

**Contribution Trips & Traps**

Presented by  
Tim Miller  
Education Manager  
SuperGuardian

SuperGuardian | CHARTERED ACCOUNTANTS AUSTRALIA & NEW ZEALAND

1

---

---

---

---

---

---

---

---

**Disclaimer**

The information in this presentation contains general advice and is provided by SuperGuardian Pty Ltd AFSL No. 485643, and is current at 2 September 2022. That advice has been prepared without taking your personal objectives, financial situation or needs into account. Before acting on this general advice, you should consider the appropriateness of it having regard to your personal objectives, financial situation and needs.

You should obtain and read the Product Disclosure Statement (PDS) before making any decision to acquire any financial product referred to in this presentation.

Please refer to our FSG (available at <https://www.superguardian.com.au/pdfs/Financial-Services-Guide.pdf>) for contact information and information about remuneration and associations with product issuers.

2

---

---

---

---

---

---

---

---

**Session overview**

- Are you keeping up with all matters impacting contributions – new rules and redefined old rules?
- How do changes impact various contribution strategies
- The blind-spots all these changes introduce (read “what does the auditor want”)

3

---

---

---

---

---


---

---

---

### Post 1 July 2021 timeline

1 July 2021	1 July 2022+
<ul style="list-style-type: none"><li>• Indexation of contribution caps</li><li>• Bring forward and work test alignment to age 67</li><li>• Excess CC changes</li><li>• SMSF followers &amp; superstream</li></ul>	<ul style="list-style-type: none"><li>• Work test amendment</li><li>• NCC to age 75</li><li>• Downsizer to 60 (or 55?)</li><li>• PRSSS withdrawal to \$50k</li><li>• Excess NCC considerations</li></ul>



4

---

---

---

---

---

---

---

---

## Admin v Audit

The timing conundrum



5

---

---

---

---

---


---

---

---

### 2021/22 contribution rules

- Members under age 67
  - All Contributions – excluding downsizer contributions under 65
- Members aged 67 to 75
  - Mandated Employer Contributions
  - Member/Employer Contributions subject to gainful employment test (and work test exemption)
  - Downsizer contributions
- Members 75 or over
  - Mandated Employer Contributions
  - Downsizer contributions



6

---

---

---

---

---

---

---


---


## Work test requirements

- 2021/22 work test resides within SIS Regulations
- Key to pre 2022 rules is that member has met the work test for trustee to be able to accept the contribution
  - In theory this restricts the timing of contribution to "post work test" condition being met
- Reg 7.04(4) (SISR) provides for contributions to be returned subject to failing the work test OR work test exemption
  - Distinguishes between excess contributions and incorrectly accepting monies

**Work Test**

- employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.
- 40 hours in 30 consecutive days



 **AUDIT ALERT**

---

---

---

---

---

---


---


---

7

## SIS Act – Accepting contributions from 1 July 2022

If a member ...	the fund may accept contributions made in respect of the member that are...	Changes
is under 60	(a) employer contributions; or (b) member contributions	- Remove work test age 67 – 74
is not under 60, but is under 75	(a) employer contributions; or (b) member contributions (including downsizer contributions)	- Includes accepting contributions up to 28 days following month member turns 75
is not under 75	(a) mandated employer contributions; or (b) downsizer contributions	



 **All contributions pre 75 subject to excess contributions rules**

---

---

---

---

---

---


---

---

8

## New work test requirements - ITAA

- S 290-165 provides conditions to be met to claim a personal deduction
- Ss 290-165(1A) imposes requirement if contribution made during period "day of 67th birthday until 28 days following month of 75th birthday"
  - Must meet gainful employment requirement during the year, not before contribution (differs from SIS requirement) – claiming is a post year event; OR
  - Must satisfy work test exemption (\$300k TSB)



---

---

---

---

---

---

---

---

9

### NALI v Contributions

- How might contributions be impacted by NALI?
  - LCR 2021/1 – Non-arm’s length expenses
  - 17B Superannuation Industry (Supervision) Act 1993
  - TR 2010/1 Income Tax: superannuation contributions
  - SMSFR 2010/1 – the application of subsection 66(1) acquisition of an asset by a SMSF from a related party
- How do you navigate all these references?



10

---

---

---

---

---

---

---

---

### SIS 17B Trustee remuneration

- SIS 17B - Remuneration of SMSF Trustees can occur if:
  - Relates to duties or services other than in capacity of trustee
  - Trustee appropriately qualified and licensed to perform duties/services
  - Performs in ordinary course of business
  - No more favourable to trustee than if dealing at arm’s length
- How about SMSFR 2010/1 and TR 2010/1 ie if no liability is raised in the Fund and no payment made then this is not considered a contribution
  - But is it a NALE?



11

---

---

---

---

---

---

---

---

### TR 2010/1 examples

TR 2010/1 - Example 2  
 No contribution made by a free service

Jasmine has a self-managed superannuation fund of which she is the sole member. She is a CA. Jasmine prepares the accounts and income tax and regulatory return for her self-managed superannuation fund each year without remuneration.

**By not incurring a liability the capital of the fund is not increased.**

What questions do we have to ask Jasmine?



12

---

---

---

---

---

---

---

---

### SMSFR 2010/1 examples

**SMSFR 2010/1 - Example 5**  
Performance of service – insignificant value


A member of an SMSF fixes taps in rental properties owned by the SMSF by replacing the tap washers. As the tap washers are insignificant in value and function the substance of the transaction is the performance of a service.

**SMSFR 2010/1 - Example 6**  
Performance of service – goods not insignificant in value

A member of an SMSF buys and installs ducted air-conditioning in a rental property owned by the SMSF. An asset is acquired as the ducted air-conditioning components are not insignificant in value and function.

A member of an SMSF buys all necessary building materials and builds a house in situ on land owned by the SMSF. The member does some of the building work and also pays contractors to do some of the building work. A service is performed for the SMSF and assets are acquired from the member as the building materials are not insignificant in value and function.

How do these the correlate to LCR 2021/2?



---

---

---

---

---

---

---

---

---

---


13

### LCR 2021/2 capacity examples - Ex 9

Trang is the trustee of her SMSF of which she is the sole member. She is also a plumber by trade and runs her own business as a sole trader in which she also employs an apprentice, Novee. Trang's SMSF has two investment properties which are leased for a commercial rate of rent.

After finishing work for the day, Trang stops by one of the SMSF's investment properties to connect a stand-alone water filter provided (and to be taken away at lease end) by the tenant. She uses some of her tools of trade to complete the installation. Trang performs this activity as trustee and does not charge for this work. Trang's use of the tools of her trade in respect of this property is minor, infrequent or irregular in nature and will not, of itself, indicate that she is undertaking these services in any other capacity other than as trustee for her SMSF. Accordingly, the NALE provisions will not apply.

In respect of the second SMSF rental property, Trang undertakes a complete renovation of the bathroom and kitchen. She schedules time in her work calendar to undertake the work and uses the tools of her trade to undertake all plumbing work on the renovations. She also engages Novee in all works. Trang does not charge the SMSF for the work undertaken in respect of the second SMSF rental property. In this instance, Trang's use of the tools of her trade will not be considered minor, infrequent or irregular in nature. Considering all her activities, she will be considered to be undertaking these services in her individual capacity, rather than as trustee for her SMSF.



---

---

---

---

---

---

---

---

---


---

14

### LCR 2021/2 capacity examples - Ex 10

Jean is the trustee of his SMSF of which he is the sole member. He is also a licenced electrician by trade. The SMSF owns a residential property which it leases for a commercial rate of rent.

Jean undertakes electrical work on the rental property that can only be done by a licenced electrician. In that instance, the work done by Jean is not as trustee of his SMSF but in his individual capacity. Jean charges the SMSF the commercial rate for the work undertaken on the rental property. Accordingly, the non-arm's length expenditure provisions will not apply.



---

---

---

---

---

---

---

---

---

---

15

### Compliance considerations

- What if appropriately qualified & don't charge?
  - Is this a contribution and NALE?
- Overcharging is financial assistance to a member?
- Overcharging is breach of s109



16

---

---

---

---

---

---

---

---

### What acquisition transactions are impacted

- If a fund purchases an asset at less than market value - NALE
- Subject to terms of the contract
  - Difference between consideration paid and the market value of asset cannot represent an in-specie transfer
- What is a contract?
- Updated TR 2010/1 Acquiring assets from related parties to reflect this



17

---

---

---

---

---

---

---

---

### TR 2010/1 examples

TR 2010/1 - Example 7  
**When in specie contribution of shares is made**  
 On 26 June 2009, Cheung signs an OMT to effect a contribution of shares from herself to her SMSF.  
 However, she leaves certain parts of the form blank for completion by her broker.  
 The broker adds the omitted information on 2 July 2009 and completes the transfer through CHESS. Cheung's contribution will be made on 2 July 2009 as it is not until that day that the relevant transfer has been completed to registrable form.

More often the reverse is true



18

---

---

---

---

---

---

---

---

### LCR 2021/2 acquisition issues

**LCR 2021/2 - Example 1**  
Non-arm's length expenditure on acquisition

During the 2019–20 income year, Armin holds commercial property with a market value of \$800,000. During the income year, he sells the commercial property to himself acting as trustee of his self-managed superannuation fund (SMSF) for \$200,000. The SMSF leases the property to a third party

**NALI applies to rent and CGT**

**LCR 2021/2 - Example 5**  
Part purchase part in-specie

During the 2018–19 income year, Nadia owns commercial premises that she leases to a third party which use the premises to carry on a business. The commercial premises have a market value of \$500,000. Nadia would like to transfer it to her SMSF, but her SMSF only has \$400,000 in cash. Nadia's SMSF purchases 50% of the commercial premises under a contract from Nadia for \$250,000. Nadia makes an in specie non-concessional contribution of the remaining 50% interest in the commercial premises (valued at \$250,000). The acceptance of the in specie contribution by Nadia as trustee of the SMSF is recorded by her in writing and the market value of the in specie contribution is reported in the SMSF's accounts. The SMSF reports the non-concessional contribution to the ATO.

Does example 1 happen?

---

---

---

---

---

---

---

---

---

---

19

## The strategy stuff

---

---

---

---

---

---

---

---

---

---

20

### Strategy considerations

- Which strategies do these changes have the greatest immediate impact on?
  - Downsizing?
  - Re-contribution strategies?
  - Bring-forward non-concessional contributions?
  - Carry forward (catch-up) concessional contributions?
  - Deferred contribution allocation - contributions reserves?
  - Pension commencements (personal transfer balance cap)?
  - Foreign transfers?
  - Small business CGT contributions?
- What are the key issues to consider?
  - Total superannuation balance and the various thresholds

---

---

---

---

---

---

---

---

---

---

21

### Contribution reserves – double deduction

Contributions must be allocated within 28 days following the end of the month which they are received – retired member turning 67 in new year

The diagram shows a timeline from 1/7/2022 to 28/7/2024. Key dates include 1/6/2023 and 30/6/2023. Contributions of \$27,500 are shown for both years, with allocation occurring within 28 days of the end of the month received.

Contribution deductible in year of receipt – Notice of intention = \$55,000  
 Contribution assessable against cap in year of allocation

What was their TSB @ previous 30 June? Carry-forward?  
 Who else might this apply to? Are there any traps?

---

---

---

---

---

---

---

---

---

---

22

### Downsizer contributions

- From 1 July 2022 available to individuals aged 60 & over (proposed reduction to 55)
- Downsize (not necessary to downsize) primary place of residence
- Must meet main residence requirement
- Must have owned for **10 years**
- Maximum contribution from proceeds \$300,000 each (us it or lose it)
- Made within 90 days of sale – lodge approved form
- Not subject to work test or total superannuation balance restrictions
- Asset test considerations

**\$300,000 downsizer contribution @ 60**

- Preserved
- Likely to knock out access to Work Test Exemption & Carry Forward Concessional
- May dilute capacity to make NCC

---

---

---

---

---

---

---

---

---

---

23

### Current bring-forward thresholds

Total superannuation balance previous 30 June	Non-concessional contributions cap for the first year	Bring forward period
Less than \$1.48 million	\$330,000	3 years
\$1.48 million to less than \$1.59 million	\$220,000	2 years
\$1.59 million to less than \$1.7 million	\$110,000	No bring forward period, general non-concessional contributions cap applies
\$1.7 million or more	Nil	N/A

---

---

---

---

---

---

---

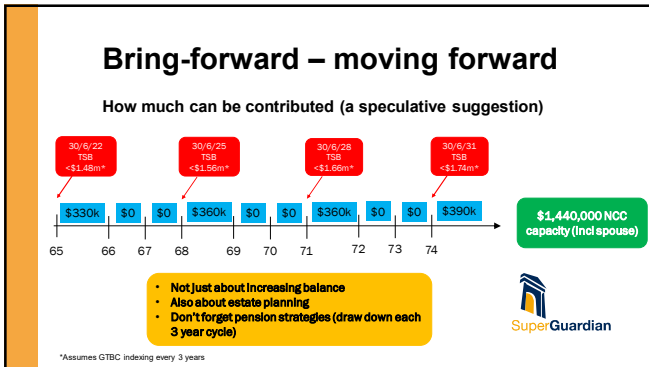
---

---

---

24





25

---

---

---

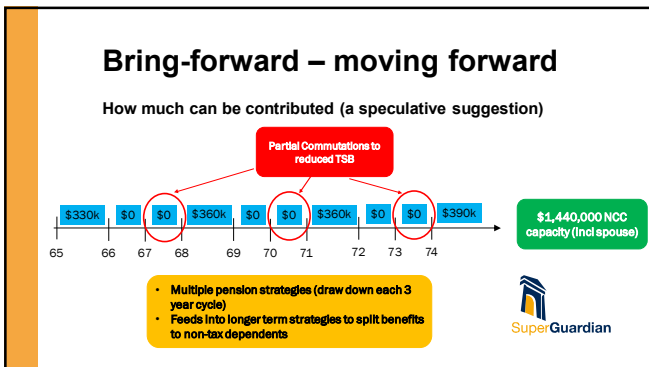
---

---

---

---

---



26

---

---

---

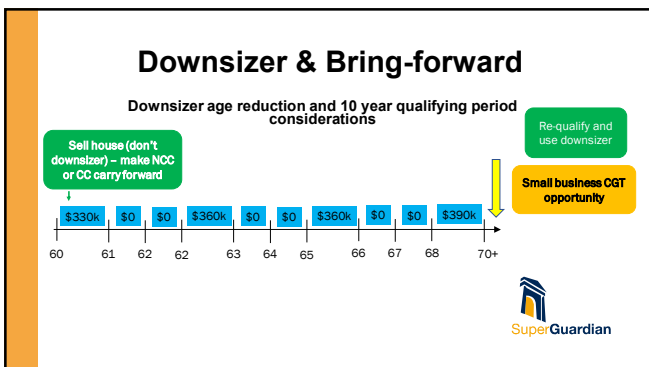
---

---

---

---

---



27

---

---

---

---

---

---

---

---

### Strategy considerations

- Age 65-75 does present great opportunities for Downsizer and re-contribution strategies but also other strategies
- Consider deductibility rules v drawdown rules
- Inherent risk of future Budget restrictions
- Risk of market movement impacting total superannuation balance i.e. waiting for future years to make contributions, if you've got it contribute it.
- Consider the estate planning ramifications of two member funds
- Also how can you use 50% pension reduction to advantage?
- Don't forget the impact certain contributions may have on your fund auditor



---

---

---

---

---

---

---

---

28

### Questions



---

---

---

---

---

---

---

---

29