

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No.     , 2012**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation and superannuation, and for related  
purposes**



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Contents		
1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2
<b>Schedule 1—GST-free health supplies</b>		<b>3</b>
	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	3
<b>Schedule 2—GST treatment of appropriations</b>		<b>6</b>
	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	6
<b>Schedule 3—Indexation of superannuation concessional contributions cap</b>		<b>9</b>
	<i>Income Tax Assessment Act 1997</i>	9
<b>Schedule 4—Refund of excess concessional contributions</b>		<b>10</b>
Part 1—Main amendments		10
	<i>Income Tax Assessment Act 1997</i>	10
Part 2—Other amendments		18
	<i>Income Tax Assessment Act 1997</i>	18
	<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	19
	<i>Taxation Administration Act 1953</i>	20
	<i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>	21
Part 3—Application of amendments		22
<b>Schedule 5—Disclosure of superannuation information</b>		<b>23</b>
	<i>Taxation Administration Act 1953</i>	23
<b>Schedule 6—Giving information about superannuation contributions</b>		<b>25</b>
Part 1—Main amendments		25
	<i>Superannuation Industry (Supervision) Act 1993</i>	25
Part 2—Other amendments		30
	<i>Superannuation Industry (Supervision) Act 1993</i>	30
<b>Schedule 7—Refunds</b>		<b>31</b>

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1     **A Bill for an Act to amend the law relating to**  
2     **taxation and superannuation, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

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

8     **2 Commencement**

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

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**Commencement information**

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<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 this Act receives the Royal Assent.	
2. Schedules 1 to 5	The day this Act receives the Royal Assent.	
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.	
5. Schedule 7	The day this Act receives the Royal Assent.	

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

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.  
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## Schedule 1—GST-free health supplies

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

5 **1 At the end of Subdivision 38-B**

6 Add:

7 **38-60 Third party procured GST-free health supplies**

8 *Insurers*

9 (1) If:

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

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

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

22 *Compulsory third party scheme operators*

23 (2) If:

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

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

4 *Government agencies*

5 (3) If:

6 (a) a supply is a supply of a service to an \*Australian  
7 government agency; and

8 (b) the service is the supplier making one or more other supplies  
9 of goods or services to an individual; and

10 (c) at least one of the other supplies is wholly or partly  
11 \*GST-free under this Subdivision;

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

15 *Parties may agree for supply not to be GST-free*

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

20 **2 Subsection 78-100(1)**

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

23 **3 Subsection 78-100(1)**

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

25 **4 At the end of subsection 78-100(1)**

26 Add:

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

29 **5 Subsection 78-100(2)**

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



1 **6 Subsection 78-118(1)**

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

4 **7 At the end of subsection 78-118(1)**

5 Add:

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

8 **8 Paragraph 78-118(2)(a)**

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

11 **9 Application of amendments**

12 (1) The amendments made by this Schedule apply in relation to supplies of  
13 services to:

- 14 (a) insurers; or  
15 (b) operators of compulsory third party schemes; or  
16 (c) Australian government agencies;

17 made on or after 1 July 2012.

18 (2) Subsection 38-60(4) of the *A New Tax System (Goods and Services Tax)*  
19 *Act 1999* applies in relation to agreements made before, on or after  
20 1 July 2012.  
21

1  
2 **Schedule 2—GST treatment of appropriations**  
3

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

5 **1 Subsection 9-15(3)**

6 Repeal the subsection.

7 **2 After section 9-15**

8 Insert:

9 **9-17 Certain payments and other things not consideration**

10 (1) If a right or option to acquire a thing is granted, then:

- 11 (a) the *consideration* for the supply of the thing on the exercise  
12 of the right or option is limited to any additional  
13 consideration provided either for the supply or in connection  
14 with the exercise of the right or option; or  
15 (b) if there is no such additional consideration—there is no  
16 consideration for the supply.

17 (2) Making a gift to a non-profit body is not the provision of  
18 *consideration*.

19 (3) A payment is not the provision of *consideration* if:

- 20 (a) the payment is made by a \*government related entity to  
21 another government related entity for making a supply; and  
22 (b) the payment is:  
23 (i) covered by an appropriation under an \*Australian law;  
24 or  
25 (ii) made under the National Health Reform Agreement  
26 agreed to by the Council of Australian Governments on  
27 2 August 2011, as amended from time to time; or  
28 (iii) made under another agreement entered into to  
29 implement the National Health Reform Agreement; and  
30 (c) the payment is calculated on the basis that the sum of:  
31 (i) the payment (including the amounts of any other such  
32 payments) relating to the supply; and

1 (ii) anything (including any payment for any act or  
 2 forbearance) that the other government related entity  
 3 receives from another entity in connection with, or in  
 4 response to, or for the inducement of, the supply, or for  
 5 any other related supply;  
 6 does not exceed the supplier's anticipated or actual costs of  
 7 making those supplies.

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

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

13 **3 Paragraph 63-27(2)(a)**

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

15 **4 Section 72-95**

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

17 **5 At the end of section 72-95**

18 Add:

19 (2) However, this Division does not apply to a supply or acquisition if  
 20 a payment for the supply or acquisition is covered by subsection  
 21 9-17(3) or (4).

22 **6 Section 72-100**

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

24 **7 At the end of section 72-100**

25 Add:

26 (2) However, this Division does not apply to a supply or acquisition if  
 27 a payment for the supply or acquisition is covered by subsection  
 28 9-17(3) or (4).

29 **8 Subsection 78-50(4)**

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

1 **9 Section 81-20 (heading)**

2 Repeal the heading, substitute:

3 **81-20 Division has effect despite sections 9-15 and 9-17**

4 **10 Section 81-20**

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

7 **11 Section 100-1 (note)**

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

9 **12 Subsection 100-10(3)**

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

11 **13 Section 195-1 (definition of *consideration*)**

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

13 **14 Application of amendments**

14 The amendments made by this Schedule apply, and are taken to have  
15 applied, from 1 July 2012.  
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## **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”.

1  
2 **Schedule 4—Refund of excess concessional**  
3 **contributions**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1997*

6 **1 At the end of Subdivision 292-G**

7 Add:

8 **292-420 Release authorities for refunded excess concessional**  
9 **contributions**

10 *Commissioner may issue release authorities*

11 (1) If:

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

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

25 (2) The release authority must:

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

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

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

14 *Obligations of superannuation providers*

- 15 (4) A \*superannuation provider that has been issued with a release  
16 authority under this section must:  
17 (a) within 30 days after the release authority is issued, pay to the  
18 Commissioner the amount stated in the release authority; and  
19 (b) within 30 days after the release authority is issued, or within  
20 7 days after the payment is made if that is earlier, give to the  
21 Commissioner a statement, in the \*approved form, advising  
22 the Commissioner of the payment.

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

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

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

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

**Schedule 4** Refund of excess concessional contributions

**Part 1** Main amendments

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- 1 (i) a \*defined benefit interest;  
2 (ii) a superannuation interest in a \*non-complying  
3 superannuation fund;  
4 (iii) a superannuation interest that is treated as a separate  
5 interest under regulations made for the purposes of  
6 section 307-200 in circumstances where the interest is  
7 supporting a \*superannuation income stream.

- 8 (6) If subsection (4) does not apply, the \*superannuation provider  
9 must, within 30 days after the release authority is issued, advise the  
10 Commissioner, in the \*approved form, that the superannuation  
11 provider is not required to comply with the release authority.

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

15 *Commissioner may vary or revoke release authorities*

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

19 *Entitlement to credits*

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

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

32 **292-425 Interest for late payments of money received by the**  
33 **Commissioner in accordance with release authority**

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



- 1 (a) the Commissioner issues a release authority under  
2 section 292-420 to a \*superannuation provider that holds a  
3 \*superannuation interest for the person; and  
4 (b) the superannuation provider pays an amount to the  
5 Commissioner in accordance with that release authority; and  
6 (c) the person is entitled to a credit mentioned in subsection  
7 292-420(8) for that amount; and  
8 (d) the Commissioner is required to refund all or part of that  
9 credit as mentioned in Division 3A of Part IIB of the  
10 *Taxation Administration Act 1953*; and  
11 (e) the Commissioner does not so refund all or part of that credit  
12 within 60 days after receiving that amount.

13 (2) The interest is to be calculated:

- 14 (a) on the sum of so much of the following amounts that the  
15 Commissioner fails to refund under that Division:  
16 (i) the amount of that credit;  
17 (ii) so much of the amount of any \*tax offset to which the  
18 person is entitled under paragraph 292-467(2)(b), for the  
19 \*excess concessional contributions to which the release  
20 authority relates, that the Commissioner is required to  
21 refund under that Division; and  
22 (b) for the period:  
23 (i) beginning 60 days after the day the Commissioner  
24 receives the amount; and  
25 (ii) ending on the day the Commissioner refunds the  
26 amount; and  
27 (c) on a daily basis; and  
28 (d) at the \*base interest rate for the day the interest is calculated.

29 **2 After section 292-465**

30 Insert:

31 **292-467 Refunded excess concessional contributions**

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

**Schedule 4** Refund of excess concessional contributions

**Part 1** Main amendments

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- 1 (b) the amount of those excess concessional contributions is  
2 \$10,000 or less; and
- 3 (c) disregarding any previous application of this section, you do  
4 not have excess concessional contributions for an earlier  
5 financial year beginning on or after 1 July 2011; and
- 6 (d) you have lodged an \*income tax return with the  
7 Commissioner for the income year that corresponds to that  
8 financial year:
- 9 (i) within 12 months after the end of that income year; or  
10 (ii) within such longer period as the Commissioner allows;  
11 and
- 12 (e) you accept an offer made by the Commissioner in accordance  
13 with subsection (3);
- 14 the Commissioner may make a written determination that, for the  
15 purposes of this Division, the excess concessional contributions  
16 mentioned in paragraph (a) for that financial year are to be  
17 disregarded.
- 18 (2) If the Commissioner makes the determination:
- 19 (a) an amount equal to the \*excess concessional contributions is  
20 included in your assessable income for your income year that  
21 corresponds to that \*financial year; and
- 22 (b) you are entitled to a \*tax offset for that income year equal to  
23 15% of the excess concessional contributions.
- 24 (3) If the Commissioner is satisfied you have \*excess concessional  
25 contributions for the \*financial year, the Commissioner may issue a  
26 notice to you, in writing, offering to make a determination under  
27 this section. You may accept the offer, in the \*approved form:
- 28 (a) within 28 days after the Commissioner issues the notice; or  
29 (b) within such longer period as the Commissioner allows.
- 30 (4) The Commissioner must notify you in writing of the determination.
- 31 (5) Notification of the determination may be included in a notice of  
32 \*assessment.
- 33 (6) The Commissioner may take such action as the Commissioner  
34 considers necessary to give effect to the determination.

1 **292-468 Variations etc. of refunded excess concessional**  
2 **contributions determinations**

- 3 (1) This section applies in relation to a determination under  
4 section 292-467 if the Commissioner is satisfied that the amount of  
5 \*excess concessional contributions mentioned in that section for a  
6 \*financial year is incorrect.
- 7 (2) The Commissioner may revoke the determination at any time  
8 before receiving a payment made in accordance with subsection  
9 292-420(4) in relation to the amount, if the Commissioner is  
10 satisfied that:  
11 (a) the person to whom the determination relates has \*excess  
12 concessional contributions greater than \$10,000 for the  
13 \*financial year; or  
14 (b) the person has no excess concessional contributions for the  
15 financial year.
- 16 (3) The Commissioner may vary the determination at any time before  
17 receiving a payment made in accordance with subsection  
18 292-420(4) in relation to the amount, if the Commissioner is  
19 satisfied that the person to whom the determination relates has  
20 \*excess concessional contributions for the \*financial year not  
21 greater than \$10,000.
- 22 (4) The Commissioner may vary the determination at any time after  
23 receiving a payment made in accordance with subsection  
24 292-420(4) in relation to the amount, if the Commissioner is  
25 satisfied that the person to whom the determination relates has  
26 \*excess concessional contributions for the \*financial year:  
27 (a) greater than the amount of the excess concessional  
28 contributions mentioned in the determination; and  
29 (b) not greater than \$10,000.
- 30 (5) The Commissioner cannot otherwise vary or revoke the  
31 determination.
- 32 (6) The Commissioner must issue to the person to whom the  
33 determination relates written notice of:  
34 (a) the variation or revocation of the determination; or

**Schedule 4** Refund of excess concessional contributions  
**Part 1** Main amendments

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- 1 (b) a decision of the Commissioner not to vary or revoke the  
2 determination, if the person requested the variation or  
3 revocation.
- 4 (7) If the determination is varied:
- 5 (a) the determination as varied has effect, for all purposes other  
6 than this subsection and subsection (8) of this section, as if it  
7 were a determination under section 292-467; and
- 8 (b) subsections 292-467(4), (5) and (6) apply in relation to the  
9 determination as varied; and
- 10 (c) the Commissioner may issue another release authority in  
11 accordance with section 292-420 in relation to the  
12 determination as varied; and
- 13 (d) that other release authority has effect, for all purposes other  
14 than this subsection, as if it were issued under  
15 section 292-420.
- 16 (8) Despite paragraph 292-420(2)(a), the release authority issued as  
17 mentioned in paragraph (7)(c) of this section must state the  
18 difference between:
- 19 (a) the amount stated in the determination as in force just before  
20 the variation; and
- 21 (b) 85% of the \*excess concessional contributions as varied.
- 22 (9) The amount of \*excess concessional contributions covered by a  
23 determination to which this section applies is disregarded for the  
24 purposes of applying Subdivision 292-E in relation to the person to  
25 whom the determination relates if the Commissioner is satisfied  
26 that:
- 27 (a) the person has excess concessional contributions greater than  
28 \$10,000 for the \*financial year to which the determination  
29 relates; and
- 30 (b) the determination cannot be varied or revoked under this  
31 section.

32 **292-469 Objections against determinations etc.**

- 33 If you are dissatisfied with:
- 34 (a) a determination of the Commissioner under section 292-467;  
35 or
-

- 1 (b) a determination of the Commissioner under that section as  
2 varied in accordance with section 292-468; or  
3 (c) a decision of the Commissioner to revoke a determination  
4 under section 292-467 in accordance with section 292-468;  
5 or  
6 (d) a decision of the Commissioner not to vary or revoke a  
7 determination under section 292-467 in accordance with  
8 section 292-468;  
9 you may object against the determination or decision in the manner  
10 set out in Part IVC of the *Taxation Administration Act 1953*.

11 **3 At the end of Division 303**

12 Add:

13 **303-15 Payments from release authorities for refunded excess**  
14 **concessional contributions**

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

3 *Income Tax Assessment Act 1997*

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

5 Before:  
returned contributions ..... 290-100  
6 insert:  
refunded excess concessional contributions ..... 292-467(2)(a)

7 **5 Section 13-1 (table item headed “superannuation”)**

8 Before:  
TFN quoted to superannuation or RSA provider after  
no-TFN contributions tax paid ..... 295-675  
9 insert:  
refunded excess concessional contributions ..... 292-467(2)(b)

10 **6 At the end of section 61-570**

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

16 **7 Section 67-23 (before table item 15)**

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

18 **8 At the end of section 290-160**

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

1 **9 At the end of section 290-230**

2 Add:

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

8 **10 Subsection 995-1(1) (definition of *reportable***  
9 ***superannuation contributions*)**

10 Repeal the definition, substitute:

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

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

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

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

22 **11 At the end of section 6**

23 Add:

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

30 **12 After subsection 8(1)**

31 Insert:

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

7 ***Taxation Administration Act 1953***

8 **13 After paragraph 14ZW(1)(aab)**

9 Insert:

- 10 (aac) if the taxation objection is made under section 292-469 of the  
11 *Income Tax Assessment Act 1997*:
- 12 (i) in relation to a determination—60 days after the  
13 Commissioner issues the determination or, if that  
14 determination is varied, 60 days after the varied  
15 determination is issued; or
  - 16 (ii) in relation to a decision to revoke a determination—60  
17 days after the making of the decision to revoke the  
18 determination; or
  - 19 (iii) in relation to a decision not to vary or revoke a  
20 determination—60 days after the making of the decision  
21 not to vary or revoke the determination; or

22 **14 Subsection 250-10(2) in Schedule 1 (after table item 38B)**

23 Insert:

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

24 **15 At the end of section 280-100 in Schedule 1**

25 Add:

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



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

2 Add:

- 3 (3) A \*superannuation provider that has been issued with a release  
4 authority in accordance with section 292-420 of the *Income Tax*  
5 *Assessment Act 1997* and that fails to comply with paragraph  
6 292-420(4)(a) of that Act is liable to an administrative penalty of  
7 20 penalty units.

8 ***Taxation (Interest on Overpayments and Early Payments) Act***  
9 ***1983***

10 **17 Subsection 3(1) (paragraph (ca) of the definition of**  
11 ***decision to which this Act applies*)**

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

15 **18 Subsection 3(1) (paragraph (a) of the definition of *income***  
16 ***tax crediting amount*)**

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

18 **19 Subsection 3(1) (paragraph (c) of the definition of *income***  
19 ***tax crediting amount*)**

20 After “rules”, insert “(other than a tax offset that arises under paragraph  
21 292-467(2)(b) of the *Income Tax Assessment Act 1997*)”.

22

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2 **Part 3—Application of amendments**

3 **20 Application of amendments**

4           The amendments made by this Schedule apply in relation to excess  
5 concessional contributions for the financial year beginning on 1 July  
6 2011 and later financial years.  
7

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2  
3  
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## Schedule 5—Disclosure of superannuation information

### *Taxation Administration Act 1953*

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

7

Add:

- |    |  |   |
|----|--|---|
| 10 | <ul style="list-style-type: none"> <li>(a) a regulated superannuation fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>); or</li> <li>(b) a public sector superannuation scheme (within the meaning of that Act); or</li> <li>(c) an * approved deposit fund; or</li> <li>(d) an *RSA provider; or</li> <li>(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"> <li>(i) beneficiaries (within the meaning of that Act) of the fund or scheme; or</li> <li>(ii) holders (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of *RSAs provided by the RSA provider</li> </ul> </li> </ul> | <p>is for the purpose of:</p> <ul style="list-style-type: none"> <li>(a) informing: <ul style="list-style-type: none"> <li>(i) a beneficiary (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) of such a fund or scheme; or</li> <li>(ii) a holder (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) of an *RSA provided by the *RSA provider; or</li> <li>(iii) an applicant to become such a beneficiary or holder; <ul style="list-style-type: none"> <li>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</li> </ul> </li> </ul> </li> <li>(b) assisting such a beneficiary, holder or applicant to choose whether to maintain or create such a superannuation interest; or</li> <li>(c) assisting such a beneficiary, holder or applicant to give effect to such a choice; or</li> <li>(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:</li> </ul> |
|----|--|---|

**Schedule 5** Disclosure of superannuation information

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- (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).

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1  
2 **Schedule 6—Giving information about**  
3 **superannuation contributions**

4 **Part 1—Main amendments**

5 *Superannuation Industry (Supervision) Act 1993*

6 **1 Subsection 3(1)**

7 Before “object”, insert “main”.

8 **2 Section 4 (before table item dealing with Part 30)**

9 Insert:

29B employers to give information about superannuation  
contributions

10 **3 At the end of subsection 6(1) (before the note)**

11 Add:

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

14 **4 Subsection 10(1)**

15 Insert:

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

18 **5 Subsection 10(1)**

19 Insert:

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

22 **6 Subsection 10(1)**

23 Insert:

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

1 **7 Subsection 64(4)**

2 Repeal the subsection.

3 **8 After Part 29A**

4 Insert:

5 **Part 29B—Employers to give information about**  
6 **superannuation contributions**  
7

8 **336J Object of this Part**

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

12 **336JA Requirement to give information**

13 (1) This section applies if:

- 14 (a) under an industrial instrument, an employer must give a pay  
15 slip to an employee; and  
16 (b) the employer can make a contribution for the benefit of the  
17 employee to a regulated superannuation fund or an RSA; and  
18 (c) the contribution relates to the salary or wages referred to in  
19 the pay slip; and  
20 (d) the contribution is not in respect of a defined benefit interest  
21 (within the meaning of the regulations).

22 Note 1: For paragraph (a), an example of an industrial instrument is subsection  
23 536(1) of the *Fair Work Act 2009*.

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

27 (2) The employer must ensure that:

- 28 (a) the pay slip includes, or is accompanied by, any information  
29 prescribed by the regulations about the contribution; and  
30 (b) the information is set out as prescribed by the regulations.

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

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

3 **336JB Requirement is a civil remedy provision under the Fair Work**  
4 **Act**

5 The *Fair Work Act 2009* has effect as if item 1 of the following  
6 table were an item of the table in subsection 539(2) of that Act:  
7

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<b>Standing, jurisdiction and maximum penalty</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Civil remedy provision</b>	<b>Persons</b>	<b>Courts</b>	<b>Maximum penalty</b>
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

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8 **336JC Geographical application of this Part**

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

17 **336JD Compliance with the requirement**

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

**Schedule 6** Giving information about superannuation contributions

**Part 1** Main amendments

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

15 **336JE Disclosing information relating to this Part**

16 For information relating directly or indirectly to this Part that is  
17 information to which section 718 of the *Fair Work Act 2009*  
18 applies, subsections 718(3) and (4) of that Act apply with the  
19 following modifications:  
20

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**Modifications to be made**

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<b>Item</b>	<b>For a reference in subsection 718(3) or (4) to ...</b>	<b>include a reference to ...</b>
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>

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1 **336JF Alternative constitutional basis**

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

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

12 **9 Application of amendments**

13 The amendments made by this Part apply in relation to salary or wages  
14 paid on or after the commencement of this Part.  
15

1

2 **Part 2—Other amendments**

3 ***Superannuation Industry (Supervision) Act 1993***

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

5 Insert:

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

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

7 **11 Section 4 (after table item dealing with Part 29)**

8 Insert:

29A protections in relation to information

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

10

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1  
2 **Schedule 7—Refunds**  
3

4 *Taxation Administration Act 1953*

5 **1 After section 8AAZLG**

6 Insert:

7 **8AAZLGA Retaining refunds while Commissioner verifies**  
8 **information**

9 *Commissioner may retain an amount*

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

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

18 *Informing the entity of the retention of the amount*

- 19 (3) The Commissioner must inform the entity (by serving a document  
20 on the entity or by other means) that he or she has retained the  
21 amount under this section. He or she must do so by the end of:
- 22 (a) in a case to which paragraph 8AAZLF(1)(a) applies—the  
23 RBA interest day (within the meaning of section 12AF of the  
24 *Taxation (Interest on Overpayments and Early Payments) Act*  
25 *1983*) for the RBA surplus of the entity; or
- 26 (b) in any other case—the 30th day after the entity gives to the  
27 Commissioner the notification mentioned in subsection (1) of  
28 this section.

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

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

34 *How long the amount may be retained*

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

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

16 *Objecting to the decision to retain the amount*

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

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

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

26 Note: For the start of the period for objecting to the decision, see paragraph  
 27 14ZW(1)(aac) and subsection 14ZW(4).

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

30 **2 After paragraph 14ZW(1)(aab)**

31 Insert:

- 32 (aac) if the taxation objection is made under subsection  
 33 8AAZLGA(6) of this Act (retaining refunds while  
 34 Commissioner verifies information)—the period:  
 35 (i) starting at the end of the 60 day period after the end of  
 36 the day before which, under subsection 8AAZLGA(3),

- 1 the Commissioner is required to inform the entity  
2 mentioned in section 8AAZLGA that the Commissioner  
3 has retained an amount under that section; and  
4 (ii) ending on the day (if any) on which there is a change, of  
5 a kind mentioned in paragraph 8AAZLGA(5)(c), to how  
6 much the Commissioner is required to refund in relation  
7 to the amount; or

8 **3 At the end of section 14ZW**

9 Add:

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