

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, 2, 6, 8, 9 and 10	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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15 Note: This table relates only to the provisions of this Act as originally
16 enacted. It will not be amended to deal with any later amendments of
17 this Act.

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

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 **Schedule 1—Transfer balance cap**

2 **Part 1—Transfer balance cap**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **1 After paragraph (gaa) of Schedule 1**

5 Insert:

6 (gab) decisions of the Commissioner of Taxation under
7 Subdivision 136-A in Schedule 1 to the *Taxation*
8 *Administration Act 1953*;

9 *Income Tax Assessment Act 1997*

10 **2 After section 26-98**

11 Insert:

12 **26-99 Excess transfer balance tax cannot be deducted**

13 You cannot deduct under this Act an amount of *excess transfer
14 balance tax that you pay.

15 **3 After Division 293**

16 Insert:

17 **Division 294—Transfer balance cap**

18 **Table of Subdivisions**

19		Guide to Division 294
20	294-A	Object of this Division
21	294-B	Transfer balance account
22	294-C	Transfer balance debits
23	294-D	Modifications for certain defined benefit income streams
24	294-E	Modifications for death benefits dependants who are children

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 294-F Excess transfer balance tax

2 Guide to Division 294

3 294-1 What this Division is about

4 There is a cap on the total amount you can transfer into the
5 retirement phase of superannuation (where earnings are exempt
6 from taxation).

7 Credits are added to a transfer balance account when you transfer
8 amounts.

9 If the balance in your account exceeds the cap, you will be required
10 to remove the excess from the retirement phase, and you will be
11 liable to pay excess transfer balance tax.

12 Note: Division 136 in Schedule 1 to the *Taxation Administration Act 1953*
13 contains rules about excess transfer balance determinations and
14 commutation authorities.

15 Subdivision 294-A—Object of this Division

16 Table of sections

17 Operative provisions

18 294-5 Object of this Division

19 Operative provisions

20 294-5 Object of this Division

21 The object of this Division is to limit the total amount of an
22 individual's *superannuation income streams that receive an
23 earnings tax exemption.

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 **Subdivision 294-B—Transfer balance account**

2 **Guide to Subdivision 294-B**

3 **294-10 What this Subdivision is about**

4 This Subdivision creates a transfer balance account for you, and
5 credits it, if you have a superannuation income stream in the
6 retirement phase.

7 It also provides for a transfer balance cap and identifies when you
8 have excess transfer balance.

9 **Table of sections**

10 **Operative provisions**

11	294-15	When you have a transfer balance account
12	294-20	Meaning of <i>retirement phase recipient</i>
13	294-25	Transfer balance credits
14	294-30	Excess transfer balance
15	294-35	Your transfer balance cap
16	294-40	Proportionally indexed transfer balance cap

17 **Operative provisions**

18 **294-15 When you have a transfer balance account**

- 19 (1) You have a ***transfer balance account*** if you are the *retirement
20 phase recipient of a *superannuation income stream.
- 21 (2) You start to have the *transfer balance account on the later of:
22 (a) 1 July 2017; and
23 (b) the day you first start to be a *retirement phase recipient of a
24 *superannuation income stream.

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

294-20 Meaning of retirement phase recipient

- (1) You are the *retirement phase recipient* of a *superannuation income stream at a time if:
- (a) the superannuation income stream is in the *retirement phase at that time; and
 - (b) a *superannuation income stream benefit from the superannuation income stream is payable to you at that time.
- (2) You are also the *retirement phase recipient* of a *superannuation income stream at a time if:
- (a) the superannuation income stream is in the *retirement phase at that time; and
 - (b) the superannuation income stream is a *deferred superannuation income stream; and
 - (c) a *superannuation income stream benefit from the superannuation income stream will be payable to you after that time.

294-25 Transfer balance credits

- (1) The following table sets out when a credit arises in your *transfer balance account and the amount of the credit. The credit is called a *transfer balance credit*.

Credits in the transfer balance account

Item	If:	A credit of:	Arises:
1	at the end of 30 June 2017, you are the *retirement phase recipient of a *superannuation income stream	the *value on 30 June 2017 of the *superannuation interest that supports the superannuation income stream	(a) on 1 July 2017, unless paragraph (b) applies; or (b) if you are a reversionary beneficiary—at the end of the period of 6 months beginning on 1 July 2017
2	on a day (the <i>starting day</i>) on or after 1 July	the *value on the starting day of the	(a) on the starting day, unless paragraph (b) applies; or

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

Credits in the transfer balance account

Item	If:	A credit of:	Arises:
	2017, you start to be the *retirement phase recipient of a *superannuation income stream	*superannuation interest that supports the superannuation income stream	(b) if you are a reversionary beneficiary—at the end of the period of 6 months beginning on the starting day
3	you have *excess transfer balance at the end of a day	your *notional earnings on excess transfer balance for that day	at the start of the next day

- 1 Note 1: The credit amount is modified for certain capped defined benefit
2 income streams: see Subdivision 294-E.
- 3 Note 2: For the meaning of *notional earnings on excess transfer balance*, see
4 section 294-220.
- 5 Note 3: If a payment split applies to payments from the superannuation
6 income stream, a debit arises under section 294-75.

7 *No notional earnings if determination issued*

- 8 (2) Despite item 3 of the table in subsection (1), no credit arises in
9 your *transfer balance account under that item at the end of a day if
10 the day is in the period:
- 11 (a) starting on the day the Commissioner makes an *excess
12 transfer balance determination in respect of you; and
- 13 (b) ending on the first day on which the sum of all *transfer
14 balance debits arising in your *transfer balance account since
15 the determination was issued equals or exceeds the
16 *crystallised reduction amount.

17 Note: For provisions about excess transfer balance determinations, see
18 Division 136 in Schedule 1 to the *Taxation Administration Act 1953*.

19 **294-30 Excess transfer balance**

20 You have *excess transfer balance* at a particular time if, at that
21 time, the balance in your *transfer balance account exceeds your
22 *transfer balance cap at that time. The amount of the *excess*
23 *transfer balance* is the amount of the excess.

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 Note 1: For *transfer balance debits*, see Subdivision 294-C.

2 Note 2: There is no consequence for having a deficit in your transfer balance
3 account.

4 **294-35 Your transfer balance cap**

5 (1) Your *transfer balance cap* for the *financial year in which you first
6 start to have a *transfer balance account is equal to the *general
7 transfer balance cap for that financial year.

8 (2) Your *transfer balance cap* for a later *financial year is equal to
9 your transfer balance cap for the previous year, subject to
10 section 294-40 (which is about proportional indexation).

11 (3) The *general transfer balance cap* is:

12 (a) for the 2017-2018 *financial year—\$1,600,000; or

13 (b) for the 2018-2019 financial year or a later financial year—the
14 amount worked out by indexing annually the amount
15 mentioned in paragraph (a).

16 Note: Subdivision 960-M shows how to index amounts. However, annual
17 indexation does not necessarily increase the amount of the cap: see
18 section 960-290.

19 **294-40 Proportionally indexed transfer balance cap**

20 (1) This section applies to increase your *transfer balance cap* for a
21 *financial year (other than the financial year in which you first start
22 to have a *transfer balance account) if:

23 (a) the *general transfer balance cap is increased as a result of
24 indexation for the financial year; and

25 (b) at no time before the start of that financial year has the
26 balance in your transfer balance account exceeded your
27 transfer balance cap.

28 (2) Your *transfer balance cap* is increased for the *financial year by
29 the amount worked out using the following formula:

30 Unused cap percentage × Indexation increase

31 where:

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *indexation increase* means the amount by which the *general
2 transfer balance cap for the financial year increased as a result of
3 indexation.

4 *unused cap percentage* is worked out by:

- 5 (a) identifying the highest balance in your *transfer balance
6 account at the end of any day up to the end of the previous
7 financial year; and
8 (b) identifying the day on which the transfer balance account had
9 that balance at the end of the day, or, if your transfer balance
10 account had that balance at the end of more than one day, the
11 earliest of those days; and
12 (c) expressing the balance identified in paragraph (a) as a
13 percentage (rounded down to the nearest whole number) of
14 your *transfer balance cap on the day identified in
15 paragraph (b); and
16 (d) subtracting the result of paragraph (c) from 100%.

17 **Subdivision 294-C—Transfer balance debits**

18 **Guide to Subdivision 294-C**

19 **294-65 What this Subdivision is about**

20 A debit arises in your transfer balance account when
21 superannuation income streams that were previously credited
22 (because they receive the earnings tax exemption) are reduced
23 (other than by draw-downs or investment losses).

24 A debit also arises in your transfer balance account when you make
25 a contribution relating to a structured settlement or personal injury,
26 or where certain events occur that result in you having reduced
27 superannuation.

28 **Table of sections**

29 Operative provisions
30 294-70 Transfer balance debits

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- 1 294-75 Certain events that result in reduced superannuation
2 294-80 Payment splits

Operative provisions

294-70 Transfer balance debits

- 5 (1) The following table sets out when a debit arises in your *transfer
6 balance account and the amount of the debit. The debit is called a
7 *transfer balance debit*.

8

Debits in the transfer balance account

Item	If:	A debit of:	Arises:
1	you receive a *superannuation lump sum because a *superannuation income stream of which you are a *retirement phase recipient is commuted, in full or in part	the amount of the superannuation lump sum	at the time you receive the superannuation lump sum
2	a contribution to a *complying superannuation plan in respect of you is covered under section 292-95 (about structured settlements or orders for personal injuries)	the amount of the contribution	at the later of: (a) the time the contribution is made; and (b) at the start of the day you first start to have a *transfer balance account
3	a *transfer balance debit arises under section 294-75 because of an event that results in reduced superannuation	the amount of the debit specified in section 294-75	at the time provided by section 294-75
4	a *transfer balance debit arises under section 294-80 because of a payment split	the amount of the debit specified in section 294-80	at the time provided by section 294-80

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

Debits in the transfer balance account

Item	If:	A debit of:	Arises:
5	a *superannuation income stream of which you are a *retirement phase recipient stops being in the *retirement phase under subsection 307-80(4)	the *value of the *superannuation interest that supports the superannuation income stream at the end of the period within which the commutation authority mentioned in that section was required to be complied with	at the end of the period within which the commutation authority mentioned in that section was required to be complied with
6	the Commissioner gives you a notice under section 136-70 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (about non-commutable excess transfer balance)	the amount of the *excess transfer balance stated in the notice	at the time the Commissioner issues the notice

1 *Legacy structured settlements*

- 2 (2) For the purposes of item 2 of the table in subsection (1), treat a
3 contribution to a *complying superannuation plan in respect of you
4 as if it were covered under section 292-95 if the contribution would
5 be covered by that section if:
6 (a) the section applied to contributions made before 10 May
7 2006; and
8 (b) paragraphs 292-95(1)(b) and (d) were disregarded.

9 **294-75 Certain events that result in reduced superannuation**

- 10 (1) A *transfer balance debit arises in your *transfer balance account if:
11 (a) subsection (2) or (5) provides that the debit arises; and
12 (b) you notify the Commissioner in the *approved form that the
13 debit has arisen.

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1

Fraud or dishonesty

2

(2) A debit arises if:

3

(a) a loss is suffered by a *superannuation income stream provider; and

4

5

(b) as a result, the *value of the *superannuation interest that supports a *superannuation income stream of which you are the *retirement phase recipient is reduced; and

6

7

8

(c) the loss is a result of fraud or dishonesty; and

9

10

(d) an individual has been convicted of an offence involving that fraud or dishonesty.

11

(3) The amount of the debit equals the amount by which the *value of the *superannuation interest is reduced as a result of the loss.

12

13

(4) The debit arises at the time of the loss.

14

Payments under section 139ZQ of the Bankruptcy Act 1966

15

(5) A debit arises if:

16

(a) an amount is paid in compliance with a notice given under section 139ZQ of the *Bankruptcy Act 1966*; and

17

18

(b) as a result, the *value of a *superannuation interest that supports a *superannuation income stream of which you are the *retirement phase recipient is reduced.

19

20

21

(6) The amount of the debit is the amount paid to the trustee in bankruptcy.

22

23

(7) The debit arises at the time of the payment.

24

294-80 Payment splits

25

(1) A *transfer balance debit arises in your *transfer balance account if:

26

(a) subsection (2) provides that the debit arises; and

27

(b) you notify the Commissioner in the *approved form that the debit has arisen.

28

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1

Payment splits

2

(2) A debit arises if:

3

(a) a *superannuation interest is subject to a *payment split but remains an interest of the *member spouse; and

4

5

(b) the superannuation interest supports a *superannuation income stream that is in the *retirement phase; and

6

7

(c) as a result of the payment split, a proportion of all *superannuation income stream benefits from the income stream is to be paid to a *non-member spouse; and

8

9

10

(d) as a result, the member spouse and the non-member spouse are both *retirement phase recipients of the superannuation income stream.

11

12

13

(3) The amount of the debit is:

14

(a) if you are the *member spouse—the proportion mentioned in paragraph (2)(c); and

15

16

(b) if you are the *non-member spouse—the remaining proportion;

17

18

of the *value, on the day the debit arises, of the *superannuation interest that supports the *superannuation income stream affected by the *payment split.

19

20

21

(4) The debit arises at the later of:

22

(a) the operative time (within the meaning of Part VIIIB of the *Family Law Act 1975*) for the *payment split; and

23

24

(b) at the start of the day you first start to have a *transfer balance account.

25

26

No double debiting

27

(5) If a *transfer balance debit, worked out by reference to a particular proportion, arises in your *transfer balance account because of a *payment split, each of the following debits arising in your account at a later time is to be reduced by the same proportion:

28

29

30

(a) a debit that arises under item 3 of the table in subsection 294-70(1) (about events that result in reduced superannuation);

31

32

33

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 (b) a debit that arises under item 5 of that table (about income
2 streams that stop being in the retirement phase).

3 **Subdivision 294-D—Modifications for certain defined benefit**
4 **income streams**

5 **Guide to Subdivision 294-D**

6 **294-105 What this Subdivision is about**

7 Certain defined benefit lifetime pensions that are subject to
8 commutation restrictions cannot result in excess transfer balance
9 (instead, Division 302A applies to the superannuation income
10 stream benefits).

11 Certain commutation-restricted income streams started before
12 1 July 2017 are covered by the same modification.

13 **Table of sections**

14 **Operative provisions**

15 294-110 When this Subdivision applies
16 294-115 Meaning of capped defined benefit income stream
17 294-120 Transfer balance credit—special rule for capped defined benefit income
18 streams
19 294-125 Excess transfer balance—special rule for capped defined benefit income
20 streams
21 294-130 Transfer balance debits—special rules for capped defined benefit income
22 streams

23 **Operative provisions**

24 **294-110 When this Subdivision applies**

25 This Subdivision applies to you if you are the *retirement phase
26 recipient of a *capped defined benefit income stream.

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

294-115 Meaning of capped defined benefit income stream

- (1) A *superannuation income stream is a *capped defined benefit income stream* if it is:
- (a) covered by item 1 of the table in subsection (3); and
 - (b) not a *deferred superannuation income stream.
- (2) A *superannuation income stream is also a *capped defined benefit income stream* if it is:
- (a) covered by any of items 2 to 7 of the table in subsection (3); and
 - (b) in the *retirement phase at the end of 30 June 2017.
- (3) This is the table mentioned in subsections (1) and (2):

Capped defined benefit income streams

Item	Topic	A superannuation income stream is covered if:
1	Lifetime pension	it is a pension for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> (the <i>SIS Act</i>) that is provided under rules that meet the standards of subregulation 1.06(2) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (the <i>SIS Regulations</i>)
2	Lifetime annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(2) of the SIS Regulations
3	Life expectancy pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(7) of the SIS Regulations
4	Life expectancy annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(9) of the SIS Regulations
5	Market linked pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(8) of the SIS Regulations
6	Market linked annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(10) of the SIS Regulations
7	Market linked	it is a pension for the purposes of the <i>Retirement</i>

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

Capped defined benefit income streams

Item	Topic	A superannuation income stream is covered if:
	pension (RSA)	<i>Savings Accounts Act 1997</i> that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i> .

- 1 (4) A *superannuation income stream is also a *capped defined benefit*
2 *income stream* if the income stream is prescribed by the
3 regulations.

294-120 Transfer balance credit—special rule for capped defined benefit income streams

- 4 (1) The following provisions apply in relation to a *capped defined
5 benefit income stream as if a reference in the provision to the
6 *value of a *superannuation interest were a reference to the *special
7 value of the superannuation interest:
8 (a) section 294-25 (about transfer balance credits);
9 (b) subsection 294-185(3) (about the cap increment for a child
10 recipient).

Meaning of special value—lifetime products

- 11 (2) The *special value*, at a particular time, of a *superannuation
12 interest that supports a *capped defined benefit income stream
13 covered by item 1 or 2 of the table in subsection 294-115(3), is the
14 amount worked out using the formula:

$$\text{Annual entitlement} \times 16$$

15 where:

16 *annual entitlement* means the total amount of the *superannuation
17 income stream benefits you are entitled to receive from the income
18 stream within the period of 12 months after that time.
19
20
21
22

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *Meaning of special value—life expectancy and market linked*
2 *products*

3 (3) The *special value*, at a particular time, of a *superannuation
4 interest that supports a *capped defined benefit income stream
5 covered by any of items 3 to 7 of the table in
6 subsection 294-115(3), is the amount worked out using the
7 formula:

8 Annual entitlement × Remaining term

9 where:

10 *annual entitlement* has the same meaning as in subsection (2) of
11 this section.

12 *remaining term* means the number of years remaining at that time
13 in the period throughout which *superannuation income stream
14 benefits are payable under the income stream, rounded up to the
15 next whole number.

16 *Regulations*

17 (4) The regulations may specify a method for determining the *special*
18 *value* of a *superannuation interest that supports a *superannuation
19 income stream prescribed by regulations made for the purposes of
20 subsection 294-115(4).

21 **294-125 Excess transfer balance—special rule for capped defined** 22 **benefit income streams**

23 (1) Despite section 294-30, you have *excess transfer balance* at a
24 particular time if, at that time, the balance in your *transfer balance
25 account:

26 (a) exceeds your *transfer balance cap at that time; and

27 (b) exceeds your capped defined benefit balance from
28 subsection (3) of this section at that time.

29 (2) The amount of the *excess transfer balance* is the lesser of the 2
30 excesses.

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 Note: For modifications of the tax treatment of benefits paid from capped
2 defined benefit income streams, see Division 302A.

3 *Your capped defined benefit balance*

4 (3) You have an amount under this subsection (a *capped defined*
5 *benefit balance*) at a time equal to:

6 (a) the sum of the *transfer balance credits in your *transfer
7 balance account at that time in respect of *capped defined
8 benefit income streams; less

9 (b) the sum of the *transfer balance debits (if any) in your
10 transfer balance account at that time in respect of capped
11 defined benefit income streams.

12 **294-130 Transfer balance debits—special rules for capped defined** 13 **benefit income streams**

14 *Debit for commutation*

15 (1) Item 1 of the table in subsection 294-70(1) applies in relation to a
16 *capped defined benefit income stream as if the reference in
17 column 2 of that item to the amount of the *superannuation lump
18 sum were a reference to:

19 (a) for a commutation in full—the *debit value, just before the
20 *superannuation lump sum is paid, of the *superannuation
21 interest that supports the capped defined benefit income
22 stream; or

23 (b) for a commutation in part—the debit value mentioned in
24 paragraph (a), multiplied by the fraction:

$$\frac{\text{Lump sum}}{\text{Value}}$$

25 where:

26 *lump sum* means the amount of the *superannuation lump sum.

27 *value* means the *value, just before the *superannuation lump sum
28 is paid, of the *superannuation interest that supports the *capped
29 defined benefit income stream.
30

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *Debit for payment split*

2 (2) Section 294-80 (about a debit for a payment split) applies in
3 relation to a *capped defined benefit income stream as if the
4 reference to the *value of the *superannuation interest were a
5 reference to the *debit value of the superannuation interest.

6 *Meaning of debit value*

7 (3) The **debit value**, at a particular time, of a *superannuation interest
8 that supports a *capped defined benefit income stream covered by
9 item 1 or 2 of the table in subsection 294-115(3), is:

10 (a) the amount of the *transfer balance credit that arose in your
11 *transfer balance account in respect of the income stream;
12 less

13 (b) the amount of any *transfer balance debits that have arisen in
14 your transfer balance account in respect of the income stream
15 before that time.

16 (4) The **debit value**, at a particular time, of a *superannuation interest
17 that supports a *capped defined benefit income stream covered by
18 any of items 3 to 7 of the table in subsection 294-115(3) is the
19 *special value of the interest at that time.

20 *Regulations*

21 (5) The regulations may specify a method for determining the **debit**
22 **value** of a *superannuation interest that supports a *superannuation
23 income stream prescribed by regulations made for the purposes of
24 subsection 294-115(4).

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 **Subdivision 294-E—Modifications for death benefits**
2 **dependants who are children**

3 **Guide to Subdivision 294-E**

4 **294-155 What this Subdivision is about**

5 If you are a death benefits dependant, and a child, you are not
6 required to use your retirement transfer balance cap to receive a
7 death benefits income stream.

8 However, there is a cap on the total amount of your death benefits
9 income streams that receives the earnings tax exemption.

10 This cap is based on the deceased's exempt pension assets, or, if
11 the deceased did not have any exempt pension assets, on the
12 transfer balance cap.

13 **Table of sections**

14 **Operative provisions**

15	294-160	When this Subdivision applies
16	294-165	Transfer balance account ends
17	294-170	Transfer balance cap—special rule for child recipient
18	294-175	Cap increment—child recipient on 30 June 2017
19	294-180	Cap increment—child recipient after 30 June 2017, no existing transfer 20 balance account
21	294-185	Cap increment—child recipient after 30 June 2017, existing transfer balance 22 account

23 **Operative provisions**

24 **294-160 When this Subdivision applies**

- 25 (1) This Subdivision applies to you if you are a *child recipient of a
26 *superannuation income stream.
- 27 (2) You are a *child recipient* of a *superannuation income stream if:

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

- 1 (a) you are a *retirement phase recipient of the superannuation
2 income stream; and
3 (b) you are covered by paragraph 6.21(2A)(b) of the
4 *Superannuation Industry (Supervision) Regulations 1994* or
5 paragraph 4.24(3A)(b) of the *Retirement Savings Accounts*
6 *Regulations 1997* (which are about children who are under
7 age 18, or under age 25 and financially dependent or who
8 have a disability).

9 **294-165 Transfer balance account ends**

- 10 (1) You stop having the *transfer balance account when you are no
11 longer a *child recipient of any *superannuation income stream.
12 (2) If you again start to have a *transfer balance account at a later time,
13 this Division applies in relation to that later transfer balance
14 account as if it were the only transfer balance account you have
15 had.

16 **294-170 Transfer balance cap—special rule for child recipient**

17 Despite section 294-35, your *transfer balance cap* on a day is the
18 sum of the cap increments that have arisen under this Subdivision
19 on and before that day.

20 Note: Your transfer balance cap is not worked out on a financial year basis
21 and it is not indexed.

22 **294-175 Cap increment—child recipient on 30 June 2017**

- 23 (1) A cap increment arises if, at the end of 30 June 2017, you are the
24 *child recipient of a *superannuation income stream.
25 (2) The amount of the cap increment is the *general transfer balance
26 cap.
27 (3) The cap increment arises:
28 (a) on 1 July 2017, unless paragraph (b) applies; or
29 (b) if you are a reversionary beneficiary—at the end of the
30 period of 6 months beginning on 1 July 2017.

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *Income stream partly funded by deceased's accumulation assets*

2 (3) However, if the *value taken into account in working out the
3 amount of the cap increment under subsection (2) is:

4 (a) in part (the **retirement phase part**) attributable to a
5 *superannuation interest of the deceased that was in the
6 *retirement phase; and

7 (b) in part attributable to a superannuation interest of the
8 deceased that was *not* in the retirement phase;

9 the amount of the cap increment is so much of the amount worked
10 out under subsection (2) as represents the retirement phase part.

11 Note: Unless you have a cap increment under section 294-175 or 294-180, a
12 superannuation income stream covered by this subsection will result in
13 excess transfer balance.

14 *Reduced increment for excess transfer balance*

15 (4) Despite subsections (2) and (3), the cap increment is reduced if
16 there was *excess transfer balance in the *transfer balance account
17 at the time the deceased died. The amount of the reduction is:

18 (a) the proportion of the *excess transfer balance that
19 corresponds to your share of the deceased's *superannuation
20 interests that were in the *retirement phase; less

21 (b) the amount of any *superannuation lump sum paid to you,
22 because of the death of the person, by way of commutation,
23 in full or in part, of a *superannuation income stream of the
24 deceased that was in the retirement phase.

25 *When cap increment arises*

26 (5) The cap increment arises:

27 (a) on the starting day, unless paragraph (b) applies; or

28 (b) if you are a reversionary beneficiary—at the end of the
29 period of 6 months beginning on the starting day.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 **Subdivision 294-F—Excess transfer balance tax**

2 **Guide to Subdivision 294-F**

3 **294-210 What this Subdivision is about**

4 This Subdivision neutralises the earnings tax exemption on
5 retirement phase income streams that result in excess transfer
6 balance.

7 **Table of sections**

8	Operative provisions
9	294-215 Excess transfer balance tax
10	294-220 Your notional earnings on excess transfer balance
11	294-225 When tax is payable—original assessments
12	294-230 When tax is payable—amended assessments
13	294-235 General interest charge

14 **Operative provisions**

15 **294-215 Excess transfer balance tax**

16 (1) You are liable to pay *excess transfer balance tax for a *financial
17 year if you have *excess transfer balance in your *transfer balance
18 account at the end of one or more days in the financial year.

19 Note: The amount of the tax is set out in the *Superannuation (Excess*
20 *Transfer Balance Tax) Imposition Act 2016*.

21 (2) Your *excess transfer balance tax is worked out by reference to
22 your *annualised notional earnings on excess transfer balance for
23 the *financial year.

24 (3) Your ***annualised notional earnings on excess transfer balance*** for
25 a *financial year is the sum of your *notional earnings on excess
26 transfer balance for each day in the financial year on which, at the
27 end of the day, you had *excess transfer balance in your *transfer
28 balance account.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 **294-220 Your notional earnings on excess transfer balance**

- 2 (1) Your *notional earnings on excess transfer balance* for a day is
3 worked out by multiplying the *notional earnings on excess
4 transfer balance rate for that day by the amount of your *excess
5 transfer balance at the end of that day.
- 6 (2) The *notional earnings on excess transfer balance rate* is the lower
7 of:
8 (a) the rate worked out under subsection 8AAD(1) of the
9 *Taxation Administration Act 1953* for the day; and
10 (b) a rate determined under subsection (3) for the day.
- 11 (3) The Minister may, by legislative instrument, determine a rate for a
12 day.

13 **294-225 When tax is payable—original assessments**

14 Your *assessed excess transfer balance tax for a *financial year is
15 due and payable at the end of 21 days after the Commissioner gives
16 you notice of the assessment of the amount of the *excess transfer
17 balance tax.

18 Note: For assessments of excess transfer balance tax, see Division 155 in
19 Schedule 1 to the *Taxation Administration Act 1953*.

20 **294-230 When tax is payable—amended assessments**

21 If the Commissioner amends your assessment, any extra *assessed
22 excess transfer balance tax resulting from the amendment is due
23 and payable 21 days after the day the Commissioner gives you
24 notice of the amended assessment.

25 **294-235 General interest charge**

26 If an amount of *assessed excess transfer balance tax that you are
27 liable to pay remains unpaid after the time by which it is due to be
28 paid, you are liable to pay the *general interest charge on the
29 unpaid amount for each day in the period that:

- 30 (a) begins on the day on which the amount was due to be paid;
31 and
-

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 (b) ends on the last day on which, at the end of the day, any of
2 the following remains unpaid:

- 3 (i) the assessed excess transfer balance tax;
4 (ii) general interest charge on any of the assessed excess
5 transfer balance tax.

6 Note: The general interest charge is worked out under Part IIA of the
7 *Taxation Administration Act 1953*.

8 **4 Section 960-265 (after table item 10)**

9 Insert:

10

10A *General transfer balance cap section 294-35

11 **5 Subsection 960-270(3) (note)**

12 Repeal the note, substitute:

13 Note 1: For the indexation of an amount mentioned in a provision listed at
14 item 8, 9, 10, 11 or 12 in section 960-265, see section 960-285.

15 Note 2: For the indexation of the amount mentioned in item 10A in
16 section 960-265, see section 960-290.

17 **6 Subsection 960-280(6) (note)**

18 Repeal the note, substitute:

19 Note 1: For the indexation of an amount mentioned in a provision listed at
20 item 8, 9, 10, 11 or 12 in section 960-265, see section 960-285.

21 Note 2: For the indexation of the amount mentioned in item 10A in
22 section 960-265, see section 960-290.

23 **7 Subsection 960-285(1)**

24 Omit “items 8 to 12”, substitute “item 8, 9, 10, 11 or 12”.

25 **8 Before Subdivision 960-S**

26 Insert:

27 **960-290 Indexation—rounded cap**

28 (1) This section applies in relation to the amount listed in item 10A of
29 the table in section 960-265.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *Indexing amounts*

2 (2) You index the amount by:

- 3 (a) first, multiplying the amount by its *indexation factor; and
4 (b) next, rounding the result in paragraph (a) down to the nearest
5 multiple of its *rounding amount.

6 (3) You do not index the amount if the *indexation factor is 1 or less.

7 *Meaning of indexation factor*

8 (4) For indexing an amount, its *indexation factor* is:

9
$$\frac{\text{*Index number for the *quarter ending on 31 December just before the start of the relevant *financial year}}{\text{*Index number for the base quarter}}$$

10 where:

11 *base quarter* means the quarter ending on 31 December 2016.

12 (5) You work out the *indexation factor mentioned in subsection (4) to
13 3 decimal places (rounding up if the fourth decimal place is 5 or
14 more).

15 *Meaning of index number and rounding amount*

16 (6) For indexing an amount to which this section applies:

- 17 (a) the *index number* for a *quarter is set out in column 2 of the
18 relevant item in the following table; and
19 (b) the *rounding amount* is set out in column 3 of that item.

20

Concepts for indexing rounded caps

Item	Column 1 Item in section 960-265	Column 2 Index number	Column 3 Rounding amount
1	Item 10A (general transfer balance cap)	the *index number mentioned in subsection 960-280(1)	\$100,000

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

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

2 **9 Subparagraph 38A(ab)(ii)**

3 Repeal the subparagraph, substitute:
4 (ii) Division 390;
5 (iii) subsection 136-80(1); or

6 ***Taxation Administration Act 1953***

7 **10 Subsection 8AAB(4) (after table item 15A)**

8 Insert:
15B 294-235 *Income Tax Assessment Act* payment of excess transfer
1997 balance tax

9 **11 After paragraph 14ZVA(b)**

10 Insert:
11 or (c) a determination under subsection 136-10(1) in Schedule 1 to
12 this Act (about excess transfer balance);

13 **12 Part 3-20 in Schedule 1 (heading)**

14 Repeal the heading, substitute:

15 **Part 3-20—Superannuation**

16 **13 Division 133 in Schedule 1 (heading)**

17 Repeal the heading, substitute:

18 **Division 133—Division 293 tax**

19 **14 At the end of Part 3-20 in Schedule 1**

20 Add:

21 **Division 136—Transfer balance cap**

22 **Table of Subdivisions**

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

- 1 Guide to Division 136
- 2 136-A Excess transfer balance determinations
- 3 136-B Commutation authorities

4 **Guide to Division 136**

5 **136-1 What this Division is about**

6 If you have excess transfer balance in your transfer balance
7 account, the Commissioner may require you and your
8 superannuation income stream provider to reduce the total amount
9 of your superannuation income streams that are in the retirement
10 phase.

11 **Subdivision 136-A—Excess transfer balance determinations**

12 **Guide to Subdivision 136-A**

13 **136-5 What this Subdivision is about**

14 If your transfer balance account exceeds the transfer balance cap,
15 the excess must be reduced by commuting in full or in part your
16 superannuation income streams that are in the retirement phase.

17 If you have more than one superannuation income stream, you may
18 choose which one to commute.

19 **Table of sections**

20	Operative provisions
21	136-10 Excess transfer balance determination
22	136-15 Review
23	136-20 Electing to commute a different superannuation income stream
24	136-25 Notifying Commissioner of transfer balance debits

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 **Operative provisions**

2 **136-10 Excess transfer balance determination**

3 (1) If you have *excess transfer balance in your *transfer balance
4 account at the end of a day, the Commissioner may make a written
5 determination stating the amount of that excess transfer balance.

6 Note: It is not necessary for the Commissioner to issue a determination
7 under this subsection if the Commissioner becomes aware that you no
8 longer have an excess transfer balance. You are still liable to pay
9 excess transfer balance tax if no determination is issued: see
10 Subdivision 294-F of the *Income Tax Assessment Act 1997*.

11 (2) A determination under this section is an *excess transfer balance*
12 *determination*.

13 (3) The amount of *excess transfer balance stated in an *excess transfer
14 balance determination is a *crystallised reduction amount*.

15 (4) The Commissioner may amend or revoke an *excess transfer
16 balance determination at any time before a commutation authority
17 relating to the determination is issued under section 136-55.

18 (5) Notice of a determination given by the Commissioner under this
19 section is prima facie evidence of the matters stated in the notice.

20 *Determination to include default commutation notice*

21 (6) A determination made under subsection (1) must include a notice:

22 (a) stating that, if you do not make an election under
23 section 136-20 within the period specified in that section, the
24 Commissioner will issue one or more commutation
25 authorities; and

26 (b) specifying:

27 (i) the *superannuation income stream provider or
28 providers to whom a commutation authority will be
29 issued; and

30 (ii) the *superannuation income stream or streams that the
31 providers will be obliged to commute in full or in part;
32 and

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 (iii) if more than one commutation authority will be
2 issued—the amount to be stated in each commutation
3 authority, or the method the Commissioner will use to
4 work out the amount to be stated in each commutation
5 authority.

6 (7) A notice included with an *excess transfer balance determination in
7 accordance with subsection (6) is a *default commutation notice*.

8 **136-15 Review**

9 (1) If you are dissatisfied with an *excess transfer balance
10 determination made in relation to you, you may object against the
11 determination in the manner set out in Part IVC.

12 (2) However, for the purposes of Part IVC, the *default commutation
13 notice does not form part of the taxation decision.

14 **136-20 Electing to commute a different superannuation income** 15 **stream**

16 (1) This section applies to you if:

17 (a) you receive an *excess transfer balance determination under
18 section 136-10; and

19 (b) you are the *retirement phase recipient of 2 or more
20 *superannuation income streams.

21 (2) You may elect which of those *superannuation income streams is
22 to be fully or partially commuted for the purpose of reducing the
23 balance in your *transfer balance account by the *crystallised
24 reduction amount.

25 *Requirements for election*

26 (3) You make an election under subsection (2) by:

27 (a) identifying the *superannuation income stream or streams to
28 be commuted in full or in part and the *superannuation
29 income stream provider for each such stream; and

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- 1 (b) if you identify more than one superannuation income
2 stream—stating the amount to be commuted from each such
3 income stream.
- 4 (4) The election must:
- 5 (a) be in the *approved form; and
- 6 (b) be given to the Commissioner within:
- 7 (i) 60 days after the *excess transfer balance determination
8 or amended excess transfer balance determination is
9 issued; or
- 10 (ii) a further period allowed by the Commissioner.

11 *Election is irrevocable*

- 12 (5) An election under this section is irrevocable.

13 **136-25 Notifying Commissioner of transfer balance debits**

- 14 (1) This section applies to you if you have received an *excess transfer
15 balance determination.
- 16 (2) You may notify the Commissioner in the *approved form of the
17 amount of a *transfer balance debit that arises in your *transfer
18 balance account if the debit arises in the period:
- 19 (a) beginning when the determination is made; and
- 20 (b) ending at the earlier of:
- 21 (i) the time you made an election under section 136-20;
22 and
- 23 (ii) the end of the period within which you may make an
24 election under section 136-20.

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Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 **Subdivision 136-B—Commutation authorities**

2 **Guide to Subdivision 136-B**

3 **136-50 What this Subdivision is about**

4 The Commissioner must issue a commutation authority, unless you
5 have notified the Commissioner that you have already reduced
6 your excess transfer balance by the crystallised reduction amount.

7 A superannuation income stream provider will usually be required
8 to commute the superannuation income stream stated in the
9 authority.

10 **Table of sections**

11 **Obligations of Commissioner**

- 12 136-55 Issuing of commutation authorities
13 136-60 Varying and revoking a commutation authority
14 136-65 Issuing further commutation authorities
15 136-70 Notifying of non-commutable excess transfer balance

16 **Obligations of superannuation income stream providers**

- 17 136-80 Obligations on superannuation income stream providers
18 136-85 Notifying the Commissioner
19 136-90 Notifying you

20 **Obligations of Commissioner**

21 **136-55 Issuing of commutation authorities**

- 22 (1) The Commissioner must issue a commutation authority under this
23 section if:
24 (a) an *excess transfer balance determination has been issued to
25 you; and
26 (b) the excess transfer balance determination has not been
27 revoked; and
28 (c) either:
-

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- 1 (i) you have not notified the Commissioner under
2 section 136-25 of a *transfer balance debit arising in
3 your *transfer balance account; or
- 4 (ii) you have notified the Commissioner under that section
5 of one or more transfer balance debits arising in your
6 transfer balance account, but the sum of those debits
7 falls short of the *crystallised reduction amount.
- 8 (2) The commutation authority must be issued:
- 9 (a) in accordance with the *default commutation notice, unless
10 paragraph (b) applies; or
- 11 (b) if you have made a valid election under section 136-20—in
12 accordance with that election.
- 13 (3) Despite paragraph (2)(a), the Commissioner may issue a
14 *commutation authority that departs from the *default commutation
15 notice in a manner the Commissioner considers to be fair and
16 reasonable if:
- 17 (a) you notified the Commissioner under section 136-25 of a
18 *transfer balance debit arising in your *transfer balance
19 account; but
- 20 (b) you did not make an election under section 136-20.
- 21 (4) Each commutation authority must:
- 22 (a) specify the *superannuation income stream that the
23 *superannuation income stream provider is to commute, in
24 full or in part; and
- 25 (b) state the amount (the *reduction amount*) by which the
26 superannuation income stream is to be reduced; and
- 27 (c) be dated; and
- 28 (d) contain any other information that the Commissioner
29 considers relevant.
- 30 (5) The total of all reduction amounts stated in commutation
31 authorities relating to an *excess transfer balance determination
32 must not exceed:
- 33 (a) if subparagraph (1)(c)(i) applies—the *crystallised reduction
34 amount; or

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

- 1 (b) if subparagraph (1)(c)(ii) applies—the shortfall from that
2 subparagraph.

3 **136-60 Varying and revoking a commutation authority**

4 The Commissioner may vary or revoke a commutation authority at
5 any time before the Commissioner receives a notice under
6 section 136-85 relating to the commutation authority.

7 **136-65 Issuing further commutation authorities**

- 8 (1) The Commissioner may issue a commutation authority under this
9 section if:
- 10 (a) a commutation authority (the *original commutation*
11 *authority*) was issued under section 136-55; and
 - 12 (b) the *superannuation income stream provider to which the
13 original commutation authority was issued:
 - 14 (i) paid a *superannuation lump sum that fell short of the
15 reduction amount stated in the original commutation
16 authority; or
 - 17 (ii) chose under subsection 136-80(2) not to comply with
18 the original commutation authority.
- 19 (2) A commutation authority issued under this section must include the
20 matters set out in subsection 136-55(4).
- 21 (3) The Commissioner may issue a commutation authority under this
22 section to any *superannuation income stream provider of a
23 *superannuation income stream of which you are the *retirement
24 phase recipient.
- 25 (4) The total of all reduction amounts stated in commutation
26 authorities issued under this section must not exceed the amount by
27 which the sum of all *superannuation lump sums notified to the
28 Commissioner under section 136-85 in respect of all commutation
29 authorities issued in respect of you under section 136-55 falls short
30 of:
- 31 (b) if subparagraph 136-55(1)(c)(i) applies—the *crystallised
32 reduction amount; or

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Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- 1 (c) if subparagraph 136-55(1)(c)(ii) applies—the shortfall from
2 that subparagraph.

3 **136-70 Notifying of non-commutable excess transfer balance**

- 4 (1) The Commissioner must notify you in writing if, at the end of a
5 day after the Commissioner has issued an *excess transfer balance
6 determination to you:
- 7 (a) the sum of all *transfer balance debits arising in your
8 *transfer balance account since the determination was issued
9 falls short of the *crystallised reduction amount; and
- 10 (b) you have *excess transfer balance in your transfer balance
11 account; and
- 12 (c) the only *superannuation income streams of which you are a
13 *retirement phase recipient are *capped defined benefit
14 income streams.

15 Note: A debit arises in your transfer balance account when the
16 Commissioner issues a notice under this section: see item 6 of the
17 table in subsection 294-70(1) of the *Income Tax Assessment Act 1997*.

- 18 (2) A notice under subsection (1) must:
- 19 (a) be in writing; and
- 20 (b) state the amount of the *excess transfer balance mentioned in
21 paragraph (1)(b).

22 **Obligations of superannuation income stream providers**

23 **136-80 Obligations on superannuation income stream providers**

- 24 (1) A *superannuation income stream provider issued with a
25 commutation authority under this Subdivision must, within 30 days
26 after the commutation authority is issued, pay by way of
27 commutation of the specified *superannuation income stream, a
28 *superannuation lump sum equal to the lesser of:
- 29 (a) the reduction amount stated in the commutation authority;
30 and
- 31 (b) the *maximum available release amount for the
32 *superannuation interest that supports the specified
33 superannuation income stream.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 *Exception for capped defined benefit income streams*

- 2 (2) Despite subsection (1), if the specified *superannuation income
3 stream is a *capped defined benefit income stream, the
4 *superannuation income stream provider may choose not to comply
5 with the commutation authority.

6 **136-85 Notifying the Commissioner**

- 7 (1) A *superannuation income stream provider issued with a
8 commutation authority under this Subdivision must notify the
9 Commissioner of the amount of a *superannuation lump sum paid
10 in accordance with the commutation authority.
- 11 (2) If a *superannuation income stream provider chooses under
12 subsection 136-80(2) not to comply with the commutation
13 authority, the provider must notify the Commissioner of that
14 choice.
- 15 (3) A notice under this section must be in the *approved form and must
16 be given within 30 days after the commutation authority is issued.
- 17 Note: Section 286-75 provides an administrative penalty for breach of this
18 subsection.

19 **136-90 Notifying you**

- 20 (1) A *superannuation income stream provider issued with a
21 commutation authority under this Subdivision must notify you if
22 the superannuation income stream provider:
23 (a) pays a *superannuation lump sum in accordance with the
24 commutation authority; or
25 (b) chooses under subsection 136-80(2) not to comply with the
26 commutation authority.
- 27 (2) A notice under this section must be in the *approved form and must
28 be given within 30 days after the commutation authority is issued.
- 29 Note: Section 286-75 provides an administrative penalty for breach of this
30 subsection.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

1 **15 At the end of subsection 155-5(2) in Schedule 1**

2 Add:

3 ; (h) an amount of *excess transfer balance tax payable for a
4 *financial year in relation to an individual's *annualised
5 notional earnings on excess transfer balance for the financial
6 year.

7 **16 Subsection 155-15(1) in Schedule 1 (note)**

8 Omit "Division 293 tax", substitute "Division 293 tax or excess transfer
9 balance tax".

10 **17 Subsection 155-30(3) in Schedule 1**

11 Repeal the subsection, substitute:

12 (3) This section does not apply to the following *assessable amounts:
13 (a) the *Division 293 tax payable by you in relation to an income
14 year in relation to your *taxable contributions for the income
15 year;
16 (b) the *excess transfer balance tax payable by you for a
17 *financial year in relation to your *annualised notional
18 earnings on excess transfer balance.

19 **18 Subsection 250-10(2) in Schedule 1 (after table item 38BB)**

20 Insert:

38BC	excess transfer balance	294-225 and	<i>Income Tax Assessment Act 1997</i>
	tax	294-230	

21 **19 Paragraph 286-75(2AA)(a) in Schedule 1**

22 Repeal the paragraph, substitute:

23 (a) you are required to give a notice to an entity (other than the
24 Commissioner) in the *approved form by a particular day
25 under any of the following provisions:
26 (i) section 96-42 (about releasing superannuation);
27 (ii) section 136-90 (about commutation authorities); and

28 **20 Section 390-1 in Schedule 1**

29 After:

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**

Transfer balance cap **Part 1**

1 Superannuation providers are also required to give information
2 about roll-over superannuation benefits paid from superannuation
3 plans.

4 insert:

5 Life insurance companies must give the Commissioner information
6 about holders of certain exempt life insurance policies.

7 **21 At the end of Subdivision 390-A in Schedule 1**

8 Add:

9 **390-20 Statements relating to holders of certain exempt life** 10 **insurance policies**

- 11 (1) A *life insurance company must give the Commissioner a
12 statement in relation to an individual if:
13 (a) the individual held an *exempt life insurance policy; and
14 (b) the policy provides for:
15 (i) an *immediate annuity that is a *superannuation income
16 stream that is in the *retirement phase; or
17 (ii) an *annuity that is a superannuation income stream that
18 is in the retirement phase; and
19 (c) the individual held the policy at any time during the period
20 specified in the determination under subsection (3).

21 Note: Section 286-75 provides an administrative penalty for breach of this
22 subsection.

- 23 (2) The statement must:
24 (a) be in the *approved form; and
25 (b) be given to the Commissioner on a day specified in the
26 determination under subsection (3).
- 27 (3) The Commissioner may determine, by legislative instrument:
28 (a) the period mentioned in subsection (1); and
29 (b) the day on which a statement must be given to the
30 Commissioner.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 1 Transfer balance cap

- 1 (4) The *approved form may require the statement to contain
- 2 information about the *exempt life insurance policy held by the
- 3 individual.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
Defined benefit income **Part 2**

1 **Part 2—Defined benefit income**

2 *Income Tax Assessment Act 1997*

3 **22 At the end of section 301-10**

4 Add:

5 Note 3: If your superannuation benefit is a superannuation income stream
6 benefit that is defined benefit income, see Division 302A.

7 **23 At the end of section 301-90**

8 Add:

9 Note: If your superannuation benefit is a superannuation income stream
10 benefit that is defined benefit income, see Division 302A.

11 **24 At the end of section 301-100**

12 Add:

13 Note: If your superannuation income stream benefit is defined benefit
14 income, see Division 302A.

15 **25 Section 302-65 (note)**

16 Repeal the note, substitute:

17 Note 1: If your superannuation income stream benefit includes an element
18 untaxed in the fund, see section 302-85.

19 Note 2: If your superannuation income stream benefit is defined benefit
20 income, see Division 302A.

21 **26 At the end of section 302-80**

22 Add:

23 Note: If your superannuation income stream benefit is defined benefit
24 income, see Division 302A.

25 **27 At the end of section 302-85**

26 Add:

27 Note: If your superannuation income stream benefit is defined benefit
28 income, see Division 302A.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 2 Defined benefit income

1 **28 After Division 302**

2 Insert:

3 **Division 302A—Modifications for defined benefit income**

4 **Guide to Division 302A**

5 **302A-1 What this Division is about**

6
7
8

The tax treatment of superannuation income stream benefits that are defined benefit income can be less favourable to you if that income exceeds your defined benefit income cap.

9 **Table of sections**

10 **Operative provisions**

- 11 302A-5 Effect of exceeding defined benefit income cap on assessable income
12 302A-10 Effect of exceeding defined benefit income cap on tax offsets
13 302A-15 Meaning of *defined benefit income*
14 302A-20 Meaning of *defined benefit income cap*

15 **Operative provisions**

16 **302A-5 Effect of exceeding defined benefit income cap on assessable**
17 **income**

18 Despite sections 301-10 and 302-65, if:

- 19 (a) during a *financial year, you receive one or more
20 *superannuation income stream benefits:
21 (i) that are *defined benefit income; and
22 (ii) to which either section 301-10 or 302-65 applies; and
23 (b) the sum of all of those benefits (other than any *elements
24 untaxed in the fund of those benefits) exceeds your *defined
25 benefit income cap for the financial year;
26 50% of that excess is assessable income.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
Defined benefit income **Part 2**

1 **302A-10 Effect of exceeding defined benefit income cap on tax**
2 **offsets**

3 Despite sections 301-100 and 302-85, if:

- 4 (a) during a *financial year, you receive one or more
5 *superannuation income stream benefits:
6 (i) that are *defined benefit income; and
7 (ii) in relation to which you are entitled, or apart from this
8 section you would be entitled, to one or more *tax
9 offsets under section 301-100 or 302-85; and
10 (b) the sum of all of the superannuation income stream benefits
11 you receive during the financial year:
12 (i) that are defined benefit income; and
13 (ii) to which section 301-10, 301-100, 302-65 or 302-85
14 applies;
15 exceeds your *defined benefit income cap for the financial
16 year;

17 the sum of those tax offsets is reduced (but not below zero) by an
18 amount equal to 10% of that excess.

19 **302A-15 Meaning of *defined benefit income***

20 *Defined benefit income* is a *superannuation income stream
21 benefit that is paid from a *capped defined benefit income stream.

22 **302A-20 Meaning of *defined benefit income cap***

- 23 (1) Your *defined benefit income cap* for a *financial year is the
24 following amount (rounded up to the nearest dollar):

25 The *general transfer balance cap for the *financial year

16

- 26 (2) However, if, during the *financial year, you receive any amounts of
27 *defined benefit income to which none of sections 301-10,
28 301-100, 302-65 and 302-85 apply, your *defined benefit income*
29 *cap* for the financial year under subsection (1) of this section is
30 reduced by the sum of those amounts.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 3 CGT relief

1 (3) Despite subsection (1) of this section, if a particular day in a
2 *financial year is the first day in relation to which section 301-10,
3 301-100, 302-65 or 302-85:

4 (a) applies to you; or

5 (b) would apart from this Division apply to you;

6 your *defined benefit income cap* for the financial year is the
7 following amount (rounded up to the nearest dollar):

8
$$\frac{\text{The *general transfer balance cap for the *financial year}}{16} \times \frac{1 + \text{Number of days remaining in the *financial year after that day}}{\text{Number of days in the *financial year}}$$

9 (4) However, if, during the *financial year, you receive after that day
10 any amounts of *defined benefit income to which none of
11 sections 301-10, 301-100, 302-65 and 302-85 apply, your *defined*
12 *benefit income cap* for the financial year under subsection (3) of
13 this section is reduced by the sum of those amounts.

14 *Taxation Administration Act 1953*

15 **29 At the end of section 12-1 in Schedule 1**

16 Add:

17 *Capped defined benefit income stream*

18 (4) This section does not apply in relation to a payment if the whole of
19 the payment is a *superannuation income stream benefit that is paid
20 from a *capped defined benefit income stream.

21 Note: For withholding amounts from a superannuation income stream, see
22 section 12-80.

23 **Part 3—CGT relief**

24 **30 Object**

25 The object of this Part is to provide temporary relief from certain capital
26 gains that might arise as a result of individuals complying with the
27 following legislative changes:

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
CGT relief **Part 3**

- 1 (a) the introduction of a transfer balance cap (as a result of this
2 Schedule);
3 (b) the exclusion of transition to retirement income streams (and
4 similar income streams) from being superannuation income
5 streams in the retirement phase (as a result of Schedule 8).

6 **31 Segregated current pension assets**

- 7 (1) This item applies if:
8 (a) at a time (the *cessation time*), a CGT asset of a complying
9 superannuation fund ceases to be a segregated current
10 pension asset of the fund; and
11 (b) that time is within the pre-commencement period; and
12 (c) the trustee of the fund makes a choice for the purposes of this
13 paragraph in respect of the asset in accordance with
14 subitem (2).
- 15 (2) A choice made for the purposes of paragraph (1)(c):
16 (a) is to be in the approved form; and
17 (b) can only be made on or before the day by which the trustee of
18 the fund is required to lodge its income tax return for the
19 2016-17 income year; and
20 (c) cannot be revoked.
- 21 (3) In determining the cost base and reduced cost base of the asset at and
22 after the cessation time for the purposes of Parts 3-1 and 3-3 of the
23 *Income Tax Assessment Act 1997*, the fund is taken:
24 (a) to have sold, immediately before the cessation time, the asset
25 for a consideration equal to its market value; and
26 (b) to have purchased the asset again at the cessation time for a
27 consideration equal to its market value.
- 28 (4) In this item:
29 *pre-commencement period* means the period:
30 (a) starting on the start of the day on which the Bill that became
31 this Act was introduced into the House of Representatives;
32 and
33 (b) ending just before 1 July 2017.
-

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 3 CGT relief

32 Superannuation funds using the proportionate method— cost base reset

- 1
2
- 3 (1) This item and item 33 apply in relation to a CGT asset of a complying
4 superannuation fund if:
- 5 (a) the proportion mentioned in subsection 295-390(3) of the
6 *Income Tax Assessment Act 1997* in respect of the fund for
7 the 2016-17 income year is greater than nil; and
8 (b) the fund held the asset throughout the pre-commencement
9 period; and
10 (c) throughout the pre-commencement period, the asset:
11 (i) was not a segregated current pension asset of the fund;
12 and
13 (ii) was not a segregated non-current asset of the fund; and
14 (d) the trustee of the fund makes a choice for the purposes of this
15 paragraph in respect of the asset in accordance with
16 subitem (2).
- 17 (2) A choice made for the purposes of paragraph (1)(d):
18 (a) is to be in the approved form; and
19 (b) can only be made on or before the day by which the trustee of
20 the fund is required to lodge its income tax return for the
21 2016-17 income year; and
22 (c) cannot be revoked.
- 23 (3) In determining the cost base and reduced cost base of the asset on and
24 after 1 July 2017 for the purposes of Parts 3-1 and 3-3 of the *Income*
25 *Tax Assessment Act 1997*, the fund is taken:
26 (a) to have sold, immediately before 1 July 2017, the asset for a
27 consideration equal to its market value; and
28 (b) to have purchased the asset again just after that sale for a
29 consideration equal to its market value.
- 30 (4) However, in determining the cost base and reduced cost base of the
31 asset on and after 1 July 2027 for the purposes of Parts 3-1 and 3-3 of
32 the *Income Tax Assessment Act 1997*, disregard subitem (3) if:
33 (a) the trustee of the fund makes a choice in respect of the asset
34 for the purposes of subitem 33(3) in accordance with
35 subsection 33(2); and
-

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
CGT relief **Part 3**

1 (b) the requirement in paragraph 33(3)(b) is not satisfied.

2 (5) In this item:

3 *pre-commencement period* means the period:

- 4 (a) starting on the start of the day on which the Bill that became
5 this Act was introduced into the House of Representatives;
6 and
7 (b) ending just before 1 July 2017.

8 **33 Superannuation funds using the proportionate method—** 9 **notional gain**

10 (1) If the trustee of the fund does *not* make a choice for the purposes of
11 subitem (3) in accordance with subitem (2):

- 12 (a) in a case where the fund has a net capital gain for the
13 2016-17 income year—increase the amount of that net capital
14 gain by the notional gain worked out under subitem (4); or
15 (b) in a case where the fund has a net capital loss for the 2016-17
16 income year and the net capital loss exceeds that notional
17 gain—reduce the amount of the net capital loss by that
18 notional gain; or
19 (c) in a case where the fund has a net capital loss for the 2016-17
20 income year and that notional gain exceeds the net capital
21 loss—treat the fund as having a net capital gain for that
22 income year equal to the excess.

23 (2) A choice made for the purposes of subitem (3):

- 24 (a) is to be in the approved form; and
25 (b) can only be made on or before the day by which the trustee of
26 the fund is required to lodge its income tax return for the
27 2016-17 income year; and
28 (c) cannot be revoked.

29 (3) If:

- 30 (a) the trustee of the fund makes a choice in respect of the asset
31 for the purposes of this subitem in accordance with
32 subsection (2); and
33 (b) a realisation event happens to the asset in an income year
34 that:
-

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 3 CGT relief

- 1 (i) starts on or after 1 July 2017; and
2 (ii) ends before 1 July 2027.

3 then:

- 4 (c) in a case where the fund has a net capital gain for that income
5 year—increase the amount of that net capital gain by the
6 notional gain worked out under subitem (4); or
7 (d) in a case where the fund has a net capital loss for that income
8 year and the net capital loss exceeds that notional gain—
9 reduce the amount of the net capital loss by that notional
10 gain; or
11 (e) in a case where the fund has a net capital loss for that income
12 year and that notional gain exceeds the net capital loss—treat
13 the fund as having a net capital gain for that income year
14 equal to the excess.

- 15 (4) The notional gain is the 2016-17 non-exempt proportion of the amount
16 (if any) by which:
17 (a) the fund's net capital gain (if any) for the 2016-17 income
18 year determined making the assumption that CGT event A1
19 happened to the asset just before the end of that income year;
20 exceeds:
21 (b) the fund's net capital gain (if any) for that income year
22 determined without making that assumption.

23 If there is no such excess, the notional gain is nil.

- 24 (5) Subsection 295-390(1) of the *Income Tax Assessment Act 1997* does not
25 apply to the amount by which a net capital gain is increased (or is taken
26 to exist) under subitem (1) or (3).

- 27 (6) In this item:

28 ***pre-commencement period*** means the period:

- 29 (a) starting on the start of the day on which the Bill that became
30 this Act was introduced into the House of Representatives;
31 and
32 (b) ending just before 1 July 2017.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
CGT relief **Part 3**

- 1 ***2016-17 non-exempt proportion*** means 1 minus the proportion
2 mentioned in subsection 295-390(3) of the *Income Tax Assessment Act*
3 *1997* in respect of the fund for the 2016-17 income year.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 4 Application and transitional provisions

1 **Part 4—Application and transitional provisions**

2 ***Income Tax (Transitional Provisions) Act 1997***

3 **34 After Division 293**

4 Insert:

5 **Division 294—Transfer balance cap**

6 **Table of Subdivisions**

7 294-A Application of transfer balance cap

8 **Subdivision 294-A—Application of transfer balance cap**

9 **Table of sections**

10 294-10 Application of Division 294 of the *Income Tax Assessment Act 1997*

11 294-30 Minor excess transfer balances disregarded if remedied in first 60 days

12 **294-10 Application of Division 294 of the *Income Tax Assessment Act***
13 ***1997***

14 Division 294 of the *Income Tax Assessment Act 1997* applies to the
15 2017-2018 financial year and later financial years.

16 **294-30 Minor excess transfer balances disregarded if remedied in**
17 **first 60 days**

18 Despite sections 294-30 and 294-125 of the *Income Tax*
19 *Assessment Act 1997* (which is about when you have excess
20 transfer balance), you do not have excess transfer balance in your
21 transfer balance account on any day in the period of 60 days
22 beginning on 1 July 2017 if:

23 (a) the only transfer balance credits in the account in that period
24 arose under item 1 of the table in subsection 294-25(1) of that
25 Act (which is about superannuation income streams you have
26 at the end of 30 June 2017); and

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
Application and transitional provisions **Part 4**

- 1 (b) the sum of those transfer balance credits exceeds your
2 transfer balance cap, but is less than or equal to \$1,700,000;
3 and
4 (c) at the end of the period, the sum of all the transfer balance
5 debits arising in your transfer balance account equals or
6 exceeds the amount of the excess from paragraph (b).

7 **35 Application of amendments**

- 8 (1) The amendments made by Parts 1 and 2 apply in relation to the
9 financial year starting on 1 July 2017 and later financial years.
10 (2) Subitem (1) does not apply to item 3 of this Schedule.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 5 Definitions

1 **Part 5—Definitions**

2 ***Income Tax Assessment Act 1997***

3 **36 Subsection 995-1(1)**

4 Insert:

5 ***annualised notional earnings on excess transfer balance*** for a
6 **financial year* has the meaning given by section 294-215.

7 ***assessed excess transfer balance tax*** means **excess transfer*
8 *balance tax*, as assessed under Schedule 1 to the *Taxation*
9 *Administration Act 1953*.

10 ***capped defined benefit income stream*** has the meaning given by
11 section 294-115.

12 ***child recipient*** of a **superannuation income stream* has the
13 meaning given by section 294-160.

14 ***crystallised reduction amount*** has the meaning given by
15 section 136-10 in Schedule 1 to the *Taxation Administration Act*
16 *1953*.

17 ***debit value***, of a **superannuation interest* that supports a **capped*
18 *defined benefit income stream*, has the meaning given by
19 section 294-130.

20 ***defined benefit income*** has the meaning given by section 302A-15.

21 ***defined benefit income cap*** has the meaning given by
22 section 302A-20.

23 ***default commutation notice*** has the meaning given by
24 section 136-10 in Schedule 1 to the *Taxation Administration Act*
25 *1953*.

26 ***excess transfer balance*** has the meaning given by section 294-30
27 and modified by section 294-125.

EXPOSURE DRAFT

Transfer balance cap **Schedule 1**
Definitions **Part 5**

1 *excess transfer balance determination* has the meaning given by
2 section 136-10 in Schedule 1 to the *Taxation Administration Act*
3 1953.

4 *excess transfer balance tax* means tax imposed by the
5 *Superannuation (Excess Transfer Balance Tax) Imposition Act*
6 2016.

7 *general transfer balance cap* has the meaning given by
8 section 294-35.

37 Subsection 995-1(1) (paragraph (a) of the definition of *indexation factor*)

11 Repeal the paragraph, substitute:

- 12 (a) for an amount mentioned in a provision listed at item 8, 9, 10,
13 11 or 12 in section 960-265—*indexation factor* has the
14 meaning given by section 960-285; or
15 (aa) for an amount mentioned in item 10A in section 960-265—
16 *indexation factor* has the meaning given by section 960-290;
17 or

38 Subsection 995-1(1) (paragraph (a) of the definition of *index number*)

20 Repeal the paragraph, substitute:

- 21 (a) for an amount mentioned in a provision listed at item 8, 9, 10,
22 11 or 12 in section 960-265—*index number* has the meaning
23 given by section 960-285; or
24 (aa) for an amount mentioned in item 10A in section 960-265—
25 *index number* has the meaning given by section 960-290; or

39 Subsection 995-1(1)

27 Insert:

28 *member spouse* has the same meaning as in Part VIII B of the
29 *Family Law Act 1975*.

30 *notional earnings on excess transfer balance* has the meaning
31 given by section 294-220.

EXPOSURE DRAFT

Schedule 1 Transfer balance cap

Part 5 Definitions

- 1 *notional earnings on excess transfer balance rate* has the
2 meaning given by section 294-220.
- 3 *retirement phase recipient* of a *superannuation income stream has
4 the meaning given by section 294-20.
- 5 *rounding amount* has the meaning given by section 960-290.
- 6 *special value*, of a *superannuation interest that supports a *capped
7 defined benefit income stream, has the meaning given by
8 section 294-120.
- 9 *superannuation income stream provider* for a *superannuation
10 income stream means:
- 11 (a) for a superannuation income stream provided by a
12 *superannuation fund—the trustee of the fund; or
- 13 (b) for a superannuation income stream that is a pension for the
14 purposes of the *Retirement Savings Accounts Act 1997*—the
15 *RSA provider; or
- 16 (c) for a superannuation income stream provided by an
17 *approved deposit fund—the trustee of the fund; or
- 18 (d) for a superannuation income stream provided by a *life
19 insurance company—the life insurance company.
- 20 *transfer balance account* means an account that arises under
21 section 294-15.
- 22 *transfer balance cap* has the meaning given by section 294-35 and
23 modified by section 294-170.
- 24 *transfer balance credit* has the meaning given by section 294-25.
- 25 *transfer balance debit* has the meaning given by section 294-70.

40 Application

- 27 An amendment made by this Part applies in relation to another
28 amendment (the *primary amendment*) made by this Act in the same
29 way as the primary amendment applies.

EXPOSURE DRAFT

Concessional superannuation contributions **Schedule 2**
Excess concessional contributions **Part 1**

1 **Schedule 2—Concessional superannuation**
2 **contributions**

3 **Part 1—Excess concessional contributions**

4 *Income Tax Assessment Act 1997*

5 **1 Subsection 291-20(2)**

6 Repeal the subsection, substitute:

7 (2) Your *concessional contributions cap* is:

8 (a) for the 2017-2018 financial year—\$25,000; or

9 (b) for the 2018-2019 financial year or a later financial year—the
10 amount worked out by indexing annually the amount
11 mentioned in paragraph (a).

12 Note: Subdivision 960-M shows how to index amounts. However, annual
13 indexation does not necessarily increase the amount of the cap: see
14 section 960-285.

15 **2 Paragraph 291-25(2)(c)**

16 Repeal the paragraph, substitute:

17 (c) it is *not* an amount mentioned in subsection 295-200(2); and

18 (d) it is *not* an amount mentioned in item 2 of the table in
19 subsection 295-190(1).

20 **3 Subsection 291-25(4)**

21 Repeal the subsection, substitute:

22 (4) For the purposes of paragraph (2)(b), disregard:

23 (a) table item 5.3 in section 50-25 (about income tax exemption
24 for constitutionally protected funds); and

25 (b) Subdivision 295-D (about excluded contributions).

26 **4 Section 291-160**

27 Omit “(1)”.

EXPOSURE DRAFT

Schedule 2 Concessional superannuation contributions

Part 1 Excess concessional contributions

1 **5 Subsection 291-160(2)**

2 Repeal the subsection.

3 **6 Section 291-165**

4 Before “Despite”, insert “(1)”.

5 **7 After paragraph 291-165(b)**

6 Insert:

7 ; and (c) the amount (if any) by which your *defined benefit
8 contributions for the financial year in respect of the defined
9 benefit interest or interests exceed those notional taxed
10 contributions.

11 Note: Section 291-370 prevents some contributions from causing your
12 concessional contributions for a financial year to exceed the
13 concessional contributions cap.

14 (2) In working out your *defined benefit contributions for the
15 *financial year for the purposes of paragraph (1)(c):

16 (a) if Subdivision 293-E applies to you for the income year
17 corresponding to the financial year—disregard
18 subsection 293-150(3); and

19 (b) if Subdivision 293-F applies to you—disregard
20 subsection 293-195(2).

21 Note: Section 291-370 prevents some contributions from causing your
22 concessional contributions for a financial year to exceed the
23 concessional contributions cap.

24 **8 After Subdivision 291-C**

25 Insert:

EXPOSURE DRAFT

Concessional superannuation contributions **Schedule 2**
Excess concessional contributions **Part 1**

1 **Subdivision 291-CA—Contributions that do not result in excess**
2 **contributions**

3 **Guide to Subdivision 291-CA**

4 **291-365 What this Subdivision is about**

5 Some contributions are treated as always being within your
6 concessional contributions cap, and therefore cannot be excess
7 concessional contributions.

8 **Table of sections**

9 **Operative provisions**

10 291-370 Contributions that do not result in excess contributions

11 **Operative provisions**

12 **291-370 Contributions that do not result in excess contributions**

- 13 (1) In working out your *concessional contributions for a *financial
14 year, treat the sum of the following as an amount equal to your
15 *concessional contributions cap under subsection 291-20(2) for the
16 financial year:
- 17 (a) your contributions (and amounts covered by
18 paragraph 291-165(1)(b) or (c)) for the financial year to a
19 *constitutionally protected fund that would (disregarding this
20 section) be concessional contributions;
 - 21 (b) if any of your notional taxed contributions for the financial
22 year:
 - 23 (i) are worked out under section 291-170 of the *Income*
24 *Tax (Transitional Provisions) Act 1997*; or
 - 25 (ii) are not worked out under that section, but only because
26 those notional taxed contributions did not meet the
27 requirements of paragraph 291-170(2)(b) of that Act;
28 the amount of those notional taxed contributions;

EXPOSURE DRAFT

Schedule 2 Concessional superannuation contributions

Part 1 Excess concessional contributions

- 1 (c) if your defined benefit contributions for the financial year
2 (other than contributions and amounts covered by
3 paragraph (a)) exceed your notional taxed contributions for
4 the financial year—the amount of that excess;
5 if that sum would otherwise exceed your concessional
6 contributions cap under subsection 291-20(2) for the financial year.

7 Note: This subsection does *not* take into account any increase in your
8 concessional contributions cap under subsection 291-20(4).

- 9 (2) This section has effect despite sections 291-25 and 291-165 of this
10 Act and section 291-170 of the *Income Tax (Transitional*
11 *Provisions) Act 1997*.

12 **9 After subsection 960-285(1)**

13 Insert:

14 *Indexing amounts*

- 15 (1A) If the amount is mentioned in item 9 in section 960-265
16 (concessional contributions cap), you index the amount by:
17 (a) first, multiplying the amount for the 2017-2018 financial year
18 by its *indexation factor mentioned in subsection (3A); and
19 (b) next, rounding the result in paragraph (a) down to the nearest
20 multiple of \$2,500.

21 **10 Subsection 960-285(2) (heading)**

22 Repeal the heading.

23 **11 Subsection 960-285(2)**

24 Omit “You”, substitute “If the amount is mentioned in item 8, 10, 11 or
25 12 in section 960-265, you”.

26 **12 Paragraph 960-285(2)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) first, multiplying the amount for the 2007-2008 income year
29 or financial year by its *indexation factor mentioned in
30 subsection (4); and

EXPOSURE DRAFT

Concessional superannuation contributions **Schedule 2**
Excess concessional contributions **Part 1**

1 **13 Subsection 960-285(3A)**

2 Omit “subparagraph (2)(a)(i)”, substitute “subsection (1A)”.

3 **14 Subsection 960-285(3A) (formula)**

4 Repeal the formula, substitute:

*Index number mentioned in subsection (6) for the *quarter ending on
31 December just before the start of the relevant income year or *financial year

*Index number mentioned in subsection (6) for the *quarter
ending on 31 December 2016

5
6

7 **15 Subsection 960-285(4)**

8 Omit “subparagraph (2)(a)(ii)”, substitute “subsection (2)”.

9 ***Income Tax (Transitional Provisions) Act 1997***

10 **16 Subdivision 291-B**

11 Repeal the Subdivision.

12 **17 At the end of subsection 291-170(2)**

13 Add:

14 Note: In some cases, section 291-370 of the *Income Tax Assessment Act*
15 *1997* has the effect of replacing this subsection with a similar rule
16 covering a broader class of contributions and amounts.

17 **18 At the end of subsection 291-170(4)**

18 Add:

19 Note: In some cases, section 291-370 of the *Income Tax Assessment Act*
20 *1997* has the effect of replacing this subsection with a similar rule
21 covering a broader class of contributions and amounts.

22 **19 At the end of section 291-170**

23 Add:

EXPOSURE DRAFT

Schedule 2 Concessional superannuation contributions

Part 1 Excess concessional contributions

1 *Constitutionally protected funds*

2 (6) This section does not apply in relation to a defined benefit interest
3 in a constitutionally protected fund.

4 **20 Application of amendments**

5 The amendments made by this Part apply in relation to the financial
6 year starting on 1 July 2017 and later financial years.

EXPOSURE DRAFT

Concessional superannuation contributions **Schedule 2**
Division 293 tax **Part 2**

1 **Part 2—Division 293 tax**

2 *Income Tax Assessment Act 1997*

3 **21 Section 293-1**

4 Omit “very high income”, substitute “high income”.

5 **22 Section 293-1**

6 Omit “\$300,000”, substitute “\$250,000”.

7 **23 Sections 293-5 and 293-10**

8 Omit “very high income”, substitute “high income”.

9 **24 Section 293-10**

10 Omit “\$300,000”, substitute “\$250,000”.

11 **25 Subsections 293-20(1), 293-155(1) and 293-200(1)**

12 Omit “\$300,000”, substitute “\$250,000”.

13 *Taxation Administration Act 1953*

14 **26 Subsection 133-15(1) in Schedule 1 (note)**

15 Omit “\$300,000”, substitute “\$250,000”.

16 **27 Application of amendments**

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

EXPOSURE DRAFT

Schedule 2 Concessional superannuation contributions

Part 3 Superannuation guarantee charge

1 **Part 3—Superannuation guarantee charge**

2 *Superannuation Guarantee (Administration) Act 1992*

3 **28 At the end of section 15**

4 Add:

5 (5) Despite subsections (3) and (4), the maximum contribution base for
6 a quarter in the 2017-18 year or any later year is the amount
7 worked out using the following formula, if that amount is less than
8 the amount worked out under those subsections:

9
$$\text{Concessional contributions cap} \times \frac{100}{\text{Charge percentage}} \times \frac{1}{4}$$

10 where:

11 *charge percentage* is the number specified in subsection 19(2) for
12 the quarter.

13 *concessional contributions cap* is the concessional contributions
14 cap, within the meaning of the *Income Tax Assessment Act 1997*,
15 for the financial year in which the quarter occurs.

16 (6) Amounts calculated under subsection (5) must be rounded down to
17 the nearest 10 dollar multiple.

EXPOSURE DRAFT

Catch-up concessional contributions **Schedule 6**

Catch-up concessional contributions **Part 1**

1 **Schedule 6—Catch-up concessional**
2 **contributions**

3 **Part 1—Catch-up concessional contributions**

4 *Income Tax Assessment Act 1997*

5 **1 Subsection 280-15(1)**

6 Omit “This limit takes the form of a tax on excessive contributions, and
7 neutralises the favourable tax treatment arising from the excessive
8 contributions.”.

9 **2 At the end of subsection 280-15(2)**

10 Add “Unused cap can be carried forward for 5 years.”.

11 **3 Section 291-1**

12 After:

13

There is a cap on the amount of superannuation contributions that 14 may receive concessional tax treatment for an individual in a 15 financial year.

16 insert:

17

You can carry forward unused concessional contributions cap from 18 the previous 5 financial years and use it to increase your cap in a 19 later financial year (unless your total superannuation balance 20 exceeds \$500,000).

21 **4 At the end of section 291-20**

22 Add:

23 *Five year carry forward of unused concessional contributions cap*

24 (3) However, your *concessional contributions cap* for the *financial
25 year is increased in accordance with subsection (4) if:

EXPOSURE DRAFT

Schedule 6 Catch-up concessional contributions

Part 1 Catch-up concessional contributions

- 1 (a) your *concessional contributions for the year would
2 otherwise exceed your concessional contributions cap for the
3 year; and
4 (b) your *total superannuation balance on 30 June of the previous
5 financial year is less than \$500,000; and
6 (c) you have previously unapplied *unused concessional
7 contributions cap for one or more of the previous 5 financial
8 years.

9 (4) Apply your unapplied *unused concessional contributions cap for
10 each of the previous 5 *financial years to increase your
11 *concessional contributions cap (but not by more than the excess
12 from paragraph (3)(a)).

13 (5) For the purposes of increasing your *concessional contributions
14 cap under subsection (4), apply amounts of unused concessional
15 contributions cap for previous *financial years in order from the
16 earliest year to the most recent year.

17 *Your unused concessional contributions cap*

18 (6) You have *unused concessional contributions cap* for a *financial
19 year if the amount of your *concessional contributions for the year
20 falls short of your *concessional contributions cap for the year. The
21 amount of the unused concessional contributions cap is the amount
22 of the shortfall.

23 (7) However, you do not have *unused concessional contributions cap*
24 for a *financial year earlier than the 2018-2019 financial year.

25 5 Subsection 995-1(1)

26 Insert:

27 *unused concessional contributions cap* has the meaning given by
28 section 291-20.

29 6 Application

30 The amendments made by this Part apply in relation to working out
31 your concessional contributions cap for the 2019-2020 financial year
32 and later financial years.

EXPOSURE DRAFT

Catch-up concessional contributions **Schedule 6**
Total superannuation balance **Part 2**

1 **Part 2—Total superannuation balance**

2 *Income Tax Assessment Act 1997*

3 **7 Section 307-205**

4 Before “The”, insert “(1)”.

5 **8 At the end of section 307-205**

6 Add:

7 (2) The *accumulation phase value* of an individual’s *superannuation
8 interest, at a particular time when the interest is not in the
9 *retirement phase, is:

10 (a) if the regulations specify that value or a method for
11 determining that value—that value; or

12 (b) otherwise—the total amount of the *superannuation benefits
13 that would become payable if the individual voluntarily
14 caused the interest to cease at that time.

15 **9 At the end of Subdivision 307-D**

16 Add:

17 **307-230 Total superannuation balance**

18 (1) Your *total superannuation balance*, at a particular time, is the sum
19 of the following:

20 (a) if you have a *superannuation interest that is not in the
21 *retirement phase—the *accumulation phase value, at that
22 time, of the interest;

23 (b) if you have a *transfer balance account—the balance of the
24 account at that time (but not less than nil);

25 (c) the amount of each *roll-over superannuation benefit:

26 (i) paid at or before that time; and

27 (ii) received by the *complying superannuation plan or the
28 entity from which the *superannuation annuity is being
29 purchased after that time; and

EXPOSURE DRAFT

Schedule 6 Catch-up concessional contributions

Part 2 Total superannuation balance

- 1 (iii) not reflected in the value in paragraph (a) or the balance
2 in paragraph (b).
- 3 (2) For the purposes of working out the balance mentioned in
4 paragraph (1)(b), if at that time you have a *superannuation interest
5 that supports a *superannuation income stream covered by
6 subsection (3):
- 7 (a) disregard the operation of the following provisions in relation
8 to the superannuation income stream:
- 9 (i) items 1 and 2 of the table in subsection 294-25(1);
10 (ii) items 1, 3, 4 and 5 of the table in subsection 294-70(1);
11 and
- 12 (b) increase the amount of that balance by the total amount of the
13 *superannuation benefits that would become payable if:
- 14 (i) you had the right to cause the superannuation interest to
15 cease at that time; and
- 16 (ii) you voluntarily caused the superannuation interest to
17 cease at that time.
- 18 (3) This subsection covers a *superannuation income stream that is any
19 of the following:
- 20 (a) an *allocated annuity;
21 (b) an *allocated pension;
22 (c) an allocated pension (within the meaning of the *Retirement*
23 *Savings Accounts Regulations 1997*);
24 (d) an *account-based annuity;
25 (e) an account-based pension (within the meaning of the
26 *Superannuation Industry (Supervision) Regulations 1994*);
27 (f) an account based pension (within the meaning of the
28 *Retirement Savings Accounts Regulations 1997*);
29 (g) a market linked annuity (within the meaning of the
30 *Superannuation Industry (Supervision) Regulations 1994*);
31 (h) a market linked pension (within the meaning of the
32 *Superannuation Industry (Supervision) Regulations 1994*);
33 (i) a market linked pension (within the meaning of the
34 *Retirement Savings Accounts Regulations 1997*).
-

EXPOSURE DRAFT

Catch-up concessional contributions **Schedule 6**
Total superannuation balance **Part 2**

1 **10 Subsection 995-1(1)**

2 Insert:

3 *account-based annuity* has the meaning given by the
4 *Superannuation Industry (Supervision) Regulations 1994 [to be*
5 *drafted]*.

6 *accumulation phase value* of a *superannuation interest has the
7 meaning given by subsection 307-205(2).

8 *total superannuation balance* has the meaning given by
9 section 307-230.

10 **11 Subsection 995-1(1) (paragraph (d) of the definition of**
11 **value)**

12 Omit “section 307-205”, substitute “subsection 307-205(1)”.

13 **12 Application**

14 An amendment made by this Part applies in relation to another
15 amendment (the *primary amendment*) made by this Act in the same
16 way as the primary amendment applies.

EXPOSURE DRAFT

Schedule 8 Innovative income streams and integrity

Part 1 Amendments

1 **Schedule 8—Innovative income streams and**
2 **integrity**

3 **Part 1—Amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Paragraph 295-385(3)(a)**

6 Omit “*superannuation income stream benefits that are payable by the
7 fund at that time”, substitute “*RP superannuation income stream
8 benefits of the fund at that time”.

9 **2 Paragraph 295-385(4)(a)**

10 Omit “that are payable by the fund at that time”, substitute “that are *RP
11 superannuation income stream benefits of the fund at that time”.

12 **3 Subsection 295-385(5)**

13 Omit “*superannuation income stream benefits payable by the fund”,
14 substitute “*RP superannuation income stream benefits of the fund”.

15 **4 At the end of section 295-385**

16 Add:

17 (7) Also, *disregarded small fund assets are not segregated current
18 pension assets.

19 **5 After section 295-385**

20 Insert:

21 **295-387 Disregarded small fund assets**

22 (1) The assets of a *complying superannuation fund are *disregarded*
23 *small fund assets* at all times in an income year if the fund is
24 covered by subsection (2) for the income year.

25 (2) A *complying superannuation fund is covered by this subsection
26 for an income year if:

EXPOSURE DRAFT

Innovative income streams and integrity **Schedule 8**
Amendments **Part 1**

- 1 (a) any of these requirements are satisfied:
2 (i) the fund is a *self managed superannuation fund at any
3 time during the income year;
4 (ii) there are less than 5 *members of the fund at any time
5 during the income year; and
6 (b) at a time during the income year, there is at least one
7 *superannuation interest in the fund that is in the *retirement
8 phase; and
9 (c) just before the start of the income year:
10 (i) a person has a *total superannuation balance that
11 exceeds \$1.6 million; and
12 (ii) the person is the *retirement phase recipient of a
13 *superannuation income stream (whether or not the fund
14 is the *superannuation income stream provider for the
15 superannuation income stream); and
16 (d) at a time during the income year, the person has a
17 superannuation interest in the fund (whether or not the
18 superannuation interest mentioned in paragraph (b)).

19 **6 Subsection 295-390(3) (definition of average value of**
20 **current pension liabilities)**

21 Omit “*superannuation income stream benefits that are payable by the
22 fund in that year”, substitute “*RP superannuation income stream
23 benefits of the fund at any time in that year”.

24 **7 Subsection 295-390(7)**

25 Omit “*superannuation income stream benefits payable at those times”,
26 substitute “*RP superannuation income stream benefits of the fund at
27 those times”.

28 **8 Subsection 295-395(2)**

29 Omit “*superannuation income stream benefits payable by the fund at
30 that time”, substitute “*RP superannuation income stream benefits of
31 the fund at that time”.

32 **9 At the end of section 295-395**

33 Add:

EXPOSURE DRAFT

Schedule 8 Innovative income streams and integrity

Part 1 Amendments

- 1 (3) However, *disregarded small fund assets are not segregated
2 non-current assets.

3 **10 Section 295-405**

4 Repeal the section, substitute:

5 **295-405 Other exempt income**

6 The *ordinary income or *statutory income of an entity is exempt
7 from income tax as set out in this table.

8 Note: For an explanation of the acronyms used, see section 295-35.
9

*Exempt income

Item	For this entity:	This is exempt:
------	------------------	-----------------

1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
---	--------------------------------	---------------------------------------------------------------------------------------------------------------

2	*RSA provider	Amount credited to the *RSA where a *superannuation income stream covered by section 295-407 was paid from the RSA for all of the period in the income year that the RSA existed
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3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a *superannuation income stream covered by section 295-407 was paid from the RSA for part of the period in the income year that the RSA existed
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10 **295-407 Covered superannuation income streams—RSAs**

11 A *superannuation income stream is covered by this section if:

- 12 (a) it is a pension (within the meaning of the *Retirement Savings*
13 *Accounts Act 1997*); and
14 (b) it is in the *retirement phase.

EXPOSURE DRAFT

Innovative income streams and integrity **Schedule 8**
Amendments **Part 1**

1 **11 Paragraph 295-410(a)**

2 Omit “pension (within the meaning of the *Retirement Savings Accounts*
3 *Act 1997*), substitute “pension covered by section 295-407”.

4 **12 Section 307-65**

5 Before “A” insert “(1)”.

6 **13 At the end of section 307-65**

7 Add:

8 (2) Treat a lump sum payment arising from a partial commutation of a
9 *superannuation income stream as a *superannuation lump sum* for
10 the purposes of this Act (other than Subdivision 295-F).

11 **14 At the end of Subdivision 307-B**

12 Add:

13 **307-75 Meaning of retirement phase superannuation income stream**
14 ***benefit***

- 15 (1) A *superannuation income stream benefit is a *retirement phase*
16 *superannuation income stream benefit* (or *RP superannuation*
17 *income stream benefit*) of a superannuation fund at a time if it is
18 payable by the fund at that time from a *superannuation income
19 stream that is in the *retirement phase at that time.
- 20 (2) A *superannuation income stream benefit is also a *retirement*
21 *phase superannuation income stream benefit* (or *RP*
22 *superannuation income stream benefit*) of a superannuation fund
23 at a time if it is payable by the fund after that time from a
24 *superannuation income stream that:
- 25 (a) is a *deferred superannuation income stream; and
26 (b) is in the *retirement phase at that time.

EXPOSURE DRAFT

Schedule 8 Innovative income streams and integrity

Part 1 Amendments

1 **307-80 When a superannuation income stream is in the *retirement***
2 ***phase***

- 3 (1) A *superannuation income stream is in the ***retirement phase*** at a
4 time if a *superannuation income stream benefit is payable from it
5 at that time.
- 6 (2) A *superannuation income stream is also in the ***retirement phase*** at
7 a time if:
- 8 (a) it is a *deferred superannuation income stream; and
9 (b) a *superannuation income stream benefit will be payable
10 from it to a person after that time; and
11 (c) the person has satisfied (whether at or before that time) a
12 condition of release specified in any of the following items of
13 the table in Schedule 1 to the *Superannuation Industry*
14 *(Supervision) Regulations 1994*:
- 15 (i) 101 (retirement);
16 (ii) 102A (terminal medical condition);
17 (iii) 103 (permanent incapacity);
18 (iv) 106 (attaining age 65).
- 19 (3) However, a *superannuation income stream is not in the ***retirement***
20 ***phase*** if it is any of the following:
- 21 (a) a transition to retirement income stream (within the meaning
22 of Part 6 of the *Superannuation Industry (Supervision)*
23 *Regulations 1994*);
24 (b) a non-commutable allocated annuity (within the meaning of
25 those regulations);
26 (c) a non-commutable allocated pension (within the meaning of
27 those regulations);
28 (d) a transition to retirement income pension (within the meaning
29 of Part 4 of the *Retirement Savings Accounts*
30 *Regulations 1997*);
31 (e) a non-commutable allocated pension (within the meaning of
32 those regulations).
- 33 (4) A *superannuation income stream is also not in the ***retirement***
34 ***phase*** in an income year if:
-

EXPOSURE DRAFT

Innovative income streams and integrity **Schedule 8**
Amendments **Part 1**

- 1 (a) the superannuation income stream is specified in a
2 commutation authority issued by the Commissioner under
3 Subdivision 136-B in Schedule 1 to the *Taxation*
4 *Administration Act 1953* to a *superannuation income stream
5 provider; and
6 (b) the superannuation income stream provider is required by
7 section 136-80 in that Schedule to pay a *superannuation
8 lump sum but fails to do so within the 30-day period
9 mentioned in that section; and
10 (c) the income year is the income year in which the 30-day
11 period ended, or a later income year.

12 **15 Paragraph 307-125(3)(c)**

13 Repeal the paragraph, substitute:

- 14 (c) despite paragraphs (a) and (b), if the superannuation benefit
15 arises from the commutation of a superannuation income
16 stream:
17 (i) if subparagraph (ii) does not apply—when the relevant
18 superannuation income stream commenced; or
19 (ii) if the superannuation income stream is a *deferred
20 superannuation income stream that had not commenced
21 before the time the commutation happened—just before
22 the time the commutation happened;

23 **16 Paragraph 320-137(3)(d)**

24 After “*annuity”, insert “covered by subsection (3A)”.

25 **17 Paragraph 320-137(3)(e)**

26 After “an annuity”, insert “covered by subsection (3A)”.

27 **18 Paragraph 320-137(3)(e) (formula)**

28 After “*annuity”, insert “covered by subsection (3A)”.

29 **19 After subsection 320-137(3)**

30 Insert:

EXPOSURE DRAFT

Schedule 8 Innovative income streams and integrity

Part 1 Amendments

1 (3A) An *annuity is covered by this subsection if it is a *superannuation
2 income stream that is in the *retirement phase.

3 **20 Subsection 320-185(4)**

4 Omit “and subsection 320-180(3)”, substitute “and
5 subsections 320-180(3) and 320-250(1A)”.

6 **21 Paragraph 320-246(1)(a)**

7 Omit “that are currently payable by the fund”, substitute “that are
8 currently *RP superannuation income stream benefits of the fund”.

9 **22 Subparagraph 320-246(1)(b)(i)**

10 Omit “that are currently payable by complying superannuation funds”,
11 substitute “that are currently *RP superannuation income stream
12 benefits of complying superannuation funds”.

13 **23 Subparagraph 320-246(1)(e)(ii)**

14 After “is a *superannuation income stream ”, insert “that is in the
15 *retirement phase”.

16 **24 After paragraph 320-246(1)(e)**

17 Insert:

18 (ea) that provides for an *annuity that is a superannuation income
19 stream that is in the retirement phase; or

20 **25 Paragraph 320-247(1)(a)**

21 Omit “that are currently payable by a *complying superannuation fund”,
22 substitute “that are currently *RP superannuation income stream
23 benefits of a *complying superannuation fund”.

24 **26 Paragraph 320-247(2)(a)**

25 Omit “that are currently payable by complying superannuation funds”,
26 substitute “that are currently *RP superannuation income stream
27 benefits of *complying superannuation funds”.

28 **27 Before subsection 320-250(1)**

29 Insert:

EXPOSURE DRAFT

Innovative income streams and integrity **Schedule 8**
Amendments **Part 1**

- 1 (1A) If:
2 (a) a *life insurance policy issued by a *life insurance company
3 becomes a policy referred to in subsection 320-190(1); and
4 (b) immediately before the policy became a policy referred to in
5 subsection 320-190(1), the policy was an *exempt life
6 insurance policy;
7 the company can transfer from its *segregated exempt assets, to a
8 *complying superannuation asset pool, assets of any kind whose
9 total *transfer value does not exceed the company's liabilities in
10 respect of the policy.

11 **28 Paragraph 320-255(1)(a)**

12 Omit “320-250(1) or (2)”, substitute “320-250(1A), (1) or (2)”.

13 **29 Subsection 995-1(1)**

14 Insert:

15 *deferred superannuation income stream* has the meaning given by
16 the *Superannuation Industry (Supervision) Regulations 1994 [to be*
17 *drafted]*.

18 *disregarded small fund assets* has the meaning given by
19 section 295-387.

20 *retirement phase*:

- 21 (a) section 307-80 sets out when a *superannuation income
22 stream is in the *retirement phase*;
23 (b) a *superannuation interest is in the *retirement phase* at a time
24 if it supports a superannuation income stream that is in the
25 retirement phase at that time.

26 *retirement phase superannuation income stream benefit* (or *RP*
27 *superannuation income stream benefit*) has the meaning given by
28 section 307-75.

EXPOSURE DRAFT

Schedule 8 Innovative income streams and integrity

Part 2 Application

1 **Part 2—Application**

2 **30 Application of amendments**

3 The amendments made by this Schedule apply in relation to the
4 2017-18 income year and later income years.

EXPOSURE DRAFT

Anti-detriment provisions **Schedule 9**
Amendments **Part 1**

1 **Schedule 9—Anti-detriment provisions**

2 **Part 1—Amendments**

3 *Income Tax Assessment Act 1997*

4 **1 Section 12-5 (table item headed “superannuation and**
5 **related business”)**

6 Omit:
detriment payments 295-485

7 **2 Group heading (before section 295-485)**

8 Repeal the heading.

9 **3 Section 295-485**

10 Repeal the section.

11 *Income Tax (Transitional Provisions) Act 1997*

12 **4 Sections 295-485A and 295-485**

13 Repeal the sections.

EXPOSURE DRAFT

Schedule 9 Anti-detriment provisions

Part 2 Application

1 **Part 2—Application**

2 **5 Application**

3 The amendments made by this Schedule apply in relation to a
4 superannuation benefit that is:

5 (a) paid because of the death of a person that occurred on or after
6 1 July 2017; or

7 (b) paid on or after 1 July 2019.

8 Note: For paragraph (b), it does not matter when the person, in relation
9 to whom the benefit is payable, died.

EXPOSURE DRAFT

Administration **Schedule 10**
End benefit caps **Part 1**

1 **Schedule 10—Administration**

2 **Part 1—End benefit caps**

3 *Taxation Administration Act 1953*

4 **1 Subsection 133-10(3) in Schedule 1**

5 Repeal the subsection (not including the note), substitute:

- 6 (3) However, the Commissioner must not make a determination under
7 this section in relation to a *superannuation interest if, at the time
8 the determination is to be made, the *end benefit for the
9 superannuation interest has become payable.

10 **2 Subsection 133-120(1) in Schedule 1**

11 Repeal the subsection, substitute:

- 12 (1) The *debt account discharge liability* for a *superannuation interest
13 for which the Commissioner keeps a debt account is the amount by
14 which the debt account is in debit at the time the *end benefit for
15 the superannuation interest becomes payable.

- 16 (1A) However, if the end benefit cap for the *superannuation interest
17 stated in a notice given to the Commissioner under subsection (2)
18 or section 133-140 is less than the amount mentioned in
19 subsection (1), the *debt account discharge liability* for the
20 superannuation interest is an amount equal to the end benefit cap.

21 **3 Subsection 133-125(1) in Schedule 1**

22 Repeal the subsection, substitute:

- 23 (1) The Commissioner must give you a notice under this section if the
24 *end benefit becomes payable from a *superannuation interest for
25 which the Commissioner keeps a debt account.

26 **4 Subparagraph 133-125(2)(c)(i) in Schedule 1**

27 Omit “paragraph 133-120(1)(a)”, substitute “subsection 133-120(1)”.

EXPOSURE DRAFT

Schedule 10 Administration

Part 1 End benefit caps

1 **5 Subparagraph 133-125(2)(c)(ii) in Schedule 1**

2 Omit “paragraph 133-120(1)(b)”, substitute “subsection 133-120(1A)”.

3 **6 Section 133-135 in Schedule 1**

4 Repeal the section, substitute:

5 **133-135 Superannuation provider may request debt account status**

6 (1) If:

7 (a) a *superannuation provider has been given a notice under
8 section 133-75 saying that the Commissioner has started to
9 keep a debt account for a *superannuation interest; and

10 (b) the superannuation provider receives a request to pay the
11 *end benefit from the superannuation interest or the end
12 benefit becomes payable from the superannuation interest;
13 the superannuation provider may, in the *approved form, request
14 the Commissioner to advise as to the status of the debt account.

15 (2) If the Commissioner receives a request, the Commissioner must
16 advise the *superannuation provider as soon as practicable whether
17 or not the debt account is in debit.

18 **7 Paragraph 133-140(1)(a) in Schedule 1**

19 Repeal the paragraph, substitute:

20 (a) unless subsection (1A) applies—the amount of the end
21 benefit cap mentioned in subsection 133-120(2) for the
22 superannuation interest; and

23 **8 After subsection 133-140(1) in Schedule 1**

24 Insert:

25 (1A) The notice does not need to state the amount of the end benefit cap
26 if:

27 (a) the *superannuation provider has already given the
28 Commissioner notice of the end benefit cap under
29 subsection 133-120(2); or

EXPOSURE DRAFT

Administration **Schedule 10**
End benefit caps **Part 1**

1 (b) before the end of the period mentioned in subsection (2), the
2 Commissioner has advised the superannuation provider under
3 subsection 133-135(2) that the debt account is not in debit.

4 **9 Subsection 133-145(1) in Schedule 1**

5 Omit “133-135 or”.

6 **10 Application**

7 The amendments made by this Part apply in relation to superannuation
8 interests from which the end benefit becomes payable on or after 1 July
9 2017.

EXPOSURE DRAFT

Schedule 10 Administration

Part 2 Combining notices

1 **Part 2—Combining notices**

2 **Division 1—Main amendments**

3 *Taxation Administration Act 1953*

4 **11 At the end of Part 5-100 in Schedule 1**

5 Add:

6 **Division 990—Miscellaneous**

7 **Table of Subdivisions**

8 990-A Combining notices

9 **Subdivision 990-A—Combining notices**

10 **Table of sections**

11 990-5 Commissioner may combine notices

12 **990-5 Commissioner may combine notices**

13 (1) For the purposes of a *taxation law under which the Commissioner
14 must or may give you a document (however described), that
15 document may be included in or with any other document
16 (however described) that the Commissioner gives you under a
17 taxation law.

18 (2) This section is enacted for the avoidance of doubt.

19 **Division 2—Other amendments**

20 *Income Tax Assessment Act 1936*

21 **12 Subsection 45D(1)**

22 Omit the second sentence.

EXPOSURE DRAFT

Administration **Schedule 10**
Combining notices **Part 2**

1 **13 Subsection 102AAM(13)**

2 Repeal the subsection.

3 **14 Subsection 159GZZZZH(3)**

4 Repeal the subsection.

5 **15 Subsection 177EA(6)**

6 Omit the second sentence.

7 **16 Subsection 177EB(7)**

8 Omit the second sentence.

9 **17 Subsection 177F(2D)**

10 Repeal the subsection.

11 ***Income Tax Assessment Act 1997***

12 **18 Subsection 204-50(4)**

13 Repeal the subsection.

14 **19 Subsection 214-60(3)**

15 Repeal the subsection.

16 **20 Subsection 214-140(1)**

17 Omit “(1)”.

18 **21 Subsection 214-140(2)**

19 Repeal the subsection.

20 **22 Subsection 275-615(3)**

21 Omit the second sentence.

22 **23 Subsection 291-465(6)**

23 Repeal the subsection.

EXPOSURE DRAFT

Schedule 10 Administration

Part 2 Combining notices

1 **24 Subsections 292-230(3), 292-310(3), 292-465(8), 292-467(3)**
2 **and 295-625(1)**

3 Repeal the subsections.

4 **25 Subsection 295-625(2) (heading)**

5 Repeal the heading.

6 **26 Subsections 815-30(8), 815-35(8) and 815-145(6)**

7 Repeal the subsections.

8 ***Income Tax (Transitional Provisions) Act 1997***

9 **27 Subsection 214-25(3)**

10 Repeal the subsection.

11 **28 Subsection 214-80(1)**

12 Omit “(1)”.

13 **29 Subsection 214-80(2)**

14 Repeal the subsection.

15 ***Petroleum Resource Rent Tax Assessment Act 1987***

16 **30 Subsection 98C(2)**

17 Repeal the subsection.

18 ***Superannuation Guarantee (Administration) Act 1992***

19 **31 Subsection 62(2)**

20 Repeal the subsection.

21 ***Taxation Administration Act 1953***

22 **32 Subsection 8AAF(3)**

23 Repeal the subsection.

EXPOSURE DRAFT

Administration **Schedule 10**
Combining notices **Part 2**

1 **33 Subsection 45-320(6) in Schedule 1**

2 Repeal the subsection.

3 **34 Subsection 45-473(1) in Schedule 1**

4 Omit “(1)”.

5 **35 Subsection 45-473(2) in Schedule 1**

6 Repeal the subsection.

7 **36 Subsections 97-5(4) and 97-25(4) in Schedule 1**

8 Repeal the subsections.

9 **37 Subsection 133-30(2) in Schedule 1**

10 Repeal the subsection.

11 **38 Subsection 280-110(2) in Schedule 1**

12 Repeal the subsection.

13 **Division 3—Application of amendments**

14 **39 Application of amendments**

15 The amendments made by this Part apply to documents (however
16 described) that the Commissioner gives on or after 1 July 2017 under
17 taxation laws.