2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX AND SUPERANNUATION LAWS AMENDMENT (2012 MEASURES No.1) BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

Table of contents

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
CTP	compulsory third party
Fair Work Act	*Fair Work Act 2009*
Fair Work Regulations	*Fair Work Regulations 2009*
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
GST	goods and services tax
RSA	retirement savings account
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SG	superannuation guarantee
SIS regulations	*Superannuation Industry (Supervision) Regulations 1994*
TAA 1953	*Taxation Administration Act 1953*
TFN	tax file number
the bodies	regulated superannuation funds or public sector superannuation schemes, approved deposit funds, RSA providers or their administrators
Multiflex	*Multiflex Pty Ltd* [2011] FCAFC 142

General outline and financial impact

GST-free health supplies

Schedule 1 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that a supply made by a health care provider to an insurer, a statutory compensation scheme operator, a compulsory third party scheme operator or a government entity, is treated as a GST-free supply to the extent that the underlying supply from the health care provider to an individual is a GST-free health supply.

Date of effect: 1 July 2012.

Proposal announced: This measure was announced in the 2011-12 Budget.

Financial impact: This measure is expected to be revenue neutral.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.25 to 1.28.

Compliance cost impact: Low.

GST treatment of appropriations

Schedule 2 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to restore the policy intent that the non commercial activities of government related entities are not subject to goods and services tax.

Date of effect: 1 July 2012.

Proposal announced: These amendments were foreshadowed by their release in draft form on the Treasury website on 23 November 2011.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.42 to 2.45.

Compliance cost impact: Low.

Indexation of superannuation concessional contributions cap

Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* to temporarily pause the indexation of the superannuation concessional contributions cap so that it will remain fixed at $25,000 up to and including the 2013-14 financial year.

Date of effect: This measure will take effect from 1 July 2013.

Proposal announced: This measure was announced in the 2011-12 Mid-Year Economic and Fiscal Outlook.

Financial impact: This measure is expected to result in a saving of $485 million over the forward estimates period.

2011-12	***2012-13***	***2013-14***	***2014-15***
–	–	$360m	$125m

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 3, paragraphs 3.17 to 3.21.

Compliance cost impact: Low.

Superannuation — refund of excess concessional contributions

Schedule 4 to this Bill amends the *Income Tax Assessment Act 1997*, the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the *Taxation Administration Act 1953*, and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to allow eligible individuals the option to effectively have excess concessional contributions of $10,000 or less refunded to them. However, if the refund is accepted, the excess concessional contributions will be assessed as income for the year of the excess contributions rather than paying excess contributions tax.

Date of effect: These amendments apply to excess concessional contributions of an eligible individual for the financial year starting on 1 July 2011 and later years.

Proposal announced: This measure was announced in the 2011-12 Budget.

Financial impact: This measure will have an ongoing cost to revenue over the forward estimates period as follows:

2011-12	*2012-13*	*2013-14*	*2014-15*
–$0.8m	–$13.6m	–$3.3m	–$2.2m

This measure is expected to reduce revenue by $19.9 million over the forward estimate period. This is due to the loss of excess contributions tax revenue being greater than the gain in personal income tax.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.73 to 4.77.

Compliance cost impact: The compliance cost impact on individuals and their superannuation funds is expected to be low. The majority of the administrative processes will be handled by the Australian Taxation Office.

Disclosure of superannuation information

Schedule 5 to this Bill permits the Australian Taxation Office (ATO) to disclose details of an individual's superannuation interests and superannuation benefits to a regulated superannuation fund or public sector superannuation scheme, an approved deposit fund, retirement savings account (RSA) provider or their administrators (the bodies).

This will enable the ATO to provide information to the bodies particularly through enhanced services that will allow the bodies to access information about a member's superannuation interests, including amounts held by the ATO. This information will enable funds to assist their members to find and consolidate their superannuation interests.

Date of effect: This measure will commence on Royal Assent.

Proposal announced: This measure was announced on 21 September 2011 as part of the Government's Stronger Super package of reforms.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 5, paragraphs 5.26 to 5.29.

Compliance cost impact: Low. The bodies will be required to enter into new SuperMatch agreements with the ATO and to make system changes to enable them to send requests and receive information.

Superannuation — payslip reporting

Schedule 6 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* to require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.

The regulations will in turn require employers to report the amount of superannuation contributions, as well as the date on which the employer expects to pay them.

The regulations will also incorporate the existing requirements in Regulation 3.46 in the *Fair Work Regulations 2009* to include the name, or name and number, of any fund to which the contribution is to (or was) paid.

Date of effect: These amendments apply to contributions accrued after the date of Proclamation. In the absence of a proclamation, this Schedule will commence 12 months after Royal Assent.

Proposal announced: This measure was announced during the 2010 election, and in the 2011-12 Budget.

Financial impact: The measure has a negligible ongoing revenue impact.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 6, paragraphs 6.31 to 6.34.

Compliance cost impact: Minimal/Medium. Software producers will need to add an additional field for the expected payment date, and employers will need to fill it in when issuing payslips.

Refunds

Schedule 7 to this Bill amends the *Taxation Administration Act 1953* to provide the Commissioner of Taxation with a legislative discretion to withhold entitlements to high risk refunds pending refund integrity checks of a taxpayer's claim.

Date of effect: These amendments commence from Royal Assent.

Proposal announced: This measure was announced in the Assistant Treasurer's Media Release No. 008 of 15 February 2012.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 7, paragraphs 7.75 to 7.78.

Compliance cost impact: Nil.

Chapter 1
GST-free health supplies

Outline of chapter

1.1 Schedule 1 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that certain supplies made to insurers in settling insurance claims under both private health insurance policies and taxable insurance policies are GST-free to the extent that the underlying supply to the insured (policy holder or third party) is GST-free under Subdivision 38-B of the GST Act.

1.2 These amendments similarly provide that supplies made to a statutory compensation scheme operator or compulsory third party (CTP) scheme operator are GST-free supplies to the extent that the underlying supply of health related goods or services to an individual is GST-free under Subdivision 38-B.

1.3 These amendments also ensure that certain supplies made by health care providers to Commonwealth, State or Territory government entities are GST-free to the extent that the underlying supply of health related goods or services to an individual is GST-free under Subdivision 38-B.

Context of amendments

1.4 Under Subdivision 38-B of the GST Act, certain health related supplies are GST-free, including most supplies of medical services (section 38-7), hospital treatment (section 38-20) and other health services (section 38-10).

1.5 In some instances, these supplies are made under multi-party arrangements where a health care provider supplies GST-free health related goods or services to a person and the health care provider receives a payment from an insurer or a government entity.

1.6 The Full Federal Court decision in *Commissioner of Taxation v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84 (*Department of Transport*), handed down on 9 July 2010, considered an arrangement entered into by the Victorian Department of Transport with taxi operators for the provision of subsidised taxi services to disabled passengers.

1.7 The Commissioner had denied the Department's claim for input tax credits in respect of the subsidy payments on the basis that there was no taxable supply made by the taxi operator to the Department. The Full Federal Court held that a taxable supply was made by a taxi operator to the Department, and as a result, the Department was entitled to an input tax credit in relation to the goods and services tax (GST) component of the payment of the subsidy to the taxi operator.

1.8 Whilst the specific facts of the case related to a government funding arrangement, the Court took a considerably broader approach in characterising multi-party arrangements than that previously taken by the Commissioner. In particular, the decision has the potential to impact on certain multi-party arrangements involving supplies to individuals of GST-free health related goods and services made in settlement of claims made under GST-free private health insurance and taxable insurance policies, under statutory compensation schemes and CTP schemes, and in relation to certain government health funding arrangements.

1.9 Prior to the decision, the Commissioner generally treated these affected arrangements as involving a single GST-free supply with the payment from the third party being consideration for that supply (*Goods and Services Ruling GSTR 2006/9 Goods and services tax: supplies*). The effect of the decision is that in certain circumstances there would now be two supplies by health care providers — one GST-free supply to the individual actually receiving the GST-free health related goods and services, and a taxable supply to the third party making the payment.

1.10 This creates compliance issues and administrative costs for health care providers and affected third parties as it requires them to account for a taxable supply when previously they did not need to. These entities would also need to alter their arrangements and put systems in place to account for GST on these supplies.

1.11 These amendments are intended to avoid these unintended outcomes and to ensure that certain supplies of health related goods and services continue to be GST-free when they involve multi-party payment arrangements.

1.12 When originally announced, retrospective amendment of the GST law to 1 July 2000 was considered appropriate. However, retrospective application is no longer considered necessary because certain supplies previously treated as taxable will now be treated as GST-free. Retrospective application would result in compliance costs to alter the GST treatment for these past supplies. In addition, entities will be protected from paying any underpaid GST if they have relied on the GSTR 2006/9 to treat supplies as non-taxable. As no GST will have been

paid in acquiring these supplies, the insurer or other third party acquirer will not be disadvantaged by prospective application.

Summary of new law

1.13 This Schedule inserts new section 38-60 to ensure that the supply of a service to make a supply to an individual is GST-free under Subdivision 38-B to the extent that the underlying supply to the individual is also GST-free under Subdivision 38-B and the first-mentioned supply is to:

- an insurer in settling a claim under an insurance policy;
- an operator of a statutory compensation scheme;
- a CTP operator under a CTP scheme; or
- an Australian government agency.

1.14 As a result, there is no separate taxable supply made by the health care provider to the insurer, the statutory compensation scheme or CTP scheme operator or Australian government agency where the health care provider makes a supply to an individual, that is wholly GST-free.

Comparison of key features of new law and current law

New law	***Current law***
A supply to an insurer of a service of making a supply of GST-free health related goods or services to an individual for settling claims under an insurance policy, is GST-free.	A supply by a health care provider of a service of making a supply of GST-free health related goods or services to an individual that is paid for by an insurer, a statutory compensation scheme or CTP scheme operator, or a Commonwealth, State or Territory government entity is a taxable supply.
A supply to a statutory compensation scheme or CTP scheme operator of a service of making a supply of GST-free health related goods or services under a statutory compensation scheme or a CTP scheme, is GST-free.	As above.

New law	*Current law*
A supply to an Australian government agency of a service of making a supply of GST-free health related goods or services to an individual, is GST-free.	As above.
The health care provider will be able to agree with the insurer, the statutory compensation scheme or CTP scheme operator or the Australian government agency, to treat the service of making the supply of the GST-free health related goods and services as a taxable supply.	No equivalent.

Detailed explanation of new law

Health insurance

1.15 If a supply by a health care provider to an insured person is either wholly or partly GST-free under Subdivision 38-B of the GST Act (the underlying supply), then a supply of the service of making the underlying supply by the health care provider to an insurer, in the course of settling insurance claims under a private, general or other health insurance policy, is GST-free, to the extent that the underlying supply is GST-free. ***[Schedule 1, item 1, subsection 38-60(1)]***

Example 1.1: A wholly GST-free supply between a health service provider and an insurer

Peter purchases private health insurance from a health insurer and pays an annual contribution. The health insurer has a pre-existing agreement with a physiotherapist where services are supplied to individuals for the purposes of settling claims made under insurance policies that the insurer issues. The agreement outlines how the parties will act when the physiotherapist treats the identified individuals. The agreement also establishes the obligation on the health insurer to pay the physiotherapist if the physiotherapist provides services to the identified individuals and a mechanism by which such payments are to be authorised.

Peter injures his knee playing sport and requires physiotherapy. Peter contacts the health insurer advising of his injury. The health insurer refers Peter to the physiotherapist who supplies physiotherapy services to Peter. The supplies of the physiotherapy services are GST-free under subsection 38-10(1). The health insurer pays the physiotherapist for the services under the terms of the pre-existing agreement.

Under this arrangement, the payment to the physiotherapist is for the supply made to the health insurer, being the service of making the supply of the physiotherapy services to Peter.

Peter's physiotherapist makes a GST-free supply to the health insurer under subsection 38-60(1). This is because:

- the supply made by the physiotherapist is a supply of a service to an insurer;
- the service is the physiotherapist making one or more supplies of goods or services to an individual (Peter);
- the supplies made by the physiotherapist to Peter are GST-free under Subdivision 38-B; and
- the supplies are made for settling one or more claims under an insurance policy of which the health insurer is an insurer.

Note that the outcome in this example would be the same even if the health insurer and physiotherapist had no pre-existing agreement but instead the insurer contracted with the physiotherapist to provide the services.

Statutory compensation schemes and CTP schemes

1.16 If a supply by a health care provider to an individual is either wholly or partly GST-free under Subdivision 38-B of the GST Act (the underlying supply), then a supply of the service of making the underlying supply by the health care provider to an operator of a statutory compensation scheme, or operator of a CTP scheme, is GST-free to the same extent as the underlying supply. ***[Schedule 1, item 1, subsections 38-60(1) and (2)]***

1.17 Subsections 78-100(1) and (2) of the GST Act are amended to ensure that a claim under a statutory compensation scheme is deemed to be a claim under an insurance policy for the purposes of subsection 38-60(1). ***[Schedule 1, items 2 to 5, subsections 78-100(1) and (2)]***

Government health funding arrangements

1.18 If a supply by a health care provider to an individual is either wholly or partly GST-free under Subdivision 38-B (the underlying supply) then a supply of the service of making the underlying supply by the health care provider to an Australian government agency, is GST-free to the same extent as the underlying supply. ***[Schedule 1, item 1, subsection 38-60(3)]***

Example 1.2: A wholly GST-free supply between a health service provider and an Australian government agency

An Australian government agency implements a program to fund specified health services for individuals that satisfy specified criteria. The program establishes a framework under which the Australian government agency is liable to pay participating health service providers for services supplied to eligible individuals.

Under the framework, eligible individuals are issued a program card for presentation to the health service provider, in which case they are not charged a fee for the services performed. Upon supplying the service to the eligible individual, the health service provider will notify the Australian government agency which will then pay the health service provider in accordance with the terms of the framework.

Lorraine satisfies the eligibility criteria under the program and is issued a program card by the Australian government agency. Lorraine attends her local doctor's surgery to receive treatment for a medical condition. The supply of the medical service is GST-free under subsection 38-7(1). The doctor is a participant in the program. The doctor is also registered for GST. Lorraine presents her program card and is not charged a fee. In accordance with the established framework, the doctor notifies the Australian government agency that she has made a supply to Lorraine. The Australian government agency pays the doctor in respect of the service the doctor supplied to Lorraine. The Australian government agency pays the doctor the specified amount in accordance with the framework.

Under this arrangement, the payment to the doctor is for the supply made to the Australian government agency, being the service of making the supply of the medical service to Lorraine.

The supply made by the doctor to the Australian government agency is GST-free under subsection 38-60(3) as:

- the supply made by the doctor is a supply of a service to an Australian government agency;
- the service is the doctor making one or more supplies of goods or services to an individual (Lorraine); and
- the supply made by the doctor to Lorraine is GST-free under Subdivision 38-B.

As the supply the doctor makes to the Australian government agency is GST-free, the doctor does not have to remit GST for the supply. The Australian government agency cannot claim an input tax credit for the acquisition it makes from the doctor as the supply made by the doctor was not a taxable supply (see paragraph 11-5(b)).

If the supply made by the doctor to Lorraine was not a GST-free supply under Subdivision 38-B, then the supply by the doctor to the Australian government agency would not be a GST-free supply.

Example 1.3: A partly GST-free supply

An Australian government agency implements a program to fund supplies of spectacles to individuals that satisfy specified criteria. The program establishes a framework under which the Australian government agency is liable to pay participating optometrists a specified amount for supplying spectacles to eligible individuals at a reduced amount.

Under the framework, eligible individuals are issued a program card for presentation to the participating optometrist. Upon supplying the spectacles to the eligible individual, the optometrist is to notify the Australian government agency and the Australian government agency will make a payment to the optometrist in accordance with the terms of the framework.

Alexander satisfies the eligibility criteria under the program and is issued a program card by the Australian government agency. Alexander attends his optometrist who participates in the program. Upon presenting his program card, the optometrist supplies Alexander with spectacles for a reduced amount in accordance with the program. The supply of the spectacles is partly GST-free and partly taxable. The optometrist has determined the GST-free proportion of the supply to be 40 per cent and the taxable proportion to be 60 per cent (based on the full GST exclusive price of the spectacles). The component of the supply consisting of the lenses for the spectacles is GST-free under subsection 38-45(1) and item 155 in the table in Schedule 3 to the GST Act. The component of the supply consisting of the frames for the spectacles is taxable under section 9-5.

In accordance with the established framework, the optometrist notifies the Australian government agency that they have made a supply to Alexander. The Australian government agency pays the optometrist the specified amount in accordance with the framework.

Under this arrangement, the payment to the optometrist is for the supply made to the Australian government agency, being the service of making the supply of the spectacles to Alexander.

The supply made by the optometrist to the Australian government agency is partly GST-free under subsection 38-60(3) as:

- the supply made by the optometrist is a supply of a service to an Australian government agency;

- the service is the optometrist making one or more supplies of goods or services to an individual (Alexander); and

- only the lenses component of the spectacles supplied by the optometrist to Alexander is GST-free under Subdivision 38-B .

The supply the optometrist makes to the Australian government agency is GST-free to the same extent that the supply of the spectacles supplied to Alexander is GST-free. That is, the GST-free proportion of the supply is 40 per cent and the taxable proportion is 60 per cent. The optometrist is liable to remit GST on the taxable proportion of the supply it makes to the Australian government agency. As the acquisition by the Australian government agency from the optometrist is a creditable acquisition, it can claim an input tax credit to the extent of the GST included in the price it paid.

Option to treat as taxable

1.19 Some entities have a variety of arrangements with health care providers where a range of supplies are made to individuals. Depending on the nature and terms of the particular arrangement, some supplies will be GST-free and some will be taxable. Health care providers and the recipient of the supply (the insurer, the statutory compensation scheme or CTP scheme operator, or the Australian government agency) may agree to treat the supplies as taxable. ***[Schedule 1, item 1, subsection 38-60(4)]***

1.20 It is expected that providing this option will reduce compliance costs, with no adverse effects to the individual receiving these goods and services. A similar mechanism currently exists in relation to supplies of medical aids and appliances, and goods declared by the Health Minister to be GST-free.

1.21 An agreement made between the relevant parties that the supply will be treated as taxable will be evidenced by established requirements in the GST Act. Where a supply is treated as a taxable supply, a tax invoice is required to be issued under section 29-70. If a supplier has issued a tax invoice, the recipient is entitled to claim input tax credits for the GST paid on the acquisition to the extent that the acquisition is a creditable acquisition.

Application provisions

1.22 These amendments apply in relation to supplies of services to insurers, to statutory compensation scheme or CTP scheme operators, or to Australian government agencies, made on or after 1 July 2012. New subsection 38-60(4) applies in relation to agreements made before, on or after 1 July 2012. This allows agreements to be made in respect of supplies that are made on or after 1 July 2012. ***[Schedule 1, item 5]***

Consequential amendments

1.23 Subsections 78-118(1) and (2) of the GST Act are amended to ensure that insurance policies under a portfolio transfer are covered by these amendments by specifying that both subsection 38-60(1) and Division 78 apply to portfolio transfers. ***[Schedule 1, item 2, subsection 78-118(1), item 4, paragraph 78-118(2)(a)]***

1.24 Similarly, a note is inserted at the end of subsection 78-118(1) to clarify that subsection 38-60(1) provides that certain supplies to insurers are GST-free. ***[Schedule 1, item 3, subsection 78-118(1)]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

GST-free health supplies

1.25 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

1.26 This Schedule amends the GST Act. These amendments ensure that a supply made by a health care provider to an insurer, a statutory compensation scheme operator, a CTP scheme operator or a government entity, is treated as a GST-free supply to the extent that the underlying supply from the health care provider to the individual is a GST-free health supply.

Human rights implications

1.27 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

1.28 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, Senator the Hon Mark Arbib

Chapter 2
GST treatment of appropriations

Outline of chapter

2.1 Schedule 2 to this Bill amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to restore the policy intent that the non-commercial activities of government related entities are not subject to goods and services tax (GST).

2.2 All legislative references in this chapter are to the GST Act unless otherwise stated.

Context of amendments

2.3 Under paragraph 9-15(3)(c), a payment made by a government related entity to another government related entity is not the provision of consideration if the payment is specifically covered by an appropriation under an Australian law.

2.4 This exclusion of certain types of payments from the definition of 'consideration' is intended to give effect to the policy that government payments made under an appropriation to fund the non-commercial activities of government are excluded from GST.

2.5 The Full Federal Court of Australia in *TT-Line Co Pty Ltd v FCT* [2009] FCAFC 178 considered the application of paragraph 9-15(3)(c). In considering when a payment was 'specifically covered by an appropriation' in the context of paragraph 9-15(3)(c), the Court held that the payment must be made pursuant to an appropriation, the terms of which specify the government related entity by name or a class of government related entities. Therefore, paragraph 9-15(3)(c) will only apply to a payment where, under the terms of the appropriation, the payment can only be made to a government related entity. The exception will not apply where, under the terms of the appropriation, the payment can be made to a government related entity or a non-government related entity.

2.6 Accordingly, the effect of the Court's decision is that payments made to government related entities that undertake non-commercial activities in circumstances where they do not charge for supplies in excess of the cost of making those supplies, will potentially be subject to GST if,

under the terms of the relevant appropriation, the payments can be made to both government related entities and non-government related entities. Following the Court's decision in *TT-Line Co Pty Ltd v FCT* [2009] FCAFC 178, the provision only covers payments made pursuant to an appropriation, the terms of which specify the government related entity by name or a class of government related entities. This is in contrast to the policy intent.

2.7 The amendments contained in this Schedule are intended to restore the policy intent that the non-commercial activities of government related entities are not subject to GST.

Summary of new law

2.8 These amendments ensure that non-commercial activities of government related entities are not subject to GST. This is achieved by treating a payment which meets certain conditions as not being the provision of consideration and therefore not subject to the basic GST rules.

2.9 A payment is not the provision of consideration where:

- the payment is made by a government related entity to another government related entity for making a supply;
- the payment is paid under a government appropriation or pursuant to specified intergovernmental health reform arrangements; and
- the payment satisfies a non-commercial test.

Comparison of key features of new law and current law

New law	*Current law*
GST treatment of appropriations A payment is not the provision of consideration and therefore not subject to GST where: • the payment is made by one government related entity to another government related entity for making a supply; and • the payment is covered by an	**GST treatment of appropriations** A payment made by one government related entity to another government related entity pursuant to an appropriation, the terms of which specify the government related entity by name or a class of government related entities, is not the provision of consideration and therefore is not subject to GST.

New law	*Current law*
appropriation under an Australian law, or is made pursuant to the National Health Reform Agreement or an agreement to implement the National Health Reform Agreement; and • the payment is calculated on the basis that the sum of the payment and anything the other government related entity receives from another entity in connection with the supply or for any other related supply does not exceed the supplier's anticipated or actual costs of making those supplies (non-commercial test). The exception applies even where the terms of the appropriation do not confine payments to a particular government related entity or a class of government related entities. A payment made from one government related entity to another government related entity of a kind specified in a regulation is also excluded from the definition of 'consideration' and therefore is not subject to GST.	A payment made under an appropriation which can be made to a government related entity or a non-government related entity is potentially subject to GST.

Detailed explanation of new law

2.10 These amendments ensure that the non-commercial activities of government related entities are not subject to GST. This is achieved by treating payments which meet certain criteria as not being the provision of consideration.

2.11 The government related entity that receives the payment for a supply is referred to in the detailed explanation section of this explanatory memorandum as the *government related entity supplier*.

2.12 A payment will not be the provision of consideration if:

- the payment is made by a government related entity to a government related entity supplier for making a supply;

- the payment is covered by an appropriation under an Australian law, or is made under the National Health Reform Agreement or an agreement to implement the National Health Reform Agreement; and

- the payment is calculated on the basis that the sum of the payment received by the government related entity supplier and anything else received by it from another entity in connection with the supply (or any other related supply), does not exceed the actual or anticipated costs of making those supplies (non-commercial test).

2.13 A payment is also not the provision of consideration if the payment is made from a government related entity to a government related entity supplier and is of a kind specified in the regulations.

2.14 If the above conditions are satisfied, a payment made by a government related entity to a government related entity supplier is not subject to GST. In contrast, payments made by a government related entity to a non-government related entity supplier are, subject to the basic GST rules, potentially subject to GST. This outcome accords with the policy intent of the amendments.

Is the payment made by a government related entity to a government related entity supplier for making a supply?

2.15 These amendments require that the payment is made by a government related entity supplier for making a supply. It is not necessary that the supply is made to the government related entity making the payment. The supply may be made to the government related entity making the payment or to a third party. 'Government related entity' is defined in section 195-1 of the GST Act. ***[Schedule 2, item 2, paragraph 9-17(3)(a)]***

2.16 GST will not apply to the payment made by a government related entity to another government related entity if the payment is not made for a supply. This is achieved under the basic rules in the GST Act, which require a supply to be made for GST to apply.

Is the payment covered by an appropriation under an Australian law?

2.17 These amendments require that the payment must be covered by an appropriation under an Australian law. This requirement is met if the payment is made pursuant to an appropriation. ***[Schedule 2, item 2, subparagraph 9-17(3)(b)(i)]***

2.18 The payment need not be 'specifically covered' by an appropriation under an Australian law. The term 'specifically' has not been included in these amendments. This is to clarify that this exception has been expanded.

2.19 The government related entity supplier does not need to be specified under the terms of the appropriation, either by name, or as part of a class of government related entities, for subparagraph 9-17(3)(b)(i) to be satisfied. Subparagraph 9-17(3)(b)(i) is satisfied where the terms of the appropriation state the purpose for which funds are appropriated, rather than the entities to which the funds can be paid. A payment is therefore covered by an appropriation for the purposes of subparagraph 9-17(3)(b)(i), if the terms of the appropriation authorise the payment to be made.

2.20 Furthermore, the exception can apply where the terms of the appropriation under which the payment is made do not confine the payment to government related entities, either by name or to a class of government related entities. Accordingly, a payment is covered by an appropriation where the terms of the appropriation authorise payments to be made to both government related entities and non-government related entities.

Is the payment made under the National Health Reform Agreement or under an agreement to implement the National Health Reform Agreement?

2.21 The amendments apply, subject to the other conditions being met, if the payment is made under:

- the National Health Reform Agreement agreed by the Council of Australian Governments on 2 August 2011, as amended from time to time; or
- an agreement entered into to implement the National Health Reform Agreement.

These payments do not need to be covered by an appropriation under an Australian law to satisfy these amendments. ***[Schedule 2, item 2, subparagraphs 9-17(3)(b)(ii) and (iii)]***

2.22 The inclusion of the National Health Reform Agreement payments reflects that not all payments between government related entities that are made under the National Health Reform Agreement, are made pursuant to an appropriation.

Does the payment meet the non-commercial test?

2.23 These amendments ensure that the non-commercial activities of government are not subject to GST. This is achieved by requiring that the payment for the supply be calculated on the basis that the sum of the payment and anything else the government related entity supplier receives from another entity in connection with, or in response to, or for the inducement of, the supply or any other related supply, does not exceed the government related entity supplier's anticipated or actual cost of making the supplies. ***[Schedule 2, item 2, paragraph 9-17(3)(c)]***

2.24 The requirement that the thing received by the government related entity supplier from another entity be in connection with, or in response to, or for the inducement of, a supply is consistent with the requirements set out in section 9-15.

2.25 If the payment made by the government related entity to the government related entity supplier for a supply is made in instalments, paragraph 9-17(3)(c) requires the aggregate of the instalment payments for that supply to be tested against the anticipated or actual costs of making the supply or supplies. Instalment payments are not tested separately.

2.26 The reference to 'anything' in subparagraph 9-17(3)(c)(ii) ensures that the GST-inclusive value of things of a non-monetary nature received by the government related entity supplier from another entity are taken into account in determining whether the sum of the payment and things received by the government related entity supplier in connection with, or in response to, or for the inducement of, the supply, or for any other related supply, does not exceed the anticipated or actual costs of making the supplies.

2.27 Whether or not the amount of the payment exceeds the government related entity supplier's anticipated or actual costs of making the supply, or supplies, is determined at the time at which the amount to be paid is worked out rather than at the time of payment (if it is later). If the determination of the amount of the payment to be made takes place before the relevant supply, or supplies, are made, it will be necessary to base the calculation on the anticipated costs of making the supply, or supplies. The amount of the payment will commonly be calculated in consultation between the government related entity making the payment and the government related entity supplier. If the payment is calculated after the relevant supply, or supplies, are made, the calculation is based on the actual costs of making the supply, or supplies. Where the calculation is based on the anticipated costs of making the supply, or supplies, it is not necessary to subsequently determine the actual costs of making the supply, or supplies.

2.28 For example, a Commonwealth department enters into an agreement with a government related entity supplier for the government related entity supplier to supply administration services during the period 1 July 2012 to 30 June 2013. If the amount paid for the services by the Commonwealth department is determined in April 2012, it is necessary to consider the anticipated costs of making the supply at the time the amount is worked out in determining whether the non-commercial test is satisfied. It is not necessary to subsequently consider the actual costs of making the supply. If, on the other hand, the amount of the payment is determined after the services have been performed, for example in August 2013, it is necessary to consider the actual costs of making the supply in determining whether the non-commercial test is satisfied.

2.29 In some situations the payment may be determined by reference to both actual costs incurred and further anticipated costs where the amount of the payment is determined during the course of a supply being made. In these circumstances, both the actual and further anticipated costs will be considered in determining whether the non-commercial test is satisfied.

2.30 A government related entity may make a payment to a government related entity supplier to make a supply to a third party for an amount that is below the market value of the supply. This may occur, for example, under subsidy programs. Depending upon the details of the arrangement, the government related entity supplier may only be making a supply to the third party, or alternatively it may be making supplies to both the government related entity making the payment and the third party. Where the arrangement involves the government related entity supplier making a supply to the government related entity that made the payment and also a supply to a third party, the supply made to the third party will relate to making the supply to the government related entity. Consistent with the policy intent that non-commercial activities of government are not subject to GST, payments or any other thing that the government related entity supplier receives from the third party under the arrangement, are included in the calculation set out in paragraph 9-17(3)(c).

2.31 In the context of these amendments, the concept of *cost* includes the government related entity supplier's direct and indirect costs of making the supply or supplies, but does not include a return on capital or concepts of cost which are measured based on opportunity cost or forgone revenue. An absorption costing methodology is an example of a methodology that may be used to calculate the anticipated or actual costs of making the supply or supplies. ***[Schedule 2, item 2, paragraph 9-17(3)(c)]***

Is the payment of a kind specified in a regulation?

2.32 A payment made by a government related entity to a government related entity supplier that is of a kind specified in a regulation, is not the provision of consideration. This regulation making power provides flexibility to add, in appropriate circumstances, other government payments (made under other Commonwealth and State or Territory arrangements that operate on a model similar to the National Health Reform Agreement) to ensure that non-commercial activities of government are not subject to GST. ***[Schedule 2, item 2, subsection 9-17(4)]***

2.33 Where the above conditions are satisfied, the payment is not the provision of consideration despite section 9-15, and is therefore not subject to GST. ***[Schedule 2, item 2, subsection 9-17(5)]***

Example 2.1: Non-commercial activity — funding education outcomes

A Territory Department of Education (the Department) has funding arrangements with government and non-government schools. Funding payments are made pursuant to an appropriation under that Territory's law, the terms of which allow for payments to be made to both government and non-government schools. Government and non-government schools which receive funding commit to achieving certain education outcomes as part of the funding arrangements.

A payment is made by the Department to a government school to fund its general operations pursuant to an appropriation under that Territory's law. The appropriation under the Territory law states the total amount of money that is authorised to be paid to both government and non-government schools. The Department determines the amount of funding to be allocated to each school based on objective criteria. Funding arrangements are entered into between the Department and both government and non-government schools. The objective criteria by which the amount of funding is determined are based on the anticipated costs of the school in meeting the education outcomes that it has undertaken to achieve.

The payment satisfies the requirements set out in subsection 9-17(3) as the payment:

- is a payment from a government related entity (the Department) to a government related entity supplier (the government school) for a supply of certain education outcomes, thereby satisfying paragraph 9-17(3)(a);

- is covered by an appropriation under an Australian law as the appropriation under the Territory law authorises the payment to be made. It does not matter that the appropriation under the Territory

law also authorises payments to be made to non-government related entities. Accordingly, subparagraph 9-17(3)(b)(i) is satisfied; and

- the amount of the payment is calculated on the basis that it does not exceed the government related entity supplier's anticipated costs of making the supply. The amount of the payment under the funding arrangement is calculated only to meet the anticipated costs of delivering the education outcomes that the school has undertaken to meet. Paragraph 9-17(3)(c) is therefore satisfied.

As subsection 9-17(3) is satisfied, the payment is not the provision of 'consideration', as defined in section 195-1, and is therefore not subject to GST.

Example 2.2: Commercial activity — legal services

A Commonwealth Department (the Department) enters into a contract with a government agency (the government related entity supplier) to supply legal services. The government related entity supplier is subject to an internal policy which requires it to charge a price that exceeds the government related entity supplier's actual costs for supplying the legal services. The government related entity supplier calculates the amount, after the supply is made to the Department, on this basis. The Department pays this amount to the government related entity supplier.

The payment made by the Department to the government related entity supplier is made pursuant to an appropriation made under a Commonwealth law that authorises the payment to be made.

The payment does not satisfy all of the requirements of subsection 9-17(3).

- Paragraph 9-17(3)(a) is satisfied as the payment is made from a government related entity (the Department) to a government related entity supplier for the supply of legal services.

- Subparagraph 9-17(3)(b)(i) is satisfied as the payment is covered by an appropriation under an Australian law as the terms of the appropriation authorise the making of the payment.

- However paragraph 9-17(3)(c) is not satisfied as the payment is calculated on the basis that it exceeds the government related entity supplier's actual costs of making the supply of legal services.

As subsection 9-17(3) is not satisfied, the payment is not excluded from being the provision of 'consideration', as defined in section 195-1, and therefore, if the basic GST rules are met, is subject to GST.

Example 2.3: Non-commercial activity — memorandum of understanding

Two Commonwealth Departments enter into a memorandum of understanding (memorandum). A section of the memorandum sets out business administration services that a Department (the government related entity supplier) will provide to the other, and the terms on which the services will be provided.

The funds which are paid under the memorandum are appropriated under a Commonwealth law which authorises the payment to be made. The amount of the payment is calculated to equal the anticipated cost of providing the services.

The agreement allows for the payments to be made in instalments throughout the duration of the agreement.

The payment satisfies the requirements set out in subsection 9-17(3) as the payment:

- is a payment from one government related entity (the Department) to a government related entity supplier for the supply of administration services, thereby satisfying paragraph 9-17(3)(a);

- is covered by an appropriation under an Australian law as the terms of the appropriation authorise the making of the payment, thereby satisfying subparagraph 9-17(3)(b)(i); and

- is calculated on the basis that the payment (being the aggregate of the instalment payments) does not exceed the government related entity supplier's anticipated costs of making the supply. This is because the amount of the payment equals the amount of the government related entity supplier's anticipated costs of making the supply.

As subsection 9-17(3) is satisfied, the payment is not the provision of 'consideration', as defined in section 195-1, and is therefore not subject to GST.

Example 2.4: Commercial activity — transport services

A State government related entity (the government related entity supplier) is engaged to supply transport services to the general public. The standard fare is calculated on the basis that it exceeds the government related entity supplier's anticipated costs of supplying the transport.

The State Government has a policy of subsidising the fares for pensioners who reside in that State (eligible customers). A State Department (the Department) has established a program to deliver this

policy objective. Under the program, an eligible customer pays only half of the fare to the government related entity supplier. The government related entity supplier then reports the subsidised transport journey to the Department, which then pays an amount (subsidy) equivalent to half of the fare to the government related entity supplier. Payments under the program are made pursuant to an appropriation under a State Act that authorises the payments to be made.

The sum of the amount of the subsidy and the subsidised fare is equal to the fare that the government related entity supplier would charge in the absence of the subsidy. This is an amount which is greater than the government related entity supplier's anticipated costs of supplying the transportation services.

Depending upon the specific details of the subsidy program, the government related entity supplier may only make supplies of transport services to eligible customers or alternatively may make supplies to both the eligible customers and the Department.

Where the government related entity supplier only makes supplies of transport services to eligible customers under the program:

- paragraph 9-17(3)(a) is satisfied as the payment is made by a government related entity (the Department) to a government related entity supplier;

- subparagraph 9-17(3)(b)(i) is satisfied as the payment is covered by an appropriation under an Australian law, as the terms of the appropriation authorise the making of the payment; and

- paragraph 9-17(3)(c) is not satisfied as the payment is calculated on the basis that the sum of the subsidy paid by the Department and the amount paid by the eligible customer for the supply of the transport service exceeds the anticipated costs of making the supply to the eligible customer.

Where the government related entity supplier makes supplies to both the Department and the eligible customers under the program, the supply of the transport service made to an eligible customer relates to the supply the government related entity supplier makes to the Department. Accordingly:

- paragraph 9-17(3)(a) is satisfied as the payment is made by a government related entity (the Department) to a government related entity supplier;

- subparagraph 9-17(3)(b)(i) is satisfied as the payment is covered by an appropriation under an Australian law as the terms of the appropriation authorise the making of the payment; and

- paragraph 9-17(3)(c) is not satisfied as the payment is calculated on the basis that the sum of the subsidy paid by the Department for the supply the government related entity supplier makes to it and the amount paid by the eligible customer for the related supply of the transport service exceeds the government related entity supplier's anticipated costs of making the supplies.

Therefore, regardless of whether the government related entity supplier only makes a single supply to the eligible customer or makes supplies to both the eligible customer and the Department, the payment will not satisfy the exception in subsection 9-17(3). The payment is therefore not excluded from being the provision of 'consideration', as defined in section 195-1 and, if the basic GST rules are met, is subject to GST.

Example 2.5: Non-commercial activity — transport services

Assume the same facts apply as in Example 2.4, except that the standard fare charged by the government related entity supplier is calculated on the basis that it does not exceed the anticipated costs of supplying the transport service.

Where the government related entity supplier only makes supplies of transport services to eligible customers under the program:

- as in Example 2.4, paragraph 9-17(3)(a) and subparagraph 9-17(3)(b)(i) are satisfied; and

- in contrast to Example 2.4, paragraph 9-17(3)(c) is also satisfied as the payment is calculated on the basis that the sum of the payment made by the Department and the amount paid by the eligible customer for the supply of the transport service does not exceed the government related entity supplier's anticipated costs of making the supply.

Where the government related entity supplier makes supplies to both the Department and eligible customers under the program, the supply of the transport service made to the eligible customer relates to the supply the government related entity supplier makes to the Department:

- as in Example 2.4, paragraph 9-17(3)(a) and subparagraph 9-17(3)(b)(i) are satisfied; and

- in contrast to Example 2.4, paragraph 9-17(3)(c) is also satisfied as the payment is calculated on the basis that the sum of the payment made by the Department for the supply the government related entity supplier makes to it and the amount paid by the eligible customer for the related supply of the transport service does not exceed the government related entity supplier's anticipated costs of making those supplies.

Therefore, the payment will satisfy the exception in subsection 9-17(3) and is excluded from being the provision of 'consideration', as defined in section 195-1, and is accordingly not subject to GST.

Example 2.6: Non-commercial activity — health outcomes

A State government has entered into an agreement (the Agreement) with the Commonwealth which sets out the terms on which the Commonwealth will contribute to the funding of public hospitals. In exchange for Commonwealth funding, the State undertakes to deliver certain health outcomes.

The amount of Commonwealth funding is calculated in accordance with the Agreement. The amount of Commonwealth funding for a particular public hospital service category is based on the volume of services provided multiplied by the efficient price for the current year.

The efficient price for a particular service is determined by an independent pricing authority and is set with reference to the anticipated cost of delivering the service in question.

The payment is from a government related entity to a government related entity supplier, as it is a payment from the Commonwealth to the State for a supply of health outcomes, which satisfies paragraph 9-17(3)(a).

Paragraph 9-17(3)(b) will be satisfied if:

- the payment is covered by an appropriation under an Australian law (subparagraph 9-17(3)(b)(i));
- the payment is made under the National Health Reform Agreement (subparagraph 9-17(3)(b)(ii)); or
- the payment is made under an agreement entered into to implement the National Health Reform Agreement (subparagraph 9-17(3)(b)(iii)).

Paragraph 9-17(3)(c) is satisfied as the amount of the funding is calculated on the basis that the funding payment does not exceed the anticipated costs of the State delivering the health outcomes.

Example 2.7: Non-commercial activity — health services

A State Government establishes Local Health Districts under State legislation as government related entities. A State Department (the Department) enters into an agreement with each of them.

The agreement governs the funding of a Local Health District and the type and volume of activities to be delivered by the Local Health District. The amount of funding is determined by the State and is set at

a level that is calculated to only cover the Local Health District's anticipated costs of delivering the services that it has undertaken to provide under the contractual agreement.

Funds are paid from the State to a Local Health District in accordance with the agreement.

The payment is from a government related entity (the Department) to a government related entity supplier (Local Health District) for a supply of health outcomes, thereby satisfying paragraph 9-17(3)(a).

Paragraph 9-17(3)(b) will be satisfied if:

- the payment is covered by an appropriation under an Australian law (subparagraph 9-17(3)(b)(i));
- the payment is made under the National Health Reform Agreement (subparagraph 9-17(3)(b)(ii)); or
- the payment is made under an agreement entered into to implement the National Health Reform Agreement (subparagraph 9-17(3)(b)(iii)).

Paragraph 9-17(3)(c) will be satisfied if the amount of the funding is calculated on the basis that the sum of the payment and anything else the Local Health District receives from another entity in connection with the supply, or for any other related supply, does not exceed the Local Health District's anticipated costs of making those supplies. Payments expected to be made by patients for health services that relate to the Local Health District's supply to the Department, and the anticipated costs of making those supplies, are therefore required to be taken into account in determining whether paragraph 9-17(3)(c) is satisfied.

Application and transitional provisions

2.34 The amendments made by this Schedule apply, and are taken to have applied, on or after 1 July 2012. ***[Schedule 2, item 14]***

2.35 These amendments therefore apply to a payment made on or after 1 July 2012, regardless of whether the payment is in connection with a supply that was made before 1 July 2012.

Consequential amendments

2.36 Subsection 9-15(3), which provides certain exemptions from the meaning of 'consideration', has been repealed and the exemptions are included in new section 9-17. ***[Schedule 2, items 1 and 2, subsections 9-17(1) and (2)]***

2.37 Amendments have been made to the following provisions to reflect that section 9-17 now includes exemptions from the meaning of 'consideration' formerly contained in subsection 9-15(3):

- paragraph 63-27(2)(a);
- subsection 78-50(4);
- section 81-20;
- section 100-1 (note);
- subsection 100-10(3); and
- section 195-1.

[Schedule 2, items 3 and 8 to 13]

2.38 Consequential amendments are also made to Division 72. Broadly, Division 72 sets out rules concerning supplies between associates without 'consideration', or for inadequate 'consideration'. It also sets out rules for acquisitions without 'consideration'.

2.39 Division 72 has the potential to operate where subsection 9-17(3) excludes payments from being the provision of 'consideration'. This may have the result that there is a supply between associates which is without 'consideration'. These consequential amendments clarify how Division 72 interacts with subsections 9-17(3) and (4).

2.40 Section 72-95 is amended to ensure that Division 72 does not apply to Commonwealth government entities where a payment for a supply or acquisition is covered by subsection 9-17(3) or (4). ***[Schedule 2, items 4 and 5]***

2.41 Section 72-100 is also amended to ensure that Division 72 does not apply to State and Territory government entities where a payment for a supply or acquisition is covered by subsection 9-17(3) or (4). ***[Schedule 2, item 6 to 7]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

GST treatment of appropriations

2.42 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.43 The amendments contained in this Schedule are intended to restore the policy intent that the non-commercial activities of government are not subject to GST.

Human rights implications

2.44 This Schedule does not affect any of the applicable rights or freedoms.

Conclusion

2.45 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, Senator the Hon Mark Arbib

Chapter 3
Indexation of superannuation concessional contributions cap

Outline of chapter

3.1 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to temporarily pause the indexation of the superannuation concessional contributions cap so that it will remain fixed at $25,000 up to and including the 2013-14 financial year.

Context of amendments

3.2 Since 1 July 2007, concessional and non-concessional superannuation contributions have been subject to annual limits.

3.3 Concessional contributions are generally those contributions which are included in the assessable income of a superannuation fund and include employer contributions (including superannuation guarantee and salary sacrifice contributions) and tax deductible personal contributions.

3.4 For individuals aged under 50 years of age a general concessional contributions cap applies. This cap is indexed annually based on movements in full-time adult average weekly ordinary time earnings for the December quarter, rounded down to the nearest multiple of $5,000. The general concessional contributions cap is currently $25,000.

3.5 The indexation factor is the proportional change in full-time average weekly ordinary time earnings from the middle month of the December 2008 quarter to the middle month of the December quarter just before the relevant financial year.

3.6 The cap for 2012-13 will not be known with absolute certainty until the full-time adult average weekly ordinary time earnings figure for the December 2011 quarter is known. Based on current Treasury projections, however, the concessional contributions cap for the 2012-13 financial year is not expected to increase above $25,000.

3.7 A transitional concessional cap of $50,000 applies to individuals aged 50 or over, which is scheduled to expire on 1 July 2012. The

Government has announced that individuals aged 50 and over with superannuation balances of less than $500,000 will continue to be eligible for a $50,000 cap.

3.8 The non-concessional contributions cap is currently set at six times the general concessional contributions cap.

3.9 In the 2011-12 Mid-Year Economic and Fiscal Outlook the Government announced that the indexation of the concessional contributions cap would be paused in 2013-14. In the absence of this measure it is expected that indexation would likely have increased the general concessional contributions cap from $25,000 to $30,000 in 2013-14.

Summary of new law

3.10 The indexation of the general concessional contributions cap will be paused, that is, the cap is not expected to increase until the 2014-15 financial year.

Comparison of key features of new law and current law

New law	*Current law*
The cap for concessional contributions will be $25,000 for the 2012-13 and 2013-14 financial years. For the 2014-15 and later financial years the concessional contributions cap will be $25,000 indexed annually based on movements in full-time adult average weekly ordinary time earnings and rounded down to the nearest multiple of $5,000.	The cap for concessional contributions to superannuation is $25,000 indexed annually based on movements in full-time adult average weekly ordinary time earnings, and rounded down to the nearest multiple of $5,000.

Detailed explanation of new law

3.11 The general concessional contributions cap is indexed annually in line with movements in full-time adult average weekly ordinary time earnings and rounded down to the nearest multiple of $5,000. This means that the cap only changes when the cumulative indexed amount reaches $5,000 or greater.

3.12 It was expected that indexation would increase the concessional contributions cap from $25,000 to $30,000 in the 2013-14 financial year.

3.13 For the 2012-13 and 2013-14 financial years the concessional contributions cap will be set at $25,000. For the 2014-15 and later financial years the concessional contributions cap will be worked out by annually indexing the amount of the concessional contributions cap for the 2013-14 financial year (that is, $25,000). ***[Schedule 3, item 1, subsection 292-20(2)]***

3.14 The cap for the 2014-15 financial year and later financial years will be indexed as if the freeze had not been imposed. That is, the underlying formula governing indexation of the concessional contributions cap will not be reset (providing for indexation by reference to the December 2008 quarter).

3.15 The pause in indexation will flow on to the increased concessional contributions cap for individuals aged 50 and over and the non-concessional contributions cap.

Consequential amendments

3.16 A consequential amendment is made to section 960-285 of the ITAA 1997 to update a reference to the concessional contributions cap as a result of the changes made to section 292-20. Section 960-285 specifies the method for indexing the concessional contributions cap. The subparagraph 960-285(2)(a)(i) is updated to replace the reference to the concessional contributions cap applying in 2010-11 to refer to the cap which applies in 2013-14. The cap for both of these years is $25,000. ***[Schedule 3, item 2, subparagraph 960-285(2)(a)(i)]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Indexation of superannuation concessional contributions cap

3.17 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

3.18 This Schedule amends subsection 292-20(2) of the ITAA 1997.

3.19 The purpose of this Schedule is to defer the indexation applied to the general concessional superannuation contributions cap until the 2014-15 financial year. The pause in indexation will flow on to the increased concessional contributions cap for individuals aged 50 and over and the non-concessional contributions cap.

Human rights implications

3.20 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

3.21 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Chapter 4
Superannuation — refund of excess concessional contributions

Outline of chapter

4.1 Schedule 4 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997), the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the *Taxation Administration Act 1953* (TAA 1953), and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to allow eligible individuals the option to effectively have excess concessional contributions of $10,000 or less refunded to them. However, if the refund is accepted, the excess concessional contributions will be assessed as income for the year of the excess contributions, rather than paying excess contributions tax.

Context of amendments

4.2 Concessional contributions are generally those contributions which are included in the assessable income of a complying superannuation fund or a retirement savings account (RSA) and are counted towards the concessional contributions cap. Concessional contributions include all employer contributions (including compulsory superannuation guarantee and salary sacrificed amounts) and personal contributions for which a deduction is allowed (generally restricted to those self-employed and those not employed). 'Concessional contributions' are defined in section 292-25 of the ITAA 1997.

4.3 As set out in Subdivision 295-H of the ITAA 1997, concessional contributions that are included in the assessable income of a complying superannuation fund form part of the low tax component of the fund's taxable income. Subdivision 295-H also provides that concessional contributions included in the assessable income of an RSA form part of the RSA component of the RSA's taxable income. These components are subject to 15 per cent tax payable by the superannuation entity as set out in sections 23 (RSAs) and 26 (superannuation funds) of the *Income Tax Rates Act 1986*.

4.4 An individual's concessional contributions are subject to an annual contributions cap.

4.5 The concessional contributions cap are set out in subsection 292-20(2) of the ITAA 1997. For the 2011-12 financial year, the concessional contributions cap is $25,000. For those aged 50 or over a transitional cap of $50,000 applies for the 2011-12 year, as set out in section 292-20 of the *Income Tax (Transitional Provisions) Act 1997*. The Government has announced that those aged 50 and over with superannuation balances below $500,000 will be subject to a $50,000 cap from 1 July 2012.

4.6 As outlined in section 292-15 of the ITAA 1997, individuals are liable to pay excess contribution tax if they have excess concessional contributions for a financial year. An individual has excess concessional contributions for a financial year if the amount of the individual's concessional contributions for the financial year exceeds the individual's concessional contributions cap for the financial year. Excess contributions tax is in addition to any tax paid by the superannuation entity in respect of the contribution.

4.7 Section 5 of the *Superannuation (Excess Concessional Contributions Tax) Act 2007* imposes excess contributions tax at 31.5 per cent of a person's excess concessional contributions for a financial year. The purpose of excess contributions tax is to remove the concessional tax treatment that would otherwise apply. The rate of excess contributions tax was also set at a high level to encourage individuals to comply with the concessional contributions cap as there is no other limit to the amount of assessable contributions that can be made.

4.8 If an individual has excess concessional contributions, the Commissioner of Taxation (Commissioner) must issue an excess contributions tax assessment. The Commissioner may also amend assessments within certain timeframes. Excess contributions tax is due and payable at the end of 21 days after the Commissioner gives the individual notice of the excess contributions tax assessment. These rules are covered in Subdivisions 292-E, 292-F and 292-G of the ITAA 1997.

4.9 A person may apply to the Commissioner for a determination that their excess concessional contributions for a financial year be disregarded or reallocated to another financial year. The Commissioner can only make this determination if there are special circumstances and making the determination is consistent with the object of the law. This is covered in Subdivision 292-H, in particular section 292-465 of the ITAA 1997.

4.10 When the Commissioner has information indicating that an individual has excess concessional contributions, the Commissioner sends a pre-assessment letter to the individual. The individual then has an opportunity to verify the contribution amount reported by their fund. If

the information is incorrect, the individual will usually ask their fund to correct the information they have provided to the Commissioner. The individual may also request the Commissioner to exercise the discretion to disregard or reallocate contributions at this stage, as set out in section 292-465 of the ITAA 1997. However, the letter itself is not an excess contributions tax assessment. If the Commissioner subsequently issues an excess contributions tax notice of assessment, the individual can object to any assessment with which they are dissatisfied as outlined in section 292-245 of the ITAA 1997.

4.11 The Commissioner must give an individual a 'release authority' as soon as practicable after making an excess contributions tax assessment. If the excess contributions tax is for excess concessional contributions an individual may choose to give the release authority to their superannuation provider within 90 days after the date of the release authority. The release authority has two important functions. First, it allows the superannuation provider to pay out a part of a member's benefits. Secondly, it allows the individual to pay their excess contributions tax liability from their superannuation monies. If the release authority is used, the individual may specify the amount to be released. The release authority may be given to more than one superannuation provider, but the total amount released must not exceed the excess contributions tax. Alternatively the individual can pay the excess contributions tax out of non-superannuation sources and not use the release authority. Collection of the excess contributions tax is outlined in Subdivision 292-G of the ITAA 1997.

4.12 Excess concessional contributions are also included in an individual's non-concessional contributions. This is to prevent high income earners from circumventing the non-concessional contributions cap by making unlimited excess concessional contributions. The meaning of 'non-concessional contributions' is set out in section 292-90 of the ITAA 1997.

4.13 These amendments provide an option for eligible individuals to pay the excess contributions tax under current processes or effectively have excess concessional contributions of $10,000 or less refunded to them and have the amount of excess concessional contributions taxed as assessable income at their marginal tax rate(s).

Summary of new law

4.14 An eligible individual will have an option to have 85 per cent of their excess concessional contributions taken out of their superannuation fund and the full amount of the excess concessional contributions assessed

at their marginal income tax rate rather than incurring excess contributions tax. The Commissioner will, in making or amending that assessment, allow the individual a refundable tax offset equal to 15 per cent of the excess concessional contributions. This measure only applies where an individual has excess concessional contributions of $10,000 (not indexed) or less and did not have excess concessional contributions for an earlier financial year commencing on or after 1 July 2011.

Comparison of key features of new law and current law

New law	*Current law*
Eligible individuals will be given the option to effectively have refunded excess concessional contributions of $10,000 or less for the 2011-12 financial year or a later year, only if they do not have excess concessional contributions for an earlier financial year commencing on or after 1 July 2011. Where the refund is chosen, excess contributions will effectively be assessable at the individual's marginal tax rate(s).	Excess concessional contributions are subject to excess contributions tax at the rate of 31.5 per cent. This is in addition to the 15 per cent deducted from assessable contributions by the superannuation provider to provide for its income tax liabilities.

Detailed explanation of new law

Release authorities for refunded excess concessional contributions

4.15 The Commissioner may issue a release authority to a superannuation provider if the Commissioner makes the determination discussed in paragraph 4.25. ***[Schedule 4, item 1, subsection 292-420(1) of the ITAA 1997]***

4.16 The release authority must state the amount to be released, which is usually 85 per cent of the excess concessional contributions to which the determination relates. The release authority must be dated and contain any other information the Commissioner considers relevant. Only 85 per cent of the excess concessional contributions will usually be stated because this takes account of the fact that the relevant excess will usually be attributable to contributions that are assessable and the superannuation provider will have reduced them by 15 per cent to provide for its income tax liability. ***[Schedule 4, item 1, subsection 292-420(2) of the ITAA 1997]***

4.17 The refund release authority under subsection 292-420(1) will be for an amount less than 85 per cent of the relevant excess concessional contributions if any excess contributions tax has already been released pursuant to a release authority given under section 292-415 for the excess concessional contributions. In this case, the Commissioner may issue a refund release authority for any difference. The Commissioner will not issue a refund release authority if the amount to be released is reduced to zero. ***[Schedule 4, item 1, subsection 292-420(3) and paragraph 292-420(1)(c) of the ITAA 1997]***

4.18 A superannuation provider that is issued with the release authority must:

- pay to the Commissioner the amount stated in the release authority within 30 days of the date of issue of the release authority; and

- provide to the Commissioner a statement in the approved form, within 30 days of the date of issue of the release authority or within seven days of payment, whichever is earlier, to advise the Commissioner of the payment.

[Schedule 4, item 1, subsection 292-420(4) of the ITAA 1997]

4.19 A superannuation provider is not required to comply with the release authority if:

- the sum of the values of the superannuation interests held by the provider for the individual (other than those described in the following dot point) is less than the amount stated in the release authority; or

- the provider holds only one or more of the following superannuation interests for the individual:

  – a defined benefit interest;

  – an interest in a non-complying superannuation fund; or

  – an interest supporting a superannuation income stream.

[Schedule 4, item 1, subsection 292-420(5) of the ITAA 1997]

4.20 If the superannuation provider is not required to comply with the release authority, the provider must, within 30 days of its issue date, advise the Commissioner, using an approved form, that it is not required to comply. The Commissioner may choose not to penalise a superannuation provider that does not pay an amount pursuant to a release

authority if it provides a reason other than those listed under subsection 292-420(5). ***[Schedule 4, item 1, subsection 292-420(6) of the ITAA 1997]***

4.21 Before the Commissioner receives the amount requested in the release authority the Commissioner may vary or revoke the release authority. This will allow the Commissioner to make corrections if, for example, new information about an individual's concessional contributions is received. ***[Schedule 4, item 1, subsection 292-420(7) of the ITAA 1997]***

4.22 The individual is entitled to a credit for the amount paid by a superannuation provider to the Commissioner under the release authority. The time at which the individual is entitled to the credit, depends on whether the Commissioner receives the amount released by the provider before, or after, the individual's income tax assessment is made or amended. ***[Schedule 4, item 1, subsection 292-420(8) of the ITAA 1997]***

4.23 This means the Commissioner will hold the entire credit amount until an assessment or amended assessment is made. However, the Commissioner may be liable to pay the individual interest if any refund the individual is entitled to is delayed unduly.

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

4.24 If the Commissioner is required to refund all or part of a credit as a result of an amount paid by a superannuation provider in accordance with the release authority and this is not done within 60 days of receiving that amount, interest will accrue on the amount that has not been refunded. The amount on which the interest is payable also includes any portion of the refundable tax offset that the Commissioner is required to refund. The interest is payable on a daily basis at the base interest rate for the period beginning 60 days after the day the Commissioner receives the payment and ending on the day of the refund. ***[Schedule 4, item 2, section 292-425 of the ITAA 1997]***

Refunded excess concessional contributions

4.25 If all of the following conditions are met, the Commissioner may issue an individual with a notice of offer for a refund:

- the Commissioner is satisfied that the individual has excess concessional contributions for a financial year;
- the amount of excess concessional contributions is $10,000 or less;

- the individual does not have excess concessional contributions for an earlier financial year starting from 1 July 2011; and

- the individual has lodged an income tax return for the relevant income year within 12 months of the end of that year, or within such longer period as the Commissioner allows.

[Schedule 4, item 2, paragraphs 292-467(1)(a) to (d) of the ITAA 1997]

4.26 The conditions for an individual to be made an offer for a refund mean:

- once an individual has excess concessional contributions in any financial year from 2011-12, they are no longer eligible for the refund option in any subsequent year. (Note: an individual's eligibility in a particular year could be affected by amendments to their excess contributions tax assessments in an earlier year that removes the individual from having made excess concessional contributions, for example, as a result of exercising the section 292-465 Commissioner's discretion.);

- if the individual exceeds their concessional contributions cap in more than one financial year before receiving notification from the Commissioner then only the first year will be eligible for the refund; and

- existing excess contributions tax processes apply for non-eligible individuals and for those who do not accept the refund offer.

4.27 The option does not apply retrospectively, that is, to excess concessional contributions made before the 2011-12 financial year. Individual circumstances before 1 July 2011 also do not affect eligibility for refund. This means that any excess concessional contributions for a year prior to 1 July 2011 are not relevant in determining eligibility.

Example 4.1: Excess concessional contributions made prior to 1 July 2011 are not used to determine whether an individual is eligible for a refund offer

The Commissioner determines an individual has excess concessional contributions of $5,000 for the 2010-11 financial year. The Commissioner then issues an excess contributions tax notice of assessment for excess concessional contributions of $5,000.

Later, the Commissioner determines an individual has excess concessional contributions of $6,000 for the 2011-12 financial year and determines that the individual is eligible for a refund offer under this measure, because the earlier $5,000 excess concessional contributions was made prior to 1 July 2011, hence it is not relevant to the individual's eligibility for a refund.

Example 4.2: Excess concessional contributions made prior to 1 July 2011 are not refundable

The Commissioner determines an individual has excess concessional contributions of $5,000 for the 2010-11 financial year. The Commissioner then issues an excess contributions tax notice of assessment for excess concessional contributions of $5,000, because the refund offer does not apply to excess concessional contributions prior to 1 July 2011.

Example 4.3: The choice not to accept a refund offer means the individual is not entitled to a future refund offer.

The Commissioner determines an individual has excess concessional contributions of $5,000 for the 2011-12 financial year and determines that the individual is eligible for a refund offer under this measure. The individual chooses not to accept the offer and hence is assessed for excess contributions tax.

Later, the Commissioner determines an individual has excess concessional contributions of $6,000 for the 2012-13 financial year. The individual is not eligible for a refund offer under this measure, because the individual had $5,000 excess concessional contributions in the 2011-12 financial year.

4.28 If the individual accepts the refund offer, the Commissioner may make a determination that excess concessional contributions for that financial year are to be disregarded for the purposes of the excess contributions tax provisions (that is, Division 292 of the ITAA 1997). ***[Schedule 4, item 2, subsections 292-467(1) and (3) of the ITAA 1997]***

4.29 A refund determination does not result in a non-acceptance of a contribution, nor is it a return of a contribution. As a result the contributions that gave rise to a refund determination are still contributions in relation to the member and the superannuation entity, and hence continue to count towards satisfying an employer's superannuation guarantee obligations and where appropriate, remain assessable income of the fund. The refund determination merely changes the income tax treatment of the individual in relation to the excess concessional contributions. Where an amount is paid to the Commissioner as a result of the refund determination it should also be noted that the amount

released from the fund is considered a superannuation benefit. The income tax treatment of the benefit is outlined in paragraph 4.58.

4.30 When the Commissioner issues a written notice of offer to the eligible individual, the individual may accept the refund offer within 28 days after the notice is issued or within such longer period as the Commissioner allows.

- An offer can only be accepted using the approved form.
- If the individual does not wish to accept the offer they could allow the offer to lapse, or contact the Australian Taxation Office (ATO), but they are not required to formally reject an offer.
- A decision not to accept the offer will not result in the individual being entitled for a refund offer in a future year.
- The choice that the individual makes is irrevocable. The Commissioner will proceed to assess excess contributions tax if the offer is not accepted on time.

[Schedule 4, item 2, subsection 292-467(3) of the ITAA 1997]

4.31 The written notice of offer will be issued at a similar time to the existing letter the Commissioner sends to individuals prior to making an excess contributions tax assessment. This letter tells the individual they may have to pay excess contributions tax. While the individual cannot object to the offer, the individual will still be able to:

- advise the Commissioner that the contribution amount is incorrect and discuss with their superannuation provider the need to have the amount of concessional contributions re-reported under section 390-115 of the TAA 1953; and/or
- apply for Commissioner's discretion to disregard or reallocate to another financial year the excess concessional contributions under section 292-465 of the ITAA 1997.

4.32 In situations like these, the individual may be granted an extension of time to accept the offer from the Commissioner. ***[Schedule 4, item 2, paragraph 292-467(3)(b) of the ITAA 1997]***

4.33 If the individual accepts the offer, the Commissioner will make a determination that the excess concessional contributions are to be disregarded. The Commissioner must issue the individual notice of the determination. The Commissioner may also send a release authority to

the relevant provider seeking to release an amount for the excess concessional contributions. ***[Schedule 4, item 2, subsections 292-467(1) and (4) of the ITAA 1997]***

4.34 The Commissioner will include the amount of excess concessional contributions in the individual's assessable income for the income year that corresponds with the financial year for the excess contributions. The Commissioner will make, or amend, the individual's income tax assessment accordingly and will therefore issue the individual a notice of the relevant assessment. Notice of the determination may be included in this notice of assessment. ***[Schedule 4, item 2, subsections 292-467 (2) and (5) of the ITAA 1997]***

4.35 The Commissioner will, in making or amending that assessment, allow the individual a tax offset equal to 15 per cent of the excess concessional contributions. This takes account of the fact that the relevant excess will usually be attributable to contributions that are assessable and the superannuation provider will have reduced them by 15 per cent to provide for its income tax liability. ***[Schedule 4, item 2, paragraph 292-467(2)(b) of the ITAA 1997]***

4.36 This tax offset is a refundable tax offset. ***[Schedule 4, items 5 and 7, sections 13-1 and 67-23 of the ITAA 1997]***

4.37 As mentioned in paragraph 4.22, the Commissioner will also allow the individual a credit for any amount paid to the Commissioner by a superannuation provider in accordance with a release authority. This will mean that most individuals will have no tax debt to pay as their income tax account with the Commissioner will be in credit.

4.38 Where an account is in credit, that is, the Commissioner owes money to the individual, the amount must be refunded to the individual. This is a credit the individual is entitled to under a taxation law for the purposes of paragraph 8AAZL(1)(b) of the TAA 1953.

4.39 However, the individual may receive a reduced refund, or no refund at all if:

- the individual has an outstanding debt with the Commissioner for another type of tax — for example, the refund may be offset against an income tax debt that they owe (section 8AAZL of the TAA 1953); and/or
- the individual has an outstanding debt to another Commonwealth agency which has required the Commissioner to pay any refund to them to cover other debts — for example, the Child Support Agency or Centrelink.

4.40 Where there is no superannuation provider that is required to comply with a release authority, the amount of excess concessional contributions will still be included in the individual's assessable income and the tax offset allowed. However, the individual is not entitled to a credit as no amount has been paid by a superannuation provider. If this means the individual's account is not in credit, they may have a tax bill to pay. ***[Schedule 4, item 2, subsection 292-467(2) of the ITAA 1997]***

Variation of refunded excess concessional contributions determinations

4.41 The Commissioner will have the power to vary or revoke a determination in certain circumstances if the Commissioner is satisfied that the amount of excess contributions previously determined is incorrect. ***[Schedule 4, item 2, subsection 292-468(1) of the ITAA 1997]***

4.42 However, there are practical limits to what can be achieved by such a variation or revocation, particularly where an amount has already been paid to the Commissioner by a superannuation provider under a release authority. These practical limits are recognised by restrictions on the Commissioner's power to vary or revoke a determination. ***[Schedule 4, item 2, subsections 292-468(2) to (5) of the ITAA 1997]***

4.43 Where a payment under a release authority has *not* been received by the Commissioner and the Commissioner is satisfied that:

- the correct amount of excess concessional contributions is greater than $10,000; or
- the individual has no excess concessional contributions.

The Commissioner may revoke the determination. ***[Schedule 4, item 2, subsection 292-468(2) of the ITAA 1997]***

4.44 If the correct amount of excess concessional contributions is greater than $10,000, the revocation of the determination will mean the Commissioner can make an excess contributions tax assessment for the correct amount. Further, the individual will not be eligible for the refund in any subsequent year.

4.45 If the individual has no excess concessional contributions, the revocation of the determination will mean the Commissioner will also revoke any release authority issued to a superannuation provider. There will usually be no income tax assessment (original or amended) to amend if no payment has been received. ***[Schedule 4, item 1, subsection 292-420(7) of the ITAA 1997]***

4.46 Where a payment under a release authority has not been received by the Commissioner and the Commissioner is satisfied that the correct amount of excess concessional contributions is not greater than $10,000, the Commissioner may vary the determination. ***[Schedule 4, item 2, subsection 292-468(3) of the ITAA 1997]***

4.47 Where there is a variation of a determination because the individual's excess concessional contributions have increased (but are $10,000 or less), the individual is not entitled to make a new choice in relation to the increased excess concessional contributions.

4.48 The Commissioner will issue a new release authority to give effect to the variation of the determination. This release authority will be for the difference between 85 per cent of the amount of the correct excess concessional contributions and the amount of excess concessional contributions stated in an earlier release authority. ***[Schedule 4, item 2, subsections 292-468(7) and (8) of the ITAA 1997]***

4.49 Where a payment under a release authority *has* been received by the Commissioner, the Commissioner cannot revoke that determination. ***[Schedule 4, item 2, subsection 292-468(2) of the ITAA 1997]***

4.50 Where a payment under a release authority *has* been received by the Commissioner, the Commissioner may vary the determination if satisfied the amount of excess concessional contributions to which the determination relates has increased, but is $10,000 or less. ***[Schedule 4, item 2, subsection 292-468(4) of the ITAA 1997]***

4.51 No other revocation or variation is allowed. ***[Schedule 4, item 2, subsection 292-468(5) of the ITAA 1997]***

4.52 Where information shows that an excess contributions tax assessment was incorrect and a refund determination could have been made, the existing law (Subdivision 292-F of the ITAA 1997) allows the Commissioner to amend the excess contributions tax assessment. The new provisions will allow the Commissioner to issue a determination for a refund offer.

4.53 Where an amount has been received by the Commissioner under a release authority issued pursuant to a refund determination and the Commissioner is satisfied the individual was not eligible for the determination because they actually had excess concessional contributions greater than $10,000, the Commissioner cannot vary or revoke the determination. Instead, the Commissioner will be required to assess the individual for excess contributions tax. However, the excess contributions tax assessment will be made by disregarding the amount of excess concessional contributions already included in the individual's assessable income. ***[Schedule 4, item 2, subsection 292-468(9) of the ITAA 1997]***

Example 4.4: Excess concessional contributions of $10,000 or less change to more than $10,000 after the payment is received

The Commissioner determined an individual had excess concessional contributions for a financial year of $5,000 and was eligible for a refund offer under this measure. The individual accepted the Commissioner's offer to make a determination to disregard the excess contributions. The individual's superannuation provider paid $4,250 to the Commissioner under a release authority.

The Commissioner amended the individual's income tax assessment to include $5,000 in assessable income and allow an offset of $750. The Commissioner also applied a credit of $4,250 to the individual's tax liability.

The Commissioner receives new information about the individual's concessional contributions and is satisfied that the individual had $13,000 excess concessional contributions for the financial year (including the $5,000 disregarded in the determination).

The Commissioner cannot revoke or vary the determination. Instead, the Commissioner must assess the individual for excess contributions tax on $8,000.

4.54 Where the Commissioner is satisfied the individual had no excess concessional contributions, the individual will be eligible for a refund offer in a future year. ***[Schedule 4, item 2, paragraph 292-467(1)(c) of the ITAA 1997]***

4.55 The Commissioner will issue individuals a written notice of a variation or revocation. If an individual asks the Commissioner to vary or revoke a determination, the Commissioner will also notify the individual of any decision not to vary or revoke the determination. This notification will ensure the individual can exercise their right to object to the Commissioner's decisions. ***[Schedule 4, item 2, subsection 292-468(6) of the ITAA 1997]***

4.56 When the Commissioner varies a determination in accordance with section 292-468, the determination as varied has effect as if it were a determination under section 292-467. ***[Schedule 4, item 2, paragraph 292-468 (7)(a) of the ITAA 1997]***

Objections against determinations

4.57 Once a determination is made by the Commissioner under section 292-467, the individual may object to the determination in the manner set out in Part IVC of the TAA 1953. This right to object also applies to a varied determination made under section 292-468, a decision to revoke a determination made under section 292-468 and a decision

made under section 292-468 not to vary or revoke a determination made under section 292-467. Part IVC of the TAA 1953 allows an individual to appeal to the Administrative Appeals Tribunal. Time limits are imposed on the period for objections. The objection must be made within 60 days after the relevant determination or decision. ***[Schedule 4, item 2, section 292-469 of the ITAA 1997; item 13, paragraph 14ZW(1)(aac) of the TAA 1953]***

Payments from release authorities for refunded excess concessional contributions

4.58 The payment made by a superannuation provider in accordance with a release authority is a 'superannuation benefit' as defined in section 307-5 of the ITAA 1997. However, as an amount is to be included in an individual's assessable income for the income year that corresponds to the financial year for which the individual has excess concessional contributions, this superannuation benefit is made non-assessable, non-exempt income. ***[Schedule 4, item 3, subsection 303-15(1) of the ITAA 1997]***

4.59 The proportioning rule does not apply to the released amount. This means that the taxable component of the superannuation interest from which the amount is paid will effectively be reduced without reducing the tax free component as well. ***[Schedule 4, item 3, subsection 303-15(2) of the ITAA 1997]***

Application and transitional provisions

4.60 These amendments apply in relation to excess concessional contributions for the financial year beginning on 1 July 2011 and later financial years.

4.61 No transitional provisions are required to give effect to the measure.

Other amendments

Items 6, 9, 10 and 12

4.62 A number of provisions of Commonwealth laws contain income tests that have regard to both:

- assessable income or an amount derived from it such as taxable income, adjusted taxable income or total income; and

- either:
  - reportable employer superannuation contributions; or
  - reportable superannuation contributions.

4.63 Where a refund determination is made under this measure for a particular financial year, an individual's assessable income for that year will be increased by the amount of their excess concessional contributions for that year. This increase will affect any amount based on or derived from assessable income. Further, if an individual has reportable employer superannuation contributions or personal deducted contributions, some or all of their excess concessional contributions may be attributable to the reportable contributions. This could result in an amount being counted twice, once as income and once as superannuation contributions.

4.64 These consequential amendments deal with cases where some or all of the excess concessional contributions that are the subject of the determination are reportable employer superannuation contributions or reportable superannuation contributions.

4.65 These amendments will ensure that the relevant excess concessional contributions subject to the determination are not included twice in the income test calculation for the individual. ***[Schedule 4, item 6, subsection 61-570(3), item 8, subsection 290-160(3), item 9, subsection 290-230(5), item 10, definition of 'reportable superannuation contributions' in subsection 995-1(1) of the ITAA 1997; item 12, subsection 8(1A) of the Superannuation (Government Co-contributions for Low Income Earners) Act 2003]***

Example 4.5: Effect of accepting the refund offer on adjusted taxable income

Salary = $165,000:

- superannuation guarantee contributions = $14,850 (@ 9%);
- additional salary sacrificed contributions = $15,000;
- reportable employer superannuation contributions = $15,000;
- excess concessional contributions amount = $4,850 ($14,850 + $15,000 – $25,000); and
- adjusted taxable income = $180,000 ($165,000 + $15,000).

The individual chooses the refund of excess concessional contributions:

- Assessable income increases by $4,850.

Adjusted taxable income:

- increases by $4,850 (due to assessable income increase); and
- decreases by $4,850 (adjustment to reflect assumed refunded reportable employer superannuation contributions).

There is no overall change to adjusted taxable income.

Items 8 and 11

4.66 The refund will not be used to reassess whether an individual is entitled to deduct personal superannuation contributions. ***[Schedule 4, item 8, subsection 290-160(3) of the ITAA 1997]***

4.67 Nor will the refund be used to reassess whether an individual has satisfied the 10 per cent income test in paragraph 6(1)(b) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*. That test is one of several used to determine whether an individual is eligible to be paid a co-contribution under that Act. That test is also to be used for the proposed low income superannuation contribution. ***[Schedule 4, item 11, subsection 6(3) of the Superannuation (Government Co-contributions for Low Income Earners) Act 2003]***

Items 14 and 16

4.68 The amount a superannuation provider is required to pay in accordance with a release authority will be treated as a tax related liability of the provider. This will enable the ATO to take legal action against the superannuation provider for the amount if it is not paid as required. ***[Schedule 4, item 14, subsection 250-10(2) of Schedule 1 to the TAA 1953]***

4.69 No general interest charge is payable if the amount is paid late by the superannuation provider as there is no provision imposing it. However, a superannuation provider is liable for an administrative penalty for a failure to pay the amount on time. ***[Schedule 4, item 1, note 1 in subsection 292-420(4) of the ITAA 1997; item 16, subsection 288-95(3) in Schedule 1 to the TAA 1953]***

4.70 An administrative penalty also applies where the superannuation provider does not provide the accompanying payment statement to the Commissioner in time under existing subsection 286-75(1) in Schedule 1 to the TAA 1953. ***[Schedule 4, item 1, note 2 in subsection 292-420(4) of the ITAA 1997]***

Item 15

4.71 Individuals will not be liable for shortfall interest charge under the TAA 1953. It would not be appropriate to impose an interest charge

in relation to an amount that could not have been included in the individual's assessable income at any time prior to the making of the determination. ***[Schedule 4, item 15, subsection 280-100(4) of the TAA 1953]***

Items 17, 18 and 19

4.72 Interest will not be payable to the individual under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* on the refund amount other than under the circumstances outlined in section 292-425 of the ITAA 1997. ***[Schedule 4, items 17 to 19, subsection 3(1) of the Taxation (Interest on Overpayments and Early Payments) Act 1983]***

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Refund of excess concessional contributions

4.73 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

4.74 This Schedule amends the ITAA 1997, the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the TAA 1953, and the *Taxation (Interest on Overpayments and Early Payments) Act* 1983 to allow eligible individuals the option to effectively have excess concessional contributions refunded to them. The amount will be assessed as individual income.

4.75 These amendments give effect to the measure announced in the 2011-12 Budget to help reduce the financial impact of excess contributions tax on individuals.

Human rights implications

4.76 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

4.77 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Chapter 5
Disclosure of superannuation information

Outline of chapter

5.1 Schedule 5 to this Bill includes a further exception to the secrecy provisions in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). This exception will allow the Australian Taxation Office (ATO) to disclose superannuation information to a regulated superannuation fund or public sector superannuation scheme, an approved deposit fund, retirement savings account (RSA) provider or their administrators (the bodies) for certain purposes.

5.2 This Schedule enables the ATO to provide the bodies with greater access to information that it holds on members' superannuation interests. This will allow funds to assist their members to find and consolidate their multiple and lost superannuation interests.

Context of amendments

5.3 In order to maintain privacy and confidentiality, the secrecy provisions in Australia's tax legislation impose strict obligations on taxation officers and others who receive taxpayer information not to disclosure this information.

5.4 Superannuation funds can currently access information from the lost member's register, Superannuation Holding Accounts Special Accounts and unclaimed superannuation guarantee amounts through the SuperMatch service. This information may be disclosed because of specific provisions within the relevant Acts that permit information to be provided to the bodies.

5.5 Funds using the SuperMatch service currently enter into an agreement with the ATO setting out the terms and conditions of their use of the service. Only the bodies with an agreement with the ATO can use SuperMatch.

5.6 Schedule 5 is part of a broader package of superannuation measures aimed at making it easier for superannuation funds and their members to locate and consolidate multiple and lost superannuation interests.

5.7 The ATO currently provides individuals with access to information on lost superannuation accounts, unclaimed money, superannuation guarantee amounts, and Superannuation Holding Accounts Special Accounts belonging to them that the ATO is aware of. This information is provided through the ATO's SuperSeeker service.

5.8 In addition, to their lost accounts and superannuation monies held by the ATO, individuals will be able to view their other superannuation accounts which are reported to the ATO on member contribution statements, through an enhanced ATO service.

5.9 Similarly, funds will not be limited to accessing information on lost accounts and amounts held by the ATO. Funds that have signed an agreement with the ATO will be able to use SuperMatch to obtain information about all their members' superannuation interests that are known to the ATO.

5.10 The new exception does not require the ATO to obtain the consent of a beneficiary, holder or applicant before disclosing protected information about that person to a superannuation entity.

5.11 However, the ATO's practice is that SuperMatch agreements entered into by superannuation funds with the ATO require superannuation funds to obtain a general consent from a member to access information using SuperMatch.

5.12 In addition, Regulation 6.49 of the *Superannuation Industry (Supervision) Regulations 1994* and Regulation 4.46 of the *Retirement Savings Accounts Regulations 1997* require fund trustees and RSA providers to obtain consent from a beneficiary or holder before using the beneficiary or holder's tax file number (TFN) to seek information from the ATO using facilities provided by the ATO (such as SuperMatch).

5.13 While the taxation laws include a number of provisions designed to ensure the security of TFNs (see Subdivision BA of Division 2 of Part III of the TAA 1953) the protection of TFNs does not form part of the framework. Therefore, TFNs will continue to be protected by the existing provisions in the taxation laws and through the legally binding guidelines on the use, disclosure and storage of TFNs that are issued by the Office of the Australian Information Commissioner.

5.14 In addition the ATO intends to reduce further the number of lost and multiple accounts by providing information to funds about their members' superannuation interests. This includes information to support auto-consolidation of low balance accounts.

5.15 To allow this the secrecy laws also need to be amended to allow the Commissioner of Taxation (Commissioner) to disclose information such as:

- information to enable a fund to fulfil their obligation to auto-consolidate accounts;
- information regarding other ATO-held monies, including, but not limited to, Superannuation Holding Account Special Account monies, Superannuation Guarantee amounts, Co-contributions and proposed Low Income Superannuation Contributions; and
- other information that would assist in reuniting individuals with their superannuation interests or for consolidating their superannuation interests, including, but not limited to, the provision of individuals' addresses.

Summary of new law

5.16 This Schedule enables the ATO to disclose information about an individual's superannuation interests to the bodies. This is achieved by a new exception to the secrecy provisions. ***[Schedule 5, item 1, subsection 355-65(3) in Schedule 1]***

5.17 The ATO is permitted to disclose information to the bodies where it is for the purpose of assisting a member to find all their superannuation interests so they can consider how they want to manage their superannuation interests. This includes whether they wish to:

- create a new superannuation interest with a superannuation provider and consolidate any or all of their existing superannuation interests into that new interest;
- consolidate existing interests; or
- maintain more than one superannuation interest with one or more RSA providers.

Comparison of key features of new law and current law

New law	*Current law*
The ATO is permitted to disclose all types of member information in relation to individuals to superannuation entities and their administrators for certain purposes.	Information about a limited range of member interests can be disclosed to superannuation providers because of specific provisions that provide for these disclosures, including for example, through the lost members' register. Information about other types of member interests cannot be disclosed to funds.
There is no change. The ATO can disclose any information they hold to the person that the information is about.	Individuals can access information about their own interests from the ATO by using the SuperSeeker service provided by the ATO, as well as through other channels available through the ATO.

Detailed explanation of new law

5.18 A new exception to the secrecy provisions in subsection 355-65(3) of Schedule 1 to the TAA 1953 permits the ATO to disclose information held by the ATO about a member's superannuation interests to the bodies.

5.19 The record or disclosure can be made for the purpose of funds assisting a member to find their superannuation interests, including any amounts held by the ATO, so they can decided how they wish to manage their superannuation interests. This includes whether they wish to:

- create a new superannuation interest with a superannuation entity and consolidate any or all of their existing superannuation interests into that new interest;
- consolidate existing interests; or
- maintain more than one superannuation interest with one or more RSA providers.

5.20 The Office of the Australian Information Commissioner has been consulted on these amendments.

5.21 Disclosure of information may occur under the exception even where consolidation of interests is not available to the member, for example, because the member has only one superannuation interest in their current or any fund.

5.22 A member can use the information disclosed to decide whether to:

- consolidate any or all of their interests;
- transfer any of those interests;
- cash any of those interests; or
- in any other way manage their superannuation interests.

5.23 Information can also be disclosed to the bodies where the information relates to an individual who has applied to become a member of that superannuation entity.

Example 5.1

XYZ Fund requests information from the ATO in relation to Jack, a member of their superannuation fund, in order to assist Jack in consolidating superannuation interests from other funds with his current interest in XYZ Fund.

The secrecy provisions in Division 355 prohibit the ATO from releasing this data to XYZ Fund. However, the exception in subsection 355-65(3) allows the ATO to release this information to XYZ fund in order to assist the fund to help Jack manage his superannuation interests.

5.24 The record or disclosure will still be for such a purpose even if after the disclosure of the information, a member decides not to do any of those things with the information disclosed.

Example 5.2

ABC Fund requests data from the ATO in relation to Poppy, a member of their superannuation fund, as Poppy advised ABC Fund that she wished to consolidate her superannuation interests.

The ATO provides this information to ABC Fund. Later Poppy decides that she does not want to consolidate her superannuation interests.

The disclosure of information to ABC Fund was still authorised under the exception as it was provided to ABC Fund with the possibility of Poppy consolidating her superannuation interests.

Consequential amendments

5.25 This Schedule commences on Royal Assent.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Disclosure of superannuation information

5.26 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

5.27 This Schedule inserts a further exception in Division 355 of Schedule 1 to the TAA 1953. This will allow the ATO to disclose details of an individual's superannuation benefits, superannuation interests and other related information to superannuation entities, exempt public sector superannuation schemes, RSA providers and their administrators

Human rights implications

5.28 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

5.29 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for and Superannuation, the Hon Bill Shorten

Chapter 6
Superannuation — payslip reporting

Outline of chapter

6.1 Schedule 6 to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.

- The regulations will in turn require employers to report the amount of superannuation contributions, as well as the date on which the employer expects to pay them. The regulations will be enacted once this Bill has come into force.

Context of amendments

6.2 Some employers fail to pay their employees' superannuation entitlements. According to the Inspector-General of Taxation, the employees worst affected tend to be low-income, casual or part-time workers. The payslip reporting measure, which forms part of the Securing Super package, will provide greater protection for these vulnerable workers.

6.3 At present employers are required to report (on payslips) either *entitlements* to superannuation *accrued* during the pay-period, or *actual* contributions.

- Section 536 of the *Fair Work Act 2009* (Fair Work Act) currently provides for payslip reporting and for the making of regulations about payslip reporting, while section 796 contains a broad, regulation making power. Regulation 3.46 in the *Fair Work Regulations 2009* (Fair Work Regulations) sets out what specifically must be reported on a payslip.

6.4 This means that at present employees may not be able to tell from their payslips whether their superannuation contributions have already been made, or when they will be made. While employers need to report accrued entitlements to superannuation guarantee (SG) contributions on payslips, they do not actually need to make SG contributions until 28 days after the end of the quarter concerned.

Employees may be misled by the payslip into thinking that the contribution has actually been paid.

6.5 This Schedule is designed to require employers to report the date on which they expect to make their contribution. This will improve employer compliance since employers will be making a public and checkable statement on their payslips. This Schedule will also improve the timeliness of information by telling employees when they can check with their fund that their employer has made the contribution.

6.6 This Schedule forms part of the *Securing Super* package, announced as an election commitment during the 2010 election campaign. Within the same package, the Government will also legislate to require Australian Prudential Regulation Authority regulated superannuation funds and retirement savings account (RSA) providers either:

- to notify members that they have either *received* or *not received* contributions during the quarter, and maintain a web-based portal for members to consult. This would apply to members with active accounts, and would require quarterly, electronic notification; or

- to issue six-monthly notices to members, with active accounts, which show contributions made.

Fund notification will complement this measure, since it will provide employees with both the opportunity and the means of checking that their employer has made the required contribution.

6.7 This Schedule will require some modification of payroll software, while the proposed reporting of actual contributions may require more extensive modification

6.8 This measure was announced in slightly different form in the 2011-12 Budget and during the 2010 election. As originally announced, employers would have been required to report superannuation contributions, on payslips, when they were actually made during the pay period. This would have been in addition to the current requirement for them to report accrued entitlements for the pay period concerned.

- The Stronger Super Consultation Panel was concerned that, under the original proposal, employers would have required software changes which are potentially considerably more expensive than those needed for the present measure. The Government is consulting further on this question, and has announced that from 1 July 2013, subject to there being no significant payroll system costs, payslip reporting of actual

contributions paid rather than just accrued contributions will commence.

6.9 While the current payslip reporting requirements are in the Fair Work Act and the Fair Work Regulations, they do not apply to:

- public sector employers in a number of states (New South Wales, Queensland, Western Australia, Tasmania and South Australia); and
- some (unincorporated) private sector employers in Western Australia.

6.10 For this reason the new requirements will go into the SIS Act.

Summary of new law

6.11 This Schedule will require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.

- The regulations will in turn require employers to report the amount of superannuation contributions and the date on which the employer expects to pay them. This will be the date on which the employer transmitted the contribution, not the date on which the fund credited the employee's account.
- The regulations will apply to all kinds of superannuation contribution processed by the employer, including:
  - SG contributions;
  - contributions made under industrial instruments; and
  - salary sacrifice and voluntary employee contributions.
- At present, employers are required to report accrued superannuation contributions under the Fair Work Regulations. These requirements will be transferred to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), along with the new 'expected date' requirement. The Fair Work Regulations will contain a note pointing to the new SIS Regulations.

- There will be no new penalty for failing to make the contribution on the date nominated, though employers who fail to do so can expect to deal with enquiries from their employees. Employers may still be liable for penalty under other provisions (for instance, for failing to meet the requirements of the *Superannuation Guarantee (Administration) Act 1992*).

Comparison of key features of new law and current law

New law	*Current law*
Employers will be required to report their superannuation contributions in the manner set out in the proposed amendments to the SIS Regulations — which have not yet been enacted.	Employers are currently required to report, on payslips, either: • *entitlements* to superannuation *accrued* during the pay-period; or • *actual* contributions. They are not required to distinguish between the two cases.

Detailed explanation of new law

6.12 Section 1 of this Schedule enlarges the object of the SIS Act, to make it clear that the Act can regulate employers when they issue payslips. It does this by amending subsection 3(1) of the SIS Act.

- It is worth noting that subsection 3(3) of the SIS Act says that the '…Act does not regulate other entities engaged in the superannuation industry'. However, this means that the SIS Act does not regulate unregulated superannuation funds. It is not meant to prevent the regulation of employers when they interact with regulated superannuation funds (and section 64 of the SIS Act already does so, requiring employers to remit deductions from salary and wages promptly). Employers are not, in this sense, 'entities engaged in the superannuation industry' since they do not themselves act as superannuation funds or RSAs. ***[Schedule 6, item 1]***

6.13 Section 2 of this Schedule inserts a new Part into the *Summary of Provisions* in section 4 of the SIS Act. ***[Schedule 6, item 2]***

6.14 Section 3 of this Schedule makes the Fair Work Ombudsman responsible for administering the new payslip provisions (by amending subsection 6(1) of the SIS Act).

6.15 Sections 4 to 6 of this Schedule add new terms to the definitions given in section 10 of the SIS Act. In particular, they give the term 'Fair Work Inspector' the meaning it has in the Fair Work Act, the term 'industrial instrument' the meaning it has in the *Income Tax Assessment Act 1997*, and the term 'salary or wages' the meaning it has in the *Superannuation Guarantee (Administration) Act 1992*. ***[Schedule 6, items 3 to 5]***

6.16 Section 7 repeals the existing definition of salary or wages in subsection 64(4) of the SIS Act, because the definition is now grouped with the other definitions in section 10 of that Act. ***[Schedule 6, item 6]***

6.17 Section 8 is the substantive amendment, and establishes a power within the SIS Act to create the regulations which will specify how employers must report superannuation contributions. Section 7 introduces a new Part (Part 29B) with a number of new sections into the SIS Act. ***[Schedule 6, item7]***

6.18 New section 336J sets out the object of the Part, which is 'to require employers to regularly give information about the superannuation contributions they have made or will make for the benefit of their employees'.

6.19 New subsection 336JA(1) imposes the new requirements on employers if they are otherwise required to issue payslips (under an industrial instrument) and if they 'can' make a contribution to a superannuation fund on behalf of the employee concerned. The word 'can' is used because the measure extends beyond those employers who are *obliged* to make superannuation contributions, for instance by an industrial agreement, and includes those employers who choose to make contributions.

- Technically, employers are not obliged to make SG contributions but are subject to the SG charge. However, employers can choose to reduce the SG charge by making tax deductible contributions into their employees' superannuation funds. Most employers choose to do this because the SG charge is not tax deductible. This Schedule therefore uses the word 'can' so as to require employers who choose to make contributions to report these on payslips.

- The regulations will probably require employers who plan to pay the SG charge to report a contribution of $0 and an

expected date of 'n.a.' (not applicable). This will alert employees.

6.20 New paragraph 336JA(1)(d) excludes cases where employees are members of defined benefit funds (where in many cases contributions during the employee's working life are merely nominal). However, employers are still required to report contributions into the accumulation part of hybrid funds (those funds which contain both defined benefit and accumulation elements).

6.21 New subsection 336JA(2) requires the affected employers to include on their payslips any information required under the regulations.

6.22 New section 336JB has the effect of treating the requirement in subsection 336JA(2) as if it were a civil remedy provision under the Fair Work Act, despite the fact that the provision is located in the SIS Act. The effect of this provision is to allow Fair Work Inspectors to use compliance and enforcement provisions equivalent to those in Chapter 4 of the Fair Work Act for the new measure.

6.23 New section 336JC gives the new Part in the SIS Act the same geographic coverage as that set out in the Fair Work Act. This means that Fair Work Inspectors will have authority within the same geographic area as they usually do under the Fair Work Act.

6.24 New subsection 336JD(1) sets out the Fair Work Ombudsman's functions in respect of the new provision, including promoting compliance, monitoring and investigating, commencing proceedings in a court and representing employees in court.

6.25 Subsections (2) and (3) allow Fair Work Inspectors to use their usual powers under the Fair Work Act when enforcing the payslip provisions in new Part 29B of the SIS Act.

6.26 Because the compliance and enforcement provisions are based on those in the Fair Work Act, subsection (4) makes a number of the existing provisions in the SIS Act inapplicable. These include the powers conveyed by:

- Part 25 of the SIS Act (*Monitoring and Investigating Superannuation Entities*);
- Part 26 (*Offences Relating to Statements, Records, etc*);
- Part 27 (*Powers of Court*); and
- Part 28 (*Proceedings*).

6.27 New section 336JE allows Fair Work Inspectors to disclose information which they acquire when administering payslips, to the Minister responsible for the SIS Act and his or her Department. This extends the current powers of Fair Work Inspectors to disclose information to the Minister responsible for the Fair Work Act and his or her Department, as set out in section 718 of the Fair Work Act.

6.28 New section 336JF sets out an alternative constitutional basis for this measure.

Application and transitional provisions

6.29 Section 9 applies the payslip reporting provisions to salary or wages paid on or after commencement; that is, from a day to be fixed by Proclamation. This is likely to be 1 January 2013. In the absence of a proclamation, this Schedule will commence 12 months after Royal Assent. The 12-month period has been chosen to give software providers more than six-months' notice, so that they can update their software in time. ***[Schedule 6, item 9]***

6.30 Sections 10 and 11 supply missing cross references in the *Summary of Provisions* in section 4 of the SIS Act. ***[Schedule 6, items 10 and 11]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Superannuation — payslip reporting

6.31 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Schedule

6.32 This Schedule will require most employers, when reporting superannuation contribution entitlements on payslips, to state the day by which the employers intends to make the contribution.

Human rights implications

6.33 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

6.34 This Schedule is compatible with human rights as it does not raise any human rights issues.

Minister for Superannuation, the Hon Bill Shorten

Refunds

Outline of chapter

Schedule 7 to this Bill amends the *Taxation Administration Act 1953* (TAA 1953) to provide the Commissioner of Taxation (Commissioner) with a discretion to delay refunding an amount to a taxpayer pending integrity checks of their claim.

Context of amendments

A taxpayer's entitlement to be paid an amount is generally provided for in the relevant taxation law. These credits may be offset against other taxation debts of the taxpayer, or refunded. For example, section 35-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that the Commissioner is required to refund a negative net amount. Section 35-10 of the GST Act provides that the taxpayer's entitlement to be paid that refund arises when he or she lodges their goods and services tax (GST) return with the Commissioner.

Section 8AAZLF of the TAA 1953 requires the Commissioner to refund a running balance account surplus or other credit.

Prior to the Full Federal Court's decision in *Commissioner of Taxation* v *Multiflex Pty Ltd* [2011] FCAFC 142 (*Multiflex*), the Commissioner's administrative practice with respect to negative net amounts was to retain certain refunds in exceptional circumstances pending verification checks on the basis that the ability to do so was implied by the TAA 1953 and the GST Act, and within the Commissioner's general powers of administration.

This practice was also considered to be consistent with the Commissioner's obligations under the *Financial Management and Accountability Act 1997* and the legislative obligation on the Commissioner to pay interest to the taxpayer under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* on refunds paid or credited following the expiry of a period set out in that Act.

In *Multiflex*, the Full Federal Court considered whether, under section 35-5 of the GST Act and section 8AAZLF of the TAA 1953, the Commissioner had an implied reasonable time in which to refund a negative net amount, including such time as is reasonably necessary to determine whether the amount was truly payable.

On 11 November 2011, in handing down its decision, the Full Federal Court found that the Commissioner is required to pay a GST refund within the time it takes to

undertake the necessary administrative steps to process the taxpayer's return and make the payment, and that the law provides no additional time for checking the validity of the claim, even if the Commissioner suspects it might be incorrect.

On 9 December 2011, the High Court of Australia dismissed the Commissioner's application for special leave to appeal against the decision. As a result, in the absence of a legislative amendment, the Commissioner is required to pay out GST refunds claimed by a taxpayer on their return once it had been processed, and then seek to recover the amounts if subsequent checks show the amounts claimed to be excessive.

Based on experience in a number of jurisdictions, this gives rise to an identifiable risk that in some cases, recovery of these amounts will not be possible, particularly in cases of organised fraud or evasion.

These amendments are intended to address the outcome in *Multiflex*, and ensure that the Commissioner has the ability to verify refund claims before paying them to a taxpayer.

In coming to its decision, the Full Federal Court considered a legislative provision contained in New Zealand's *Goods and Services Tax Act 1985*. Elements of that provision, and the judicial approach to this issue in the United Kingdom, have been adopted in developing the new provision.

In a full self assessment environment such as that which applies to companies and superannuation funds (but not individuals) for income tax purposes, and proposed to be introduced for indirect taxes, taxpayers self assess their tax-related liabilities and tax-related entitlements through the lodgment of the relevant return. On lodgment of the return, there is a deemed assessment and the return is deemed to be a notice of that assessment.

Returns and notifications in a self assessment environment are generally accepted at face value; however they may be subject to post−assessment audits or verification activities by the Commissioner.

In conducting their tax affairs, taxpayers are presumed by the Commissioner to be acting honestly, unless the Commissioner has reason to believe otherwise. This presumption is set out in the Taxpayer's Charter.

As there will be circumstances where the amount claimed in a return or other notification is incorrect, including due to carelessness, recklessness or fraud, it is a necessary integrity requirement that the Commissioner has the ability to delay refunding amounts in certain circumstances.

These amendments seek to restore the Commissioner's previous administrative practice of retaining certain refunds for verification prior to payment to protect the integrity of the tax system. At the same time, the provision seeks to strike a balance

between this need to preserve the integrity of the tax system and curtailing the opportunities for refund fraud on the one hand; and the principles of self assessment and like systems and a taxpayer's expectation of a prompt refund on the other.

Consistent with the rest of Divisions 3 and 3A of the TAA 1953, the new provision will potentially apply to all running balance account surpluses (which arise when payments and credits allocated to a taxpayer's running balance account exceed primary tax debts allocated to that account) and other entitlements to credits under the taxation law.

Summary of new law

This Schedule provides the Commissioner with a legislative discretion to retain an amount for verification purposes, consistent with the Commissioner's administrative practice prior to the decision in *Multiflex*. These amendments operate in conjunction with section 8AAZLF which provides that the Commissioner has an upfront obligation to pay a running balance account surplus or credit.

In circumstances where it would be reasonable to require verification of information provided by the taxpayer relating to an amount that the Commissioner would otherwise have to refund, the Commissioner may retain the refund for the purposes of verifying the information.

The Commissioner may also retain an amount if the taxpayer requests that the Commissioner retain the amount for verification purposes.

In deciding whether to retain the amount, the Commissioner must have regard to a number of factors, including, but not limited to, the impact on the entity's financial position, the impact on the revenue and the likelihood that there is fraud or evasion, intentional disregard or recklessness as to the operation of a taxation law.

If the Commissioner wishes to retain the amount beyond an initial period of time (generally 14 or 30 days), the Commissioner must inform the taxpayer before that period ends. The continued retention of the amount after this period is also subject to the same objective test of reasonableness.

Taxpayers may object to the Commissioner's decision to retain a refund, if the Commissioner has not refunded the amount, made an assessment under Division 105 in Schedule 1 to the TAA 1953 or otherwise amended the assessment giving rise to the refund entitlement after a set period of time.

Comparison of key features of new law and current law

New law	*Current law*
The Commissioner is required to pay a refund that a taxpayer is entitled to under a taxation law within the time it takes to undertake the necessary administrative steps to process the taxpayer's return and make the payment. However, the Commissioner may retain an amount if it would be reasonable to require verification of information, relating to a refund amount, provided by the taxpayer.	The Commissioner is required to pay a refund that a taxpayer is entitled to under a taxation law within the time it takes to undertake the necessary administrative steps to process the taxpayer's return and make the payment. There is no legislative provision which allows the Commissioner to retain a refund to check the validity of the claim, even if the Commissioner suspects it might be incorrect.
The Commissioner is required to notify the taxpayer when he or she retains an amount under the provision.	No equivalent.
Taxpayers may object under Part IVC of the TAA 1953 against a decision of the Commissioner to retain a refund if the Commissioner has not refunded the amount, amended the taxpayer's assessment or made or amended an assessment relating to the amount under Division 105 in Schedule 1 to the TAA 1953 within a set period of time. A decision by the Commissioner to retain an amount is not exempt from judicial review.	No equivalent.

Detailed explanation of new law

Commissioner's discretion to retain an amount

Upfront obligation on the Commissioner to pay a refund

Section 8AAZLF of the TAA 1953 provides that the Commissioner generally has an upfront obligation to refund, to a taxpayer, a running balance account surplus or credit if the amount has not been otherwise allocated or applied under Division 3 of the TAA 1953.

Threshold test

Section 8AAZLGA is inserted into the TAA 1953 to allow the Commissioner to retain an amount he or she would otherwise have to refund to a taxpayer under section 8AAZLF in certain circumstances.

Firstly, the taxpayer must have given the Commissioner a notification that affects, or may affect, the amount that the Commissioner is required to refund to the taxpayer. ***[Schedule 7, item 1, subsection 8AAZLGA(1) of the TAA 1953]***

This could be a GST return, or another document which has resulted in a running balance account surplus or credit that the Commissioner must refund under section 8AAZLF.

Secondly, the Commissioner can only retain the amount if either:

- it would be reasonable to require verification of information contained in the taxpayer's notification and relating to the amount that the Commissioner would have to refund ***[Schedule 7, item 1, paragraph 8AAZLGA(1)(a) of the TAA 1953]***; or

- the taxpayer has requested that the Commissioner retain the amount for verification purposes, and the request has not been withdrawn ***[Schedule 7, item 1, paragraph 8AAZLGA(1)(b) of the TAA 1953]***.

Verification of information

7.28 As the term *verification* is not defined, it (and the terms *verify* and *verifying*) is intended to take on its ordinary meaning. In the context of the provision, this could refer to actions or enquiries that may need to be taken to prove or establish the correctness or accuracy of the information provided.

7.29 The discretion is intended to allow the Commissioner to consider the correctness of the information provided by the taxpayer before refunding an amount the Commissioner would otherwise have to refund. It is not intended that the Commissioner use this discretion to withhold a refund merely where the Commissioner and the taxpayer disagree about how the law applies to the facts. The appropriate course of action for the Commissioner in these circumstances is to issue an assessment to reflect his or her view of the law.

Example 7.1

Joel is registered for GST. In May 2012, Joel makes a number of supplies and acquisitions. On 21 June 2012, Joel lodges his GST

return for the monthly tax period ending 31 May 2012. Joel's net amount is an amount less than zero and gives rise to a refund.

The Commissioner and Joel have different views about the GST treatment of a number of acquisitions that Joel claims that he has made during the tax period. The Commissioner has an established view as to the treatment, and Joel does not agree. This alone is insufficient for the Commissioner to retain the refund. As the Commissioner has an established view, the Commissioner may make an assessment, and Joel can challenge the Commissioner's view by objecting to that assessment.

However, the Commissioner may retain the amount if it would be reasonable to do so after consideration of the factors in subsection 8AAZLGA(2). This may be the case if on the information available to the Commissioner it would be reasonable to verify that the acquisitions in fact took place. If, after further enquiries, it is no longer reasonable to verify that the acquisitions did in fact take place, the refund should no longer be retained under section 8AAZLGA, but instead the Commissioner should issue an assessment to Joel to reflect the Commissioner's view of the law.

Amount retained

The Commissioner might decide to only retain some of the amount claimed and where it is reasonably practical to do so.

Relevant factors

The conditions that must be satisfied to exercise the discretion are objectively tested, and as such, in deciding whether to retain an amount, the Commissioner must consider a number of factors based on the information available to him or her at the time of making the decision. These factors are:

- the likely accuracy of the information ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(a) of the TAA 1953]***;
- the likelihood that the information was affected by fraud or evasion, intentional disregard of a taxation law or recklessness as to the operation of a taxation law ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(b) of the TAA 1953]***;
- the impact of retaining the amount on the entity's financial position ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(c) of the TAA 1953]***;
- the possible impact on the revenue ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(d) of the TAA 1953]***;

- the complexity that would be involved in verifying the information ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(e) of the TAA 1953]***;

- the time for which the Commissioner has already retained the amount ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(f) of the TAA 1953]***;

- what the Commissioner has already done to verify the information ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(g) of the TAA 1953]***;

- whether the Commissioner has sufficient information on which to make an assessment relating to the amount ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(h) of the TAA 1953]***;

- whether the information provided by the taxpayer is consistent with information previously provided by the taxpayer ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(i) of the TAA 1953]***; and

- any other relevant matter ***[Schedule 7, item 1, paragraph 8AAZLGA(2)(j) of the TAA 1953]***.

7.32 A balance is required between risks to the revenue and the taxpayer's entitlement to be paid the amount, and the Commissioner must take into account all the circumstances of the case. In any particular case, some factors may be more relevant than others.

7.33 It should be noted that no single factor is determinative and the applicability of each factor will depend on the specific circumstances of each case. Each factor may weigh towards or against retaining an amount.

7.34 In addition, the test is an ongoing one and the degree of certainty that there may be about each factor will be guided by the information that the Commissioner has available at the time of making the decision. This may change over the period. In some cases, it may be impossible for the Commissioner to consider a factor due to the absence of certain information. For example, the Commissioner may have sought information from a taxpayer but has not yet received it. The Commissioner's knowledge on the first day of the period, for example, might be much less than at a later stage.

Likely accuracy of information

7.35 In assessing the likely accuracy of the information, considerations could include the potential that, and possible extent to

which, the information is inaccurate. This might include things such as the current amount being claimed appearing to be quite different to claims over several previous periods and the possibility of an error having been made.

Likelihood that information is affected by fraud or evasion, intentional disregard or recklessness

7.36 Consideration of this factor would include the degree to which it is likely that the information was affected by fraud or evasion, intentional disregard of a taxation law or recklessness as to the operation of a taxation law.

7.37 *Intentional disregard* and *recklessness* take on their ordinary meanings. A taxpayer will be taken to have intentionally disregarded a taxation law if the taxpayer has consciously decided to disregard clear obligations under a taxation law. This could include producing false records, such as a false tax invoice.

7.38 A taxpayer will have been reckless as to the operation of a taxation law if the taxpayer's conduct clearly shows disregard of, or indifference to, consequences or risks that are reasonably foreseeable to result from the taxpayer's actions. This could include providing information in a return where the taxpayer knows there is a real risk that the information may be incorrect, or is indifferent to whether the information is incorrect.

7.39 In assessing the likelihood of there being fraud or evasion, intentional disregard or recklessness, the compliance history of the entity may be relevant. Where there has been a good compliance history, this would be an indicator that fraud or evasion, intentional disregard or recklessness is unlikely. On the other hand, where there has been a history of non-compliance with the tax laws, this could indicate that there is a higher likelihood of intentional disregard or recklessness (if not fraud or evasion).

Impact of retaining a refund on a taxpayer's financial position

7.40 Relevant considerations would be whether retaining the refund will cause financial hardship for the taxpayer, such that it would compromise the taxpayer's business viability. This may include an assessment of the impact on the taxpayer's immediate cash flow, solvency and borrowing needs.

7.41 The size of the potential refund is a relevant consideration, but must be considered with regard to the particular taxpayer's specific circumstances.

Possible impact on the revenue

7.42 A consideration of the possible impact on the revenue would include looking at whether retaining the amount is necessary for protection of the revenue. This will generally be guided by whether the Commissioner would be able to recover a refunded amount if the information were subsequently found to be incorrect. In instances of suspected fraud where the taxpayer is likely to be a flight risk, for example, experience shows that it may be less likely that a refund could be recovered once released.

7.43 The size of the refund is a relevant consideration, but must be considered with regard to the particular taxpayer's specific circumstances. Whilst a smaller amount might indicate a lesser risk to the revenue and a larger amount a greater risk, there is no threshold amount which would prevent or require the retention of an amount.

Complexity involved in verifying information

7.44 Complex arrangements, such as those involving multiple supply chains and multiple entities, will generally require more time and resources than a straightforward arrangement where information can be verified more quickly. His Honour Justice Jessup, in considering the *Multiflex* case in the Federal Court hearing, accepted that the investigation being undertaken was complex and difficult. He acknowledged that if the question in the matter before him 'related only to the length of what should be regarded as reasonable' then he would have had no reason not to accept the period as a reasonable one (see paragraphs 27 and 28 in *Multiflex Pty Ltd v Commissioner of Taxation* [2011] FCA 1112).

Time for which a refund is already retained

This would involve consideration of the time already elapsed since the Commissioner first started to retain the refund. The length of time for which the Commissioner has already retained an amount would also be relevant to considerations of the impact on the entity's financial position and the complexity of the investigation.

Commissioner's actions to verify the information

This would involve a consideration of what actions the Commissioner has already taken in verifying the information. It would be reasonable to expect the Commissioner to actively seek to resolve any uncertainty there might be about the correctness of a claim, given the underlying purpose of the provision.

Commissioner's ability to make an assessment

Depending on the information available to the Commissioner, the Commissioner may be in a position to make an assessment. Applying the

reasonableness test in the context of an assessment system, it would be expected that the Commissioner would make an assessment where he or she is in a position to do so, particularly where he or she is in a position to make an assessment that changes the taxpayer's entitlement to the refund. This will enable the taxpayer to exercise objection and review rights in relation to their underlying claim.

Consistency of information with previously provided information

This could include a consideration of things such as the amount of the refund claimed compared to the refund amounts previously or commonly claimed by the entity. This enables the patterns in lodged information to be taken into account, recognising that in many cases an unusual variation might be readily explicable on the basis of an extraordinary transaction taking place during the tax period.

Any other relevant matter

There may be other matters peculiar to a particular taxpayer's circumstances that the Commissioner should take into account. The Commissioner should not, however, have regard to irrelevant considerations.

Retention periods

Obligation to inform

If the Commissioner decides to retain an amount, he or she is required to inform the taxpayer:

- in the case of a running balance account surplus, by the running balance account interest day (which will generally be 14 days after giving the Commissioner the notified information) ***[Schedule 7, item 1, paragraph 8AAZLGA(3)(a) of the TAA 1953]***; or

- for other credits, within 30 days of the taxpayer giving the Commissioner a notice containing the amount claimed ***[Schedule 7, item 1, paragraph 8AAZLGA(3)(b) of the TAA 1953]***.

7.51 The Commissioner's obligation to inform may be satisfied in a number of ways, including by telephone, electronic mail or post.

7.52 As a majority of verification checks are able to be resolved through informal conversations between the Commissioner and the taxpayer, it may be more efficient and effective for the Commissioner to inform the taxpayer by telephone rather than by post.

7.53 However, there may be circumstances in which the Commissioner is unable to contact the taxpayer. In these circumstances

the Commissioner will be taken to have satisfied the obligation to inform by serving a document to the taxpayer's preferred address for service in accordance with Part 2A of the *Taxation Administration Regulations 1976*.

Example 7.2: Notice by the running balance account interest day (14 days)

Caroline runs a small business and is registered for GST. On 28 October 2013, Caroline lodges her GST return for the tax period ending 30 September 2013 indicating she is entitled to a refund of $50,000. An amount of $50,000 is allocated to the running balance account and she has a running balance account surplus of $50,000. If on an objective assessment of the facts, and having regard to the factors in subsection 8AAZLGA(2), it is reasonable to retain that refund in order to verify the information provided by Caroline, the Commissioner must inform Caroline by 11 November 2013 that he or she is retaining the refund.

Example 7.3: Notice within 30 days

FlynnCo is a start-up company and submits its 2012-13 income tax return on 28 February 2014. In the return, FlynnCo claims a large refundable research and development (R&D) tax offset. If on an objective assessment of the facts, and having regard to the factors in subsection 8AAZLGA(2), it is considered reasonable to retain that refund to verify the information provided by FlynnCo, the Commissioner must inform FlynnCo by 30 March 2013 that he or she is retaining the refund.

7.54 At the time of informing the taxpayer of his or her decision to retain an amount, the Commissioner may ask the entity to provide any additional information that he or she requires for the purpose of verifying the information. ***[Schedule 7, item 1, subsection 8AAZLGA(4) of the TAA 1953]***

Initial retention period

If the Commissioner fails to inform the taxpayer that he or she is retaining an amount under section 8AAZLGA by the specified day, then the Commissioner must refund the amount to the taxpayer on the day after that date. ***[Schedule 7, item 1, paragraph 8AAZLGA(5)(b) of the TAA 1953]***

This means that the Commissioner will only be able to retain an amount until:

- in the case of a running balance account surplus, the running balance account interest day ***[Schedule 7, item 1, paragraph 8AAZLGA(3)(a) of the TAA 1953]***; or

- for other credits, the 30th day after the taxpayer gives the Commissioner a notice containing the amount claimed ***[Schedule 7, item 1, paragraph 8AAZLGA(3)(b) of the TAA 1953]***.

The retention of the refund during this initial period is also subject to the objective tests as set out in subsection 8AAZLGA(1).

When the Commissioner must refund a retained amount

7.58 Once the Commissioner informs the taxpayer of his or her decision to retain a refund in accordance with subsection 8AAZLGA(3), the Commissioner may only retain the amount until:

- it would no longer be reasonable to require verification of the information (in cases where the taxpayer did not request that the Commissioner retain the refund) ***[Schedule 7, item 1, paragraph 8AAZLGA(5)(a) of the TAA 1953]***;

- the amount that the Commissioner is required to refund changes as a result of the Commissioner amending the taxpayer's assessment ***[Schedule 7, item 1, subparagraph 8AAZLGA(5)(c)(i) of the TAA 1953]***; or

- the amount that the Commissioner is required to refund changes as a result of the Commissioner making or amending the taxpayer's assessment under Division 105 in Schedule 1 to the TAA 1953 ***[Schedule 7, item 1, subparagraph 8AAZLGA(5)(c)(ii) of the TAA 1953]***.

The test provided for in paragraph 8AAZLGA(5)(a) requires the Commissioner to release a refund, if at any time, it is no longer reasonable for a refund to be retained. This may be because of new information that has been provided to the Commissioner.

In assessing whether it would be reasonable to require verification of the information, the Commissioner would need to have regard to the factors in subsection 8AAZLGA(2).

Example 7.4

Tom is registered for GST and lodged his GST return on 28 October 2012. The return gives rise to a net amount less than zero. After an objective assessment of the particular circumstances in Tom's case, and having regard to the factors in subsection 8AAZLGA(2), the Commissioner retains the amount on the basis that it is reasonable to require verification of Tom's refund claim. The Commissioner contacts Tom on 30 October 2012 and informs him of the decision to retain the refund.

On 8 November 2012, the Commissioner concludes his verification activities. As the Commissioner is now satisfied that Tom is entitled to the claimed amount, it would no longer be reasonable for the Commissioner to continue retaining the amount. The Commissioner refunds the amount to Tom on 9 November 2012.

Review rights under Part IVC

7.61 A taxpayer may object under Part IVC of the TAA 1953 to the Commissioner's decision to retain the refund. ***[Schedule 7, item 1, subsection 8AAZLGA(6) of the TAA 1953]***

Time for objection

7.62 The right to object arises 60 days (plus any applicable extensions) after the day on which the Commissioner is required to inform the taxpayer of his or her decision to retain the refund under subsection 8AAZLGA(3). ***[Schedule 7, item 2, paragraph 14ZW(1)(aac) of the TAA 1953]***

7.63 The 60-day period is extended by any periods of time in which the Commissioner has requested further information from the taxpayer and that information has not been provided to the Commissioner. ***[Schedule 7, item 3, subsection 14ZW(4) of the TAA 1953]***

7.64 The extension mechanism in subsection 14ZW(4) operates by testing each day in the 60-day period referred to in subparagraph 14ZW(1)(aac)(i), and checking whether there is an outstanding information request. For each day there is an outstanding information request, an extra day is added to the end of the 60-day period.

7.65 To ensure that taxpayers are not adversely affected by the actions of third parties, the extension mechanism does not apply where it is necessary for the Commissioner to make requests to third parties as part of his or her verification activities.

7.66 If the Commissioner has already refunded the amount, amended the taxpayer's assessment, or made or amended an assessment for the taxpayer relating to the amount under Division 105 in Schedule 1 to the TAA 1953, then the taxpayer may no longer object under subsection 8AAZLGA(6) to the Commissioner's decision to retain the refund. ***[Schedule 7, item 2, subparagraph 14ZW(1)(aac)(ii) of the TAA 1953]***

7.67 Instead, if the Commissioner has made or amended an assessment that changes the entitlement to the refund, the taxpayer, if dissatisfied, must object to the assessment or amended assessment under Part IVC of the TAA 1953.

Notification of an entitlement to object

7.68 The Commissioner has up to seven days after the end of the 60-day period (plus extensions) to inform the taxpayer, in writing, of the taxpayer's right to object. The Commissioner may choose to inform the taxpayer of these objection rights before the end of the period. ***[Schedule 7, item 1, subsection 8AAZLGA(7) of the TAA 1953]***

The taxpayer's right to object does not depend on receipt of the Commissioner's notification. Instead, the notification requirement is to ensure that taxpayers affected by this provision are made aware of their rights.

Example 7.5

Duncan runs a shoe shop and is registered for GST. On 28 July 2012, Duncan lodges his GST return for the tax period ending 30 June 2012. Duncan's net amount for that period is a refund of $15,000. An amount of $15,000 is allocated to the running balance account and he has a running balance account surplus of $15,000. The running balance account interest day would be 11 August 2012.

Duncan's past compliance history has been poor and at times he has been found to have been reckless when lodging his GST returns. On this occasion, his claim for a refund does not correspond with his recent lodgment activity. After considering all the factors in subsection 8AAZLGA(2), including Duncan's past compliance history, which suggests that the information might be affected by recklessness, and Duncan's recent lodgment activity, the Commissioner determines that it would be reasonable to require the amounts in Duncan's GST return to be verified.

On 8 August 2012, the Commissioner informs Duncan that he has decided to retain the refund under section 8AAZLGA. On 20 August 2012, the Commissioner requests additional information from Duncan. Duncan provides this information to the Commissioner on 19 September 2012.

The Commissioner's investigations, including the information provided by Duncan indicate that the acquisitions to which the refund claim relates are part of a complex supply chain.

The Commissioner again considers whether it is reasonable to continue retaining the amount. Having regard to the factors, including the complexity involved and the likelihood that Duncan may again be acting recklessly, the Commissioner determines that it would be reasonable to continue to retain the refund.

If by 10 October 2012 (60 days from the running balance account interest day plus the 30 days Duncan took to provide the requested information to the Commissioner), the Commissioner still has not

refunded the amount, made an assessment of Duncan's net amount or informed Duncan of the decision to retain the amount, Duncan may object to the Commissioner's decision to retain the amount under Part IVC of the TAA 1953. The Commissioner is required to notify Duncan of his objection rights by 17 October 2012.

Delayed refund interest

An imperative on the Commissioner to act promptly and not delay refunds unnecessarily is that he or she may be required to pay interest as provided for under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* on refunds paid or credited following the expiry of a period set out in that Act. ***[Schedule 7, item 1, note in subsection 8AAZLGA(6) of the TAA 1953]***

For example, under the delayed refund interest rules in Part IIIAA of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, where the conditions for entitlement are met interest will be payable from the running balance account interest day for running balance account surpluses.

RBA interest day is defined in section 12AF of the *Taxation (Interest on Overpayments and Early Payments) Act 1983* as being the 14th day after the later of:

- the day on which the surplus arises;
- the day on which a notification is given to the Commissioner under section 8AAZLG of the TAA 1953; or
- the day on which the taxpayer nominates a financial institution account for the purposes of section 8AAZLH of the TAA 1953.

Application and transitional provisions

These amendments commence on the day of Royal Assent.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Refunds

This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This Schedule amends the TAA 1953 to provide the Commissioner with a discretion to delay refunding an amount to a taxpayer pending integrity checks of their claim.

Human rights implications

This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, Senator the Hon Mark Arbib

Index

Schedule 1: GST-health supplies

Bill reference	*Paragraph number*
Item 1, subsection 38-60(1)	1.15
Item 1, subsections 38-60(1) and (2)	1.16
Item 1, subsections 38-60(3) and (4)	1.18, 1.19
Items 2 to 5, subsections 78-100(1) and (2)	1.17
Item 2, subsection 78-118(1), item 4, paragraph 78-118(2)(a)	1.23
Item 3, subsection 78-118(1)	1.24
Item 5	1.22

Schedule 2: GST treatment of appropriations

Bill reference	*Paragraph number*
Items 1 and 2, subsections 9-17(1) and (2)	2.36
Item 2, subparagraphs 9-17(3)(b)(i)(ii) and (iii)	2.17, 2.21
Item 2, paragraph 9-17(3)(a)	2.15
Item 2, paragraph 9-17(3)(c)	2.23, 2.31
Item 2, subsections 9-17(4) and (5)	2.32, 2.33
Items 3 and 8 to 13	2.37
Items 4 and 5	2.40
Items 6 to 7	2.41
Item 14	2.34

Schedule 3: Indexation of superannuation concessional contributions cap

Bill reference	*Paragraph number*
Item 1, subsection 292-20(2)	3.13
Item 2, subparagraph 960-285(2)(a)(i)	3.16

Schedule 4: Refund of excess concessional contributions

Bill reference	***Paragraph number***
Item 1, subsections 292-420 (1) and (2) of the ITAA 1997	4.15, 4.16
Item 1, subsection 292-420(3) and paragraph 292-420(1)(c) of the ITAA 1997	4.17
Item 1, subsection 292-420(4) of the ITAA 1997	4.18
Item 1, note 1 to subsection 292-420(4) of the ITAA 1997; item 16, subsection 288-95(3) in Schedule 1 to the TAA 1953	4.69
Item 1, subsection 292-420(5) of the ITAA 1997	4.19
Item 1, subsection 292-420(6) of the ITAA 1997	4.20
Item 1, subsection 292-420(7) of the ITAA 1997	4.21, 4.45
Item 1, subsection 292-420(8) of the ITAA 1997	4.22
Item 1, note 2 to subsection 292-420(4) of the ITAA 1997	4.70
Item 2, section 292-425 of the ITAA 1997	4.24
Item 2, subsections 292-467(1) and (4) of the ITAA 1997	4.33
Item 2, paragraphs 292-467(1)(a) to (d) of the ITAA 1997	4.25
Item 2, paragraph 292-467(1)(c) of the ITAA 1997	4.54
Item 2, subsections 292-467(1) and (3) of the ITAA 1997	4.28
Item 2, subsection 292-467(2) of the ITAA 1997	4.40
Item 2, subsections 292-467 (2) and (5) of the ITAA 1997	4.34
Item 2, paragraph 292-467(2)(b) of the ITAA 1997	4.35
Item 2, subsection 292-467(3) of the ITAA 1997	4.30
Item 2, paragraph 292-467(3)(b) of the ITAA 1997	4.32
Item 2, subsection 292-468(1) of the ITAA 1997	4.41
Item 2, subsection 292-468(2) of the ITAA 1997	4.43, 4.49
Item 2, subsections 292-468(2) to (5) of the ITAA 1997	4.42
Item 2, subsection 292-468(3) of the ITAA 1997	4.46
Item 2, subsection 292-468(4) of the ITAA 1997	4.50
Item 2, subsection 292-468(5) of the ITAA 1997	4.51
Item 2, subsection 292-468(6) of the ITAA 1997	4.55
Item 2, subsections 292-468(7) and (8) of the ITAA 1997	4.48
Item 2, paragraph 292-468(7)(a) of the ITAA 1997	4.56
Item 2, subsections 292-468(9) of the ITAA 1997	4.53
Item 2, section 292-469 of the ITAA 1997; item 13, paragraph 14ZW(1)(aac) of the TAA 1953	4.57
Item 3, subsection 303-15(1) of the ITAA 1997	4.58

Bill reference	*Paragraph number*
Item 3, subsection 303-15(2) of the ITAA 1997	4.59
Items 5 and 7, sections 13-1 and 67-23 of the ITAA 1997	4.36
Item 6, subsection 61-570(3), item 8, subsection 290-160(3), item 9, subsection 290-230(5), item 10, definition of 'reportable superannuation contributions' in subsection 995-1(1) of the ITAA 1997; item 12, subsection 8(1A) of the *Superannuation (Government Co-contributions for Low Income Earners) Act 2003*	4.65
Item 8, subsection 290-160(3) of the ITAA 1997	4.66
Item 11, subsection 6(3) of the *Superannuation (Government Co-contributions for Low Income Earners) Act 2003*	4.67
Item 14, subsection 250-10(2) of Schedule 1 to the TAA 1953	4.68
Item 15, subsection 280-100(4) of the TAA 1953	4.71
Items 17 to 19, subsection 3(1) of the *Taxation (Interest on Overpayments and Early Payments) Act 1983*	4.72

Schedule 5: Disclosure of superannuation information

Bill reference	*Paragraph number*
Item 1, subsection 355-65(3) in Schedule 1	5.16

Schedule 6: Giving information about superannuation contributions

Bill reference	*Paragraph number*
Item 1	6.12
Item 2	6.13
Items 3 to 5	6.15
Item 6	6.16
Item7	6.17
Item 9	6.29
Items 10 and 11	6.30

Schedule 7: Refunds

Bill reference	***Paragraph number***
Item 1, subsection 8AAZLGA(1) of the TAA 1953	7.26
Item 1, paragraph 8AAZLGA(1)(a) of the TAA 1953	7.28
Item 1, paragraph 8AAZLGA(1)(b) of the TAA 1953	7.28
Item 1, paragraph 8AAZLGA(2)(a) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(b) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(c) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(d) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(e) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(f) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(g) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(h) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(i) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(2)(j) of the TAA 1953	7.32
Item 1, paragraph 8AAZLGA(3)(a) of the TAA 1953	7.57
Item 1, paragraph 8AAZLGA(3)(b) of the TAA 1953	7.57
Item 1, subsection 8AAZLGA(4) of the TAA 1953	7.55
Item 1, paragraph 8AAZLGA(5)(a) of the TAA 1953	7.59
Item 1, paragraph 8AAZLGA(5)(b) of the TAA 1953	7.56
Item 1, subparagraph 8AAZLGA(5)(c)(i) of the TAA 1953	7.59
Item 1, subparagraph 8AAZLGA(5)(c)(ii) of the TAA 1953	7.59
Item 1, subsection 8AAZLGA(6) of the TAA 1953	7.62
Item 1, note in subsection 8AAZLGA(6) of the TAA 1953	7.71
Item 1, subsection 8AAZLGA(7) of the TAA 1953	7.69
Item 2, paragraph 14ZW(1)(aac) of the TAA 1953	7.63
Item 2, subparagraph 14ZW(1)(aac)(ii) of the TAA 1953	7.67
Item 3, subsection 14ZW(4) of the TAA 1953	7.64