



## WILLS & ESTATES | Issue No. 21 | 1 July is coming – estate planning and changes to superannuation

April 2017

The much anticipated superannuation changes are fast approaching, taking effect on 1 July 2017. In the three months left before the changes take effect, it is important that those involved in estate planning understand exactly how the changes may affect a person's estate plan.

There are quite a number of changes to superannuation coming however, this update will focus on the two main changes that could have estate planning consequences: the abolishment of anti-detriment payments and the introduction of the transfer balance cap.

The abolishment of the anti-detriment payment will only impact a person's estate plan if the payment was being relied upon and integral to a person's estate plan. If the payment is an integral part of a person's estate plan, then the estate plan will need to be redone to take into account the fact that the payment will not be received, unless death occurs before 30 June 2017.

The biggest change that will impact estate planning, particularly for those people with large balances in their pension accounts, is the introduction of the transfer balance cap. Briefly, from 1 July 2017, every person receiving a pension will start with a transfer balance cap. The transfer balance cap will be indexed but it will start at \$1.6 million. Balances exceeding the cap will be taxed.

Two key estate planning tools – the reversionary pension and the binding death benefit nomination – which have been widely used and considered by many to be essential parts of an estate plan because they give certainty, will require careful use and evaluation going forward.

For example, say that Bill and Hillary each have \$1 million in their pension accounts with reversionary pensions to each other in the event of their deaths. When Bill dies, his pension account balance is \$800,000 and Hillary's transfer balance account is \$1 million. Bill's pension account balance will be added to Hillary's transfer balance account one year after Bill's death.

Stricken with grief, Hillary does nothing about her finances.

Exactly one year after Bill's death, because the pension is reversionary and therefore no discretion can be exercised, \$800,000 gets added to Hillary's transfer balance account. Her transfer balance cap account now exceeds \$1.6 million by \$200,000, upon which she will be taxed.

Even though Hillary had a year to do something to fix her pension situation, in this example she didn't and there was nothing that could be done once that one year anniversary of Bill's death happened. Hillary would therefore have been hit with a tax bill.

In that year following Bill's death, Hillary may have been able to fix the pension situation by:

- taking some of Bill's pension as a lump sum; or
- commuting some of her pension back to her accumulation account.

If she ends up with a large accumulation account, Hillary will then need to consider whether a binding death benefit nomination should be used as part of her estate plan.

---

*“The biggest change that will impact estate planning, particularly for those people with large balances in their pension accounts, is the introduction of the transfer balance cap.”*

---

The key takeaway from the above example is that using reversionary pensions as an estate planning tool will require careful consideration going forward to avoid unintended consequences for people like Hillary who, due to circumstance, are not prompt in dealing with changes in their circumstances.

Those involved in estate planning will serve their clients best by carefully considering whether the estate plan that has been crafted for them will, after 1 July 2017, achieve their estate planning objectives.



**Chris Herrald\***

Senior Associate

**Mullins Lawyers**

t +61 7 3224 0256

cherrald@mullinslaw.com.au



**Michael Klatt**

Partner

**Mullins Lawyers**

t +61 7 3224 0370

mklatt@mullinslaw.com.au

\*Chris Herrald is currently on parental leave. If you have any questions about this eNews article, please contact Michael Klatt