

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018

No. , 2018

(Treasury)

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

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

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Taxation and*
7 *Superannuation Guarantee Integrity Measures) Act 2018.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
3. Schedule 3, Part 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
4. Schedule 3, Part 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedules 4 and 5	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
6. Schedule 6	1 July 2018.	1 July 2018

4
5
6

Note: This table relates only to the provisions of this Act as originally enacted.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

2 *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*

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

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

1 **Schedule 1—Directions and penalties in**
2 **relation to superannuation guarantee**
3 **charge**
4

5 *Taxation Administration Act 1953*

6 **1 After paragraph 8C(1)(f)**

7 Insert:

8 (fa) to comply with an education direction in accordance with
9 subsection 295-10(4) in Schedule 1; or

10 **2 After paragraph 14ZW(1)(bh)**

11 Insert:

12 (bi) if the taxation objection is made under section 295-35 in
13 Schedule 1 to this Act (about education directions)—the
14 period specified for the purposes of subsection 295-10(3) in
15 the direction given to the person (subject to
16 subsection 295-30(7)); or

17 (bj) if the taxation objection is made under section 296-25 in
18 Schedule 1 to this Act (about directions to pay
19 superannuation guarantee charge)—the period specified for
20 the purposes of paragraph 296-10(3)(c) in the direction given
21 to the person (subject to subsection 296-35(2)); or

22 **3 After Division 290 in Schedule 1**

23 Insert:

24 **Division 295—Education directions**

25 **Guide to Division 295**

26 **295-5 What this Division is about**

27

If the Commissioner reasonably believes that an employer has 28 failed to comply with certain obligations relating to superannuation

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

- 1 (ii) if the employer is a company—a director (within the
2 meaning of the *Corporations Act 2001*) of the company;
3 or
4 (iii) if the employer is an unincorporated association or body
5 of entities—a member of the committee of management
6 of the association or body; or
7 (iv) if the employer is a partnership—a partner in the
8 partnership; or
9 (v) any other person who makes, or participates in making,
10 decisions that affect the whole, or a substantial part, of
11 the business of the employer.

12 (2) The Commissioner may give you a written direction (an *education*
13 *direction*) requiring you to undertake a specified approved course
14 of education (see section 295-15) and provide the Commissioner
15 with evidence of completion of the course.

16 (3) The education direction must specify the period within which you
17 must comply with the direction (which must be a period that is
18 reasonable in the circumstances).

19 Note: The period may be affected by the operation of subsection 295-30(7).

20 (4) You must comply with the direction before the end of the specified
21 period.

22 Note: Failure to comply with this subsection is an offence against
23 section 8C.

24 (5) You are liable to an administrative penalty of 5 penalty units if you
25 contravene subsection (4).

26 Note: Division 298 contains machinery provisions for administrative
27 penalties.

28 (6) An education direction is not a legislative instrument.

29 **295-15 Approval of courses of education**

30 (1) The Commissioner may, in writing, approve one or more courses
31 of education for the purposes of giving education directions.

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Directions and penalties in relation to superannuation guarantee charge **Schedule 1**

1 (2) A course approved under subsection (1) may be provided by the
2 Commissioner or by another entity.

3 (3) An approval under subsection (1) is not a legislative instrument.

4 **295-20 Costs of course of education**

5 (1) The Commissioner or other entity providing an approved course of
6 education may charge fees for the course.

7 (2) Any fees charged must not be such as to amount to taxation.

8 **295-25 Variation or revocation on Commissioner's own initiative**

9 If the Commissioner has given you an education direction, the
10 Commissioner may, at any time, vary or revoke the education
11 direction by written notice given to you.

12 **295-30 Variation on request**

13 (1) If the Commissioner has given you an education direction, you
14 may ask the Commissioner to vary the direction.

15 (2) The request must be made by written notice given to the
16 Commissioner before the end of the period specified in the
17 direction for the purposes of subsection 295-10(3).

18 (3) The request must set out the reasons for making the request.

19 (4) The Commissioner must decide:

- 20 (a) to vary the direction in accordance with the request; or
21 (b) to vary the direction otherwise than in accordance with the
22 request; or
23 (c) to refuse to vary the direction.

24 (5) If the Commissioner does not make a decision on the request
25 before the end of 28 days after the day the Commissioner received
26 the request, the Commissioner is taken, at the end of that period, to
27 have decided to refuse the request.

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

- 1 (6) If the Commissioner makes a decision on the request before the
2 end of the period referred to in subsection (5), the Commissioner
3 must:
4 (a) notify you of the Commissioner's decision; and
5 (b) if the decision is to vary the direction (whether or not in
6 accordance with the request)—give you a copy of the varied
7 direction; and
8 (c) if the decision is to refuse to vary the direction, or to vary the
9 direction otherwise than in accordance with the request—
10 give you written reasons for the decision.
- 11 (7) If you make a request under this section, then, for the purposes of
12 subsection 295-10(4), the period specified in the direction for the
13 purposes of subsection 295-10(3) is taken to be extended by 1 day
14 for each day in the period:
15 (a) beginning at the start of the day the Commissioner receives
16 the request; and
17 (b) ending at the end of the day that the Commissioner notifies
18 you that a decision has been made on the request.

19 **295-35 Taxation objection**

- 20 If you are dissatisfied with:
21 (a) a decision of the Commissioner to give an education
22 direction, or to vary one otherwise than in accordance with a
23 request under section 295-30; or
24 (b) a decision of the Commissioner under section 295-30 to
25 refuse to vary an education direction;
26 you may object against the decision in the manner set out in
27 Part IVC.

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Directions and penalties in relation to superannuation guarantee charge **Schedule 1**

1 **Division 296—Direction to pay superannuation guarantee**
2 **charge**

3 **Guide to Division 296**

4 **296-5 What this Division is about**

5 If you are liable to pay an amount of superannuation guarantee
6 charge or certain related liabilities, the Commissioner may direct
7 you to pay the amount.

8 If the amount is not paid, you may commit an offence.

9 **Table of sections**

10	296-10	Direction to pay superannuation guarantee charge
11	296-15	Offence
12	296-20	Variation or revocation
13	296-25	Effect of liability being reduced or ceasing to exist
14	296-30	Taxation objection
15	296-35	Extension of period to comply if taxation objection made

16 **296-10 Direction to pay superannuation guarantee charge**

- 17 (1) The Commissioner may, by written notice, give you a direction
18 requiring you to pay to the Commissioner:
- 19 (a) an amount of superannuation guarantee charge that is payable
20 by you under the *Superannuation Guarantee*
21 *(Administration) Act 1992*; or
- 22 (b) if an estimate under Division 268 in this Schedule of the
23 amount of a liability of yours to pay superannuation
24 guarantee charge for a quarter under section 16 of the
25 *Superannuation Guarantee (Administration) Act 1992* is in
26 force as referred to in subsection 268-10(5)—the amount of
27 the estimate.

28 Note: The direction does not create a separate liability to pay the amount.
29 However, it may result in you committing an offence against
30 subsection 296-15(1) if the amount is not paid.

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

- 1 (2) In deciding whether to give a direction under subsection (1), the
2 Commissioner must have regard to the following matters:
- 3 (a) your history of compliance with obligations to pay
4 superannuation guarantee charge, and obligations to pay
5 estimates under Division 268 of superannuation guarantee
6 charge;
- 7 (b) your history of compliance with other obligations under
8 *taxation laws;
- 9 (c) whether the amount mentioned in paragraph (1)(a) or (b) is
10 substantial, having regard to the size and nature of your
11 business;
- 12 (d) any steps that you have taken to discharge the liability to pay
13 the amount or dispute that the liability exists;
- 14 (e) any other matter that the Commissioner considers relevant.
- 15 (3) The direction must:
- 16 (a) set out the amount that you are required to pay to the
17 Commissioner; and
- 18 (b) if the amount referred to in paragraph (1)(a) or (b) relates to a
19 *quarter—set out the quarter; and
- 20 (c) specify the period before the end of which you must comply
21 with the direction (which must end at least 21 days after the
22 day the direction is given); and
- 23 (d) explain the consequences of failing to comply with the
24 direction; and
- 25 (e) explain how you may have the Commissioner’s decision to
26 give the direction reviewed.
- 27 (4) To avoid doubt, a single notice may relate to 2 or more directions,
28 but must comply with subsection (3) in relation to each of them.
- 29 (5) A notice given under subsection (1) is not a legislative instrument.

30 **296-15 Offence**

- 31 (1) You commit an offence if:
- 32 (a) you are given a direction under subsection 296-10(1); and

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Directions and penalties in relation to superannuation guarantee charge **Schedule 1**

1 (b) the liability to pay the amount set out in the direction is not
2 discharged (whether by you or by another entity) before the
3 end of the period specified in the direction under
4 paragraph 296-10(3)(c).

5 Penalty: 50 penalty units or imprisonment for 12 months, or both.

6 (2) An offence against subsection (1) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

8 (3) Subsection (1) does not apply if both of the following apply:

9 (a) you took all reasonable steps to comply with the direction
10 before the end of the period specified in the direction under
11 paragraph 296-10(3)(c);

12 (b) you took all reasonable steps to ensure that the liability was
13 discharged before the direction was given.

14 Note: A defendant bears an evidential burden in relation to the matter in
15 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

16 **296-20 Variation or revocation**

17 (1) If the Commissioner has given you a direction under
18 subsection 296-10(1), the Commissioner may, at any time before
19 the end of the period specified in the direction under
20 paragraph 296-10(3)(c), by written notice given to you:

21 (a) vary the direction to reduce the amount that you are required
22 to pay to the Commissioner in order to comply with the
23 direction; or

24 (b) vary the direction to extend the period specified in the notice
25 of the direction under paragraph 296-10(3)(c); or

26 (c) revoke the direction.

27 (2) To avoid doubt, the variation or revocation of a direction under
28 subsection (1) does not affect any liability that you may have to
29 pay an amount referred to in the direction.

30 **296-25 Effect of liability being reduced or ceasing to exist**

31 (1) If:

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

- 1 (a) you have been given a direction under subsection 296-10(1)
2 requiring you to pay an amount of a liability referred to in
3 that subsection to the Commissioner; and
4 (b) the period specified in the direction under
5 paragraph 296-10(3)(c) has not expired; and
6 (c) the liability is reduced (but not to nil);
7 the amount set out in the direction is taken to be reduced by the
8 amount of the reduction referred to in paragraph (c).
- 9 (2) If:
10 (a) you have been given a direction under subsection 296-10(1)
11 requiring you to pay an amount of a liability referred to in
12 that subsection to the Commissioner; and
13 (b) the period specified in the direction under
14 paragraph 296-10(3)(c) has not expired; and
15 (c) either:
16 (i) the liability is reduced to nil; or
17 (ii) the liability ceases to exist;
18 the direction is taken to be revoked.
- 19 (3) You may be convicted of an offence against subsection 296-15(1)
20 in relation to a direction under subsection 296-10(1) requiring you
21 to pay an amount of a liability referred to in subsection 296-10(1)
22 to the Commissioner even if:
23 (a) the liability is reduced, or ceases to exist, after the end of the
24 period specified in the direction under
25 paragraph 296-10(3)(c); or
26 (b) the liability is discharged after the end of that period; or
27 (c) the liability is, after the end of that period, taken never to
28 have existed, or taken not to have existed at a time on or
29 before the end of that period.

30 **296-30 Taxation objection**

- 31 If you are dissatisfied with a decision of the Commissioner to give
32 you a direction under subsection 296-10(1), you may, at any time
33 before the end of the period specified in the direction under
-

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Directions and penalties in relation to superannuation guarantee charge **Schedule 1**

1 paragraph 296-10(3)(c), object against the decision in the manner
2 set out in Part IVC.

3 **296-35 Extension of period to comply if taxation objection made**

4 (1) This section applies if:

5 (a) the Commissioner gives you a direction under
6 subsection 296-10(1); and

7 (b) the period specified in the direction under
8 paragraph 296-10(3)(c) has not expired; and

9 (c) you:

10 (i) make an objection in accordance with section 296-30 in
11 relation to the Commissioner's decision to give you the
12 direction; or

13 (ii) make an objection in the manner set out in Part IVC
14 against a taxation decision that relates to your liability
15 to pay an amount referred to in the direction.

16 (2) The period specified in the direction under paragraph 296-10(3)(c)
17 is extended by one day for each day in the period that begins on the
18 day the objection is made and ends at the end of the later of the
19 following days:

20 (a) the day 21 days after the day the Commissioner notifies you
21 of the Commissioner's decision under section 14ZY in
22 relation to the objection;

23 (b) if, before the end of the day referred to in paragraph (a), you:

24 (i) apply to the *AAT in accordance with Division 4 of
25 Part IVC for review of the Commissioner's decision; or

26 (ii) lodge an appeal against the Commissioner's decision
27 with the Federal Court of Australia under Division 5 of
28 that Part;

29 the day the review or the appeal is finally determined.

30 (3) To avoid doubt, the extension of the period under subsection (2)
31 does not affect any liability that you may have to pay an amount
32 referred to in the direction.

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Schedule 1 Directions and penalties in relation to superannuation guarantee charge

1 **4 Application of education direction provisions**

2 Division 295 in Schedule 1 to the *Taxation Administration Act 1953*, as
3 inserted by this Schedule, applies in relation to a failure referred to in
4 paragraph 295-10(1)(a) in that Schedule that occurs on or after 1 July
5 2018 (including a failure to pay an amount that became payable before
6 that day, and remains payable on or after that day).

7 **5 Application of superannuation guarantee charge direction**
8 **provisions**

9 Division 296 in Schedule 1 to the *Taxation Administration Act 1953*, as
10 inserted by this Schedule, applies in relation to a failure to pay an
11 amount referred to in paragraph 296-10(1)(a) in that Schedule, or an
12 amount of an estimate referred to in paragraph 296-10(1)(b) in that
13 Schedule, that first becomes payable on or after 1 July 2018.

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Disclosure of information about non-compliance **Schedule 2**

1 **Schedule 2—Disclosure of information about**
2 **non-compliance**
3

4 *Taxation Administration Act 1953*

5 **1 Subsection 355-65(3) in Schedule 1 (table item 7, column**
6 **headed “and the record or disclosure ...”,**
7 **paragraph (a))**

8 After “the *Superannuation Guarantee (Administration) Act 1992*”,
9 insert “, or under a provision of this Act as it relates to that Act.”.

10 **2 Subsection 355-65(3) in Schedule 1 (after table item 7)**

11 Insert:

- 12
- | | | |
|----|--|---|
| 7A | an individual who is or was an employee (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i>) | (a) is of information that relates to:
(i) a failure by the individual’s employer or former employer to comply with the employer’s obligations under the <i>Superannuation Guarantee (Administration) Act 1992</i> , or under a provision of this Act as it relates to that Act, in relation to the employee; or
(ii) such a failure that the Commissioner reasonably suspects to have occurred; or
(iii) any actions taken by the Commissioner in relation to such a failure or suspected failure; and
(b) does not relate to the general financial affairs of the employer. |
|----|--|---|
- 13

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Schedule 2 Disclosure of information about non-compliance

1 **3 Subsection 355-65(9) in Schedule 1**

2 Repeal the subsection, substitute:

3 (9) To avoid doubt, the exceptions in table items 7 and 7A in table 2 in
4 subsection (3) have effect even if it is, or has been, in dispute or
5 uncertain whether the individual is an employee or former
6 employee of the employer.

7 **4 Application—disclosure of information**

8 The amendments made by this Schedule apply in relation to records or
9 disclosures made on or after 1 July 2018 in relation to matters that arose
10 before, on or after that day.

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Single touch payroll reporting **Schedule 3**
Single touch payroll reporting **Part 1**

1 **Schedule 3—Single touch payroll reporting**

2 **Part 1—Single touch payroll reporting**

3 *Income Tax Assessment Act 1997*

4 **1 Subsection 995-1(1) (definition of *substantial employer*)**

5 Repeal the definition.

6 *Taxation Administration Act 1953*

7 **2 Paragraph 8AAZLGB(1)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) the Commissioner reasonably believes that the entity has
10 made a payment as a result of which the entity is, or will be,
11 required to notify the Commissioner under section 389-5 in
12 Schedule 1; and

13 **3 Paragraph 8AAZLGB(3)(b)**

14 Omit “if subparagraph (1)(a)(i) applied—”.

15 **4 Section 389-1 in Schedule 1**

16 Repeal the section, substitute:

17 **389-1 What this Division is about**

18 Employers must (unless they are exempt) notify the Commissioner
19 of certain amounts that relate to payments in respect of their
20 employees.

21 In many cases this Division has the effect of bringing forward the
22 due dates for notification or reporting under other provisions.
23 Notifying under this Division may satisfy an employer’s
24 obligations to notify or report under the other provisions.

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Schedule 3 Single touch payroll reporting

Part 1 Single touch payroll reporting

1 **5 Section 389-5 in Schedule 1 (heading)**

2 Repeal the heading, substitute:

3 **389-5 Required reporting by employers**

4 **6 Subsection 389-5(1) in Schedule 1**

5 Omit all the words from and including “If:” to and including “column 2
6 of that item”, substitute “An entity must notify the Commissioner of an
7 amount of a kind referred to in column 1 of an item in the following
8 table on or before the day referred to in column 2 of that item, if the
9 amount arises as a result of conduct of the entity (such as payment of an
10 amount or provision of a benefit)”.

11 **7 Subsection 389-5(6) in Schedule 1**

12 Repeal the subsection.

13 **8 Subsections 389-15(1) and (2) in Schedule 1**

14 Repeal the subsections.

15 **9 Subsection 389-15(3) in Schedule 1 (heading)**

16 Repeal the heading.

17 **10 Application—required reporting**

- 18 (1) The amendments made by this Part apply in relation to an amount that
19 an entity is required to notify to the Commissioner if the requirement to
20 notify arises on or after 1 July 2019.
- 21 (2) For the purposes of Division 3 of Part 1 of Schedule 23 to the *Budget*
22 *Savings (Omnibus) Act 2016*, and despite item 24 of that Schedule, the
23 **application day** for an entity is taken to be the earlier of the following:
24 (a) the application day for the entity under that Division,
25 disregarding the effect of this item;
26 (b) 1 July 2019.

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Single touch payroll reporting **Schedule 3**
Reporting of salary sacrifice amounts **Part 2**

1 **Part 2—Reporting of salary sacrifice amounts**

2 *Taxation Administration Act 1953*

3 **11 Paragraphs 8K(2A)(a) and 8N(2)(a)**

4 Omit “item 1 or 2”, substitute “item 1, 2 or 2A”.

5 **12 Paragraph 284-75(8)(a) in Schedule 1**

6 Omit “item 1 or 2”, substitute “item 1, 2 or 2A”.

7 **13 Subsection 389-5(1) in Schedule 1 (after table item 2)**

8 Insert:

9

2A The following amounts:

(a) a sacrificed ordinary time earnings amount (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) of an employee of the entity, in respect of the entity;

(b) a sacrificed salary or wages amount (within the meaning of that Act) of an employee of the entity, in respect of the entity

The day on which the entity would have been required, under this section, to notify the Commissioner of the payment of the amount, if it had been paid to the employee as ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) or salary or wages (within the meaning of that Act).

10

11 **14 Subsection 389-25(1) in Schedule 1**

12 Omit “item 1 or 2”, substitute “item 1, 2 or 2A”.

13 **15 Application**

14 The amendments made by this Part apply in relation to quarters
15 beginning on or after 1 July 2018.

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Schedule 4 Fund reporting

Part 1 Grace period for member information statements

1 **Schedule 4—Fund reporting**

2 **Part 1—Grace period for member information**
3 **statements**

4 ***Taxation Administration Act 1953***

5 **1 After subsection 8K(2A)**

6 Insert:

7 (2B) Subsection (1) or (1B) does not apply if:

- 8 (a) the statement (the ***original statement***) was made under
9 section 390-5 in Schedule 1; and
10 (b) the person who made the original statement makes a further
11 statement to a taxation officer that corrects the original
12 statement in each of the respects in which it is false or
13 misleading in a material particular; and
14 (c) subsection 390-7(1) in Schedule 1 provides for a period for
15 correcting the original statement; and
16 (d) the further statement:
17 (i) is in the approved form; and
18 (ii) is made within the period referred to in paragraph (c) of
19 this subsection.

20 Note: A defendant bears an evidential burden in relation to the matter in
21 subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

22 **2 At the end of section 8N**

23 Add:

- 24 (3) This section does not apply if:
25 (a) the statement (the ***original statement***) was made under
26 section 390-5 in Schedule 1; and
27 (b) the person who made the original statement makes a further
28 statement to a taxation officer that corrects the original
29 statement in each of the respects in which it is false or
30 misleading in a material particular; and
-

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Fund reporting **Schedule 4**
Grace period for member information statements **Part 1**

- 1 (c) subsection 390-7(1) in Schedule 1 provides for a period for
2 correcting the original statement; and
3 (d) the further statement:
4 (i) is in the approved form; and
5 (ii) is made within the period referred to in paragraph (c) of
6 this subsection.

7 Note: A defendant bears an evidential burden in relation to the matter in
8 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

9 **3 Subsection 284-75(8) in Schedule 1 (heading)**

10 Repeal the heading, substitute:

11 *Further exceptions to subsection (1)*

12 **4 At the end of section 284-75 in Schedule 1**

13 Add:

- 14 (9) You are not liable to an administrative penalty under subsection (1)
15 if:
16 (a) you made the statement (the *original statement*) under
17 section 390-5; and
18 (b) you make a further statement to a taxation officer that
19 corrects the original statement in each of the respects in
20 which it is false or misleading in a material particular; and
21 (c) subsection 390-7(1) provides for a period for correcting the
22 original statement; and
23 (d) the further statement:
24 (i) is in the *approved form; and
25 (ii) is made within the period referred to in paragraph (c) of
26 this subsection.

27 **5 After section 390-5 in Schedule 1**

28 Insert:

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Schedule 4 Fund reporting

Part 1 Grace period for member information statements

1 **390-7 Grace periods for correcting false or misleading member**
2 **information statements**

3 *When statements can be corrected*

4 (1) A *superannuation provider in relation to a *superannuation plan
5 that has given a statement to the Commissioner under
6 section 390-5 may correct the statement:

7 (a) within the period determined by the Commissioner under
8 subsection (2) of this section; or

9 (b) if paragraph (a) does not apply but the superannuation
10 provider is covered by a determination under
11 subsection (5)—within the period specified in that
12 determination.

13 Note 1: Correcting the statement can protect the superannuation provider from
14 liability for a false or misleading statement: see subsections 8K(2B),
15 8N(3) and 284-75(9).

16 Note 2: If no period has been determined under subsection (2) or (5) in
17 relation to a superannuation provider, the superannuation provider will
18 not be able to take advantage of the grace period provided for by this
19 section.

20 *Determinations for particular superannuation providers*

21 (2) The Commissioner may determine the period within which the
22 *superannuation provider may correct a statement.

23 (3) The Commissioner must give the *superannuation provider written
24 notice of the determination.

25 (4) The *superannuation provider may object, in the manner set out in
26 Part IVC, against a decision of the Commissioner determining a
27 period under subsection (2) relating to the superannuation provider.

28 *Determinations for classes of superannuation providers*

29 (5) The Commissioner may, by legislative instrument, determine the
30 period within which *superannuation providers included in a class
31 of superannuation providers specified in the determination may
32 correct a statement.

EXPOSURE DRAFT

Fund reporting **Schedule 4**
Employer reporting of superannuation contributions **Part 2**

1 **Part 2—Employer reporting of superannuation**
2 **contributions**

3 *Taxation Administration Act 1953*

4 **6 Subsection 389-5(1) in Schedule 1 (table item 3)**

5 Repeal the item.

6 **7 Application**

7 The amendment made by this Part applies in relation to a contribution
8 that is paid on or after 1 July 2018.

EXPOSURE DRAFT

Schedule 4 Fund reporting

Part 3 Statements for lost members

1 **Part 3—Statements for lost members**

2 *Superannuation (Unclaimed Money and Lost Members) Act*
3 *1999*

4 **8 Section 7**

5 Omit:

6 The regulations may establish a scheme under which
7 superannuation providers must provide the Commissioner of
8 Taxation with details relating to lost members. An aim of the
9 scheme would be to reduce at an early stage the number of
10 accounts which become unclaimed money.

11 **9 Section 8 (definition of *lost member*)**

12 Repeal the definition, substitute:

13 *lost member* means a member of a fund who is:

- 14 (a) a lost RSA holder within the meaning of the *Retirement*
15 *Savings Accounts Regulations 1997*; or
16 (b) a lost member within the meaning of the *Superannuation*
17 *Industry (Supervision) Regulations 1994*.

18 **10 Part 4**

19 Repeal the Part, substitute:

20 **Part 4—Register of lost members**
21

22 **23 Register of lost members**

23 The Commissioner must keep a register of lost members.

EXPOSURE DRAFT

Fund reporting **Schedule 4**
Statements for lost members **Part 3**

1 **24 Commissioner may give information to State or Territory**
2 **authorities**

3 The Commissioner may give information contained in the register
4 to a State or Territory authority if the State or Territory has a law
5 satisfying the requirements of subsections 18(4) and (5).

6 **11 Subsection 24HA(1)**

7 Omit “subsections 25(3) and (4)”, substitute “subsection 25(4)”.

8 **12 Subsections 25(3) and 26(3)**

9 Repeal the subsections.

10 **13 Section 27**

11 Omit “subsection 23(2)”, substitute “Part 4”.

12 **14 Paragraph 29(1)(b)**

13 Omit “subsection 23(2)”, substitute “Part 4”.

14 **15 Subsection 44(1)**

15 Omit “subsection 23(2)”, substitute “Part 4”.

16 **16 Application of amendments**

17 The repeal of subsection 23(1) of the *Superannuation (Unclaimed*
18 *Money and Lost Members) Act 1999* made by this Part does not apply in
19 relation to information that must be given to the Commissioner, under
20 the scheme mentioned in that subsection as in force at any time before
21 the commencement of this item, for a half year ending before 1 January
22 2018.

23 **17 Transitional provisions**

24 (1) The register that, just before the commencement of this item, was kept
25 under regulations made for the purposes of subsection 23(2) of the
26 *Superannuation (Unclaimed Money and Lost Members) Act 1999* is
27 treated, from that commencement, as being kept under section 23 of that
28 Act, as amended by this Part.

EXPOSURE DRAFT

Schedule 4 Fund reporting

Part 3 Statements for lost members

- 1 (2) Without limiting section 23 of that Act, as amended by this Part, the
2 register kept under that section may contain any information given to
3 the Commissioner (whether before, on or after the commencement of
4 this item) under the scheme established by regulations made for the
5 purposes of that section, as in force at any time before that
6 commencement.

7 ***Taxation Administration Act 1953***

8 **18 At the end of subsection 390-5(9) in Schedule 1**

9 Add:

- 10 ; (d) information relating to the *Superannuation (Unclaimed*
11 *Money and Lost Members) Act 1999.*

EXPOSURE DRAFT

Compliance measures **Schedule 5**
Penalties relating to estimates **Part 1**

1 **Schedule 5—Compliance measures**

2 **Part 1—Penalties relating to estimates**

3 *Taxation Administration Act 1953*

4 **1 Subsection 269-10(1) in Schedule 1 (table item 4)**

5 Repeal the item.

6 **2 Subsection 269-10(1) in Schedule 1 (note)**

7 Repeal the note.

8 **3 At the end of section 269-10 in Schedule 1**

9 Add:

10 *Estimates*

11 (4) This Division also applies if:

12 (a) a company is a company registered under the *Corporations*
13 *Act 2001*; and

14 (b) the company is given notice of an estimate under
15 Division 268; and

16 (c) the company is obliged to pay the amount of the estimate to
17 the Commissioner on or before a particular day (the *due day*).

18 (5) If this Division applies because of subsection (4), then for the
19 purposes of this Division:

20 (a) the *initial day* is:

21 (i) for an estimate of an underlying liability referred to in
22 paragraph 268-10(1)(a) (PAYG withholding
23 liabilities)—the day on or before which the company is
24 obliged to pay the amount of the underlying liability to
25 the Commissioner; or

26 (ii) for an estimate of an underlying liability referred to in
27 paragraph 268-10(1)(b) (superannuation guarantee
28 charge)—the last day of the *quarter to which the
29 estimate relates; and

EXPOSURE DRAFT

Schedule 5 Compliance measures

Part 1 Penalties relating to estimates

1 (b) the company's obligation to pay the amount of the estimate is
2 taken to have begun on the day after the initial day.

3 (6) For the purposes of subparagraph (5)(a)(i), assume that the
4 underlying liability exists as identified in the notice of the estimate
5 under section 268-15.

6 **4 After subsection 269-15(2)**

7 Insert:

8 (2A) To avoid doubt, if the obligation of the company is an obligation to
9 pay the amount of an estimate of an underlying liability under
10 Division 268, a director is subject to his or her obligation under
11 subsection (1):

12 (a) even if the underlying liability never existed or has been
13 discharged in full; and

14 (b) even if the unpaid amount of the underlying liability is less
15 than the unpaid amount of the estimate; and

16 (c) at all times on and after the day referred to in
17 paragraph 269-10(5)(b) until the director's obligation ceases
18 under subsection (2) of this section, including at any such
19 times before the Commissioner has made the estimate or
20 given notice of the estimate.

21 **5 After subsection 269-35(3) in Schedule 1**

22 Insert:

23 (3AA) If the obligation referred to in subparagraph (2)(a)(i) is an
24 obligation to pay an amount of an estimate of an underlying
25 liability under Division 268, that reference to an obligation
26 includes a reference to the obligation to pay the underlying
27 liability.

28 (3AB) For the purposes of subsection (3AA), assume that the underlying
29 liability exists as identified in the notice of the estimate under
30 section 268-15.

31 **6 At the end of subsection 269-35(3A) in Schedule 1**

32 Add:

EXPOSURE DRAFT

Schedule 5 Compliance measures

Part 2 Director penalties

1 **Part 2—Director penalties**

2 *Taxation Administration Act 1953*

3 **8 Subsection 269-30(2) in Schedule 1 (table, heading to**
4 **column 2)**

5 Omit “the last day of the 3 months after”.

6 **9 Subsection 269-30(2) in Schedule 1 (table item 1, column 2)**

7 Before “the due day”, insert “the last day of the 3 months after”.

8 **10 Subsection 269-30(2) in Schedule 1 (table item 2, column**
9 **1)**

10 Omit “(estimates of PAYG withholding liabilities and superannuation
11 guarantee charge)”, substitute “of a liability referred to in
12 paragraph 268-10(1)(a) (PAYG withholding liabilities)”.

13 **11 Subsection 269-30(2) in Schedule 1 (table item 2, column**
14 **2)**

15 Before “the day”, insert “the last day of the 3 months after”.

16 **12 Subsection 269-30(2) in Schedule 1 (at the end of the**
17 **table)**

18 Add:

19

4	the amount of an estimate under Division 268 of a liability referred to in paragraph 268-10(1)(b) (superannuation guarantee charge),	the day by which the company was obliged to pay the underlying liability to which the estimate relates,	to any extent.
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EXPOSURE DRAFT

Compliance measures **Schedule 5**
Director penalties **Part 2**

1 **13 Subsection 269-30(3) in Schedule 1**

2 Omit “column 2, treat the reference in the column”, substitute “item 1
3 or 2, treat the reference in the item”.

4 **14 Application**

5 The amendments made by this Part apply in relation to:

- 6 (a) an amount referred to in item 1 or 3 of the table in
7 subsection 269-30(2) in Schedule 1 to the *Taxation*
8 *Administration Act 1953* (as amended by this Part) that first
9 becomes payable on or after 1 July 2018; and
10 (b) an estimate referred to in item 2 or 4 of the table in that
11 subsection (as amended by this Part) that is made on or after
12 1 July 2018 (whether the underlying liability to which the
13 estimate relates arose before, on or after that day).

EXPOSURE DRAFT

Schedule 5 Compliance measures

Part 3 Orders to provide security

1 **Part 3—Orders to provide security**

2 *Taxation Administration Act 1953*

3 **15 At the end of Subdivision 255-D in Schedule 1**

4 Add:

5 **255-115 Order to comply with requirement**

6 (1) The Federal Court of Australia may, on the application of the
7 Commissioner, order you to comply with a requirement to give
8 security under section 255-100, if the Commissioner has given you
9 notice of the requirement under subsection 255-105(1).

10 (2) If the Court makes an order under subsection (1), the Court may
11 also order you to comply with such other requirements made, or
12 that could be made, in relation to you under the taxation law as the
13 Court considers necessary to ensure the effectiveness of the
14 requirement referred to in that subsection.

15 (3) An order under subsection (1) or (2) may require you to comply
16 with the requirement on or before a day specified in the order.

17 (4) If an order under subsection (1) or (2) is not given to you orally by
18 the court, the proper officer of the court must cause a copy of the
19 order to be served on you in the prescribed manner.

20 **255-120 Offence**

- 21 (1) You commit an offence if:
22 (a) you are subject to an order under subsection 255-115(1) or
23 (2); and
24 (b) you fail to comply with the order.

25 Penalty: 50 penalty units or imprisonment for 12 months, or both.

26 (2) An offence against subsection (1) is an offence of strict liability.

27 Note: For strict liability, see section 6.1 of the *Criminal Code*.

EXPOSURE DRAFT

Compliance measures **Schedule 5**
Orders to provide security **Part 3**

1 (3) Subsection (1) does not apply to the extent that you are not capable
2 of complying with the order.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

5 **16 Application**

6 The amendments made by this Part apply in relation to a requirement to
7 give security in relation to a tax-related liability if the Commissioner
8 gives notice of the requirement under subsection 255-105(1) on or after
9 1 July 2018.

EXPOSURE DRAFT

Schedule 6 Amendments relating to employee commencement

Part 1 Disclosure of tax file numbers

1 **Schedule 6—Amendments relating to**
2 **employee commencement**

3 **Part 1—Disclosure of tax file numbers**

4 *Income Tax Assessment Act 1936*

5 **1 Section 202CG**

6 Omit all the words after “a payer of the recipient”, substitute:

7 if:

- 8 (a) the recipient provided the number in a TFN declaration to the
9 Commissioner in relation to the payer; or
10 (b) the recipient made a TFN declaration to the Commissioner in
11 relation to the payer that included a statement referred to in
12 subsection 202CB(2).

13 **2 Application**

14 The amendment made by this Part applies in relation to a TFN
15 declaration made on or after 1 July 2018.

EXPOSURE DRAFT

Amendments relating to employee commencement **Schedule 6**
Withholding information **Part 2**

1 **Part 2—Withholding information**

2 ***Taxation Administration Act 1953***

3 **3 Subsection 355-50(2) in Schedule 1 (at the end of the table)**

4 Add:

5

- | | | |
|----|---|--|
| 11 | a payer (within the meaning of Part VA of the <i>Income Tax Assessment Act 1936</i>) in relation to whom an individual has made a *TFN declaration that is in effect | (a) is of a matter that relates to the individual's income tax or other liability referred to in paragraph 11-1(b), (ca), (cb), (cc), (cd), (da) or (db); and
(b) is for the purpose of assisting the individual to give a declaration under section 15-50 to the payer; and
(c) is made as the result of a request made by the individual to the Commissioner |
|----|---|--|

6

EXPOSURE DRAFT

Schedule 6 Amendments relating to employee commencement

Part 3 Superannuation choice

1 **Part 3—Superannuation choice**

2 *Taxation Administration Act 1953*

3 **4 Subsection 355-65(3) in Schedule 1 (at the end of the table)**

4 Add:

5

- 11 An employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) of an individual is for the purpose of:
- (a) informing the individual of one or more of his or her *superannuation interests; or
 - (b) assisting the individual to choose whether to maintain or create a superannuation interest; or
 - (c) assisting the individual to give effect to such a choice

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