ASFA Explainer

Building a Stronger and Fairer Super System Legislation: Explaining the impact on both high and low income earners

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About ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers. We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

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Background

The legislated objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way. ASFA, as the peak-body for Australia's superannuation sector has had a long-standing position in support ensuring tax concessions and government support for superannuation are distributed equitably.

ASFA's position on the Better Targeted Superannuation Concessions Bill, also known as the 'Div 296' legislation and now known as the 'Building a Stronger and Fairer Super System' Bill, is well publicised. ASFA has also strongly advocated for improvements to the Low Income Super Tax Offset (LISTO), a government payment made to those earning less than $45,000. We welcome the inclusion of increases to the LISTO in the legislation.

The purpose of this paper is not to advocate for changes to the introduced legislation, but to explain the impacts.

Summary:

- Around 90,000 people are estimated to be impacted by the changes to tax concessions for those with super balances above $3 million
- Over 99.5% of fund members will not pay the new tax associated with balances over $3 million. The average superannuation balance is around $173,000 across all age groups and $355,000 for those aged 60-64
- The tax impact will be an additional 15% on the proportion of realised earnings between $3m and $10m. For a person with a $3.2m balance in a pooled fund receiving a relatively high realised $250,000 return on their investments but with only $125,000 in realised investment income they will pay $1,171 in Div 296 tax
- The legislation also proposes an increase to the Low Income Super Tax Offset which will benefit those earning between $37,000 and $45,000
- It is estimated that 1.3 million Australians will benefit from the change to LISTO, with approximately 770,000 receiving the payment who previously were not eligible
- The maximum payment will increase from $500 to $810 with the average recipient to receive $410 a year more in their superannuation account
- A person earning $44,000 and receiving the new payment will be around $51,000 better off in retirement

In regard to the implementation of the Division 296 tax, any model that prioritises simplicity and cost effectiveness involves some compromises. However, it should be acknowledged that the bulk of individuals impacted by the proposed Division 296 tax will mostly be in SMSFs and/or high value Defined Benefit superannuation interests where more precise calculations will be possible. Table 1 provides further details for the number of members in APRA regulated funds who have benefits which are account based.

Table 1: Individuals with Super Balances over $3m in APRA regulated funds

	2022-23 Total Super Balance		
Members with accounts in	**$3m-$10m**	**Over $10m**	**Total**
One APRA fund	1,200	10	1,200
Multiple APRA funds	6,100	50	6,100
One APRA fund and at least one SMSF	6,900	400	7,300
Multiple APRA funds and at least one SMSF	2,900	100	3,000
Total	**17,100**	**600**	**17,700**

Source: ATO data as at 1 Dec 2025

The Government has indicated that the Division 296 tax will impact on less than 0.5 per cent of those with superannuation. Given that there will be over 18 million people with superannuation as at June 2027 this suggests around 90,000 individuals impacted. There will be more accounts impacted than individuals given multiple account holding. In addition to the 18,000 or so people with an APRA fund account, there might be over 70,000 individuals with a TSB of more than $3 million who have an account in an SMSF. Around 8,800 individuals with a defined benefit account are forecast to be impacted.

Supporting low-income earners by increasing the upper threshold for the Low Income Superannuation Tax Offset (LISTO)

The legislation includes two important changes to the Low Income Superannuation Tax Offset: A change to the threshold of eligibility, and an increase in the amount of the government payment.

Background

The LISTO is a government payment to the superannuation accounts of eligible low income earners. It ensures they receive a tax concession on their superannuation contributions relative to the tax rate on their take-home pay. It also improves equity between the superannuation tax concessions for low income workers and high income workers. Without LISTO, these low income workers would receive little or no concessional tax treatment on their contributions.

Eligible individuals do not have to do anything extra to receive a LISTO payment as long as they have provided their Tax File Number (TFN) to their fund.

Over recent years, the LISTO settings have remained the same while other aspects of the tax and superannuation system have changed, including:

- The payment cap has remained $500 per year, which is based on a Superannuation Guarantee rate of 9 per cent. However, the Superannuation Guarantee rate has been above this level since 2013 and has now reached 12 per cent. This means that the LISTO does not fully offset contributions tax for any LISTO recipients who earn over $27,778.

- Similarly, the eligibility threshold of $37,000 has not been adjusted since the second income tax bracket was increased to $45,000 in 2020-21. As a result, low income earners between these income levels currently receive no LISTO payment, and therefore receive very limited tax concessions on their contributions to superannuation.

The government's legislated tax cuts will lower the income tax rate for workers under the proposed threshold ($45,000) to 15 per cent on 1 July 2026 and then 14 per cent on 1 July 2027. Without change to LISTO, this would mean these workers pay similar tax rates on their superannuation contributions and personal income.

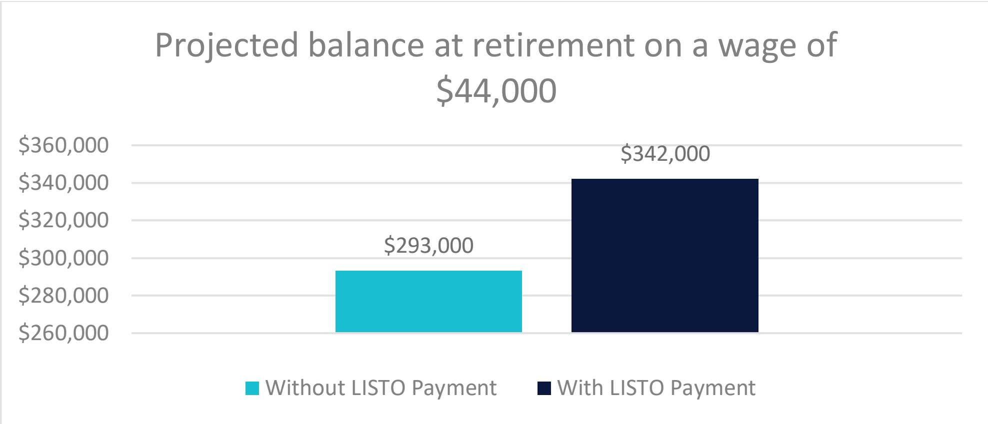
The proposed changes will ensure the LISTO threshold and maximum cap align with personal income tax settings and the 12 per cent Superannuation Guarantee rate.

They will mean that, when the final legislated tax cut takes effect on 1 July 2027, the effective tax on contributions will be zero rather than 15 per cent, compared to the marginal rate of 14 per cent.

It is equitable that individuals on the lowest tax bands receive concessional tax treatment for superannuation that is commensurate with the rate of assistance for higher income earners. With the increase in the upper threshold on equity grounds it is reasonable to provide those earning between

$37,000 and $45,000 with a tax concession in line with what they received prior to the change in the taxation rate structure.

For a person aged 35 and retiring at age 67 who is on a wage of $44,000 a year, receiving a LISTO payment to their superannuation account of $792 a year would lift their superannuation balance at retirement in today's dollars from around $293,000 to $342,000, a substantial increase.



The number of people benefiting

In 2023-24 around 2.36 million individuals received a total of around $670 million from LISTO, down from 2.7 million individuals two years earlier.

Because of these changes, in 2027-28 over 770,000 additional Australians will be eligible for LISTO, and 490,000 Australians will receive a higher LISTO payment. This includes those earning under $37,000 a year due to the increase in the maximum amount payable. This will mean 1.3 million Australians will benefit from these changes, of which around 60 per cent are women, bringing the total number of Australians eligible for LISTO to 3.1 million. Table 2 sets out the increase in LISTO for those on taxable incomes of between $37,000 and $45,000

The average increase in the LISTO payment will be $410 for affected workers.

There are a considerable number of part--time workers who have income in the $37,000 to $45,000 range.

Table 2: LISTO payments by taxable income level

Income level	Previous LISTO payment	LISTO payment after change
$37,000	$500	$666
$38,000	0	$684
$40,000	0	$720
$42,000	0	$756
$44,000	0	$792
$45,000	0	$810

Increasing the tax on investment earnings associated with superannuation balances over $3 million (Division 296)

How the new tax will work

The Government is proposing a two-tiered approach with total concessional tax rates for large balance holders:

- An additional 15 per cent tax on the proportion of earnings corresponding to Total Superannuation Balances (TSBs) between the lower threshold ($3 million) and the higher threshold ($10 million); and
- An additional 25 per cent on the proportion of earnings corresponding to TSBs above the higher threshold ($10 million).

Superannuation funds submit individuals' balances to the ATO for all members. The ATO will add all the superannuation interests of an individual to calculate an individual's TSB.

The ATO will then contact a super fund for the proportion of the fund's applicable realised earnings for any individual with a TSB above the legislated threshold.

The realised earnings of a fund will be based on its taxable income, adjusted for elements such as contributions and pension phase income. It is proposed that the calculations closely align to existing tax concepts.

In-scope members will then be attributed an appropriate share of the fund's realised earnings based on existing reporting mechanisms or on a fair and reasonable basis. This would be supported by guidance from the ATO. Regulations will also help define what fair and reasonable means in this context.

Only realised earnings after 1 July 2026 will be included, with this adjustment made on an exact basis for SMSFs and individually managed accounts in pooled funds, with a transitional arrangement applying to other fund members.

The methodology adopted for the proposed Division 296 tax now will generally involve funds with more than six members using a "fair and reasonable" approach for reporting on realised earnings (adjusted where appropriate for capital gains that accrued prior to 1 July 2026). This is a different method than that which will apply to members of Self-Managed Superannuation Funds (SMSFs) and what will apply to individuals in platform and like arrangements offered by funds with more than six members.

For Self-Managed Superannuation Funds (SMSFs) and for members in individual managed accounts in platforms or member directed investment arrangements in large funds the calculation of realised investment earnings will be based on the specific investments held and the pattern of realised investment returns.

Special valuation methods for investment earnings will be used for members of defined benefit funds based on the increase over the relevant financial year in the Family Law value of the member's superannuation interest, with adjustments made for contributions and benefits paid (where applicable). There also will be an adjustment to reduce the calculated investment return in line with the adjustment for other types of superannuation accounts to ensure that only realised gains after 1 July 2026 are taken into account.

Some transitional arrangements will apply in 2026-27.

Funds will undertake the calculation of realised investment earnings attributable to in-scope individuals, and provide this information back to the ATO.

The ATO will calculate the tax liability and issue assessments to the individuals concerned, who can pay the amount assessed directly or apply for its release from their superannuation account. Defined benefit members may elect to defer the tax payment until they take their superannuation benefit.

Worked examples: members in different types of superannuation funds

The retired farmer with an SMSF

Fred has retired from farming. His children continue the farming business, paying rent to Fred's Self-Managed Super Fund (SMSF) which holds the property as an investment asset.

Fred's account in the SMSF has an investment portfolio represented by the $3 million value of the farm as at 30 June 2026, together with shares and bank deposits. His total superannuation balance as at 30 June 2026 is $3.8 million. The fund receives rent in 2026–27 at a yield of 4 per cent on the opening value of the land, which equates to $120,000. The SMSF is required to charge a commercial rent for the farming land. Rent is a set amount and does not vary with the profitability (up or down) of the farming business.

He also received $100,000 in proceeds from the sale of shares in June 2027, which he had held for more than 12 months. He had elected to use a 1 July 2026 cost base for the assets in his fund. The total capital gain for those shares from 1 July 2026 was $30,000.

Interest and dividends amount to $60,000 a year.

The realised taxable income relevant to his Division 296 liability is $120,000 in rent, $60,000 in dividends and interest, and $20,000 in capital gains (reflecting the one-third reduction for capital gains in a superannuation fund). Relevant expenses are $10,000. The total net realised income is $190,000.

At 30 June 2027 the value of his interest in the farm has increased by 10 per cent to $3.3 million and also the value of his remaining shareholdings increased. The total value of his interest in the SMSF is $4.0 million.

The percentage of taxable earnings over $3 million is calculated by subtracting $3 million from $4.0 million and then dividing it by $4.0 million, resulting in a percentage of earnings attributable to the balance over $3 million of 25.00 per cent. The Division 296 tax amount is calculated by first multiplying the superannuation earnings for the purposes of Division 296 of $190,000 by 25.00 per cent, which is $47,500. That amount is then multiplied by the 15 per cent tax rate, leading to a Division 296 tax amount of $7,125.

Joan, a retiree with an account in APRA regulated pooled fund

In the 2026–27 income year Joan received benefit payments of $250,000 combined from her two pension accounts and made a $300,000 downsizer contribution. The fund has records of her daily account balance, including investment earnings credited to the account. In her annual statement from the fund it is indicated that she had total investment earnings credited to her account of $250,000. However, for the purposes of Division 296 the fund reports to the ATO that Joan's realised investment income is $125,000.

On 30 June 2027 Joan's Total Superannuation Balance (TSB) was $3.2 million.

The percentage of taxable earnings over $3 million is calculated by subtracting $3.0 million from $3.2 million and then dividing it by $3.0 million, resulting in a percentage of earnings attributable to the balance over $3 million 6.25 per cent.

The Division 296 tax amount is calculated by first multiplying the superannuation earnings of $125,000 by 6.25 per cent, which is $7,812. That amount is then multiplied by the 15 per cent tax rate, leading to a Division 296 tax amount of $1,171.

A high balance SMSF member

Emily is 55 and a member of an SMSF and has a total super balance of $12.9 million at the end of the 2026-27 income year. That year she was attributed $840,000 of the fund's realised earnings for the purposes of this tax. This amount only takes into account realised investment earnings and has a 1 July 2026 cost base for capital gains for the purposes of the Division 296 tax.

The proportion of her balance above the $3 million threshold is 76.74 per cent and the proportion of her balance above the $10 million threshold is 22.48 per cent.

Emma's BTSC tax liability is therefore $115,581 (0.15 x 0.7674 x $840,000 + 0.10 x 0.2248 x $840,000). Note the combined BTSC tax rate on earnings over $10 million is 25 per cent.

Defined Benefit Fund member

Robert retired from the public service in May 2026 after many years of service. He qualified for a defined benefit pension which he started to receive from May 2026.

The trustee of the fund uses an approved Family Law valuation method to determine a Total Superannuation Balance (TSB).

Using those factors he has a TSB of $3,232,125 on 30 June 2026 and a closing balance of $3,215,937 as at 30 June 2027. The closing balance reflects a lower valuation factor due to the member being one year older but there is also an increase in the benefit paid, which for the purpose of this illustration is indexed by growth in the CPI of 2.5%. Robert's pension is CPI indexed.

Robert's adjusted TSB at the end of the year is calculated to be $3,465,937 by adding his total withdrawals of $250,000. His calculated superannuation earnings for the year (before adjustment for realised gains only) are $233,812 (the difference between $3,232,125 and $3,465,937).
Regulations will set the percentage of calculated superannuation investment earnings which are equivalent to realised earnings. This percentage will be lowest in the first year of the Division 296 tax, increasing to 100% after the transitional period has expired.

For the purposes of this example it is assumed that the percentage to be applied in 2026-27 for defined benefit fund members is 48.5% (this is an arbitrary assumption for illustrative purposes, actual number to be set in Regulations may be higher or lower than this and will not be known until sometime in 2027-28). Adjusting for realised earnings, the $233,812 becomes $113,398.

The percentage of taxable earnings over $3 million is calculated by subtracting $3 million from $3,215,937 and then dividing it by $3,215,937, resulting in a percentage of earnings attributable to the balance over $3 million of 6.71%.

The Division 296 tax amount is calculated by first multiplying the estimated realised superannuation earnings of $113,398 by 6.71%, which is $7,609. That amount is then multiplied by the 15% tax rate, leading to a Division 296 tax amount of $1,141.

The great bulk of defined benefit pensioners have pension payments and valuation factors which lead to TSBs well below $3 million.

Calculating TSBs for defined benefit fund members who have not yet retired requires detailed information on salary and personal contributions and generally needs actuarial or other expert calculations.

Members of Commonwealth government employee superannuation defined benefit funds can find valuation factors at https://www.legislation.gov.au/F2025L00281/asmade/text/2

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