

Webinar:

# Changing Face of SMSF



Aaron Dunn  
CEO, Smarter SMSF

March 2020





Smarter SMSF

# Disclaimer

Smarter SMSF Pty Ltd has taken reasonable care in producing the information found in this presentation and believes that the information is correct at the time of compilation but does not warrant the accuracy of that information.

Changes in circumstances may occur at any time and may impact on the accuracy, reliability or completeness of the information and we exclude liability for any decision taken on the basis of the information shown in or omitted from this presentation.

Save for statutory liability which cannot be excluded, Smarter SMSF disclaims all responsibility for any loss or damage which any person may suffer from reliance on this information or any opinion, conclusion or recommendation in this presentation whether the loss or damage is caused by any fault or negligence on the part of presenter or otherwise.

Today's session

**Legislation tracking**

**Bills & Treasury**

**ATO updates**

# Legislation tracking

## Legislation update

# Outstanding Legislation

Item	Status
<ul style="list-style-type: none"><li>One-off SG Amnesty for employers to correct historical super guarantee non-compliance</li></ul>	<p>Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 has now received Royal Assent as Act no. 21 on 6 March 2020, with Amnesty period available until 7 September 2020</p> <p><a href="#">Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019</a></p> <p>For more information about how the amnesty allows employers to disclose and pay previously unpaid super guarantee charge (SGC), visit the ATO website:</p> <p><a href="https://www.ato.gov.au/Business/Super-for-employers/Superannuation-guarantee-amnesty/">https://www.ato.gov.au/Business/Super-for-employers/Superannuation-guarantee-amnesty/</a></p>
<ul style="list-style-type: none"><li>Correcting debit value on commutation of a Market Linked Pension as a CDBIS.</li><li>Rollover of super death benefits (15% tax on untaxed element upon rollover)</li></ul>	<p><a href="#">Treasury Laws Amendment (2019 Measures No. 3) Bill 2019</a> was introduced into Parliament on 5 December 2019 – currently before the Senate.</p>

## Legislation update

# Outstanding Legislation

Item	Status
<ul style="list-style-type: none"><li>• Allowing voluntary contributions (both CCs &amp; NCCs) to be made for people 65 &amp; 66 years without having to meet the 'work test'</li><li>• Also extends to the bring-forward rule for NCCs where member meets relevant TSB requirements.</li><li>• Extending ability for spouse contributions up to age 74</li></ul>	<p>Exposure draft issued by Treasury on 5 March 2020 for consultation until 3 April 2020.</p> <p><a href="#">Treasury consultation - Improving flexibility of superannuation for older Australians</a></p>
<ul style="list-style-type: none"><li>• Streamlining the administrative requirements for the calculation of ECPI.</li></ul>	<p>Announced in the 2019-20 Federal Budget (held on 2 April 2019) with measures to start on 1 July 2020; no draft legislation has been issued by Treasury at this time. Senator Jane Hume recently confirmed the Government's commitment to reducing red tape with this legislative change.</p>

## Legislation update

# Outstanding Legislation

Item	Status
<ul style="list-style-type: none"><li>• Increase of SMSF membership from 4 to 6</li></ul>	<p>Recent presentation by Senator Jane Hume at the SMSF Association National Conference restated the Government's commitment to this policy;</p> <p><a href="#">Address to SMSF Association Annual Conference</a></p>
<ul style="list-style-type: none"><li>• 3-year SMSF Audit cycle</li></ul>	<p>Following closure of the Treasury consultation on 31 August 2018, no draft legislation was issued for this proposal. It appears unlikely that the Government will revisit these measures.</p>

# Bills & Treasury



Treasury consultation

# Improving flexibility for older Australians

## Treasury measures

# Improving flexibility for older Australians

Government announced in 2019-20 Federal Budget changes that would provide greater flexibility for Australian's over age 65 in making contributions (both concessional and non-concessional) from 1 July 2020.

- Treasury has released the following exposure drafts for consultation:
  - Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Improving Flexibility for Older Australians; and
  - Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020

## Treasury measures

# Improving flexibility for older Australians

Once these laws are passed by Parliament they will:

1. Increase the age from 65 to 67 at which the work test starts to apply for voluntary concessional and non-concessional contributions;
2. Increase the cut-off age for spouse contributions from 69 to 74 years of age; and
3. Allow individuals age 65 and 66 to be eligible to make up to three years of non-concessional contributions under the bring-forward rule.

## Treasury measures

# Improving flexibility for older Australians

ITAA 1997	SIS Regulations
<p>The Bill implements changes to the bring-forward rule, allowing eligible individuals under 67 years of age to use the bring-forward NCC cap in a particular financial year.</p>	<p>Subregulation 7.04(1) will establish a new age category of 65 to under 67 and specify the types of contributions that can be made by a member in that age category:</p> <ul style="list-style-type: none"><li>• Mandated employer contributions; or</li><li>• Employer contributions (except mandated employer contributions)</li><li>• Member contributions; or</li><li>• Downsizer contributions</li></ul>
	<p>Subparagraph (b) (ii), in Subregulation 7.04(1) will be amended to enable spouse contributions to be made in respect of a member who is under 75 years of age.</p>
	<p>Subparagraph (d) (ii), in Subregulation 7.04(1) will be amended to enable spouse contributions in respect of a recently retired member who is eligible for the one-year work test exemption</p>

## Treasury measures

# Improving flexibility for older Australians

Age at 1 July									
Current law	62	63	64	65	66	67	68	69	70
	62	63	64	65	66	67	68	69	70
	62	63	64	65	66	67	68	69	70
New law	62	63	64	65	66	67	68	69	70
	62	63	64	65	66	67	68	69	70

ATO updates

ATO updates

# ATO investment strategy guidance

## ATO Update

# ATO investment strategy guidance

- ATO released additional guidance to help trustees understand areas including:
  - What needs to be included in the fund's investment strategy
  - Investment restrictions
  - What 'giving effect' to a fund's investment strategy means
  - The frequency to review the fund's investment strategy
  - The auditor's role in relation to the fund's investment strategy
  - Non-compliance and ATO action via ACR for SISR 4.09 breach
- Likely to be **first step** towards more detailed guidance



## ATO Update

# ATO investment strategy guidance

What needs to be included?

*“When formulating your investment strategy, it is **not a valid approach** to merely specify investment ranges of 0 to 100% for each class of investment. You also need to articulate how you plan to invest your super or why you require broad ranges to achieve your investment goals to satisfy the investment strategy requirements.”*

# ATO investment strategy guidance

**Asset classes:** The ATO accepts the following methods for determining asset class ranges within an investment strategy

## No asset range–by listing of material assets

[illegible]

## ATO Update

# ATO investment strategy guidance

## Listing material assets

If the trustee chooses not to use allocated portions of percentages in the investment strategy, they should ensure that material assets are listed within the report, including reasons **why** investing in those assets will achieve the retirement goals.

## Short-term variations

The ATO doesn't accept that short term variations to a fund's articulated investment approach, including specified asset allocations, constitute a variation from the investment strategy.

## ATO Updates

# Auditor's role

The fund's auditor will check whether the fund has met the investment strategy requirements within SISR 4.09 for the relevant financial year.

This means they will check that:

- The SMSF had an investment strategy in place for the relevant financial year that considered the factors outlined within SISR 4.09 (ATO's guidance)
- The fund's investments during the relevant financial year were in accordance with that strategy
- The strategy had been reviewed at some stage during the relevant financial year.

## ATO Updates

# Fixing compliance issues

## Non-compliant investment strategy

If the auditor identifies a breach, trustee can fix the issue by attaching:

- a signed and dated addendum to the strategy; or
- a trustee minute which adequately addresses the requirements.

An auditor will only need to lodge an ACR notifying the ATO of the breach if it meets the **ACR reporting criteria**. For most funds, the criteria will be met if either:

- the auditor has identified the same breach in a previous income year and it has been repeated in the current income year
- it is a breach from a previous year that remains unrectified at the time of audit.

## ATO Updates

# What we are observing...

- Arrangements being made for trustees to update their investment strategy documentation
  - where doesn't exist or fix deficiencies
- Additional trustee minutes where necessary that deal with heavy asset concentration within the fund
- Auditors increasing their level of activity around investment strategies to manage own risk
  - Raise in management letters to trustees
  - both ATO risk and trustee recovery risk





ATO updates

# Intermediary LRBAs

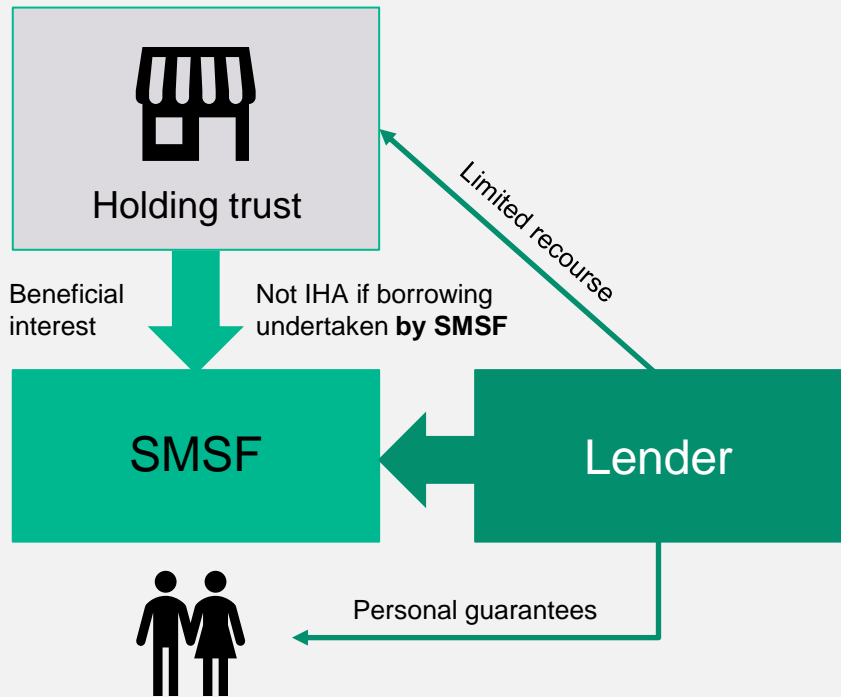
## ATO Updates

# Intermediary LRBA

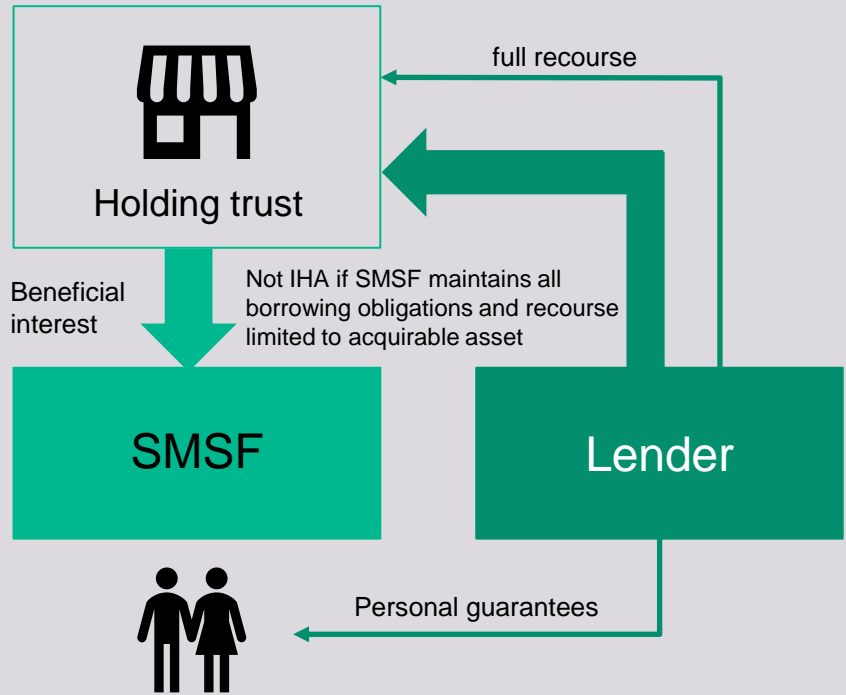
- ATO has released a draft legislative instrument about intermediary LRBAs
- IHA Determination to cover an arrangement involving an SMSF, holding trust and lender
- Under the arrangement:
  - The trustee of the holding trust borrows money as principal from a lender to acquire the Single Acquirable Asset (SAA)
  - The SMSF maintains the holding trustees borrowing (meaning an indirect borrowing has occurred)
- Consultation open until 13 March 2020



## Typical LRBA



## Intermediary LRBA



ATO updates

# No indexation of transfer balance cap from 1 July 2020

## ATO Updates

# No indexation of TBC

- The All Groups Consumer Price Index (CPI) figure for the December 2019 quarter was published on 29 January 2020 at a figure of 116.2.
- For indexation of the general transfer balance cap to have occurred on 1 July 2020, this figure needed to be 116.9 or higher.
- **As a result, it is now anticipated that the general transfer balance cap is likely to be indexed on 1 July 2021.**



ATO updates

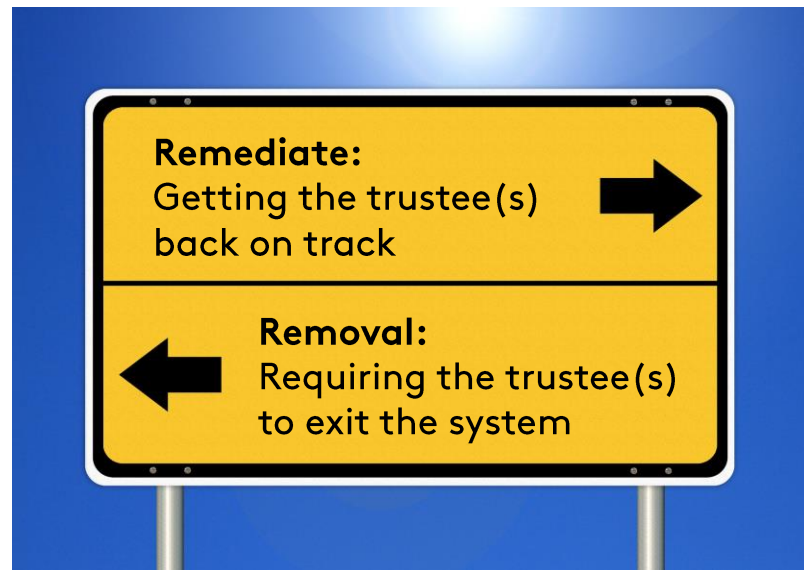
# ATO review of enforcement action

## ATO Updates

# ATO review of enforcement action

As a result of the Financial Services Royal Commission, the ATO undertook a review of their enforcement action process to:

- Assess the effectiveness of their regulatory powers
- Consider the impact on compliance behaviour after application of regulatory powers; and
- Identify opportunities to increase the ATO's regulatory effectiveness.



## ATO Updates

# ATO review of enforcement action

Whilst this is not a shift in the ATO's stance, the Regulator is continuing to look at the right balance of support and enforcement.

Their findings identified that:

- Through the use of the ATO's regulatory powers:
  - Their removal powers are being used appropriately
  - There appears to be some inconsistency in the application of the full range of enforcement powers
  - Over the last 3 years, 75% of administrative penalties were fully remitted
- The effectiveness of the use of these powers:
  - Post enforcement action, a significant proportion of SMSFs subsequent compliance (in terms of meeting lodgment obligations), was significantly below the level of the general SMSF population.

## ATO Updates

# ATO review of enforcement action

The result is that the ATO are taking steps around improving their regulatory effectiveness through a variety of measures including:

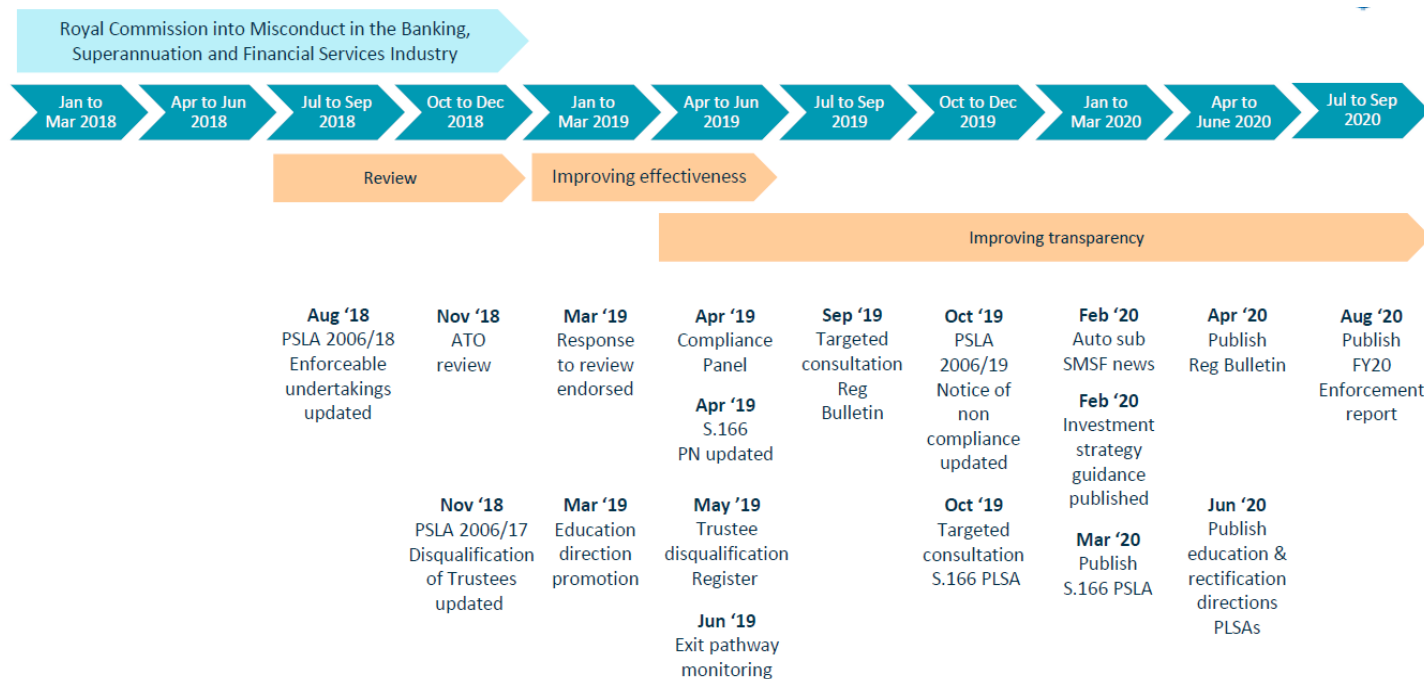
- Updated and refreshed Practice Notes and Law Administration Practice Statements
- Provide a recalibrated approach for education directions and administrative penalties
- Create a strategic compliance panel for more complex cases
- Implement a process for monitoring compliance for all exit pathway actions

SMSF enforcement action	2017-18	2018-19	YTD 2019-20
Direction to educate (trustees)	32	45	95
Direction to rectify	31	34	74
Enforceable undertakings	138	131	58
Notice of non-compliance	11	26	21
Disqualified trustees	257	245	127
Number of SMSFs with penalties imposed	169	146	84
Net admin penalties raised	\$1.7m	\$3.1m	\$3.3m

Greater utilisation of directions to educate to address poor post enforcement action compliance

## ATO Updates

# ATO review and response time







ATO updates

# Alerts for changes made to SMSF information

## ATO Updates

# Alerts for changes made to SMSF information

To help safeguard the retirement savings of SMSF member and to reduce the risk of fraud and misconduct, from February 2020 the ATO has started to issue an alert via email and/or text message when changes are made within to a SMSF.

This includes the following changes:

- financial institution account details
- electronic service address (ESA)
- authorised contact
- members.



## ATO system error resolved

An initial error regarding text & email alerts relating to ESAs were previously sent to a small number of SMSF trustees has now been resolved by the ATO.

# Smart people stick together



## Aaron Dunn

CEO & Co-founder

Smarter SMSF

1300 95 94 76

<https://smartersmsf.com>

[team@smartersmsf.com](mailto:team@smartersmsf.com)

# Thank you!

T 1300 95 94 76

[team@smartersmsf.com](mailto:team@smartersmsf.com)