Actuaries Institute.

Information Note: Notional Taxed Contributions
December 2025

Contents

1. Introduction

1.1. Purpose

The purpose of this Information Note is to provide Members with updated information on Notional Taxed Contributions (NTCs). It replaces the TP Simpler Super – Notional Taxed Contributions dated March 2008,

Since the introduction of NTCs in 2007, the Institute has raised concerns regarding the NTC provisions with Treasury in various submissions. The Institute's letter dated 25 May 2007 first raised significant concerns with Treasury, which led to amendments to the applicable regulations in September 2007. The ATO also issued a number of Interpretative Decisions in 2008 which clarified its interpretation of various issues. However, some issues and uncertainties remained unresolved. Most recently, the Institute reiterated two outstanding NTC issues in its submission to Treasury dated 26 April 2024.

In the meantime, the use of the NTC methodology (with modifications) was expanded to encompass calculations for the purposes of Division 293 tax effective from 1 July 2012 and it is intended to be used for the proposed Division 296 tax if it commences in 2026. The relevant legislation has also been subject to a number of amendments over time, including renumbering of provisions and changes to some terminology.

Given the passage of time, it was considered appropriate to issue this Information Note to:

- consolidate the available information on NTCs, including relevant Institute correspondence with Treasury and the ATO;
- provide Members with a resource on NTCs, including background and legislative history, and any clarifications provided outside the legislation (e.g. from ATO rulings); and
- remind Members of a number of considerations and uncertainties relating to NTCs.

As noted above, there are a number of questions surrounding interpretation of the NTC legislation which remain unresolved by Government or the ATO, despite the passage of time. The Institute expects that, in order to comply with their reporting obligations, superannuation fund trustees will have adopted interpretations taking into account their fund's specific circumstances and, potentially, with the consideration of legal advice. This may have resulted in different established practices in certain areas relating to NTCs. Members need to be aware that such differences may exist and may require specific consideration, for example in cases of successor fund transfers.

1.2. Status of this Information Note

This Information Note was prepared by the Institute's Superannuation & Investments Practice Committee and replaces the TP Simpler Super – Notional Taxed Contributions dated March 2008. The Professional Practice Committee has classified it as an Information Note because of the regulatory issues that remain unresolved.

This Information Note:

- is not a Professional Standard or Practice Guideline and it is not mandatory; and
- does not constitute legal advice. Any interpretation or commentary within the Information Note regarding specific legislative or regulatory requirements reflects the expectations of the Institute but does not guarantee compliance under applicable legislation or regulations.

Accordingly, Members are expected to seek clarification from the relevant regulator and/or seek legal advice in the event they are unsure or require specific guidance regarding their legal or regulatory obligations.

Members are expected to refer specifically to the following documents and legislation:

- the Income Tax Assessment Act 1997 (Cth);
- the Income Tax (Transitional Provisions) Act 1997 (Cth);
- the Income Tax Assessment (1997 Act) Regulations 2021 (Cth);
- relevant ATO Interpretative Decisions.

This Information Note does not override the requirements in these documents or in any Professional Standards, Practice Guidelines or Regulatory Guidance that are relevant to this area of work.

References to legislation and regulatory requirements are current at the date of this Information Note. Members should confirm that there have been no subsequent changes.

Appendix A provides a timeline of the legislative history of the NTCs and the Institute's submissions on NTCs (including correspondence with Treasury and the ATO).

Appendices B and C provide cross references between this Information Note and the NTC issues covered in the Institute's letter to Treasury dated 6 May 2010 and the Information Note on NTCs dated March 2008 respectively. The Appendices include comments on the current status of the NTC issues raised in those documents.

Feedback from Members is encouraged and can be forwarded to the Legislation Sub-committee through ppd@actuaries.asn.au.

1.3. Defined terms

In this Information Note:

'actuary' means a Fellow or Accredited Member of the Institute of Actuaries of Australia, as defined in section 995.1 of the Act

'ATO ID' means ATO Interpretative Decision

'DB' means defined benefit

'**DBC**' means defined benefit contributions

'**Defined benefit interest**' has the meaning in section 291-175 of the Act

'ITAA97' or the 'Act' means the *Income Tax Assessment Act 1997* (Cth)

MRB' means minimum requisite benefit

'NER' means new entrant rate

'NTC' means notional taxed contributions

'**On-hold member**' has the meaning in section 291-170.04 of the Regulations

'**Pensioned member**' has the meaning in section 291-170.04 of the Regulations

'ITAR 97' means the *Income Tax Assessment Regulations 1997* (Cth) (repealed)

'ITAR21' or 'Regulations' means the *Income Tax Assessment (1997 Act) Regulations 2021* (Cth)

'SG' means the Superannuation Guarantee system established by the *Superannuation Guarantee (Administration) Act 1992* (Cth) and related legislation

'SFT' means successor fund transfer

Transitional Provisions Act means the *Income Tax (Transitional Provisions) Act 1997* (Cth).

The non-capitalised word "members" is used to refer to members of a superannuation fund, whereas the capitalised word "Members" is used to refer to Members of the Institute.

2. Background on NTCs

2.1. Relevant legislation

When the concessional contribution cap was introduced in 2007, special rules were required to calculate contributions for DB members for the purposes of the cap. The primary rules are contained in subdivision 291-C of the Act. Transitional arrangements including grandfathering provisions are in subdivision 291-C of the Transitional Provisions Act. The methodology for calculating NTCs is contained in Schedule 1A of the ITAR21.

The NTC methodology (with modifications) is also used to calculate defined benefit contributions for the purpose of Division 293 tax. The primary rules are contained in subdivisions 293-D – 293-F of the Act. For funded DB interests, DBCs are equal to NTCs. For other DB interests, such as constitutionally protected and unfunded or partially funded DB interests where NTCs are equal to zero, the methodology for DBC calculations is contained in Schedule 1AA of the ITAR21 and mirrors the NTC methodology for most schemes.

The remainder of this Information Note focuses on NTCs. While many of the issues are also relevant to the calculation of DBCs under Schedule 1AA of the ITAR21, Members performing calculations of DBCs in accordance with Schedule 1AA should be aware of the differences and refer to the applicable legislation.

2.2. Overview of the NTC requirements

Sections 291-165 and 291-170 of the ITAA97 provide that special rules apply for concessional contributions in relation to DB interests. These rules require a member's concessional contributions in respect of their DB interests to be calculated as their NTC rather than the actual employer contributions (if any) funding their DB. The NTC for this purpose is calculated in accordance with the ITAR21.

The Regulations require superannuation fund trustees to obtain the advice of an actuary to determine the NER(s) to be used by the trustee in the calculation of NTCs for defined benefit members.

An NER is required to be determined by an actuary for each benefit category, based on the benefit design applicable to that benefit category and the methodology and valuation assumptions set out in the ITAR21.

According to the ITAR21, the NER for a benefit category is the rate that represents the long-term cost, expressed as a percentage of superannuation salary, of providing as much of the fund benefit as is payable on a voluntary exit to a hypothetical new entrant to the benefit category. The Regulations require NERs to be rounded down to the lower 1 percentage point (for example, 10.6% would be rounded down to 10%).

Schedule 1A regulation 1.4 of the ITAR21 requires that an accruing member must not belong to more than one benefit category at the same time unless certified by an actuary. To make such a certification, the actuary must be satisfied that the amount of NTCs to be reported will not be materially different from the amount of NTCs that would have been reported had the member belonged to only one benefit category.

Where there are more than two sub-funds containing defined benefit members, the NTC provisions are required to be applied at a sub-fund level.

Trustees are also required to obtain the advice of an actuary to calculate certain adjustments to the NTCs when certain events occur, for example, where a member's benefit has increased as a result of an exercise of discretion.

Actuaries may also be involved in providing advice to trustees in relation to whether a DB member continues to meet the “grandfathering” provisions in the Transitional Provisions Act and the Regulations that may cap the member's NTCs in certain circumstances.

2.3. Grandfathering of NTCs

The Transitional Provisions Act provides for grandfathered NTCs to be capped at the concessional contribution cap amount. Grandfathering applies to defined benefit interests that existed on 5 September 2006 or on 12 May 2009.

Regulations 291-170.05 and 291-170.0 7 set out the conditions which must be met for grandfathering to apply. The following is a summary of the circumstances in which grandfathering may be lost. Members should refer to the Regulations for full details.

- If a member's NER increases, since the relevant date, other than in the case of changes to the fund rules to comply with the SG or where the member is required to move to a new benefit category because of fund rules in force on the relevant date;
- If the fund rules have changed after 5 September 2006 to improve the member's benefit;
- If the member has moved to a new benefit category, except where the change does not provide the member with an improved level of benefit or the move was required under legislation or rules of the fund in force on 5 September 2006;
- If the method of calculating the member's superannuation salary has changed in a way that would increase the salary since the relevant date, other than a change required in order to comply with the SG;
- If the member's superannuation salary has increased by more than 50% in one year or 75% over three years, except where the employer has advised the fund trustee that the increase is on an arm's length basis
- If a discretion is exercised by the fund trustee or employer to pay a benefit greater than that assumed in calculating the NER after the relevant date

It is also worth noting that, due to the Regulations requiring NERs to be rounded down to the lower 1 percentage point, NERs may remain unchanged and grandfathering retained even when benefits have been improved.

As actuaries calculate the NERs, they may be involved in providing advice to trustees in relation to whether grandfathering is lost.

3. Key outstanding concerns on NTCs

In its submission to Treasury dated 26 April 2024, the Institute reiterated two key concerns on NTCs and requested the Regulations be amended to resolve these concerns.

3.1. Loss of grandfathering due to changes in actuarial assumptions not specified in the Regulations

The Regulations require the actuary to set any other assumptions not specified in the Regulations but which are necessary for the calculation of the NERs. The Regulations further provide that these assumptions are to be based on the assumptions used in the most recent actuarial valuation of the fund, unless the actuary believes these are no longer appropriate, in which case these assumptions should be set on a best estimate basis.

Changes in these actuarial assumptions to reflect actual or expected fund experiences could lead to higher NERs, without any change or improvement to the benefits to which members are entitled. For example:

- Where there are pension benefits, an increase in the assumed pension take-up rate to reflect fund experience may result in an increase in the NER
- When a defined benefit has an MRB or other minimum benefit that is based on the accumulation of contributions plus earnings less expenses, an actuarial assumption is required for these expenses. A fund may experience a reduction in expenses due to the fund achieving cost savings in administration and/or insurance expenses (for example, as a result of a fund merger). The actuary may reduce the expense assumption to reflect the fund experience, which would lead to an increase in the value of the minimum benefit and a possible increase in the NER.

In such cases, the Institute submission stated, loss of grandfathering is a counter-intuitive and unreasonable outcome for the DB members.

The submission recommended the Regulations be amended to enable grandfathering to continue where there is an increase to the NER resulting solely from changes in actuarial assumptions (with no change in benefits).

3.2. Loss of grandfathering due to change in new entrant age associated with a Successor Fund Transfer

The Regulations specify that the new entrant age is determined at the DB fund or sub-fund level. This means the same new entrant age is to be assumed for all benefit categories.

One implication is that in an SFT into an existing fund/sub-fund, where the transferring DB members and existing DB members have different assumed new entrant ages, the transferring DB members may see a change in their assumed new entrant age. If this change leads to an increased NER, then the transferring DB members will lose grandfathering.

The Regulations provide that in cases of fund transfers, the actuary may recalculate the new entrant age taking into account the age at entry of the transferring DB and of the existing DB members. However, this recalculation could still result in an increase in the NER for either the transferring or the existing DB members, again leading to the loss of grandfathering.

This issue could be avoided if transferring DB members were in a separate sub-fund from the existing DB members. However, this requires the maintenance of two separate sub-funds with the associated higher fund management costs. This is an undesirable outcome and a hurdle to companies seeking to amalgamate their separate DB funds.

The Institute’s 26 April 2024 submission to Treasury recommended the Regulations be amended to enable the predecessor fund new entrant age for transferring DB members to be retained in the receiving fund.

A related issue is the new entrant age for a new defined benefit fund. In the very rare instance of a new defined benefit fund being set up, the requirement is that it must have at least 50 new defined benefit members at its commencement date. The wording of the current Regulations effectively requires a new entrant age of 40 to be used (regardless of the members' actual ages) as there were no defined benefit members in the new fund as at 1 July 2007. Actuaries need to aware of this potential anomaly in the rare event of setting up a new defined benefit fund.

4. Other NTC issues and uncertainties

The Institute has raised other issues and uncertainties regarding NTCs with Treasury in various submissions. The remainder of this Information Note provides Members with information on those issues and uncertainties which the Institute considers that Members may need to be aware of.

4.1. When are NERs required to be recalculated?

It is not clear from the Regulations when NERs are required to be recalculated. For example, if at an actuarial valuation after 1 July 2007 the actuary updated the assumptions relating to the proportion of members assumed to opt for a pension benefit as opposed to a lump sum benefit, as this assumption affected NERs but is not one specified by the Regulations, did the NERs need to be recalculated? Does this mean at every actuarial valuation where an actuary modifies an assumption not specified by the Regulations, the actuary needs to verify either NERs have not changed or re-certify the NERs?

The industry has largely proceeded on the basis that NERs would not need to be re-calculated purely due to changes in actuarial assumptions not specified in the NTC Regulations. Recalculation and certification are generally only undertaken if there is a change in benefits or the SG rate (see also section 3.2 in relation to recalculations relating to SFTs). The Institute has previously sought confirmation of this approach from Treasury in multiple submissions, however no confirmation has been provided.

Members need to exercise judgement when changing valuation assumptions and be aware of the potential impact on NERs and grandfathering of NTCs.

4.2. Issues with the definition of a superannuation sub-fund

A *superannuation sub-fund*, in relation to defined benefit members of a superannuation fund, is defined in the Regulations as an arrangement in the fund which satisfies the following conditions:

- there are separately identifiable assets and separately identifiable beneficiaries;
- the interest of each beneficiary is determined by reference only to the conditions governing that arrangement;
- the defined benefit members have the same employer-sponsor;
- the employer-sponsor deals with each of the defined benefit members at arm's length.

There were a number of issues with the above definitions (e.g. in the case of related employers or treatment of sub-funds with identical benefits), however with the passage of time it is likely that trustees will have developed practices to address these issues. Members are encouraged to review the 2008 IN and consult trustees in the event of any uncertainty in this area.

4.3. NTCs – nil amount

Regulation 291-170.04 provides that the NTC in respect of a member's DB interest is nil for non-accruing members, which include On-hold members and Pensioned members.

4.3.1. Pensioners – indexation rules

To be considered a Pensioned member, Regulation 291-170.04(7)(iii) requires that "the pension payments increased at rates that were consistent with the rates prescribed under the rules of the fund that applied **when the pension commenced to be paid**".

A strict interpretation of this clause could lead to a few issues:

- For example, for a long-time DB pensioner who started their pension 25 years ago, a historical pension indexation rule change 20 years ago would make the pensioner not a non-accruing member for the purposes of the NTC provisions. It is then unclear what the NTC implications are for such pensioners.
- Changes to the indexation rules in a future year would also indicate that the pensioner would not be treated as a non-accruing member in subsequent years. It is unclear whether such a change would result in:
  - a concessional contribution in the year of the change (based on the full value of all future increases); or
  - additional concessional contributions in that year and each subsequent year (based on the higher pension paid in that year alone).

These issues remain unresolved.

4.3.2. On-hold members

For On-hold members, which include deferred and frozen benefit members, Regulation 291-170.04(6) sets out conditions for them to be considered as non-accruing members. One condition is that their benefits only increase "at the rate (if any) at which the salary on which the member's benefit is based increased". The ATO has issued ID 2008/89 confirming that it will accept this condition to include benefit increases based on Final Average Salary.

4.3.3. Minimum Requisite Benefit underpin

Defined benefit members are entitled to a defined benefit which is underpinned by an MRB. The MRB may be either in defined benefit or accumulation form (or a combination). Where a member has accrued the maximum standard DB allowed under the rules of the fund, the MRB may continue to accrue.

The ATO has not accepted the Institute's suggestion that such a member should be considered as non-accruing while the member's MRB is less than the member's undiscounted accrued retirement benefit.

Actuaries therefore need to consider which benefit category such members belong to for the purpose of determining their NTCs. The decision will need to be made in the light of all the circumstances but could be:

- A special "category" covering only members who have reached their maximum accrual, or
- The member's original category before reaching the maximum accrual, or
- Another relevant category.

4.4. Salary-related issues

4.4.1. Measurement of high salary increases

High salary increases that are not made on an arm's length basis can lead to the loss of grandfathering. There are two salary increase tests to be applied, being 50% over a 1-year period and 75% over a 3-year period.

The ATO has issued ATO ID 2008/98 on how to apply these two tests, stating that:

- The tests must be completed each time a member's rate of superannuation salary increases;
- The tests are only required to be completed when there is an increase in the rate of salary for superannuation purposes, even though there may be changes in the member's salary at any time.

4.4.2. Treatment of part timers

The formula in section 1.7 of Schedule 1A of the Regulations does not appear to allow for any adjustment if a member's part-time status changes during a year.

However, as set out in its August 2007 letter to the Institute, the ATO's view is that the wording provides sufficient scope for actuaries to make appropriate adjustments for particular members, including those who have a change in part-time status during a year.

4.4.3. Two salaries may apply in a year of transfer

The Regulations specify that the salary to be used in determining the member's NTCs is "the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the fund".

This implies that in the case of an SFT during the financial year, there may be two calculations of the member's NTC, each using a different superannuation salary. For example, if an SFT occurred on 1 January 2024, then for the 2023/2024 financial year, a member's salary on 1 July 2023 would be used to calculate their NTC in the predecessor fund and their salary on 1 January 2024 would be used in the successor fund. An SFT could potentially result in an increase in the member's NTCs over which the member has no control.

This issue only affects the NTC in respect of the year of the SFT, however it can have ramifications for affected individuals in that year. The issue was raised with Treasury in the Institute's submission of 6 May 2010 but remains unresolved.

4.5. Discretions to be allowed for

Clause 2.5(2) of Schedule 1A requires that where the fund rules provide a discretion to pay a benefit that is higher than the standard benefit, the actuary must assume that the higher benefit is always paid on voluntary exit on or after age 55. Clause 2.5(3) provides that where the higher benefit exceeds the accrued retirement benefit, the actuary may assume that the benefit is any amount between the accrued retirement benefit and the higher benefit.

Clause 2.5(4) covers the situation where the actuary believes there is a reasonable expectation that a higher benefit than either the standard benefit or the accrued retirement benefit will be paid (this clause does not refer to discretions under the fund rules). In this case, the actuary should assume that the benefit paid on voluntary exit on or after age 55 is always equal to the benefit reasonably expected to be paid. However, it would generally not be appropriate to assume such a payment will be made unless such an assumption was adopted in the most recent actuarial review.

Note that the discretionary power may be a general discretionary power (for example, the power to augment any benefit); it is not necessary that it be a power related solely to the early retirement benefit.

The ATO has issued ATO ID 2008/97, which confirms that where an exercised discretion is already incorporated in the current NER, no further NTCs arise under Part 4 of Schedule 1A. However, if the discretionary benefit actually paid on voluntary exit or redundancy that is not bona fide exceeds the benefit allowed for in calculating the NER, then an additional notional contribution may arise under Part 4.

4.6. Uncertainties with Schedule 1A Parts 4 to Part 7 (previously X, W, Y and Z respectively) adjustment amounts

The Regulations require the trustee to seek the actuary's advice on working out the following adjustment amounts:

- Part 4 – increased exit benefit adjustment amount (previously called W);
- Part 5 – category change or discretion adjustment amount (previously called X);
- Part 6 – governing rules change adjustment amount (previously called Y);
- Part 7 – increased superannuation salary adjustment amount (previously called Z).

The Institute has previous sought clarification from Treasury on a number of issues associated with these provisions, however the issues remain unresolved. A summary of the issues is provided below. Further information including worked examples of some issues can be found in the Institute's letter to Treasury dated 6 May 2010[1].

With the passage of time, it is likely that each fund has established practices to calculate these adjustment amounts. Members unclear about the approach to be adopted should seek information from the particular fund's trustee.

4.6.1. Issue with Part 4 increased exit benefit adjustment amount

This adjustment amount can apply if discretion is exercised to pay a benefit upon a member's voluntary exit or redundancy that is not bona fide where the benefit paid is greater than that assumed in calculating the NER.

Clause 2.1(3) of the Regulations explains that voluntary exit encompasses resignation, early retirement or retirement. However, it is unclear whether voluntary exit is triggered when the member exits the fund, the defined benefit section of the fund or the employment of the employer. Voluntary exit from the employer does not necessarily lead to voluntary exit from the fund (or even from the defined benefit section of the fund in some cases), however that is generally the time at which the discretion to pay an enhanced benefit is exercised.

4.6.2. Issues with Part 5 category change or discretion adjustment amount

This adjustment amount applies in a year in which the member's accrued retirement benefit increases as a result of a change of benefit category or an exercise of discretion. However, it is required to be worked out on advice from the actuary as representing the increase in the *value* of the accrued retirement benefit, if any, as a result of the change in benefit category or the exercise of the discretion.

The term "accrued retirement benefit" is not defined. Standard actuarial practice would be to calculate the amount of the accrued retirement benefit in a manner that does not involve discounting or valuation taking into account future decrement assumptions, and to calculate the *value* of the accrued retirement benefit as a discounted projected accrued retirement benefit that would not generally include any value in respect of resignation benefits (except to the extent that the resignation benefit acts as an underlying minimum to the retirement benefits). However, the Regulations do not specify retirement decrements, only voluntary resignation decrements. Therefore it is unclear what decrements should be used or whether another method of calculation should be used.

[1] https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-22197

4.6.3. Issues with Part 6 governing rule change adjustment amount

This adjustment amount applies in a year in which there is an amendment to the governing rules that may result in an increase in the member's *benefit* and which is made for a reason other than to satisfy a legislative requirement. It is worked out on advice from the actuary as representing the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change.

If "benefit" was given its widest interpretation, this adjustment amount would need to be calculated if any benefit was changed in a way that might result in an increase. However, in practice, the adjustment is equal to zero for any benefit increases that do not affect the accrued retirement benefit.

Due to the use of the undefined term "accrued retirement benefit", the same issues that affect Part 5 adjustments also affect Part 6 adjustments.

An additional issue is that Part 6 requires the governing rules change adjustment amount to be calculated for the financial year in which the governing rules are amended, which may not always be the same financial year that the amendment is effective. The Institute's 26 April 2024 letter to Treasury recommended an amendment to fix this potential timing issue, however, no change has been made to the Regulations.

4.6.4. Issue with Part 7 increased superannuation salary adjustment amount

This adjustment amount may apply where the member's superannuation salary is increased in a non-arm's length way with the primary purpose of achieving an increase in superannuation benefit, and it is worked out as the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in superannuation salary.

Due to the use of the undefined term "accrued retirement benefit", the same issues that affect Part 5 adjustments also affect Part 7 adjustments.

4.6.5. Issue with conflicts between Part 4 to 7

There can be instances when the exercise of a discretion may result in an adjustment under multiple Parts of Schedule 1A.

For instance, an exercise of discretion to increase a member's accrued retirement benefit at the time the member leaves the fund could fall under Part 4 or Part 5 or both. The adjustment amount may be different depending on which Part applies. The Institute requested an amendment to the Regulations to clarify that only one adjustment can apply in respect of the same event, however, no such amendment has been made and the formula in clause 1.8 of Schedule 1A implies that more than one adjustment amount could apply to a member in a particular financial year.

4.6.6. Issue with conversion of DB to accumulation benefits

The conversion of DB to accumulation benefits can be achieved in multiple ways, including

- compulsory benefit category change

- voluntary benefit category change
- changes to governing rules, or
- the exercise of a discretion.

The trustee needs to determine which of Parts 4-7 is applicable, which will depend on the particular method of conversion applying. The adjustment amount may be different under different Parts. The Institute recommended specific provisions be inserted into the Regulations to cover these conversions, however, no such amendment has been made. Members need to be aware of the NTC implications when determining the transfer amounts for any DB to accumulation conversions.

Similar considerations may also apply in the case of fund wind-ups.

4.7. Treatment of special designs

Appendix D sets out the agreed treatment of a number of benefit designs with the specified particular features which have resulted in queries being raised with the ATO. This does not preclude the adoption of alternative approaches where the actuary considers that it would be more appropriate or reasonable given the fund design.

Appendix A: Timeline, submissions and other information on NTCs

The table provides a summary of the timeline and the information available on NTCs, including the legislative history, Institute submissions to Treasury and related correspondence.

Some superannuation funds may have obtained legal or tax advice or ATO private rulings in order to implement NTCs based on their specific fund circumstances. Members should seek instructions from the applicable fund trustee.

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
5 September 2006	Federal Budget announcement	Treasurer Costello announced plans to simplify superannuation.	The "Simpler Super" reforms introduced caps on superannuation contributions. To implement these caps for defined benefit interests, the reforms also introduced methodology to calculate NTCs.
15 March 2007	Legislation	ITAA97 Subdivision 292-D: Modifications for defined benefit interests came into effect. The Act also provided for the grandfathering of defined benefit interests held on 5 September 2006 (the date the Budget measures were announced).	The main NTC amendments to ITAA97 were introduced via the *Tax Laws Amendment (Simplified Superannuation) Act 2007*. Minor wording amendments were introduced via the *Superannuation Legislation Amendment (Simplification) Act 2007*.
25 May 2007	Institute letter to Treasury	The Institute wrote to Treasury raising significant concerns regarding the NTC provisions in ITAR97.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-29199

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
1 July 2007	Regulation	ITAR Subdivision 292-D: Modifications for defined benefit interests came into effect and detailed how NTCs were to be calculated for defined benefit interests.	The main amendments to ITAR97 were introduced via the *Income Tax Assessment Amendment Regulations 2007 (No. 3)*.
8 August 2007	ATO response to the Institute	The ATO responded to the Institute's May 2007 letter on behalf of Treasury.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-28608
26 September 2007	Regulation	The NTC provisions in ITAR97 were amended in response to the Institute's concerns.	The main amendments to ITAR97 were introduced via the *Income Tax Assessment Amendment Regulations 2007 (No. 9)*.
March 2008	Institute Information Note	The Institute issued the Information Note: Simpler Super – Notional Taxed Contributions (subsequently reclassified as an Information Note).	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-58901
May 2008	ATO IDs	The ATO issued various Interpretative Decisions in relation to NTCs.	On the meaning of defined benefit members: • ATO ID 2008/77 defined benefit pensioners • ATO ID 2008/78 defined benefit deferred members • ATO ID 2008/79 on non-accruing defined benefit members ATO ID 2008/97 on exercise of a discretion.

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
			ATO ID 2008/98 on superannuation salary increases. ATO ID 2008/162 in relation to notional taxed contributions for the Public Sector Superannuation Scheme.
12 May 2009	Federal Budget announcement	Treasurer Swan announced superannuation changes, including a reduction in the annual concessional contributions cap.	
29 June 2009	Legislation	The ITAA97 was amended so that the annual concessional contributions cap was halved from $50,000 for the 2008-2009 financial year to $25,000 for the 2009-2010 financial year. The Act provided for the grandfathering of defined benefit interests held on 12 May 2009 (the date the Budget measures were announced).	The main amendments to ITAA97 were introduced via the *Tax Laws Amendment (2009 Budget Measures No. 1) Act 2009*.
9 July 2009	Regulation	The NTC provisions in the ITAR97 were amended to reflect the Federal Budget measures and ITAA97 changes.	The main amendments to ITAR97 were introduced via the *Income Tax Assessment Amendment Regulations 2009 (No. 3)*.
6 May 2010	Institute letter to Treasury	The Institute wrote to Treasury raising continuing concerns regarding the NTC provisions in ITAR97.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-22197

Date	**Event Type**	**Event**	**Additional comments / hyperlinks for Institute documents**
4 March 2011	Institute letter to Treasury	The Institute wrote to Treasury raising issues about concessional contribution limits and allocations from reserves to accumulation interests. These issues may affect accumulation interests of defined benefit members.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-22363 The reserve allocation issues are not covered in this Information Note.
8 May 2012	Federal Budget announcement	Treasurer Swan announced progressive increases to the SG rate to 12% and a reduction in the superannuation tax concessions for high income earners (known as Division 293 tax).	
1 July 2012	Legislation	The Division 293 tax came into effect.	With the exception of a small number of public sector funds, the notional defined benefit contributions applying for Division 293 tax purposes are equal to the member's NTCs that apply for concessional contribution limit purposes, except that no capping applies to the contributions used for Division 293 tax from 1 July 2013. (Capped NTCs were used for 2012/13 only.) For more information, see the Institute's "Information Note: Division 293 Tax – End Benefit Cap". https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-56981

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
6 September 2012	Institute letter to Treasury	The Institute wrote to the Treasury on Benefit Certificate changes due to increases in the SG rate. The letter reiterated NTC issues from the Institute's letter to Treasury dated 6 May 2010 and raised a new grandfathering issue where the salary definition for defined benefits changes due to SG increases.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-57087
12 February 2013	Institute letter to Treasury	The Institute wrote to Treasury to provide advance notice of the Institute's information note on NTC and SG increases. The letter also followed up on the NTC issues raised in the Institute's previous letters to Treasury.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-18265
March 2013	Institute Information Note	The Institute issued the Information Note: Notional Taxed Contributions and Superannuation Guarantee Increases (subsequently reclassified as a Technical Paper).	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-58875
29 June 2013	Legislation	Amendments to the NTC-related provisions in the ITAA97 and the Transitional Provisions Act	The main amendments were introduced via the *Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013*.

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
			Provisions in the ITAA97 were renumbered, the NTC provisions are now located now Subdivision 291-C (previously Subdivision 292-D). Some NTC provisions from the ITAA97 were moved to the Transitional Provisions Act, in particular the provisions on grandfathering on 5 September 2006 and on 12 May 2009.
27 October 2020	Institute letter to Treasury	The Institute wrote to Treasury in relation to the "*Remake of sunsetting Income Tax Assessment Regulations 1997*".	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-55955 The Institute raised concerns with wording in the draft regulations. These issues were resolved in the final wording of the Regulations.
1 April 2021	Regulation	The ITAR21 replaced the ITAR97.	
9 May 2023	Federal Budget announcement	Treasurer Chalmers announced a reduction in superannuation tax concessions for individuals with total superannuation balances exceeding $3 million.	
November 2023	Treasury consultation	Treasury consultation on the draft bill to introduce Division 296 of the ITAA97 which reduces the tax concessions for individuals with a total superannuation balance exceeding $3 million.	The draft bill is the *Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023*.

Date	Event Type	Event	Additional comments / hyperlinks for Institute documents
March 2024	Treasury consultation	Treasury consultation on draft regulations to implement the Division 296 measures.	The draft regulations were contained in the *Treasury Laws Amendment (Measures for Future Instruments) Instrument 2023: Better Targeted Superannuation Concessions* and included proposed updates to the assumptions used to calculate NTCs.
26 April 2024	Institute letter to Treasury	The Institute wrote to Treasury on its Division 296 draft regulations. The submission included concerns with the proposed updates to NTC assumptions, along with recommendations to address with some existing NTC issues.	https://content.actuaries.asn.au/resources/resource-ce6yyqn64sx3-2093352434-55567
1 July 2025	Legislation	The proposed date on which the Division 296 provisions come into effect.	The legislation remains outstanding.

Appendix B: Cross reference to Institute's letter to Treasury dated 6 May 2010

Section number in 6 May 2010 letter	Description of the issue	Current status	Cross reference to this Information Note
1.1	Loss of grandfathering due to new entrant age change on an SFT to an existing DB fund.	Still a significant outstanding issue.	Section 3.2.
1.2	Loss of grandfathering on an SFT due to regulation wording not allowing for exemption for compulsory category change under current fund rules (regulation wording only allowed for exemption for fund rules in force on 5 September 2006)	Resolved by amendment to relevant Regulations	Not covered.
1.3	Loss of grandfathering due to changes in actuarial assumptions not specified in the Regulations Related issue of when are NERs required to be re-calculated.	Still a significant outstanding issue. Uncertainties remain.	Section 3.1. Section 4.1.
1.4	Two contribution caps may apply in the year of an SFT.	Resolved as ATO now calculates the capped NTC amount.	Not covered.
1.5	Two salaries may apply in year of an SFT	Still an issue but always been a minor issue.	Section 4.4.3.
1.6	When is grandfathering lost?	Uncertainties remain however it is likely that funds have established their own practice given the passage of time.	Not covered.

Section number in 6 May 2010 letter	Description of the issue	Current status	Cross reference to this Information Note
1.7	Can grandfathering be lost and then regained?	Industry is operating on the basis that grandfathering cannot be regained.	Not covered.
2.1 to 2.5	Determination of W, X, Y and Z	Uncertainties remain	Issues summarised in Section 4.6. For detailed examples, see 6 May 2010 letter.
2.6 to 2.7	DB to accumulation conversions or winding up of DB fund		
3.1	Augmentations on retrenchment		
3.2	The inclusion of W, X, Y and Z in capped contributions	Largely fixed in the wording of the Regulations. The only outstanding issue is in relation to non-arm's length salary increase.	Section 4.5.
3.3	Augmentation of accumulation benefits in a DB fund	Practice established.	Not covered.
4.1	Accumulation contributions related to defined benefits	Practice established.	Not covered.
4.2	Pension indexation not meeting regulatory requirements could be considered to result in NTCs for pensioners.	Practice established.	Section 4.3.1.
4.3	Target benefit arrangements.	Issue affects few superannuation funds and practice established.	Not covered.

Section number in 6 May 2010 letter	Description of the issue	Current status	Cross reference to this Information Note
4.4	Anti-detriment augmentation of accumulation death benefits in a defined benefit fund.	No longer an issue as anti-detriment payments ceased from 1 July 2019.	Not covered.
4.5	Regulations out of order.	Resolved, correction made to the Regulations.	Not covered.

Appendix C: Cross reference to Information Note dated March 2008

Section number in 6 May 2010 letter	Description of the issue	Current status	Cross reference to this Information Note
1.1	Not an issue.		
1.2	Definition of sub-funds	Uncertainties remain, however it is likely that funds have established their own practice given the passage of time.	Section 4.2
1.3 and 1.4	The five-member rule – different NTC rules apply to funds/sub-funds with less than five defined benefit members as at 1 July 2007. Funds with less than five defined benefit members may be considered to meet this rule under some circumstances specified by the Regulations. When NTCs were introduced, there were uncertainties as to who were considered defined benefit members for the purposes of this rule.	The ATO has issued ATO IDs 2008/77, 2008/78 and 2008/79 clarifying that defined benefit pensioners, deferred and frozen benefit members are considered defined benefit members (as well as currently accruing defined benefit members) for the purposes of this rule.	Not covered.
1.5	NTCs – nil amount	Some uncertainties remain.	Section 4.3.

Section number in 6 May 2010 letter	**Description of the issue**	**Current status**	**Cross reference to this Information Note**
1.6	Loss of grandfathering for 6 September 2006 members due to transfers or category changes between 6 September 2006 Budget announcement and final NTC Regulations being released, as well as measurement of high salary increases.	Historical issue only. The ATO has issued AT ID 2008/98 clarifying the question around measurement of high salary increases.	Not covered.
1.7	Not an issue.		
1.8	Calculation of new entrant age	Largely a historical issue when the new entrant age needed to be determined when NTCs were first introduced. Uncertainties remain in relation to SFTs into an existing defined benefit fund/sub-fund, or in the rare instances of setting up a new defined benefit.	Not covered. Section 3.2.
1.9	Benefit options – member choice	ATO ID 2008/97 confirms that a benefit choice made by the member (for example, between a lump sum and a pension benefit) is not considered to be the exercise of a discretion as referred to in Part 4 of Schedule 1A of the Regulations.	Not covered.

Section number in 6 May 2010 letter	Description of the issue	Current status	Cross reference to this Information Note
1.10	Discretions required to be allowed for under Part 2.5 of Schedule 1A of the Regulations	ATO clarification received.	Section 4.5.
1.11	Treatment of part-timers	ATO clarification in advice to the Institute dated August 2007.	Section 4.4.2
1.12	Treatment of special designs	Practice established, 2008 examples are included in this Information Note for information.	Appendix D

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Appendix D: Treatment of special designs

Section A: Designs with Variable Rates of Accrual

Where the benefit design is such that the accrual rate varies with either age or service, it is not clear whether only one benefit category applies (based on the average new entrant age) or, for example, a separate benefit category is required for each accrual rate.

Examples of such designs are:

- a retirement benefit rate of accrual of 15% to age 40 then 20% to age 65,
- a retirement benefit rate of accrual of 15% for members joining up to age 40, 20% for members joining on or after age 45, and a multiple of 4.00 for members joining between 40 and 45 (i.e.. a rate of accrual of between 15% and 20%)
- a retirement benefit rate of accrual of 10% for the first 10 years of membership and 20% thereafter, and
- the Retirement Benefit Multiple (RBM) at age 65 is 20% x membership with a maximum RBM of 7.00 and a pro-rata approach to the determination of the accrued multiple prior to age 65. Hence members joining under age 30 have an accrual rate of less than 20%.

The ATO has confirmed that each of the above designs can be treated as a single benefit category with the design based on that applicable to the hypothetical new entrant at the fund-based new entrant age.

This is because, although the rates of accrual vary between members joining at different ages, each hypothetical new entrant to the benefit category **at the same entry age** would accrue retirement benefits on the same basis. Hence each design meets the definition of benefit category under Clause 1.2 of Schedule 1A of the Regulations.

While this approach may arguably 'overstate' or 'understate' the NER for some members and potentially lead to some anomalies, this is considered acceptable taking into account the simplifying assumptions already inherent in the methodology, the purpose for which the NERs are to be used and the small number of cases which are likely to approach the concessional limits.

The ATO has also indicated that its agreement to the above approach does not preclude the adoption of alternative approaches where the actuary considers that it would be more appropriate or reasonable given the fund design.

Section B: Maximum Average Accrual Rate (“Catch-Up”) Design – Benefit Categories

For the purpose of the issues addressed in this Section and Section C, we will use a hypothetical fund (the XYZ Super Plan) which has two design features which generate questions in regard to the determination of NERs.

These features, which affect a number of funds in practice, are:

- A varying rate of accrual depending on the member contribution rate in combination with a maximum accrued multiple (12% times years of membership), and
- The fact that, while the accrual of defined benefits requires members to make contributions, the member contributions do not go towards funding of the salary-related defined benefit but rather go towards an additional accumulation-style benefit (refer Section C issue).

The XYZ Super Plan defined benefit design allows Contributory Members a choice of contribution rates of 2% to 10%. The rate of accrual is equal to the member contribution rate plus 7% for each year of membership, subject to a maximum accrued multiple of 12% times years of membership (i.e. the accrued multiple which would apply if the member contribution rate had been 5% throughout membership). Members may also choose to be Non-Contributory, in which case there is a zero accrual rate (and the employer makes SG contributions to an accumulation account for the member).

While the accrual of defined benefits requires members to make contributions, the accumulation of member contributions plus interest is paid *in addition to* the accrued multiple times final average salary.

Essentially this design is aimed at allowing members who have contributed less than 5% in the past to make ‘catch-up’ contributions of 6% to 10% in order to ‘catch-up’ to the maximum accrued multiple. However technically a member could ‘catch-up’ in advance, by contributing more than 5% for a period and then less than 5% for a period to achieve the same multiple as a member who had done the reverse or who had contributed at 5% throughout.

Once a member on a contribution rate of 6% to 10% has ‘caught-up’ to the maximum accrued multiple, application of the maximum multiple (which accrues at 12% each year regardless of the member contribution rate) means that their effective accrual rate will fall back to the 12% rate which applies to a 5% contributor.

The question therefore arises as to whether the NER for a 10% contributor (for example) should be based on the standard 17% accrual rate which would apply for a 10% contributor in ‘catch-up’ mode or the 12% accrual rate which would apply if they have already accrued the maximum multiple for their membership period.

A similar question may also apply to members contributing 2%, 3% or 4%. If they have contributed 5% or less on average in the past, they will effectively be accruing at the standard 9%, 10% or 11% rate respectively. However if they have contributed more than 5% on average in the past (and hence their accrued multiple is currently being restricted to the maximum), they will effectively be accruing at the 12% rate of accrual at which the maximum multiple accrues, until their average contribution rate falls below 5%.

The question therefore may also arise as to whether the New Entrant Rate for a 2% contributor (for example) based on the standard 9% accrual rate can also be applied for a 2% contributor if they effectively had a 12% accrual rate (for a limited period) due to contributing more than 5% on average in the past.

For the purpose of this question, let us say the NERs are as set out in the following table, depending on the approach taken (as set out below the table):

Member Contribution Rate	Provisional New Entrant Rate			
	Approach 1	Approach 2	Approach 3	
			Standard	Non-Standard
0%	0%	0%	0%	8%
2%	6%	6%	6%	8%
3%	7%	7%	7%	8%
4%	7%	7%	7%	8%
5%	8%	8%	8%	Not applicable
6%	8%	9%	9%	8%
7%	8%	10%	10%	8%
8%	8%	10%	10%	8%
9%	8%	10%	10%	8%
10%	8%	11%	11%	8%

Approach 1

Under Approach 1, the hypothetical new entrant to each category is assumed to join that category when first joining the plan and to remain in the category throughout service. Under this approach, due to the maximum accrued multiple rule, members contributing 6% to 10% would accrue the same defined benefit (12% of final average salary for each year of membership) as those contributing 5%. Hence their NER is the same as the 5% contribution category.

- This is a simple approach.
- It is arguably generous to members contributing 6% to 10% for any period when they are accruing at more then 12% as their NER is arguably understated, but the understatement is only up to 3% (i.e. a NER of 8% for 10% Contributors as compared with an NER of 11% under Approach 2) and the period of 'understatement' will be limited to when they catch up to the maximum accrued multiple.

- It is also arguably generous to members contributing 0% to 4% for any period when they are accruing at 12% because they have contributed more than 5% on average in the past, but this period will be limited to when their average contribution rate falls to 5%.

Approach 2

Under Approach 2, the maximum accruing multiple is ignored for members contributing 6% to 10% (i.e. effectively they are assumed to have enough <5% membership so the maximum multiple does not kick in), so the hypothetical new entrant in each category is assumed to remain in the category throughout service and to accrue at their member contribution rate plus 7% throughout service.

- This is a reasonably simple approach.

- The assumption that the maximum accrued multiple will not apply through to age 65 is unrealistic for most new entrant ages (i.e. 40 or below).

- It arguably overstates the NER for members contributing 6% to 10% for any period when they are only accruing at 12%. While they could elect to move to the 5% contributory category without reducing their current defined benefit accrual rate, they are likely to consider this approach unfairly penalises them.

- As for Approach 1, this approach is arguably generous to members contributing 0% to 4% for any period when they are accruing at 12% because they have contributed more than 5% on average in the past, but this period will be limited to when their average contribution rate falls to 5%.

Approach 3

Under Approach 3, the categories of members contributing other than 5% are each treated as forming two benefit categories, split according to whether the member's current accrual rate is the standard rate for that category or at the 12% rate which applies to the 5% category. The Standard accrual rate benefit category would use the Approach 2 NER and the Non-Standard benefit category would receive the 5% category NER.

- This is arguably the most equitable approach insofar as the NER is consistent with the member's accrual rate at any point in time.

- However it is a more complicated approach which will require considerable additional administrative effort to split members of 9 categories (0% - 4% and 6% - 10%) into 18 categories and re-categorise them whenever required e.g. when a 10% contributor reaches the point at which they have contributed more than 5% on average in the past, they will need to be moved from the Standard 10% (Catch-up) benefit category to the Non-Standard 10% (Non Catch-up) benefit category.

- It is also more complex to communicate to members.

- The Standard NER assumption that the maximum accrued multiple will not apply through to age 65 is unrealistic for most new entrant ages (i.e. 40 or below).

Institute's Recommended Approach

The Institute recommended that the ATO accept Approach 1 as it is the simplest approach and considered to be the most consistent with the new entrant rate methodology adopted for notional taxed contribution rates. While this approach could arguably be generous to members in certain circumstances, the level of 'understatement' is generally expected to be minor and to apply only for limited periods.

The ATO has confirmed that it will accept Approach 1 for the above and similar catch-up designs which are in place at 1 July 2007.

However, noting that it would be possible to design 'catch-up arrangements' which have far greater levels of 'understatement' than the above hypothetical fund, the ATO has advised that the application of Approach 1 to any new designs, or modification or extensions to existing catch-up designs, be subject to the approval of the ATO in each instance.

The ATO has also indicated that its agreement to the above approach does not preclude the adoption of alternative approaches where the actuary considers that it would be more appropriate or reasonable given the fund design.

Section C: Treatment of Member Contributions in Hybrid Design

As noted above, the design of the XYZ Plan defined benefits requires members to make a contribution (e.g. 5%, which may be via salary sacrifice of 5%/0.85 = 5.88%) in order to be eligible for a salary-related defined benefit which is fully employer-sponsored i.e. the benefit is a hybrid comprising the employer-sponsored multiple of salary benefit plus the member-sponsored (in many instances via salary sacrifice) accumulation of the compulsory member contributions with interest.

In this case, it is unclear from the Regulations whether the benefit used in determining the NER should be inclusive or exclusive of the accumulation of the compulsory member contributions with interest i.e. should the NER be based on:

- just the cost of the salary-related defined benefit (sample rates as set out in the table above); or
- the cost of the salary-related defined benefit plus the member contribution rate?

It would be possible to take the view that the accumulation of the compulsory member contributions with interest is not a defined benefit and therefore should not be included in the NER.

However, if this approach is taken, the ‘cap’ which was designed to protect defined benefit members (subject to conditions) from excess contributions tax in respect of their existing defined benefits, would be ineffective for any member whose compulsory member contributions are paid by salary sacrifice. Such a member would not be able to maintain their defined benefit if they cease their compulsory member contributions but these would not be included in the notional taxed contributions subject to the cap.

Looking from this viewpoint leads to the view that the NER should be determined including allowance for the accumulation of the compulsory member contributions with interest. The NERs for the XYZ Plan would then be the sample rates as set out in the table above plus the member contribution rate of 0% to 10% (after allowance for contributions tax in the case of salary sacrifice contributions) as applicable to the category.

The ATO has NOT accepted this interpretation.

The Institute has not further pursued this issue. However, it remains open for trustees of funds with designs similar to that of the above scheme to write to the ATO to seek an interpretation of the regulations as they apply to their scheme.

End of Information Note

Document Control

Document Control				
Version	**Title of Document**	**Name of approving Council or Committee**	**Date of approval**	**Date of publication**
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