsizer contribution will be assessed as an NCC. This may result in an excess NCC where:

- the person's TSB precludes them from making an NCC or reduces their NCC cap, or
- an NCC has already been made during the year, or the person has already triggered the bring-forward rule.

This may also impact the person's ability to make other planned NCCs.

11 The Hon Michael Sukkar MP, Assistant Treasurer, (2019) *'Downsizer contributions reach $1 billion.* 29 June 2019

12 Productivity Commission 2015 **'Housing Decisions of Older Australians'**

13 This is because downsizer contributions can only be made with sale proceeds received from the sale of a single qualifying dwelling, under a single contract of sale. Any unused downsizer cap cannot be used in relation to future disposals.

14 The *Downsizer contribution into super form* must be completed and lodged with the trustee at or before the contribution is made.

15 Contributions made later than 28 days after the month the person has turned 75 cannot be accepted as personal contributions.

First Home Super Saver Scheme – increased release amount

Commencement date: 1 July 2022

Key advice opportunities	▪ Increase total investments in the concessionally taxed super system for first home deposit, which may increase total savings available. ▪ Manage tax on earnings by making PDCs or salary sacrifice. ▪ Increase engagement of younger clients in relation to superannuation. ▪ If a new client opportunity is established, it may facilitate discussion about insurance inside super and a review of current arrangements to ensure adequate cover exists, and will not be lost as a result of the inactive or low member balance rules.
Summary of change	▪ Currently, up to $30,000 of voluntary super contributions can be released (along with associated earnings) and used for a deposit on a first home. This amount will increase to $50,000, plus associated earnings[16]. ▪ The limit on contributions that can be made annually (within ordinary contribution caps) will remain to be $15,000.
Important to note	While this change increases the total amount that can be invested for a home purchase in a concessionally taxed environment, the annual limit of $15,000 on contributions that can be made and later accessed under the scheme means that to use the scheme to its full extent: ▪ investments will need to be made over a longer period of time, and ▪ higher income earners who have more of their CC cap utilised by SG contributions will need to make voluntary contributions over a greater number of years.

Why use the FHSSS to save for a deposit?

There are a number of benefits to using the FHSSS, including:

- if voluntary CCs are made, this may reduce income tax in the year that the contribution is made, which effectively increases the amount that could be saved for a home deposit
- actual earnings within the fund are taxed at the concessional rate of up to 15%, compared to the marginal tax rate which could be up to 47%, and
- upon withdrawal from the fund, assessable amounts (which includes CCs released plus associated earnings on all amounts received) are taxed at the MTR less a 30% tax offset.

Additional opportunities

While the FHSSS is not limited in terms of age, it may be one of the first trigger events for younger Australians to engage with a financial adviser. In addition to providing advice on the appropriateness of the FHSSS, this opportunity may also open the door to broader discussions about superannuation and the benefits of:

- reviewing existing accounts
- considering whether the asset allocation of their existing super account, typically a MySuper fund, is appropriate for saving for a home deposit (which usually has a far shorter time horizon than saving for retirement)
- consolidation of super, and
- ensuring that the importance of personal protection is discussed, and that insurance held in super is appropriate and not at risk of cancellation, or that appropriate cover is considered where none is currently held.

It might also be possible for clients utilising the FHSSS to receive additional assistance under the First Home Loan Deposit Scheme (New Homes) or Family Home Guarantee. This is in addition to state based stamp duty concessions and first home buyers' grants.

16 Associated earnings do not reflect actual fund returns but are based on the Shortfall Interest Charge. This has varied from 3.04% (July to September 2021 and January to March 2022) to 3.1% (October to December 2021) in the current financial year.

Adviser checklist: Clients who may benefit from the changes

Clients in the following circumstances may benefit from advice:

- ✓ Older clients with a large taxable component in super.
- ✓ In receipt of an inheritance or selling assets in retirement who would benefit from boosting super savings.
- ✓ Existing recipients of death benefit pensions who would prefer to consolidate their own account-based pension with the death benefit pension or hold an amount of the death benefit in accumulation.
- ✓ Aged 60 to 64 selling a property owned for 10+ years that is eligible for at least a partial main residence exemption – not previously eligible for a downsizer contribution.
- ✓ Selling an eligible property and would maximise their, or their partner's, social security benefits and entitlements by investing sale proceeds in an exempt accumulation interest (while under their Age Pension age).
- ✓ Members of a couple aged 67+ where one spouse has (or is expected to) fully utilised their TBC and has a remaining accumulation interest, or additional funds outside super they wish to contribute.
- ✓ Clients who would benefit from maximising non-estate assets.
- ✓ Clients saving for a first home deposit.

Contact details

For further information, please contact MLC Technical Services on **1800 645 597.**

Appendix: Other related resources

Topic	Content
Work test exemption	**Adviser resources** Work test exemption for older Australians
Downsizer Contributions	**Adviser resources** Article: Downsizer contributions Downsizer contributions: EOFY strategies to manage TSB **Client resources** Concept card: Upside your super with downsizer contributions Article: Upsize your super with downsizer contributions
NCCs	**Adviser resources** Guide to NCCs NCC advice opportunities Benefits of a recontribution strategy
Super death benefits	**Adviser resources** Guide to super death benefits
FHSSS	**Adviser resources** FHSSS explained **Client resources** Client KnowHow: FHSSS
Insurance inside super	**Adviser content** Opt-in insurance for under 25s and low balances Election to maintain insurance in an inactive account