

EXPOSURE DRAFT

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016

No. , 2016

(Treasury)

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

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

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Treasury Laws Amendment (Fair and Sustainable*
8 *Superannuation) Act 2016.*

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.
14

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
4. Schedule 3	2 July 2017.	2 July 2017
5. Schedule 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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Deducting personal contributions **Schedule 1**

1 **Schedule 1—Deducting personal**
2 **contributions**
3

4 ***Income Tax Assessment Act 1997***

5 **1 Subsection 280-10(1)**

6 Omit “if less than 10% of their total assessable income (plus reportable
7 fringe benefits) for the income year is attributable to employment or
8 similar activities”, substitute “to most complying superannuation
9 funds”.

10 **2 Subsection 280-10(2)**

11 Omit “personal contributions made by individuals whose employment
12 income is 10% or more of their total income, and contributions made by
13 others in respect of them”, substitute “contributions made by others in
14 respect of individuals”.

15 **3 Subsection 290-150(2)**

16 Omit “290-160 (if applicable),”.

17 **4 Sections 290-155 and 290-160**

18 Repeal the sections, substitute:

19 **290-155 Complying superannuation fund condition**

20 (1) If the contribution is made to a *superannuation fund, it must be a
21 *complying superannuation fund, for the income year of the fund in
22 which you made the contribution, that is not:

- 23 (a) a *Commonwealth public sector superannuation scheme in
24 which you have a *defined benefit interest; or
25 (b) a superannuation fund that would not include the contribution
26 in its assessable income under section 295-190; or
27 (c) a superannuation fund of a kind prescribed by the
28 regulations.

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Schedule 1 Deducting personal contributions

1 (2) In determining for the purposes of paragraph (1)(b) whether
2 section 295-190 would apply in relation to a contribution, disregard
3 Subdivision 295-D.

4 **5 Paragraph 290-165(1)(b)**

5 Repeal the paragraph, substitute:

6 (b) attributable to activities, or circumstances, that result in you
7 being treated as an employee for the purposes of the
8 *Superannuation Guarantee (Administration) Act 1992*
9 (assuming that subsection 12(11) of that Act had not been
10 enacted).

11 **6 Subsection 995-1(1)**

12 Insert:

13 *Commonwealth public sector superannuation scheme* has the
14 same meaning as in the *Superannuation (Unclaimed Money and*
15 *Lost Members) Act 1999*.

16 **7 Application of amendments**

17 The amendments made by this Schedule apply in relation to
18 contributions made in the 2017-18 income year and later income years.

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Tax offsets for spouse contributions **Schedule 2**

1 **Schedule 2—Tax offsets for spouse**
2 **contributions**
3

4 *Income Tax Assessment Act 1997*

5 **1 Paragraph 290-230(2)(c)**

6 Omit “\$13,800”, substitute “\$40,000”.

7 **2 After subsection 290-230(4)**

8 Insert:

9 (4A) You are *not* entitled to the *tax offset for an income year if your
10 *spouse’s *non-concessional contributions for the *financial year
11 corresponding to the income year exceed your spouse’s
12 *non-concessional contributions cap for the financial year.

13 **3 Paragraph 290-235(1)(a)**

14 Omit “\$10,800”, substitute “\$37,000”.

15 **4 Application of amendments**

16 The amendments made by this Schedule apply in relation to
17 contributions made in the 2017-18 income year and later income years.

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Schedule 3 Low income superannuation tax offset

1 **Schedule 3—Low income superannuation tax**
2 **offset**

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

5 **1 Subsection 5(2)**

6 After:

- 7 • Part 2 (sections 6 to 12) tells you who are the people in respect
8 of whom a Government co-contribution is payable. It also tells
9 you how much the co-contribution is.

10 insert:

- 11 • Part 2A (sections 12B to 12G) tells you who are the people
12 entitled to a low income superannuation tax offset. It also tells
13 you how much the low income superannuation tax offset is.

14 **2 After Part 2**

15 Insert:

16 **Part 2A—Low income superannuation tax offset**
17

18 **12B Reference to Government co-contribution includes reference to**
19 **low income superannuation tax offset**

20 (1) A law of the Commonwealth applies in relation to a low income
21 superannuation tax offset in the same way as it applies in relation
22 to a Government co-contribution.

23 (2) Subsection (1) does not apply to:

24 (a) the following provisions:

25 (i) Part 2 of this Act (other than section 12);

26 (ii) this Part;

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Low income superannuation tax offset **Schedule 3**

- 1 (ii) section 23;
2 (iii) section 54 of this Act; and
3 (b) any other law of the Commonwealth, to the extent that the
4 other law relates to a provision mentioned in paragraph (a) of
5 this subsection.
- 6 (3) Paragraph 14(1)(a) (Commissioner to have regard to income tax
7 return) does not apply in deciding whether to make a determination
8 under section 13 that a low income superannuation tax offset is
9 payable under subsection 12C(2) in respect of a person for an
10 income year.
- 11 (4) Subsections 24(3) and (4) have an operation in respect of low
12 income superannuation tax offsets that is separate to their operation
13 in respect of Government co-contributions.

14 **12C Person entitled to low income superannuation tax offset**

- 15 (1) A low income superannuation tax offset is payable under this
16 subsection in respect of a person for an income year of the person
17 if:
18 (a) the person's concessional contributions for the financial year
19 that corresponds to the income year are for a financial year
20 starting on or after 1 July 2017; and
21 (b) the person's adjusted taxable income for the income year
22 (worked out in accordance with Schedule 3 to the *A New Tax*
23 *System (Family Assistance) Act 1999* (disregarding clauses 3
24 and 3A of that Schedule)) does not exceed \$37,000; and
25 (c) the requirement in paragraph 6(1)(b) is satisfied in respect of
26 the person in relation to the income year; and
27 (d) the requirement in paragraph 6(1)(f) is satisfied in respect of
28 the person in relation to the income year.
- 29 (2) A low income superannuation tax offset is payable under this
30 subsection in respect of a person for an income year of the person
31 if:
32 (a) the person's concessional contributions for the financial year
33 that corresponds to the income year are for a financial year
34 starting on or after 1 July 2017; and

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Schedule 3 Low income superannuation tax offset

- 1 (b) 12 months after the end of the income year, the
2 Commissioner reasonably believes there is insufficient
3 information to decide whether to make a determination under
4 section 13 that a low income superannuation tax offset is
5 payable under subsection (1) in respect of the person for the
6 income year; and
7 (c) the Commissioner estimates that:
8 (i) the person's adjusted taxable income for the income
9 year (worked out in accordance with Schedule 3 to the *A*
10 *New Tax System (Family Assistance) Act 1999*
11 (disregarding clauses 3 and 3A of that Schedule)) does
12 not exceed \$37,000; and
13 (ii) 10% or more of the person's total income for the
14 income year (disregarding subsections 8(2) and (3)) is
15 attributable to the person engaging in activities covered
16 under subsection 6(2); and
17 (d) the requirement in paragraph 6(1)(f) is satisfied in respect of
18 the person in relation to the income year.
- 19 (3) For the purposes of paragraph (1)(c), disregard the words "in
20 which the person makes the contribution" in paragraph 6(2)(a).
- 21 (4) For the purposes of subparagraph (2)(c)(i), treat the person as
22 having total deductions of \$300 for the income year unless the
23 Commissioner has information to the contrary.
- 24 (5) For the purposes of subparagraph (2)(c)(ii), disregard the words "in
25 the income year in which the person makes the contribution" in
26 paragraph 6(2)(a).

12E Amount of low income superannuation tax offset

- 28 (1) This section applies if a low income superannuation tax offset is
29 payable under subsection 12C(1) or (2) in respect of a person for
30 an income year.
- 31 (2) The amount of the person's low income superannuation tax offset
32 for the income year is:

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Low income superannuation tax offset **Schedule 3**

- 1 (a) unless paragraph (b) or (c) applies—15% of the total of the
2 person’s concessional contributions for the financial year that
3 corresponds to the income year; or
4 (b) if the amount worked out under paragraph (a) exceeds
5 \$500—\$500; or
6 (c) if the amount worked out under paragraph (a) is less than
7 \$10—\$10.
- 8 (3) If, apart from this subsection:
9 (a) there would be an underpaid amount as mentioned in
10 section 19 in respect of the person’s low income
11 superannuation tax offset for the income year; and
12 (b) the underpaid amount would be less than \$10;
13 decrease the amount of that low income superannuation tax offset
14 by that underpaid amount.
- 15 (4) If, apart from this subsection:
16 (a) there would be an amount overpaid as mentioned in
17 section 24 in respect of the person’s low income
18 superannuation tax offset for the income year; and
19 (b) the amount overpaid would be less than \$10;
20 increase the amount of that low income superannuation tax offset
21 by that amount overpaid.

22 **12F Consequences if estimates no longer accurate**

- 23 (1) Treat a low income superannuation tax offset as never having been
24 payable under subsection 12C(2) in respect of a person for an
25 income year if:
26 (a) the Commissioner obtains information after making the
27 determination under section 13 that the tax offset was so
28 payable; and
29 (b) the Commissioner decides that, had the Commissioner
30 obtained that information before making the determination,
31 the Commissioner would not have made the determination.
- 32 Note: The tax offset will be recoverable under section 24.
- 33 (2) The Commissioner must give the person written notice of the
34 Commissioner’s decision under paragraph (1)(b).
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Schedule 3 Low income superannuation tax offset

1 12G Reports on this Part

2 (1) After the end of each quarter the Commissioner must give the
3 Minister a report, for presentation to the Parliament, on the
4 working of this Part during the quarter. The report must include,
5 for the quarter to which the report relates, the prescribed details
6 about beneficiaries of, and amounts of, low income superannuation
7 tax offsets.

8 (2) After the end of each financial year the Commissioner must give
9 the Minister a report, for presentation to the Parliament, that:
10 (a) is on the working of this Part during the financial year; and
11 (b) includes, for the financial year to which the report relates, the
12 prescribed details about beneficiaries of, and amounts of, low
13 income superannuation tax offsets.

14 3 Subsection 49(1)

15 After “Part 2,”, insert “2A,”.

16 4 At the end of section 55

17 Add:

18 Note: The regulations may relate to the Government co-contribution and the
19 low income superannuation tax offset (see section 12B).

20 5 Section 56

21 Insert:

22 *concessional contributions* has the same meaning as in the *Income*
23 *Tax Assessment Act 1997*.

24 6 Section 56

25 Insert:

26 *low income superannuation tax offset* means a low income
27 superannuation tax offset payable under this Act.

28 7 Application of amendments

29 The amendments made by this Schedule apply to the 2017-18 income
30 year and later income years.

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Primary objective of the superannuation system **Schedule 4**

1 **Schedule 4—Primary objective of the**
2 **superannuation system**
3

4 *Legislation Act 2003*

5 **1 After paragraph 15J(2)(f)**

6 Insert:

7 (fa) if the instrument is a regulation relating to superannuation—
8 contain a statement of compatibility prepared under
9 subsection 7(1) of the *Superannuation (Objective) Act 2016*;
10 and