



# **Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003**

**No. 111, 2003**

**An Act to make amendments consequential on the enactment of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus (<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003**

**No. 111, 2003**

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**An Act to make amendments consequential on the enactment of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, and for related purposes**

*[Assented to 12 November 2003]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003*.

## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent  | 12 November 2003    |
| 2. Schedule 1, items 1 to 15  | The day on which this Act receives the Royal Assent  | 12 November 2003    |
| 3. Schedule 1, items 16 and 17  | The later of:<br>(a) the start of the day on which this Act receives the Royal Assent; and<br>(b) immediately after the commencement of item 48 of Schedule 1 to the <i>Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2003</i> |                     |
| 4. Schedule 1, items 18 to 25   | The day on which this Act receives the Royal Assent  | 12 November 2003    |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments consequential on the Superannuation (Government Co-contribution for Low Income Earners) Act 2003**

### **Part 1—Amendments**

#### ***Income Tax Assessment Act 1936***

##### **1 Paragraph 82AAS(2)(b)**

Repeal the paragraph, substitute:

- (b) to the extent to which those benefits would be attributable to the year of income:
  - (i) the benefits would be wholly or partly attributable to contributions made, or required to be made, in relation to the year of income:
    - (A) to a superannuation fund of the relevant person; and
    - (B) by someone other than the relevant person; and
    - (C) in connection with the eligible employment of the relevant person in the year of income; or
  - (ii) the benefits would, in whole or in part, be paid in relation to the year of income:
    - (A) out of money (other than contributions made to a superannuation fund) of someone other than the relevant person; and
    - (B) in connection with the eligible employment of the person in the year of income.

##### **2 Subparagraph 82AAS(3)(c)(i)**

After “made”, insert “, or required to be made.”.

##### **3 Subdivision AAC of Division 17 of Part III**

Repeal the Subdivision.

##### **4 At the end of subparagraph 274(1)(a)(i)**

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<sup>4</sup> *Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003* No. 111, 2003

Add:

; or (E) Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

**5 At the end of subparagraph 274(1)(ba)(i)**

Add:

(C) Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; and

**6 At the end of paragraph 274(1)(e)**

Add “(except to the extent to which it represents a Government co-contribution or contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*)”.

***Income Tax Assessment Act 1997***

**7 Section 11-10**

Before:

**interest**

judgment debt, personal injury ..... 51-57, **23GA**

insert:

**Government co-contributions**

towards low income earner’s superannuation ..... 51-65

**8 At the end of Division 51**

Add:

**51-65 Government co-contribution towards low income earner’s superannuation**

The following are exempt from income tax:

(a) a Government co-contribution in respect of you under the *Superannuation (Government Co-contribution for Low*

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**Part 1** Amendments

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*Income Earners) Act 2003* that is paid to you, or to your legal personal representative;

(b) a payment to you, or to your legal personal representative, of the balance of an account under the *Small Superannuation Accounts Act 1995* to the extent to which the balance represents a Government co-contribution or co-contributions in respect of you under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

Note: A Government co-contribution in respect of you paid to another person (such as the trustee of a complying superannuation fund) would not be income of yours according to ordinary concepts.

## ***Military Superannuation and Benefits Act 1991***

### **9 After subsection 5(1)**

Insert:

(1AA) Without limiting subsection (1), the Minister may amend the Trust Deed to:

- (a) authorise the Board to:
  - (i) accept particular kinds of amounts in respect of particular kinds of people who are not members of the Scheme; and
  - (ii) deal with those amounts under the Deed; and
- (b) define the functions of the Board in relation to those amounts; and
- (c) include provisions in the Rules dealing with:
  - (i) the manner in which those amounts will be dealt with; and
  - (ii) the benefits that are to become payable in relation to those amounts; and
  - (iii) the circumstances in which entitlements to receive those benefits will arise; and
  - (iv) any other matter relating to those amounts or those benefits.

## ***Small Superannuation Accounts Act 1995***

### **10 At the end of section 3**

Add:

- The accounts may also be used to hold Government co-contributions payable under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. The rules for these deposits differ in some respects from those that apply to other deposits.

## 11 Section 4

Insert:

**complying superannuation fund** has the same meaning as in Part IX of the *Income Tax Assessment Act 1936*.

Note: Section 267 of the *Income Tax Assessment Act 1936* defines **complying superannuation fund** by reference to the provisions of Division 3 of Part 5 of the *Superannuation Industry (Supervision) Act 1993*.

## 12 Section 4

Insert:

**Government co-contribution** in respect of an individual means a Government co-contribution payable in respect of the individual under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

## 13 Paragraph 16(b)

Omit “65, 66, 67 or 67A”, substitute “61, 65, 66, 67, 67A or 91E”.

## 13A Section 16 (notes 1, 2, 3 and 4)

Repeal the notes, substitute:

Note 1: Section 61 deals with individuals who request transfer of account balances to RSAs or superannuation funds.

Note 2: Section 65 deals with individuals who retire because of disability.

Note 3: Section 66 deals with individuals who have turned 65.

Note 4: Section 67 deals with individuals who are not Australian residents for income tax purposes etc.

Note 5: Section 67A deals with individuals who have permanently departed from Australia.

**Part 1** Amendments

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Note 6: Section 91E deals with debiting of accounts to recover overpayments of Government co-contributions.

**14 At the end of Division 4 of Part 7**

Add:

**61A Commissioner may transfer account balance to RSA or superannuation fund**

- (1) The Commissioner of Taxation may pay the balance of an individual's account to:
  - (a) an RSA of the individual; or
  - (b) the trustee of a complying superannuation fund for crediting to an account of the individual within that fund.
- (2) To avoid doubt, the Commissioner of Taxation may make the payment under subsection (1) without a request from the individual under section 61.
- (3) The Reserve is debited for the purposes of making the payment under subsection (1).
- (4) When the payment under subsection (1) is made, the individual's account is debited by the amount of the payment.
- (5) In this section:

*trustee* of a superannuation fund means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund—the trustee; or
- (b) otherwise—the person who manages the fund.

**15 After Part 12**

Insert:

## **Part 12A—Government co-contributions for low income earners**

### **91A Commissioner of Taxation may deposit Government co-contributions for low income earners into individual's account**

In addition to the deposits that may be made under Part 4, the Commissioner of Taxation may deposit into an individual's account a Government co-contribution payable in respect of the individual.

### **91B Act generally applies to deposits under this Part in the same way as it applies to deposits under Part 4**

Except as provided for in this Part, this Act applies to a deposit made under this Part in the same way as it applies to a deposit made under Part 4.

### **91C Deposit not held on trust etc.**

- (1) Section 33 applies to a deposit made under this Part.
- (2) None of the other provisions of Part 4 apply to a deposit made under this Part.

### **91D Crediting of deposits**

- (1) Part 5 does not apply to a deposit made under this Part.
- (2) An amount equal to a deposit made under this Part is to be transferred from the Consolidated Revenue Fund to the Reserve.
- (3) As soon as practicable after the amount is transferred to the Reserve under subsection (2), the individual's account is to be credited with an amount equal to the deposit.

**91E Debiting account with overpayment of Government co-contribution**

Under section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the Commissioner may, in certain circumstances, debit an individual's account as a way of recovering an overpayment of a Government co-contribution if the account includes deposits made under this Part.

**91F Withdrawal of account balances**

*Division 2 of Part 7 does not apply*

- (1) Division 2 of Part 7 (account frozen for 14 days after deposit) does not apply to a deposit made under this Part.

*Modification of section 61 (transfer to RSA or superannuation fund at individual's request)*

- (2) To the extent to which the balance in an individual's account represents deposits made under this Part, section 61 applies to the account as if the reference in subparagraph (2)(b)(i) to a regulated superannuation fund were a reference to a complying superannuation fund.

*Section 63 does not apply*

- (3) Section 63 (withdrawal of account balance of less than \$200 where individual has ceased to be employed by depositor) does not apply to an individual's account to the extent that the balance in the account represents deposits made under this Part.

*Interpretation*

- (4) A reference in this section to the balance of an individual's account to the extent to which it represents deposits made under this Part is a reference to that balance to the extent to which it represents:
  - (a) deposits made under this Part; and
  - (b) interest accruing on deposits made under this Part.

## **91G Refunds of deposits**

Part 8 does not apply to deposits made under this Part.

### ***Superannuation Act 1976***

#### **16 Section 130A (after paragraph (c) of the definition of transferred amount)**

Insert:

; or (d) an amount payable in respect of the person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

#### **17 After subsection 130B(1)**

Insert:

(1A) The Commissioner of Taxation may pay to the Board an amount payable in respect of a person under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

### ***Superannuation Contributions Tax (Assessment and Collection) Act 1997***

#### **18 Paragraph 8(5)(a)**

After “excludes”, insert “Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and”.

#### **19 Paragraph 8(5)(b)**

After “excludes”, insert “Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and”.

### ***Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997***

#### **20 Paragraph 9(6)(a)**

**Schedule 1** Amendments consequential on the Superannuation (Government Co-contribution for Low Income Earners) Act 2003

**Part 1** Amendments

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After “excludes”, insert “Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and”.

**21 Paragraph 9(6)(b)**

After “excludes”, insert “Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and”.

***Superannuation (Resolution of Complaints) Act 1993***

**22 After paragraph 15CA(1)(b)**

Insert:

; or (c) section 26 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

**23 Subsection 15CA(2)**

Repeal the subsection, substitute:

(2) If a person who is given by a superannuation provider a copy of a statement given by the provider to the Commissioner under:

- (a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
- (b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or
- (c) section 26 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

is also given by the provider a notice setting out the prescribed period within which the person must complain to the Tribunal about the decision, the person may only make a complaint to the Tribunal under this section within that period.

***Taxation Administration Act 1953***

**24 Subsection 8AAB(5) (after table item 12)**

Insert:

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Amendments consequential on the Superannuation (Government Co-contribution for  
Low Income Earners) Act 2003 **Schedule 1**  
Amendments **Part 1**

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12A 25

*Superannuation (Government  
Co-contribution for Low Income Earners)  
Act 2003*

**Schedule 1** Amendments consequential on the Superannuation (Government Co-contribution for Low Income Earners) Act 2003

**Part 2** Application

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## **Part 2—Application**

### **25 Application of amendments**

The amendments made by Part 1 of this Schedule apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2003.

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*[Minister's second reading speech made in—  
House of Representatives on 29 May 2003  
Senate on 23 June 2003]*

(74/03)