



Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012

No. 75, 2012

**An Act to amend the law relating to taxation and
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to taxation and
superannuation, and for related purposes**

[Assented to 27 June 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax and Superannuation Laws
Amendment (2012 Measures No. 1) Act 2012*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 June 2012
2. Schedules 1 to 5	The day this Act receives the Royal Assent.	27 June 2012
3. Schedule 6, Part 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 6, Part 2	The day this Act receives the Royal Assent.	27 June 2012
5. Schedule 7	The day this Act receives the Royal Assent.	27 June 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—GST-free health supplies

A New Tax System (Goods and Services Tax) Act 1999

1 At the end of Subdivision 38-B

Add:

38-60 Third party procured GST-free health supplies

Insurers

(1) If:

- (a) a supply is a supply of a service to an insurer; and
- (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
- (c) at least one of the other supplies is:
 - (i) wholly or partly *GST-free under this Subdivision; and
 - (ii) for settling one or more claims under an *insurance policy of which the insurer is an insurer;

the first-mentioned supply is ***GST-free*** to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

Note: For subparagraph (c)(ii), the insurer may be an insurer of the policy because of a portfolio transfer (see section 78-118).

Compulsory third party scheme operators

(2) If:

- (a) a supply is a supply of a service to an *operator of a *compulsory third party scheme; and
- (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
- (c) at least one of the other supplies is:
 - (i) wholly or partly *GST-free under this Subdivision; and
 - (ii) made under the compulsory third party scheme;

the first-mentioned supply is ***GST-free*** to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

Government agencies

(3) If:

- (a) a supply is a supply of a service to an *Australian government agency; and
- (b) the service is the supplier making one or more other supplies of goods or services to an individual; and
- (c) at least one of the other supplies is wholly or partly *GST-free under this Subdivision;

the first-mentioned supply is *GST-free* to the extent that the other supplies mentioned in paragraph (b) are GST-free under this Subdivision.

Parties may agree for supply not to be GST-free

- (4) However, a supply is not *GST-free* (to any extent) under this section if the supplier and the *recipient have agreed that the supply, or supplies of a kind that include that supply, not be treated as GST-free supplies.

2 Subsection 78-100(1)

Omit “This Division applies”, substitute “Subsection 38-60(1) and this Division apply”.

3 Subsection 78-100(1)

Omit “it applies”, substitute “they apply”.

4 At the end of subsection 78-100(1)

Add:

Note: Subsection 38-60(1) provides that certain supplies to insurers are GST-free.

5 Subsection 78-100(2)

Omit “this Division”, substitute “subsection 38-60(1) and this Division”.

6 Subsection 78-118(1)

Omit “this Division applies”, substitute “subsection 38-60(1) and this Division apply”.

7 At the end of subsection 78-118(1)

Add:

Note: Subsection 38-60(1) provides that certain supplies to insurers are GST-free.

8 Paragraph 78-118(2)(a)

Omit “this Division”, substitute “subsection 38-60(1) and this Division”.

9 Application of amendments

- (1) The amendments made by this Schedule apply in relation to supplies of services to:
 - (a) insurers; or
 - (b) operators of compulsory third party schemes; or
 - (c) Australian government agencies;made on or after 1 July 2012.
- (2) Subsection 38-60(4) of the *A New Tax System (Goods and Services Tax) Act 1999* applies in relation to agreements made before, on or after 1 July 2012.

Schedule 2—GST treatment of appropriations

A New Tax System (Goods and Services Tax) Act 1999

1 Subsection 9-15(3)

Repeal the subsection.

2 After section 9-15

Insert:

9-17 Certain payments and other things not consideration

- (1) If a right or option to acquire a thing is granted, then:
 - (a) the *consideration* for the supply of the thing on the exercise of the right or option is limited to any additional consideration provided either for the supply or in connection with the exercise of the right or option; or
 - (b) if there is no such additional consideration—there is no consideration for the supply.
- (2) Making a gift to a non-profit body is not the provision of *consideration*.
- (3) A payment is not the provision of *consideration* if:
 - (a) the payment is made by a *government related entity to another government related entity for making a supply; and
 - (b) the payment is:
 - (i) covered by an appropriation under an *Australian law; or
 - (ii) made under the National Health Reform Agreement agreed to by the Council of Australian Governments on 2 August 2011, as amended from time to time; or
 - (iii) made under another agreement entered into to implement the National Health Reform Agreement; and
 - (c) the payment is calculated on the basis that the sum of:
 - (i) the payment (including the amounts of any other such payments) relating to the supply; and

(ii) anything (including any payment for any act or forbearance) that the other government related entity receives from another entity in connection with, or in response to, or for the inducement of, the supply, or for any other related supply;

does not exceed the supplier's anticipated or actual costs of making those supplies.

(4) A payment is not the provision of *consideration* if the payment is made by a *government related entity to another government related entity and the payment is of a kind specified in regulations made for the purposes of this subsection.

(5) This section applies despite section 9-15.

3 Paragraph 63-27(2)(a)

Omit "paragraph 9-15(3)(b)", substitute "subsection 9-17(2)".

4 Section 72-95

Before "This", insert "(1)".

5 At the end of section 72-95

Add:

(2) However, this Division does not apply to a supply or acquisition if a payment for the supply or acquisition is covered by subsection 9-17(3) or (4).

6 Section 72-100

Before "This", insert "(1)".

7 At the end of section 72-100

Add:

(2) However, this Division does not apply to a supply or acquisition if a payment for the supply or acquisition is covered by subsection 9-17(3) or (4).

8 Subsection 78-50(4)

Omit "section 9-15", substitute "section 9-17".

9 Section 81-20 (heading)

Repeal the heading, substitute:

81-20 Division has effect despite sections 9-15 and 9-17

10 Section 81-20

Omit “section 9-15 (which is about consideration)”, substitute “sections 9-15 and 9-17 (which are about consideration)”.

11 Section 100-1 (note)

Omit “paragraph 9-15(3)(a)”, substitute “subsection 9-17(1)”.

12 Subsection 100-10(3)

Omit “Paragraph 9-15(3)(a)”, substitute “Subsection 9-17(1)”.

13 Section 195-1 (definition of *consideration*)

Omit “section 9-15”, substitute “sections 9-15 and 9-17”.

14 Application of amendments

The amendments made by this Schedule apply, and are taken to have applied, from 1 July 2012.

Schedule 3—Indexation of superannuation concessional contributions cap

Income Tax Assessment Act 1997

1 Paragraph 292-20(2)(d)

Repeal the paragraph, substitute:

- (d) for the 2010-2011 financial year—\$25,000; or
- (e) for the 2011-2012 financial year—\$25,000; or
- (f) for the 2012-2013 financial year—\$25,000; or
- (g) for the 2013-2014 financial year—\$25,000; or
- (h) for the 2014-2015 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (g).

2 Subparagraph 960-285(2)(a)(i)

Omit “2009-2010”, substitute “2013-2014”.

Schedule 4—Refund of excess concessional contributions

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Subdivision 292-G

Add:

292-420 Release authorities for refunded excess concessional contributions

Commissioner may issue release authorities

(1) If:

- (a) the Commissioner makes a determination under section 292-467 (refunded excess concessional contributions) for a person in relation to *excess concessional contributions; and
- (b) the person has one or more *superannuation interests; and
- (c) any amount paid in accordance with section 292-415 that relates to an amount of *excess concessional contributions tax for the person for the *financial year to which the determination relates does not equal or exceed 85% of the excess concessional contributions;

the Commissioner may issue a release authority relating to the excess concessional contributions to a *superannuation provider that holds such a superannuation interest for the person.

(2) The release authority must:

- (a) state the amount that is 85% of the *excess concessional contributions; and
- (b) be dated; and
- (c) contain any other information that the Commissioner considers relevant.

Note: If the release authority relates to a determination as varied under section 292-468, the amount stated in the release authority is as provided in subsection 292-468(8).

- (3) Despite paragraph (2)(a), if:
- (a) an amount has been paid in accordance with section 292-415 in relation to an *excess contributions tax assessment for the person for the *financial year to which the determination relates; and
 - (b) the amount relates wholly or partly to *excess concessional contributions by the person for the financial year;
- the amount stated under paragraph (2)(a) must be reduced (but not below zero) by so much of the amount as relates to those excess concessional contributions.

Obligations of superannuation providers

- (4) A *superannuation provider that has been issued with a release authority under this section must:
- (a) within 30 days after the release authority is issued, pay to the Commissioner the amount stated in the release authority; and
 - (b) within 30 days after the release authority is issued, or within 7 days after the payment is made if that is earlier, give to the Commissioner a statement, in the *approved form, advising the Commissioner of the payment.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with paragraph (a).

Note 2: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with paragraph (b).

Note 3: For the taxation treatment of the payment, see section 303-15. As a result of the determination made under section 292-467, the excess concessional contributions are included in the person's assessable income: see paragraph 292-467(2)(a).

- (5) However, subsection (4) does not apply if:
- (a) the sum of the *values of every *superannuation interest (other than an interest of a kind mentioned in paragraph (b)) held by the *superannuation provider for the person is less than the amount stated in the release authority; or
 - (b) the superannuation provider holds only one or more of the following kinds of superannuation interests for the person:

- (i) a *defined benefit interest;
 - (ii) a superannuation interest in a *non-complying superannuation fund;
 - (iii) a superannuation interest that is treated as a separate interest under regulations made for the purposes of section 307-200 in circumstances where the interest is supporting a *superannuation income stream.
- (6) If subsection (4) does not apply, the *superannuation provider must, within 30 days after the release authority is issued, advise the Commissioner, in the *approved form, that the superannuation provider is not required to comply with the release authority.

Note: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Commissioner may vary or revoke release authorities

- (7) The Commissioner may vary or revoke a release authority at any time before the Commissioner receives a payment relating to the release authority in accordance with subsection (4).

Entitlement to credits

- (8) If the *superannuation provider pays an amount to the Commissioner in accordance with this section, the person is entitled to a credit equal to that amount. The credit arises:
- (a) if the Commissioner receives the amount before making or amending an *assessment of the person's taxable income to give effect to the determination—on the date of the assessment or amended assessment; or
 - (b) otherwise—on the day the Commissioner receives the amount.

Note: Division 3 of Part IIB of the *Taxation Administration Act 1953* provides for the treatment of credits that an entity is entitled to under a taxation law.

292-425 Interest for late payments of money received by the Commissioner in accordance with release authority

- (1) The person is entitled to an amount of interest worked out under subsection (2) if:
-

- (a) the Commissioner issues a release authority under section 292-420 to a *superannuation provider that holds a *superannuation interest for the person; and
 - (b) the superannuation provider pays an amount to the Commissioner in accordance with that release authority; and
 - (c) the person is entitled to a credit mentioned in subsection 292-420(8) for that amount; and
 - (d) the Commissioner is required to refund all or part of that credit as mentioned in Division 3A of Part IIB of the *Taxation Administration Act 1953*; and
 - (e) the Commissioner does not so refund all or part of that credit within 60 days after receiving that amount.
- (2) The interest is to be calculated:
- (a) on the sum of so much of the following amounts that the Commissioner fails to refund under that Division:
 - (i) the amount of that credit;
 - (ii) so much of the amount of any *tax offset to which the person is entitled under paragraph 292-467(2)(b), for the *excess concessional contributions to which the release authority relates, that the Commissioner is required to refund under that Division; and
 - (b) for the period:
 - (i) beginning 60 days after the day the Commissioner receives the amount; and
 - (ii) ending on the day the Commissioner refunds the amount; and
 - (c) on a daily basis; and
 - (d) at the *base interest rate for the day the interest is calculated.

2 After section 292-465

Insert:

292-467 Refunded excess concessional contributions

- (1) If:
 - (a) the Commissioner is satisfied you have *excess concessional contributions for a *financial year; and

Schedule 4 Refund of excess concessional contributions

Part 1 Main amendments

- (b) the amount of those excess concessional contributions is \$10,000 or less; and
 - (c) disregarding any previous application of this section, you do not have excess concessional contributions for an earlier financial year beginning on or after 1 July 2011; and
 - (d) you have lodged an *income tax return with the Commissioner for the income year that corresponds to that financial year:
 - (i) within 12 months after the end of that income year; or
 - (ii) within such longer period as the Commissioner allows; and
 - (e) you accept an offer made by the Commissioner in accordance with subsection (3);
- the Commissioner may make a written determination that, for the purposes of this Division, the excess concessional contributions mentioned in paragraph (a) for that financial year are to be disregarded.
- (2) If the Commissioner makes the determination:
 - (a) an amount equal to the *excess concessional contributions is included in your assessable income for your income year that corresponds to that *financial year; and
 - (b) you are entitled to a *tax offset for that income year equal to 15% of the excess concessional contributions.
 - (3) If the Commissioner is satisfied you have *excess concessional contributions for the *financial year, the Commissioner may issue a notice to you, in writing, offering to make a determination under this section. You may accept the offer, in the *approved form:
 - (a) within 28 days after the Commissioner issues the notice; or
 - (b) within such longer period as the Commissioner allows.
 - (4) The Commissioner must notify you in writing of the determination.
 - (5) Notification of the determination may be included in a notice of *assessment.
 - (6) The Commissioner may take such action as the Commissioner considers necessary to give effect to the determination.
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292-468 Variations etc. of refunded excess concessional contributions determinations

- (1) This section applies in relation to a determination under section 292-467 if the Commissioner is satisfied that the amount of *excess concessional contributions mentioned in that section for a *financial year is incorrect.
- (2) The Commissioner may revoke the determination at any time before receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that:
 - (a) the person to whom the determination relates has *excess concessional contributions greater than \$10,000 for the *financial year; or
 - (b) the person has no excess concessional contributions for the financial year.
- (3) The Commissioner may vary the determination at any time before receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that the person to whom the determination relates has *excess concessional contributions for the *financial year not greater than \$10,000.
- (4) The Commissioner may vary the determination at any time after receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that the person to whom the determination relates has *excess concessional contributions for the *financial year:
 - (a) greater than the amount of the excess concessional contributions mentioned in the determination; and
 - (b) not greater than \$10,000.
- (5) The Commissioner cannot otherwise vary or revoke the determination.
- (6) The Commissioner must issue to the person to whom the determination relates written notice of:
 - (a) the variation or revocation of the determination; or

- (b) a decision of the Commissioner not to vary or revoke the determination, if the person requested the variation or revocation.
- (7) If the determination is varied:
- (a) the determination as varied has effect, for all purposes other than this subsection and subsection (8) of this section, as if it were a determination under section 292-467; and
 - (b) subsections 292-467(4), (5) and (6) apply in relation to the determination as varied; and
 - (c) the Commissioner may issue another release authority in accordance with section 292-420 in relation to the determination as varied; and
 - (d) that other release authority has effect, for all purposes other than this subsection, as if it were issued under section 292-420.
- (8) Despite paragraph 292-420(2)(a), the release authority issued as mentioned in paragraph (7)(c) of this section must state the difference between:
- (a) the amount stated in the determination as in force just before the variation; and
 - (b) 85% of the *excess concessional contributions as varied.
- (9) The amount of *excess concessional contributions covered by a determination to which this section applies is disregarded for the purposes of applying Subdivision 292-E in relation to the person to whom the determination relates if the Commissioner is satisfied that:
- (a) the person has excess concessional contributions greater than \$10,000 for the *financial year to which the determination relates; and
 - (b) the determination cannot be varied or revoked under this section.

292-469 Objections against determinations etc.

If you are dissatisfied with:

- (a) a determination of the Commissioner under section 292-467;
- or

- (b) a determination of the Commissioner under that section as varied in accordance with section 292-468; or
- (c) a decision of the Commissioner to revoke a determination under section 292-467 in accordance with section 292-468; or
- (d) a decision of the Commissioner not to vary or revoke a determination under section 292-467 in accordance with section 292-468;

you may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

3 At the end of Division 303

Add:

303-15 Payments from release authorities for refunded excess concessional contributions

- (1) A *superannuation benefit that you are taken to receive under section 307-15, paid in relation to a release authority issued in relation to you in accordance with section 292-420, is not assessable income and is not *exempt income.
- (2) Section 307-125 (the proportioning rule) does not apply to such a *superannuation benefit.

Part 2—Other amendments

Income Tax Assessment Act 1997

4 Section 10-5 (table item headed “superannuation”)

Before:

returned contributions 290-100

insert:

refunded excess concessional contributions 292-467(2)(a)

5 Section 13-1 (table item headed “superannuation”)

Before:

TFN quoted to superannuation or RSA provider after
no-TFN contributions tax paid 295-675

insert:

refunded excess concessional contributions 292-467(2)(b)

6 At the end of section 61-570

Add:

- (3) For the purposes of paragraph (1)(c), reduce (but not below zero) your *reportable employer superannuation contributions by the amount of any contributions disregarded under section 292-467 for you for the *financial year corresponding to the income year.

7 Section 67-23 (before table item 15)

Insert:

- 14 refunded *excess the *tax offset available under paragraph
concessional contributions 292-467(2)(b)

8 At the end of section 290-160

Add:

- (3) For the purposes of paragraph (2)(a) of this section, disregard any *excess concessional contributions included in your assessable income under paragraph 292-467(2)(a) for the *financial year corresponding to the income year.

9 At the end of section 290-230

Add:

- (5) For the purposes of subparagraph (2)(c)(iii), reduce (but not below zero) the *reportable employer superannuation contributions by the amount of any contributions disregarded under section 292-467 for your *spouse for the *financial year corresponding to the income year.

10 Subsection 995-1(1) (definition of *reportable superannuation contributions*)

Repeal the definition, substitute:

reportable superannuation contributions, for an individual and an income year, means the sum of:

- (a) the individual's *reportable employer superannuation contributions (if any) for the income year; and
(b) the individual's deductions (if any) under Subdivision 290-C for the income year;

reduced (but not below zero) by the amount of any contributions disregarded under section 292-467 for the individual for the *financial year corresponding to the income year.

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

11 At the end of section 6

Add:

- (3) In working out the person's total income (or 10% of that income) for the purposes of paragraph (1)(b) of this section, disregard any excess concessional contributions (within the meaning of the *Income Tax Assessment Act 1997*) included in the person's assessable income under paragraph 292-467(2)(a) of that Act for the financial year corresponding to the income year.

12 After subsection 8(1)

Insert:

- (1A) For the purposes of paragraph (1)(c) of this section, reduce (but not below zero) the reportable employer superannuation contributions by any excess concessional contributions (within the meaning of the *Income Tax Assessment Act 1997*) included in the person's assessable income under paragraph 292-467(2)(a) of that Act for the financial year corresponding to the income year.

Taxation Administration Act 1953

13 After paragraph 14ZW(1)(aab)

Insert:

- (aac) if the taxation objection is made under section 292-469 of the *Income Tax Assessment Act 1997*:
- (i) in relation to a determination—60 days after the Commissioner issues the determination or, if that determination is varied, 60 days after the varied determination is issued; or
 - (ii) in relation to a decision to revoke a determination—60 days after the making of the decision to revoke the determination; or
 - (iii) in relation to a decision not to vary or revoke a determination—60 days after the making of the decision not to vary or revoke the determination; or

14 Subsection 250-10(2) in Schedule 1 (after table item 38B)

Insert:

38BA amount in accordance with refunded excess concessional contributions release authority 292-420(4)(a) *Income Tax Assessment Act 1997*

15 At the end of section 280-100 in Schedule 1

Add:

- (4) Despite subsection (1), you are not liable to pay *shortfall interest charge to the extent that the additional amount relates to assessable income mentioned in paragraph 292-467(2)(a) of the *Income Tax Assessment Act 1997* (refunded excess concessional contributions).

16 At the end of section 288-95 in Schedule 1

Add:

- (3) A *superannuation provider that has been issued with a release authority in accordance with section 292-420 of the *Income Tax Assessment Act 1997* and that fails to comply with paragraph 292-420(4)(a) of that Act is liable to an administrative penalty of 20 penalty units.

Taxation (Interest on Overpayments and Early Payments) Act 1983

17 Subsection 3(1) (paragraph (ca) of the definition of *decision to which this Act applies*)

After “the liability of the taxpayer to tax”, insert “other than a decision to give effect to a determination under section 292-467 of the *Income Tax Assessment Act 1997*”.

18 Subsection 3(1) (paragraph (a) of the definition of *income tax crediting amount*)

After “Division 770”, insert “or subsection 292-420(8)”.

19 Subsection 3(1) (paragraph (c) of the definition of *income tax crediting amount*)

After “rules”, insert “(other than a tax offset that arises under paragraph 292-467(2)(b) of the *Income Tax Assessment Act 1997*)”.

Part 3—Application of amendments

20 Application of amendments

The amendments made by this Schedule apply in relation to excess concessional contributions for the financial year beginning on 1 July 2011 and later financial years.

Schedule 5—Disclosure of superannuation information

Taxation Administration Act 1953

1 Subsection 355-65(3) in Schedule 1 (at the end of the table)

Add:

- | | | |
|----|--|---|
| 10 | <ul style="list-style-type: none"> (a) a regulated superannuation fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>); or (b) a public sector superannuation scheme (within the meaning of that Act); or (c) an * approved deposit fund; or (d) an *RSA provider; or (e) an entity that, as an agent of such a fund, scheme or RSA provider, provides administration services for: <ul style="list-style-type: none"> (i) beneficiaries (within the meaning of that Act) of the fund or scheme; or (ii) holders (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of *RSAs provided by the RSA provider | <p>is for the purpose of:</p> <ul style="list-style-type: none"> (a) informing: <ul style="list-style-type: none"> (i) a beneficiary (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) of such a fund or scheme; or (ii) a holder (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of an *RSA provided by the *RSA provider; or (iii) an applicant to become such a beneficiary or holder; of one or more of his or her *superannuation interests (whether with that fund, scheme or RSA provider or another fund, scheme or RSA provider); or (b) assisting such a beneficiary, holder or applicant to choose whether to maintain or create such a superannuation interest; or (c) assisting such a beneficiary, holder or applicant to give effect to such a choice; or (d) informing such a beneficiary, holder or applicant of an amount that is or may become payable, or that may be paid, credited or otherwise dealt with, in relation to the beneficiary, holder or applicant under: |
|----|--|---|

Schedule 5 Disclosure of superannuation information

- (i) the *Small Superannuation Accounts Act 1995*; or
- (ii) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or
- (iii) the *Superannuation Guarantee (Administration) Act 1992*; or
- (iv) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
- (e) assisting such a beneficiary, holder or applicant to give effect to a choice that he or she may make, or undertake an action that he or she may undertake, in relation to an amount mentioned in paragraph (d).

Schedule 6—Giving information about superannuation contributions

Part 1—Main amendments

Superannuation Industry (Supervision) Act 1993

1 Subsection 3(1)

Before “object”, insert “main”.

2 Section 4 (before table item dealing with Part 30)

Insert:

29B employers to give information about superannuation
contributions

3 At the end of subsection 6(1) (before the note)

Add:

; and (h) the Fair Work Ombudsman has the general administration of
Part 29B.

4 Subsection 10(1)

Insert:

Fair Work Inspector has the same meaning as in the *Fair Work
Act 2009*.

5 Subsection 10(1)

Insert:

industrial instrument has the same meaning as in the *Income Tax
Assessment Act 1997*.

6 Subsection 10(1)

Insert:

salary or wages has the same meaning as in the *Superannuation
Guarantee (Administration) Act 1992*.

7 Subsection 64(4)

Repeal the subsection.

8 After Part 29A

Insert:

Part 29B—Employers to give information about superannuation contributions

336J Object of this Part

The object of this Part is to require employers to regularly give information about the superannuation contributions they have made or will make for the benefit of their employees.

336JA Requirement to give information

- (1) This section applies if:
- (a) under an industrial instrument, an employer must give a pay slip to an employee; and
 - (b) the employer can make a contribution for the benefit of the employee to a regulated superannuation fund or an RSA; and
 - (c) the contribution relates to the salary or wages referred to in the pay slip; and
 - (d) the contribution is not in respect of a defined benefit interest (within the meaning of the regulations).

Note 1: For paragraph (a), an example of an industrial instrument is subsection 536(1) of the *Fair Work Act 2009*.

Note 2: The employers covered by paragraph (b) include those that are required to contribute, those that choose to contribute and those that pay superannuation guarantee charge rather than contribute.

- (2) The employer must ensure that:
- (a) the pay slip includes, or is accompanied by, any information prescribed by the regulations about the contribution; and
 - (b) the information is set out as prescribed by the regulations.

Note: This section is a civil remedy provision under the *Fair Work Act 2009* (see section 336JB of this Act and Part 4-1 of that Act).

- (3) Without limiting paragraph (1)(c), the regulations may prescribe when a contribution relates to salary or wages.

336JB Requirement is a civil remedy provision under the Fair Work Act

The *Fair Work Act 2009* has effect as if item 1 of the following table were an item of the table in subsection 539(2) of that Act:

Standing, jurisdiction and maximum penalty			
Column 1	Column 2	Column 3	Column 4
Civil remedy provision	Persons	Courts	Maximum penalty
1 336JA of the <i>Superannuation Industry (Supervision) Act 1993</i>	(a) an employee; (b) an inspector	(a) the Federal Court; (b) the Federal Magistrates Court; (c) an eligible State or Territory court	30 penalty units

336JC Geographical application of this Part

- (1) Division 3 (about geographical application) of Part 1-3 of the *Fair Work Act 2009* applies in relation to this Part in a corresponding way to the way that Division applies in relation to section 536 (about pay slips) of that Act.
- (2) For this purpose, regulations made under that Act for the purposes of that Division apply in relation to this Part in a corresponding way to the way those regulations apply in relation to section 536 of that Act.

336JD Compliance with the requirement

- (1) The Fair Work Ombudsman's functions include the following:
- (a) promoting compliance with section 336JA;
 - (b) monitoring compliance with section 336JA;
 - (c) inquiring into, and investigating, any act or practice that may be contrary to section 336JA;

Schedule 6 Giving information about superannuation contributions

Part 1 Main amendments

- (d) commencing proceedings in a court to enforce section 336JA;
 - (e) representing employees who are, or may become, a party to proceedings in a court under the *Fair Work Act 2009*, if the Fair Work Ombudsman considers that representing the employees will promote compliance with section 336JA.
- (2) A Fair Work Inspector may exercise compliance powers (within the meaning of the *Fair Work Act 2009*) for the purpose of determining whether section 336JA is being, or has been, complied with.
- (3) For the purposes of the *Fair Work Act 2009*, the purpose referred to in subsection (2) is taken to be a compliance purpose.
- (4) Parts 25, 26, 27 and 28 of this Act do not apply in relation to this Part.

336JE Disclosing information relating to this Part

For information relating directly or indirectly to this Part that is information to which section 718 of the *Fair Work Act 2009* applies, subsections 718(3) and (4) of that Act apply with the following modifications:

Modifications to be made		
Item	For a reference in subsection 718(3) or (4) to ...	include a reference to ...
1	the Minister	the Minister administering the <i>Superannuation Industry (Supervision) Act 1993</i>
2	the Department	the Department administered by the Minister administering the <i>Superannuation Industry (Supervision) Act 1993</i>
3	this Act	Part 29B of the <i>Superannuation Industry (Supervision) Act 1993</i>

336JF Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if its references to an employer were, by express provision, confined to an employer that:

- (a) is a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) is a national system employer (within the meaning of the *Fair Work Act 2009*); or
- (c) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.

9 Application of amendments

The amendments made by this Part apply in relation to salary or wages paid on or after the commencement of this Part.

Part 2—Other amendments

Superannuation Industry (Supervision) Act 1993

10 Section 4 (after table item dealing with Part 24A)

Insert:

24B the administration by APRA and the Commissioner of
Taxation of superannuation funds with fewer than 5
members

Note: This item inserts a missing cross-reference into a list of the Parts of the Act.

11 Section 4 (after table item dealing with Part 29)

Insert:

29A protections in relation to information

Note: This item inserts a missing cross-reference into a list of the Parts of the Act.

Schedule 7—Refunds

Taxation Administration Act 1953

1 After section 8AAZLG

Insert:

8AAZLGA Retaining refunds while Commissioner verifies information

Commissioner may retain an amount

- (1) The Commissioner may retain an amount that he or she otherwise would have to refund to an entity under section 8AAZLF, if the entity has given the Commissioner a notification that affects or may affect the amount that the Commissioner refunds to the entity, and:
 - (a) it would be reasonable to require verification of information (the *notified information*) that:
 - (i) is contained in the notification; and
 - (ii) relates to the amount that the Commissioner would have to refund; or
 - (b) the entity has requested the Commissioner to retain the amount for verification of the notified information, and the request has not been withdrawn.
- (2) In deciding whether to retain the amount under this section, the Commissioner must, as far as the information available to the Commissioner at the time of making the decision reasonably allows, have regard to the following:
 - (a) the likely accuracy of the notified information;
 - (b) the likelihood that the notified information was affected by:
 - (i) fraud or evasion; or
 - (ii) intentional disregard of a taxation law; or
 - (iii) recklessness as to the operation of a taxation law;
 - (c) the impact of retaining the amount on the entity's financial position;

- (d) whether retaining the amount is necessary for the protection of the revenue, including the likelihood that the Commissioner could recover any of the amount if the notified information were found to be incorrect after the amount had been refunded;
- (e) any complexity that would be involved in verifying the notified information;
- (f) the time for which the Commissioner has already retained the amount;
- (g) what the Commissioner has already done to verify the notified information;
- (h) whether the Commissioner has enough information to make an assessment relating to the amount (including information obtained from making further requests for information);
- (i) the extent to which the notified information is consistent with information that the entity previously provided;
- (j) any other relevant matter.

Informing the entity of the retention of the amount

- (3) The Commissioner must inform the entity (by serving a document on the entity or by other means) that he or she has retained the amount under this section. He or she must do so by the end of:
 - (a) in a case to which paragraph 8AAZLF(1)(a) applies—the RBA interest day (within the meaning of section 12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*) for the RBA surplus of the entity; or
 - (b) in any other case—the 30th day after the entity gives to the Commissioner the notification mentioned in subsection (1) of this section.

Note: Under Part 2A of the regulations, documents may be served on a person using the person's preferred address for service.

- (4) In informing the entity that the amount is retained, the Commissioner may request information that he or she is aware will be required for the purposes of verifying the notified information.

How long the amount may be retained

- (5) The Commissioner may retain the amount under this section only until:

-
- (a) if paragraph (1)(a) applies—it would no longer be reasonable to require verification of the information; or
 - (b) if the Commissioner fails to inform the entity, in accordance with subsection (3), that he or she has retained the amount under this section—the end of the day after the time by which, under that subsection, the Commissioner is required to inform the entity; or
 - (c) in any case—there is a change to how much the Commissioner is required to refund, as a result of:
 - (i) the Commissioner amending an assessment relating to the amount; or
 - (ii) the Commissioner making or amending an assessment, under Division 105 in Schedule 1, relating to the amount;

whichever happens first.

Objecting to the decision to retain the amount

- (6) The entity may object to a decision of the Commissioner to retain the amount under this section in the manner set out in Part IVC, if the entity is dissatisfied with the decision.

Note: Interest on the amount may be payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

- (7) Before the end of the 7 days after the start of the period during which, under section 14ZW, the entity may object to the decision, the Commissioner must notify the entity, in writing, that the entity may object to the decision.

Note: For the start of the period for objecting to the decision, see paragraph 14ZW(1)(aac) and subsection 14ZW(4).

- (8) A failure to comply with subsection (7) does not affect the validity of the decision.

2 Before paragraph 14ZW(1)(ab)

Insert:

- (aad) if the taxation objection is made under subsection 8AAZLGA(6) of this Act (retaining refunds while Commissioner verifies information)—the period:
 - (i) starting at the end of the 60 day period after the end of the day before which, under subsection 8AAZLGA(3),

the Commissioner is required to inform the entity mentioned in section 8AAZLGA that the Commissioner has retained an amount under that section; and

- (ii) ending on the day (if any) on which there is a change, of a kind mentioned in paragraph 8AAZLGA(5)(c), to how much the Commissioner is required to refund in relation to the amount; or

3 At the end of section 14ZW

Add:

- (4) The 60 day period mentioned in subparagraph (1)(aad)(i) (including the period as extended by a previous application of this subsection) is extended by the number of days during that period in relation to which the following paragraphs apply:
 - (a) on or before the day, but during the period, the Commissioner requests information from the entity for the purposes of verifying the notified information mentioned in section 8AAZLGA;
 - (b) the Commissioner does not receive the requested information before the day.

*[Minister's second reading speech made in—
House of Representatives on 1 March 2012
Senate on 18 June 2012]*

(24/12)
