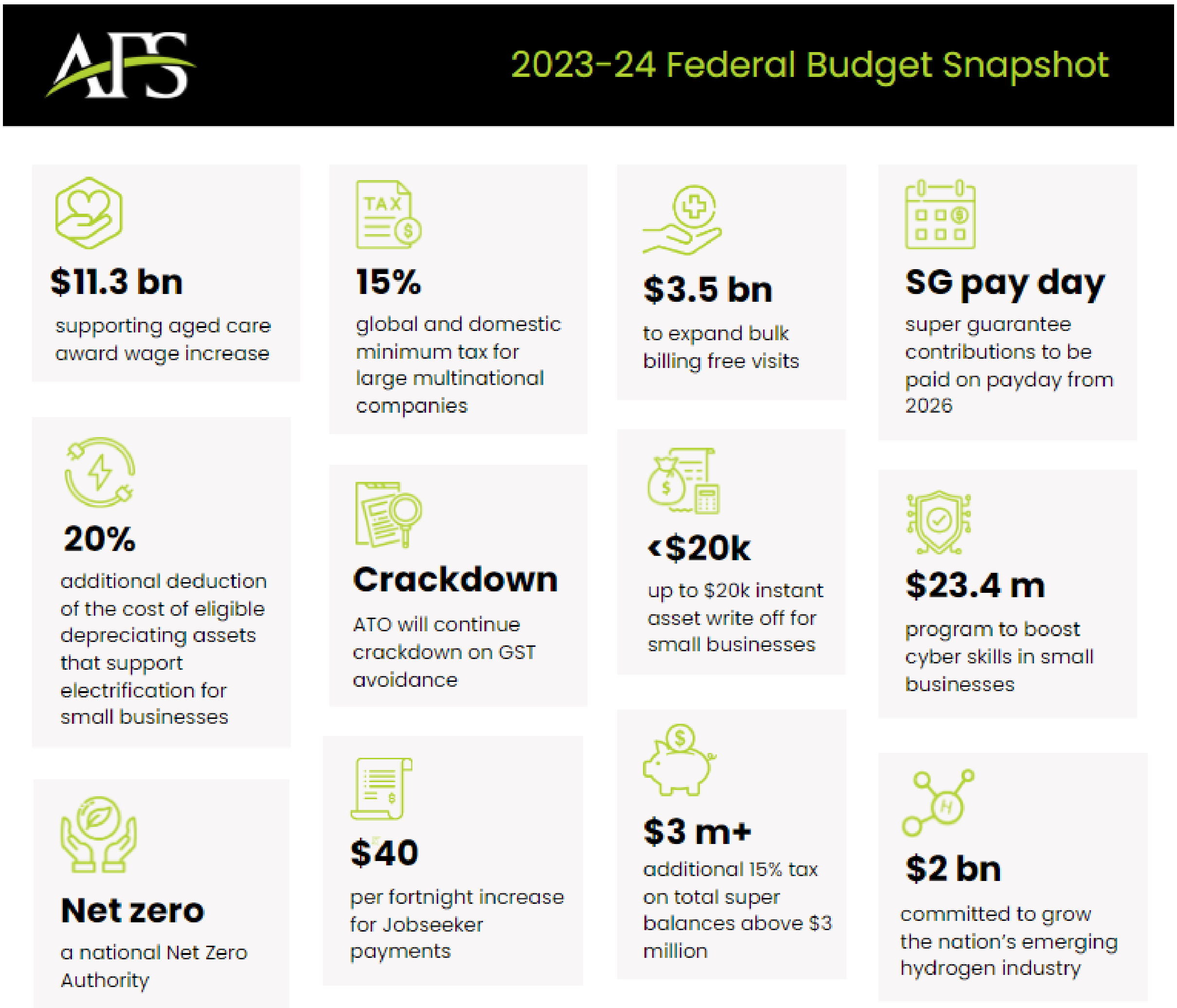
On Tuesday, 9 May 2023, Treasurer Jim Chalmers handed down the 2023-24 Federal Budget, his 2nd Budget, which follows the October 2022 Budget.

The Treasurer announced a package of cost-of-living measures designed to provide relief without adding inflationary pressures.

A Budget surplus of $4.2bn is forecast in 2022-23, but an underlying cash deficit of $13.9bn is expected in 2023-24 (and a $35.1bn deficit for 2024-25). The Budget papers note that the global economic outlook has deteriorated and is highly uncertain with persistent inflation and rising interest rates expected to slow real GDP growth from 3.25% in 2022-23 to 1.5% in 2023-24, before rising to 2.25% in 2024-25. While inflation remains elevated at 6% for this year, it is expected to fall to 3.25% in 2023-24 and return to the RBA's target band of 2-3% in 2024-25. The Government also believes that its cost-of-living measures will take 0.75 of a percentage point off inflation in 2023-24.

Federal Budget snapshot



Executive summary

The major tax-related measures announced in the Budget included:

- **Small businesses instant asset write-off threshold** – to be increased to $20,000 for 2023-24 for businesses with aggregated annual turnover of less than $10m. The $20,000 threshold will apply on a per asset basis;
- **Small Business Energy Incentive** – businesses with annual turnover of less than $50m will be able to claim an additional 20% deduction on spending that supports electrification and more efficient use of energy. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024;
- **Small business lodgement penalty amnesty** – will be provided for small businesses with aggregate turnover of less than $10m to encourage them to re-engage with the tax system. The amnesty will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023 that were originally due between 1 December 2019 to 29 February 2022;
- **Small business unpaid tax and super** – additional funding from 1 July 2023 to assist the ATO to engage with taxpayers who have high-value debts over $100,000 and aged debts older than 2 years where those taxpayers are either public and multinational groups with an aggregated turnover of greater than $10m, or privately owned groups or individuals controlling over $5m of net wealth;
- **PAYG and GST instalment uplift factor** – 6% for 2022-23 (being lower than the 12% rate that would otherwise have applied under the statutory formula);
- **General anti-avoidance provisions (Pt IVA)** – scope to be expanded to catch 2 additional types of scheme from 1 July 2024, regardless of whether the scheme was entered into before that date;
- **FBT rules for electric vehicles (EVs)** – the eligibility of plug-in hybrid electric cars will sunset from 1 April 2025 from the FBT exemption for eligible electric cars;
- **Build-to-rent properties** – for eligible new build-to-rent projects where construction commences after Budget night, the Government will:
  - increase the rate for the capital works tax deduction (depreciation) to 4% per year;
  - reduce the final withholding tax rate on eligible fund payments from managed investment trust (MIT) investments from 30% to 15%.
- **Non-arm's length income (NALI)** – the amount of non-arm's length expenses (NALE) taxed at 45% as NALI will be limited to twice the level of a general expense from 1 July 2023 for SMSFs and small APRA funds. In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund;
- **Super account balances above $3m** – the Budget confirmed the Government's intention to apply an additional 15% tax on total superannuation balances above $3 million from 1 July 2025;

- **Payday super** – employers will be required to pay their employees' super guarantee at the same time as their salary and wages from 1 July 2026;
- **Pension drawdowns: no reduction in minimum** – the Budget did not announce a further extension to 2023-24 of the temporary 50% reduction in the minimum annual payment amounts for superannuation pensions and annuities.

Personal taxation

Personal tax rates unchanged for 2023-24; Stage 3 start from 2024-25 unchanged

In the Budget, the Government did not announce any personal tax rates changes. The Stage 3 tax changes commence from 1 July 2024, as previously legislated.

The 2023–2024 tax rates and income thresholds for residents (unchanged since 2021–2022) are:

- taxable income up to $18,200 – nil;
- taxable income of $18,201 to $45,000 – nil plus 19% of excess over $18,200;
- taxable income of $45,001 to $120,000 – $5,092 plus 32.5% of excess over $45,000;
- taxable income of $120,001 to $180,000 – $29,467 plus 37% of excess over $120,000; and
- taxable income of more than $180,001 – $51,667 plus 45% of excess over $180,000.

Stage 3: from 2024–2025

The Budget did not announce any changes to the Stage 3 personal income tax changes, which are set to commence from 1 July 2024, as previously legislated. From 1 July 2024, the 32.5% marginal tax rate will be cut to 30% for one big tax bracket between $45,000 and $200,000. This will more closely align the middle tax bracket of the personal income tax system with corporate tax rates. The 37% tax bracket will be entirely abolished at this time.

Therefore, from 1 July 2024, there will only be three personal income tax rates: 19%, 30% and 45%. From 1 July 2024, taxpayers earning between $45,000 and $200,000 will face a marginal tax rate of 30%. With these changes, around 94% of Australian taxpayers are projected to face a marginal tax rate of 30% or less.

Low income tax offset for 2023-24 (unchanged)

As a reminder the LMITO has now ceased, low and middle income taxpayers remain entitled to the low income tax offset (LITO). No changes were made to the LITO in the 2023-24 Budget.

The maximum amount of the LITO is $700. The LITO is withdrawn at a rate of 5 cents per dollar between taxable incomes of $37,500 and $45,000 and then at a rate of 1.5 cents per dollar between taxable incomes of $45,000 and $66,667.

Medicare levy low-income thresholds for 2022-23

For the 2022-23 income year, the Medicare levy low-income threshold for singles will be increased to $24,276 (up from $23,365 for 2021-22). For couples with no children, the family income threshold will be increased to $40,939 (up from $39,402 for 2021-22). The additional amount of threshold for each dependent child or student will be increased to $3,760 (up from $3,619).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold will be increased to $38,365 (up from $36,925 for 2021-22). The family threshold for seniors and pensioners will be increased to $53,406 (up from $51,401), plus $3,760 for each dependent child or student.

Date of effect
The increased thresholds will apply to the 2022-23 and later income years.

Business taxation

Start dates for global minimum tax and domestic minimum tax under Two Pillar Solution

The Government will implement 2 key aspects of Pillar Two of the OECD/G20 Two-Pillar Solution to address the tax challenges arising from digitalisation of the global economy:

- a 15% global minimum tax for large multinational enterprises with the Income Inclusion Rule ("IIR") applying to income years starting on or after 1 January 2024 and the

Undertaxed Profits Rule ("UTPR") applying to income years starting on or after 1 January 2025. The IIR imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity, while the UTPR denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under the IIR; and

- a 15% domestic minimum tax applying to income years starting on or after 1 January 2024.

The global minimum tax and domestic minimum tax will be based on the OECD Global Anti-Base Erosion Model Rules, which are designed to ensure large multinationals pay an effective minimum level of tax on the income arising in each jurisdiction in which they operate.

The global minimum tax rules allow Australia to apply a top up tax on a resident multinational parent or subsidiary company where the group's income is taxed below 15% overseas.

A domestic minimum tax will give Australia first claim on top-up tax for any low-taxed domestic income. In a small number of instances, a large multinational company's effective Australian tax rate may fall below 15%. In these instances, the domestic minimum tax applies so that Australia collects the revenue that would otherwise have been collected by another country's global minimum tax.

Small business instant asset write-off: $20,000 threshold for 2023–2024

The Government will temporarily increase the instant asset write-off threshold to $20,000 from 1 July 2023 to 30 June 2024.

Small businesses, ie those with aggregated annual turnover of less than $10 million, will be able to immediately deduct the full cost of eligible assets costing less than $20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024. The $20,000 threshold will apply on a per asset basis, so small businesses can instantly write off multiple assets.

Assets valued at $20,000 or more (which cannot be immediately deducted) can continue to be placed into the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter.

Small Business Energy Incentive: 20% bonus deduction

The Budget papers confirmed that the Small Business Energy Incentive will provide businesses with annual turnover of less than $50 million an additional 20% deduction on spending that supports electrification and more efficient use of energy. This measure was originally announced by the Treasurer on 30 April 2023.

The Small Business Energy Incentive will apply to a range of depreciating assets, as well as upgrades to existing assets. These will include assets that upgrade to more efficient electrical goods such as energy-efficient fridges, assets that support electrification such as heat pumps and electric heating or cooling systems, and demand management assets such as batteries or thermal energy storage.

However, certain exclusions will apply, such as:

- electric vehicles;
- renewable electricity generation assets;
- capital works; and
- assets that are not connected to the electricity grid and use fossil fuels.

Up to $100,000 of total expenditure will be eligible for the incentive, with the maximum bonus tax deduction being $20,000 per business.

Date of effect
Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024. Full details of eligibility criteria will be finalised following consultation.

Small business lodgement penalty amnesty; integrity measure to target unpaid tax and super

The Government announced that a lodgment penalty amnesty program will be provided for small businesses with aggregate turnover of less than $10 million to encourage them to re-engage with the tax system.

The amnesty will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023 that were originally due during the period from 1 December 2019 to 29 February 2022.

Integrity measure to target unpaid tax and super

The Government will also provide funding from 1 July 2023 over 4 years to assist the ATO to engage more effectively with businesses to address the growth of tax and superannuation liabilities.

The additional funding will facilitate ATO engagement with taxpayers who have high-value debts over $100,000 and aged debts older than 2 years where those taxpayers are either public and multinational groups with an aggregated turnover of greater than $10 million, or privately owned groups or individuals controlling over $5 million of net wealth.

PAYG and GST instalment uplift factor: 6% for 2022-23

The Budget papers state that the GDP uplift factor for PAYG and GST instalments will be set at 6% for the 2023-24 income year. The papers state that this uplift factor is lower than the 12% that would have applied under the statutory formula.

Date of effect

The 6% GDP uplift rate will apply to small to medium enterprises eligible to use the relevant instalment methods (up to $10 million annual aggregated turnover for GST instalments and $50 million annual aggregated turnover for PAYG instalments) in respect of instalments that relate to the 2023-24 income year and fall due after the enabling legislation receives assent. This measure is estimated to have no net impact on receipts.

Meaning of “exploration” and “mining, quarrying and prospecting rights”: amendments in response to Shell Energy

The Government will amend the Petroleum Resource Rent Tax (“PRRT”) legislation to ensure the PRRT and income tax legislation operate as intended following the Full Federal Court’s decision in *FCT v Shell Energy Holdings Australia Limited* [2022] FCAFC 2.
The amendments will clarify that “exploration for petroleum” is limited to the “discovery and identification of the existence, extent and nature of the petroleum resource” and does not extend to activities and feasibility studies directed at evaluating whether the resource is commercially recoverable. Note that the amendments will apply to all expenditure incurred from 21 August 2013.

The amendments will also clarify that mining, quarrying and prospecting rights (“MQPRs”) cannot be depreciated for income tax purposes until they are used (not merely held) and will limit the circumstances in which the issue of new rights over areas covered by existing rights lead to tax adjustments. These amendments will restore the policy intent of the law and apply in respect of all MQPRs acquired or started to be used after 7:30 pm (AEST) on 9 May 2023.

Scope of anti-avoidance provisions to expand

The Government will expand the scope of the general anti-avoidance provisions in Pt IVA of the ITAA 1936 so that they can apply to:

- schemes that reduce tax paid in Australia by accessing a lower withholding tax rate on income paid to foreign residents. Part IVA already applies to schemes that produce a tax benefit by not having any withholding tax liability in respect of an amount paid to a foreign resident; and
- schemes that achieve an Australian income tax benefit, even where the dominant purpose was to reduce foreign income tax.

This measure will apply to income years commencing on or after 1 July 2024, regardless of whether the scheme was entered into before that date.

Patent box measures

The Government states that it will not proceed with 3 separate patent box measures announced in the 2021-22 and 2022-23 Budgets (by the former Government). This relates to introduction of concessional tax treatment for eligible corporate income associated with new patents in the medical and biotechnology sectors (referred to "patent box" income).

Capital raisings and franked distributions

The Budget papers confirm that the start date for the measure to make certain distributions funded by capital raisings unfrankable has been changed from the original 19 December 2016 to 15 September 2022. This change is encapsulated in the Bill currently before Parliament.

Build-to-rent properties: MIT withholding rate down

The Budget Papers confirm the earlier announcement by the PM to implement the following measures designed to increase the supply of housing. For eligible new build-to-rent projects where construction commences after Budget night, the Government will:

- increase the rate for the capital works tax deduction (depreciation) to 4% per year;

- reduce the final withholding tax rate on eligible fund payments from managed investment trust (MIT) investments from 30% to 15%.

Build-to-rent properties: building allowance up

This measure will apply to build-to-rent projects consisting of 50 or more apartments or dwellings made available for rent to the general public. The dwellings must be retained under single ownership for at least 10 years before being able to be sold and landlords must offer a lease term of at least 3 years for each dwelling.

Currently, Div 43 of the ITAA 1997 allows for a deduction of capital expenditure incurred in constructing income producing buildings (and certain structural improvements). The rate for income-producing buildings constructed after 27 February 1992 is 2.5%, other than short-term traveller accommodation and industrial buildings (which are eligible for a 4% rate).

FBT rules for Electric Vehicles: rules for plug-in hybrids to sunset

The Budget papers state that the Government will sunset the eligibility of plug-in hybrid electric cars from the FBT exemption for eligible electric cars. This change will apply from 1 April 2025.

Arrangements involving plug-in hybrid electric cars entered into between 1 July 2022 and 31 March 2025 remain eligible for the Electric Car Discount.

It can be noted that while the Government seems to be stating that it will implement the sunset, this measure is already enacted by the Treasury Laws Amendment (Electric Car Discount) Act 2022. The was the result of a Senate amendment put forward by Senator Pocock and the Greens: see 2022 WTB 50 [999].

The other amendment that made it to the amending Act was that a review must be undertaken in 2025 to determine the effectiveness of the measures it contains.

GST compliance program extended by 4 years

The Government will provide $588.8 million to the ATO over 4 years from 1 July 2023 to continue a range of activities that promote GST compliance.

These activities will ensure businesses meet their tax obligations, including accurately accounting for and remitting GST, and correctly claiming GST refunds. Funding through this extension will also help the ATO develop more sophisticated analytical tools to combat emerging risks to the GST system.

Reducing compliance cost for general insurers – amendment to account for AASB17

The Government will introduce legislation to amend the tax law to minimise the regulatory burden facing the general insurance industry.

The introduction of the new accounting standard, AASB17 Insurance Contracts, has meant that the tax law is no longer aligned with accounting standards.

The amendment will allow general insurers to continue to use audited financial reporting information, which is calculated according to the new standard, as the basis for their tax returns.

The measure will have effect for income years commencing on or after 1 January 2023.

Superannuation

Super fund NALI to be capped at twice general expense under NALE rules

The non-arm's length income (NALI) provisions in s 295-550 of the ITAA 1997, as they apply to non-arm's length expenses (NALE), will be amended to limit the income taxable as NALI to twice the level of a general expense for SMSFs and small APRA funds.

In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund. Expenditure that occurred prior to the 2018-19 income year will also be exempted.

These proposed changes follow industry concerns regarding the ATO's interpretation of the NALE provisions in Law Companion Ruling LCR 2021/2, and the implications of the ruling for both APRA-regulated funds and SMSFs.

Date of effect
Not specified. However, a Government consultation paper, previously released on 23 January 2023, indicated that any proposed legislative amendments in relation to the NALE rules would apply from 1 July 2023.

Background
Currently, NALE of a "general nature" (eg accounting fees, actuarial costs, audit fees, investment adviser fees and compliance costs) may still have a sufficient nexus to all of the income of a fund. As a result, if an SMSF incurs a small fund expense that is not on arm's length terms, all of the income derived by the fund (including taxable contributions and capital gains) could be taxable at 45%. The Budget changes propose to limit the income taxable at 45% as NALI to twice the level of such a general expenses.
The Government's consultation paper (noted above) was released as part of a review to consider amendments to ensure the NALE provisions operate as intended. Although the consultation paper did not represent a settled position of the Government at that time, it proposed a factor-based approach whereby the maximum amount of fund income taxable as NALI at the highest marginal rate (45%) would be 5 times the level of the general expenditure breach. This would be calculated as the difference between the amount that would have been charged as an arm's length expense and the amount that was actually charged to the fund. Where the product of 5 times the breach is greater than all fund income, all fund income will be taxed at the highest marginal rate.

A Treasury official confirmed in the Budget Lock-up that the Government will proceed with the factor-based approach set out in the consultation paper but it will now adopt a 2 times factor (instead of a 5 times factor). At the current highest marginal tax rate of 45%, a maximum effective tax rate of 90% (2 times 45%) will be applied to a general expenditure breach (down from the 225% originally proposed). It is expected that trustees would self-assess an arm's length price (based on objective and supportable data) when applying this calculation method.

Super tax changes for account balances above $3m confirmed, but no further details

The Government confirmed its intention to implement superannuation tax changes for individuals with account balances above $3 million from 1 July 2025, including in relation to defined benefit schemes.

However, the Budget Papers did not reveal any further details.

Background
Currently, fund earnings from superannuation in the accumulation phase are taxed at up to 15%. This 15% tax rate will continue for total superannuation balances below $3m but individuals will pay an extra 15% for balances above that amount.

In response to the Government's consultation paper, the SMSF Association has called for super funds to be given the option of reporting "actual earnings" rather than the proposed model which would calculate earnings based on the movement in the member's TSB, which by definition, includes "unrealised gains". In its submission, the Association set out numerous reasons why certain amounts would need to be excluded from an individual's TSB to avoid "earnings" being overstated under the proposed model.

Super to be paid on employees' payday from 1 July 2026

The Budget papers confirmed the Government's intention to require all employers to pay their employees' super guarantee at the same time as their salary and wages from 1 July 2026. This payday super measure was originally announced by the Treasurer on 2 May 2023.

Treasury and the ATO are expected to consult closely with industry and stakeholders on these changes in the second half of 2023. The final design will be considered as part of the 2024-25 Budget.

More funding to recover unpaid super; ATO to be set enhanced targets

The ATO will receive $40.2 million in additional resourcing to help it detect unpaid super payments earlier. It is estimated that $3.4 billion worth of super went unpaid in 2019-20.

The Government will also set enhanced targets for the ATO for the recovery of payments.

Date of effect
The proposed 1 July 2026 start date for payday super is intended to provide sufficient time for employers, superannuation funds, payroll providers and other parts of the superannuation system to prepare for the change.

Super pensions: No reduction in minimum drawdowns for 2023-24

The Budget did not announce a further extension to 2023-24 of the temporary 50% reduction in the minimum annual payment amounts for superannuation pensions and annuities. As a result, the 50% reduction in the minimum pension drawdowns, which has applied for the 2019-20, 2020-21 and 2021-22 and 2022-23 income years, is set to end on 30 June 2023.

Accordingly, superannuation trustees and members will need to start planning for the additional cash flow requirements to satisfy the minimum annual payment amounts for 2023-24 in relation to account-based, allocated and market linked pensions.

Other measures

Excise on tobacco to increase sharply

The Government will increase tobacco excise and excise-equivalent customs duty by 5% per year for 3 years from 1 September 2023, in addition to ordinary indexation.

The Government will also align the tax treatment of tobacco products subject to the per kilogram excise and excise-equivalent customs duty (such as roll-your-own tobacco) with the manufactured per-stick rate, by progressively lowering the “equivalisation weight” from 0.7 to 0.6 grams. These progressive decreases will occur on 1 September each year from 2023, with the new weight coming fully into effect from 1 September 2026. This will raise the per kilogram duty accordingly.

The Government will expand compliance activity to address illicit tobacco and work with relevant agencies and State and Territory governments to develop an appropriate multi-jurisdictional approach.

Anti-money laundering agencies to receive additional funding

The Government will provide $14.3 million over 4 years from 2023-24 to support policy and legislative reforms to harden Australia against illicit financing and evaluation of Australia’s anti-money laundering framework. Funding includes:

- $8.6 million over 3 years from 2023-24 to the Australian Transaction Reports and Analysis Centre (AUSTRAC) to develop and consult stakeholders on legislative reforms to modernise Australia’s anti-money laundering and counter-terrorism financing regime and support preparation for, and participation in, the evaluation of Australia’s regime against global standards by the Financial Action Task Force;
- $5.6 million over 4 years from 2023-24 in additional departmental resourcing for the Attorney-General’s Department.

Energy Price Relief Plan

There has been much interest in the Government’s plan to address rising energy prices. The Government will provide $1.5 billion over 5 years from 2022-23 (and $2.7 million per year ongoing) to reduce the impact of rising energy prices on Australian households and businesses by providing targeted energy bill relief and progressing gas market reforms.

Funding includes:

- $1.5 billion over 2 years from 2023-24 to establish the Energy Bill Relief Fund to support targeted energy bill relief to eligible households and small business customers, which includes pensioners, Commonwealth Seniors Health Card holders, Family Tax Benefit A and B recipients and small business customers of electricity retailers;
- $14.7 million over 5 years from 2022-23 (and $2.7 million per year ongoing) to the ACCC to administer and enforce compliance with a temporary cap of $12 per gigajoule on the price of gas and to develop and implement a mandatory gas code of conduct;
- $9.5 million over 3 years from 2022-23 for the Australian Energy Regulator to monitor coal and gas markets across the National Electricity Market.

The Government will also provide funding to support the NSW and Queensland governments to implement a cap of $125 per tonne on the price of coal used for electricity generation.

Where to from here?

If you would like assistance understanding how announcements in this Budget impact you, please contact your AFS accountant or our office on 03 5443 0344.

Information provided from Thomson Reuters.

The 2023-24 Budget Papers are available from the following website:

https://budget.gov.au/