

EXPOSURE DRAFT

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Inserts for
**Treasury Legislation Amendment
(Improving Accountability and Member
Outcomes) Bill 2017: superannuation
guarantee (salary sacrifice integrity
measures)**

Commencement information

Column 1**Column 2****Column 3**

Provisions**Commencement****Date/Details**

1. Schedule 8

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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Schedule 8—Salary sacrifice integrity

Superannuation Guarantee (Administration) Act 1992

1 Subsection 6(1)

Insert:

quarterly salary or wages base, for an employer in respect of an employee, for a quarter has the meaning given by subsection 19(1).

sacrificed contribution means:

- (a) a sacrificed ordinary time earnings contribution; or
- (b) a sacrificed salary or wages contribution.

sacrificed ordinary time earnings contribution has the meaning given by subsection 15A(1).

sacrificed salary or wages contribution has the meaning given by subsection 15A(2).

2 At the end of section 11

Add:

Note: Under subsection 19(1), certain contributions are included in the quarterly salary or wages base, for an employer in respect of an employee, in respect of a quarter for the purposes of calculating an employer's individual superannuation guarantee shortfall.

3 At the end of Part 2

Add:

15A Interpretation: salary sacrifice arrangements

Sacrificed ordinary time earnings contribution

(1) A contribution is a *sacrificed ordinary time earnings contribution*, by an employer for the benefit of an employee, in respect of a quarter if:

- (a) the contribution was made to a complying superannuation fund or an RSA by the employer for the benefit of the employee; and
- (b) the contribution was made because the employee agreed:

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- 1 (i) for the contribution to be made; and
2 (ii) in return for the employee's ordinary time earnings for
3 the quarter to be reduced (including to nil); and
4 (c) had the ordinary time earnings been paid to the employee
5 (instead of being reduced), those ordinary time earnings
6 would not have been excluded salary or wages.

7 *Sacrificed salary or wages contribution*

- 8 (2) A contribution is a *sacrificed salary or wages contribution*, by an
9 employer for the benefit of an employee, in respect of a quarter if:
10 (a) the contribution was made to a complying superannuation
11 fund or an RSA by the employer for the benefit of the
12 employee; and
13 (b) the contribution was made because the employee agreed:
14 (i) for the contribution to be made; and
15 (ii) in return for the employee's salary or wages for the
16 quarter to be reduced (including to nil); and
17 (c) had the salary or wages been paid to the employee (instead of
18 being reduced), those salary or wages would not have been
19 excluded salary or wages.

20 *Excluded salary or wages*

- 21 (3) For the purposes of this section, excluded salary or wages are
22 salary or wages that, under section 27 or 28, are not to be taken
23 into account for the purpose of making a calculation under
24 section 19.

25 **4 Subsection 19(1) (formula)**

26 Repeal the formula, substitute:

$$\begin{array}{r} \text{Quarterly salary or wages base,} \\ \text{for the employer in respect of the employee,} \\ \text{for the quarter} \end{array} \times \frac{\begin{array}{r} \text{Charge percentage for} \\ \text{the employer} \\ \text{for the quarter} \end{array}}{100}$$

27
28 **5 At the end of subsection 19(1)**

29 Add:

30 *quarterly salary or wages base*, for an employer in respect of an
31 employee, for a quarter means the sum of:

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- 1 (a) the total salary or wages paid by the employer to the
2 employee for the quarter; and
3 (b) any contributions that are sacrificed salary or wages
4 contributions, by the employer, for the benefit of the
5 employee, in respect of the quarter.

6 **Subsection 19(3)**

7 Repeal the subsection, substitute:

- 8 (3) If the quarterly salary or wages base, for an employer in respect of
9 an employee, for a quarter exceeds the maximum contribution base
10 for the quarter, the employer's quarterly salary or wages base to be
11 taken into account for the purposes of the application of
12 subsection (1) in relation to the quarter is the amount equal to the
13 maximum contribution base.

14 **Subsection 23(2)**

15 Omit "contributes", substitute "makes a contribution (other than a
16 sacrificed contribution)".

17 **Subsection 23(2) (formula)**

18 Repeal the formula, substitute:

$$\frac{\text{Contribution}}{\text{Ordinary time earnings base}} \times 100$$

19 **Subsection 23(2) (definition of *ordinary time earnings*)**

20 Repeal the definition.

21 **At the end of subsection 23(2)**

22 Add:

23 *ordinary time earnings base* is the number of dollars in the sum of:

- 24 (a) the ordinary time earnings of the employee for the quarter in
25 respect of the employer; and
26 (b) any contributions that are sacrificed ordinary time earnings
27 contributions, by the employer, for the benefit of the
28 employee, in respect of the quarter.
29

30 **After subsection 23(2)**

31 Insert:

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1 (2A) For the avoidance of doubt, paragraph (b) of the definition of
2 *ordinary time earnings base* in subsection (2) applies in respect of
3 a contribution even if the contribution may not be taken into
4 account under this section because of another provision of this Act.

5 **12 Subsection 23(9A)**

6 After “purposes of”, insert “section 15A and”.

7 **13 Subsection 23(12) (heading)**

8 Repeal the heading, substitute:

9 *Reduction of ordinary time earnings base if amount excluded from*
10 *employee’s salary or wages*

11 **14 Subsection 23(12)**

12 After “ordinary time earnings”, insert “base”.

13 **15 Subsection 23(12)**

14 Omit “are”, substitute “is”.

15 **16 Subsection 23A(1)**

16 After “A contribution”, insert “(other than a sacrificed contribution)”.

17 **17 Section 23B**

18 Before “For”, insert “(1)”.

19 **18 Section 23B**

20 Omit “sections 23 and 23A”, substitute “a provision covered by
21 subsection (2)”.

22 **19 At the end of section 23B**

23 Add:

24 (2) The provisions are as follows:

- 25 (a) section 15A (which deals with salary sacrifice arrangements);
- 26 (b) section 23 (which deals with reduction of charge percentage);
- 27 (c) section 23A (which deals with offsetting late payments
28 against an employer’s liability to pay superannuation
29 guarantee charge).

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1 **20 Subsection 25(1)**

2 Omit “section 23”, substitute “sections 15A and 23”.

3 **21 Application**

4 The amendments made by this Schedule apply in relation to working
5 out an employer’s superannuation guarantee shortfall for quarters
6 beginning on or after 1 July 2018.

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