

# SUPERMATTERS

SUPERANNUATION STRATEGIES FOR YOU AND YOUR BUSINESS

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## INSIDE

- How the 'Protecting Your Superannuation' laws will affect you
- Super changes to protect employees' entitlements
- What disqualifies you as a Trustee



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## Are you eligible for the super downsizer scheme?

The superannuation downsizer scheme is finishing up its first year after coming into effect on 1 July 2018.

Under the scheme, eligible individuals that are 65 years and older may be able to make a contribution into their superannuation of up to \$300,000 from the proceeds of selling their family home.

### What is the downsizer scheme?

Downsizer contributions can provide a way to boost your super balance for those who may not have saved enough to fund their retirement. As they are tax-free, downsizer contributions can be a good opportunity to top up already existing savings. They are non-concessional contributions, meaning that they do not count towards your contributions caps and can still be made for those who have a super balance greater than \$1.6 million. While there are a number of benefits to the scheme, it is necessary to keep in mind that the contributions are not tax-deductible.

No work test applies to be eligible for downsizer contributions. This test requires that taxpayers aged 65-74 who wish to make voluntary contributions must be employed for at least 40 hours within a 30-day period. By removing this requirement, older Australians who no longer work significant hours will still be able to add large sums to their super.

### Eligibility:

To be eligible to make a downsizer contribution to your super, you must meet a number of requirements. These include:

- You are over 65 (there is no maximum age limit).
- The amount that you are contributing is taken from the proceeds of selling your home, where the contract of sale was exchanged on or after 1 July 2018.
- Contributions are made within 90 days of receiving the proceeds of a sale.

- The sold property must have been owned for at least 10 years and must have been your main place of residence at some point in time.
- The property must be in Australia and excludes houseboats, caravans and mobile homes.
- The proceeds from the sale of the home are exempt or partially exempt from capital gains tax (CGT) under the main residence exemption.
- You have not previously made a super downsizer contribution from the sale of another home. However, if the home that was sold was only owned by one spouse, then the other spouse that did not have an ownership interest may also make a downsizer contribution if they meet all of the other eligibility requirements.

Further rules may apply to various situations, and contributions that do not meet the downsizer contribution eligibility requirements may incur penalties from the ATO. For more information and advice on other implications to the super downsizer scheme that may affect you, consult your professional advisor.

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# How the 'Protecting Your Superannuation' laws will affect you

The Treasury Laws Amendment (Protecting your Superannuation Package) Bill 2019 received the Royal Assent on 12 March 2019 and will come into effect from 1 July 2019.

This bill is part of the Government's package of reforms that were announced in the 2018-19 Federal Budget.

The new legislation is designed to protect Australians' superannuation savings by ensuring that their super balance isn't negatively affected by unnecessary fees on insurance policies. Individuals are encouraged to check their super balance before the reforms commence and familiarise themselves with the changes that may affect them.



## Insurance:

For individuals who do not act before 1 July, their insurance may be deemed inactive. Under the Protecting Your Superannuation Bill, super accounts that have been inactive for 16 months will have their automatic insurance cancelled. These inactive accounts may also be transferred to the ATO. Members will be able to 'opt-in' to protect their insurance cover and stop their account from being inactive, but this must be done before 30 June. Once the regime has commenced, trustees will need to ensure that they have ongoing arrangements in place to identify members who risk becoming inactive.

## Ban on exit fees:

The new laws will remove the need to pay exit fees from all superannuation accounts. Trustees that are currently charging exit fees will need to review the current fee structure in order to implement any necessary disclosure and product changes. This will ensure that exit fees will not be charged on or after the 1 July 2019, the date these changes will commence.

While the policy changes are intended to protect consumers, there may be alarming consequences for those who may not realise their account is inactive and assume that their insurance cover will continue. All superannuation trustees and members will need to review these changes to ensure they are meeting all necessary obligations. If further help is needed about how the changes will impact you, consult your financial advisor.

## What disqualifies you as a Trustee

Before becoming a trustee of an SMSF, you need to be aware of the responsibilities that it entails.

SMSFs are closely regulated by the ATO and have rules that dictate who is legally allowed to run them. While anyone 18 years old or over can be a trustee or director of an SMSF, they must not be under a legal disability such as mental incapacity, or a disqualified person.

The ATO can take action to disqualify an SMSF trustee. The most common reason is for illegal early access breaches. There are other ways a person may become disqualified and some may not even realise they have been. Continuing to act as an SMSF trustee or director of the corporate trustee while disqualified is an offence, and further penalties may apply.

Typical things that can disqualify an individual are:

- Having been convicted of an offence involving dishonesty.
- Being subject to a civil penalty order under the super laws.
- Being insolvent under administration (including being an undischarged bankrupt).

- Having been disqualified by a court or regulator (for example, by the ATO or APRA).

The ATO has a disqualified trustees register to see if an individual has previously been disqualified. The register provides information and easy search options to help determine whether a potential trustee has been disqualified. It is updated quarterly and includes all individuals who have been disqualified since 2012, the year that the information was first published electronically.

There are two options a fund can take when a trustee has been disqualified. The first is to roll over the disqualified person's member benefits to a large (APRA) superannuation fund, such as an industry or public offer fund. The second is to convert the SMSF into a Small APRA Fund (SAF) by appointing an APRA approved trustee.

Trustees or directors of a corporate trustee run the fund and make decisions that affect the retirement interests of each fund member, including themselves. It is in the members' best interests to remain aware of which trustees are or may be disqualified and how a trustee may become disqualified.

## Super changes to protect employees' entitlements

Several revisions from the Treasury Laws Amendment (2018 Measures No.4) Bill 2018 took effect from 1 April 2019 to step up employee entitlements.

These measures are designed to help reduce the super guarantee (SG) gap, protect employees' super entitlements and strengthen the ATO's ability to recover unpaid super.

Changes to disclosure laws will now allow the ATO to disclose information to employees about an employers' failure to meet SG obligations. This will also allow for the ATO to reveal their processes involved in retrieving these amounts.

Additionally, a free voluntary online education course is now available to help employers understand and meet SG obligations. Education directions permit the ATO to instruct employers who don't meet their SG obligations to complete the online education course, which includes an assessment element.

The revisions have strengthened debt collection mechanisms, making it easier for the ATO to identify and correct mistakes. They are now able to:

- Specifically direct employers to pay unpaid SG.
- Hold business owners liable for amounts owing through enhanced director penalties.
- Apply for a court order to compel an employer to comply with a security deposit requirement.

Individuals are encouraged to notify the ATO of non-complying employers. If your employer is approachable, you could consider making them aware of the online course and its benefits prior to the ATO contacting them and directing them to complete it.

