

EXPOSURE DRAFT



EXPOSURE DRAFT

Superannuation Guarantee (Administration) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Revenue and Financial Services

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Part 1—Preliminary

1 Name

This instrument is the *Superannuation Guarantee (Administration) Regulations 2018*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Superannuation Guarantee (Administration) Act 1992*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) actuary;
- (b) defined benefit superannuation scheme;
- (c) MySuper member;
- (d) ordinary time earnings;
- (e) superannuation guarantee statement.

In this instrument:

Act means the *Superannuation Guarantee (Administration) Act 1992*.

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Part 1 Preliminary

Section 5

capital guaranteed fund has the same meaning as in the *Corporations Regulations 2001*.

eligible community service activity has the same meaning as in subsection 109(1) of the *Fair Work Act 2009*.

employer contribution rate, in relation to a member of a superannuation scheme, means the rate:

- (a) at which contributions relating to the member are paid into the superannuation fund in respect of the scheme by an employer of the member; and
- (b) that is expressed as a percentage of the member's ordinary time earnings.

minimum requisite benefit has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

parental leave includes any of the following:

- (a) maternity leave;
- (b) early paid leave for an expectant mother if the employer is unable to transfer her to a safe job;
- (c) paternity leave;
- (d) pre-adoption leave;
- (e) adoption leave.

relevant fund means any of the following:

- (a) a complying approved deposit fund;
- (b) a complying superannuation fund;
- (c) an RSA.

responsible officers means:

- (a) in relation to a relevant fund that is a complying approved deposit fund or a complying superannuation fund—the trustees of the fund; or
- (b) in relation to a relevant fund that is an RSA—the RSA provider of the RSA.

scheduled international social security agreement has the meaning given by subsection 5(1) of the *Social Security (International Agreements) Act 1999*.

shortfall component has the meaning given by sections 64A and 64B of the Act.

successor fund has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*.

Part 2—Defined benefit members

6 Circumstances in which member taken to be defined benefit member

- (1) For the purposes of paragraph 6AA(b) of the Act, subsection (2) sets out circumstances in which a member of a superannuation fund is to be taken to be a **defined benefit member** for the purposes of subsection 19(2CA) of the Act.
- (2) A circumstance is that the member:
 - (a) is a member of the scheme established under the *Military Superannuation and Benefits Act 1991* (the **military superannuation scheme**); or
 - (b) holds an interest, as a **non-member spouse** within the meaning of section 90MD of the *Family Law Act 1975*, in the military superannuation scheme; or
 - (c) has a preserved benefit in the military superannuation scheme; or
 - (d) has an ancillary account in the military superannuation scheme; or
 - (e) both:
 - (i) is a member of the scheme established under the *Defence Force Retirement and Death Benefits Act 1973*; and
 - (ii) has an ancillary account in the military superannuation scheme; or
 - (f) holds an interest, as a **non-member spouse** within the meaning of section 90MD of the *Family Law Act 1975*, in a superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*; or
 - (g) has made an election under section 137 of the *Superannuation Act 1976*; or
 - (h) is a **preserved benefit member** within the meaning of the *Public Sector Superannuation Scheme Trust Deed*.

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Part 3 Benefit certificates

Section 7

Part 3—Benefit certificates

7 Benefit certificates

- (1) An employer must obtain a benefit certificate from an actuary:
 - (a) if the employer is required to lodge a superannuation guarantee statement—on or before the day on which the superannuation guarantee statement for the quarter to which the certificate relates is lodged; or
 - (b) if the employer is not required to lodge a superannuation guarantee statement—at or before the time ascertained under subsections 10(3) and (4) of the Act; or
 - (c) on or before such later date as the Commissioner allows.
- (2) A benefit certificate must:
 - (a) include the name of each defined benefit superannuation scheme to which the certificate relates; and
 - (b) specify, or identify by reference to the governing rules of each scheme to which the certificate relates, the minimum requisite benefit; and
 - (c) specify:
 - (i) the notional employer contribution rate in relation to each scheme, or combination of schemes, to which the certificate relates; and
 - (ii) the class of members of the scheme or schemes to which the notional employer contribution rate relates; and
 - (d) include a statement to the effect that each notional employer contribution rate referred to in paragraph (c) has been calculated in accordance with this instrument; and
 - (e) specify the date of effect of the benefit certificate in relation to each scheme to which the certificate relates; and
 - (f) include the name, business address and actuarial qualifications of the actuary who issues the certificate; and
 - (g) include the signature of the actuary and the date on which the certificate is signed.

8 Notional employer contribution rate—general

- (1) Subject to subsection (2), the notional employer contribution rate in relation to a class of employees who are members of a defined benefit superannuation scheme is the rate determined in accordance with section 9 or 10.
- (2) If section 9 or 10 is not applicable to a class of employees, the notional employer contribution rate for that class is calculated in accordance with a method determined by an actuary, who certifies that the method:
 - (a) is applicable to the class; and
 - (b) is consistent with section 9 or 10; and

-
- (c) determines a rate that is comparable to the rate at which the employer of the employees must contribute to the superannuation scheme, or schemes, to provide the employees with the minimum requisite benefit.

9 Notional employer contribution rate—accumulation benefits

If, in relation to a class of employees who are members of a defined benefit superannuation scheme:

- (a) the minimum requisite benefit in respect of each employee in that class is calculated as an accumulation of employer contributions; and
- (b) the employer contribution rate used in that calculation is the same for each employee in the class;

the notional employer contribution rate in relation to the class is that employer contribution rate.

10 Notional employer contribution rate—defined benefits

- (1) For the purposes of this section:

DF, in relation to a person:

- (a) who has not turned 45—is 0.3; or
- (b) who has turned 45 but has not turned 65—is the number that is calculated by multiplying 0.00125 by:
 - (i) in the case of a person whose age, expressed in months, when he or she withdraws from a superannuation scheme is a whole number of months—the number that is equal to 780 less the number of months; or
 - (ii) in the case of a person whose age, expressed in months, when he or she withdraws from a superannuation scheme exceeds a whole number of months—the number that is equal to 779 less the number of months; or
- (c) who has turned 65—is 0.

FOTE is:

- (a) if a benefit accruing in respect of membership after 30 June 2008 is expressed in the governing rules of a superannuation scheme as a multiple of the annual ordinary time earnings of the person as at the day on which he or she withdraws from the scheme—0.0833; or
- (b) if a benefit accruing in respect of membership after 30 June 2008 is expressed in the governing rules of the scheme as a multiple of the average annual ordinary time earnings of the person in the period of 3 years ending on the day on which he or she withdraws from the scheme—0.09; or
- (c) if a benefit accruing in respect of membership after 30 June 2008 is expressed in those governing rules as a multiple of the average annual ordinary time earnings of the person in a particular number of years of membership of the person ending on the day on which he or she withdraws from the scheme:

$$0.0833 + \left(0.0022 \times A \right)$$

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Part 3 Benefit certificates

Section 10

where:

A is the number of years specified in the governing rules of the scheme ending on the day on which the person withdraws from the scheme.

FSAL is:

- (a) if *SAL* is the annual salary of the person, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992, as at the day on which he or she withdraws from the scheme—0.0833; or
- (b) if *SAL* is the average annual salary of the person in the period of 3 years ending on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992—0.09; or
- (c) if *SAL* is the average annual salary of the person in a number of years, specified in the governing rules of the scheme, ending on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992:

$$0.0833 + \left(0.0022 \times A \right)$$

where:

A is the number of years specified in the governing rules of the scheme ending on the day on which the person withdraws from the scheme.

MB has the same meaning as in subsection (5).

MCR, in relation to a member of a superannuation scheme, is the rate at which contributions are paid by the member into a superannuation fund in respect of the scheme for the period from 1 July 2008, being a rate that is expressed, for the purposes of the governing rules of the scheme, as a percentage of his or her annual ordinary time earnings.

MRB means the minimum requisite benefit in respect of the person.

NM, in relation to contributions to a superannuation scheme in respect of a person that are made after 30 June 2008, is:

- (a) in the case of a person who withdraws from the scheme at the end of a period that is a whole number of months after the day on which the first contribution was made—that whole number; and
- (b) in the case of a person who withdraws from the scheme at the end of a period that exceeds a whole number of months after the day on which the first contribution was made—the number that is equal to the sum of:
 - (i) that whole number; and
 - (ii) the fraction that is calculated by dividing the number of days in the month in which the person withdrew from the scheme, up to and including the day of withdrawal, by the total number of days in that month.

NMI, in relation to contributions to a superannuation scheme in respect of a person that are made between 1 July 1992 and 30 June 2008, is:

- (a) if the number of months from the day on which the first contribution was made to 30 June 2008 is a whole number—that whole number; and

- (b) if the number of months from the day on which the first contribution was made to 30 June 2008 exceeds a whole number—the number that is equal to the sum of:
 - (i) the whole number; and
 - (ii) the fraction that is calculated by dividing the number of days in the month in which the first contribution was made, from the day the first contribution was made to the end of the last day of the month, by the total number of days in that month.

OTE is:

- (a) if a benefit accruing in respect of the period from 1 July 2008 is expressed in the governing rules of a superannuation scheme as a multiple of the annual ordinary time earnings of a member of that scheme as at the day on which he or she withdraws from the scheme—his or her annual rate of ordinary time earnings as at that day; or
- (b) if a benefit accruing in respect of the period from 1 July 2008 is expressed in the governing rules of the scheme as a multiple of the average annual ordinary time earnings of a member of the scheme in a period referred to in paragraph (b) or (c) of the definition of **FOTE**—his or her average annual rate of ordinary time earnings in the relevant period.

PAB1 means that part of the minimum requisite benefit that accrued to the person before 1 July 1992, calculated in accordance with subsection (6).

PAB2 means that part of the minimum requisite benefit that accrued to the person between 1 July 1992 and 30 June 2008, calculated in accordance with subsection (7).

SAL is the annual salary of the member on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992, or if a benefit is expressed in the governing rules of the scheme applicable as at 30 June 1992 as a multiple of the annual salary of the member averaged over a period, his or her average annual rate of salary in the relevant period.

SALI is the amount that would have been SAL if the member had withdrawn from the scheme on 30 June 1992.

TCR has the same meaning as in subsection (4).

TR, in relation to a complying superannuation scheme, is the rate of tax payable in respect of the scheme in relation to the low tax component (within the meaning of the *Income Tax Assessment Act 1997*) of the taxable income of the scheme.

- (2) The notional employer contribution rate in relation to a defined benefit superannuation scheme in respect of a class of employees is calculated in accordance with this section if:
 - (a) MCR and TCR are greater than 0, and have not changed since 1 July 1992; and
 - (b) MCR and TCR are the same in respect of each employee in the class; and

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Section 10

- (c) TR has not changed since 1 July 2008; and
- (d) the definition of **SAL** in the governing rules of the scheme did not change between 1 July 1992 and 30 June 2008; and
- (e) no part of the minimum requisite benefit constitutes an element untaxed in the fund of the taxable component (within the meaning of the *Income Tax Assessment Act 1997*); and
- (f) the benefit certificate to which the notional employer contribution rate relates is in respect of a single superannuation scheme; and
- (g) the date of effect of the benefit certificate is on or after 1 July 2008; and
- (h) the minimum requisite benefit as at 30 June 2008 in respect of each employee in the class was equal to the amount calculated using the formula:

$$TCR \times FSAL \times NM1 \times SAL \times \left(1 - DF\right) + A \times \frac{SAL}{SAL1}$$

with the values of **SAL** and **DF** determined as at 30 June 2008 and the value of **A** calculated in accordance with subsection (6); and

- (i) the minimum requisite benefit accruing in respect of the period from 1 July 2008 in respect of each employee in the class is prescribed in the governing rules of the scheme as a multiple of:
 - (i) the annual ordinary time earnings of the employee as at the day when he or she withdraws from the fund; or
 - (ii) the average annual ordinary time earnings of the employee in a period ending when he or she withdraws from the scheme.
- (3) The notional employer contribution rate in relation to a class of employees specified in a benefit certificate relating to a defined benefit superannuation scheme is calculated using the formula:

$$\frac{TCR}{1} - \frac{MCR}{1 - TR}$$

- (4) **TCR** is calculated using the formula:

$$\frac{MB}{FOTE \times NM \times OTE \times (1 - DF)}$$

- (5) **MB** is calculated using the formula:

$$MRB - PAB1 - PAB2$$

- (6) **PABI** is calculated using the formula:

$$\frac{A \times SAL}{SAL1}$$

where:

A is the lesser of:

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- (a) the amount of the benefit vested in the member as at 30 June 1992 in accordance with the governing rules of the superannuation scheme; and
- (b) the amount of the benefit that has accrued in respect of the member as at 30 June 1992 in accordance with those governing rules.

(7) **PAB2** is calculated using the formula:

$$\text{TCR} \times \text{FSAL} \times \text{NM1} \times \text{SAL} \times (1 - \text{DF})$$

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Part 4 Liability of employers to pay superannuation guarantee charge

Section 11

Part 4—Liability of employers to pay superannuation guarantee charge

11 Certain employees excluded

For the purposes of paragraph 27(1)(d) of the Act, each of the following employees is a prescribed employee:

- (a) an employee who has been appointed by a company operating in Australia to be the national managing executive or deputy national managing executive or a state manager and who is the holder of:
 - (i) a Subclass 456 (Business (Short Stay)) visa granted under the *Migration Act 1958*; or
 - (ii) a Subclass 400 (Temporary Work (Short Stay Specialist)) visa granted under that Act;
- (b) an employee who is the holder of a visa referred to in paragraph (a) if:
 - (i) the employee holds a position as a senior executive of a company operating in Australia or is establishing a business activity in Australia on behalf of the employer; and
 - (ii) the employee's position carries substantial executive responsibility; and
 - (iii) the employee's qualifications for the position are appropriate; and
 - (iv) the employee's position is a full-time position;
- (c) an employee who is the holder of a Subclass 482 (Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under the *Migration Act 1958* if:
 - (i) the employee has been appointed by a company operating in Australia to be the national managing executive or deputy national managing executive or a state manager; and
 - (ii) the employee was nominated as mentioned in clause 482.212 of Schedule 2 to the *Migration Regulations 1994* or in paragraph 457.223(2)(c) or 457.223(4)(a) of that Schedule (as in force before 18 March 2018);
- (d) an employee who is the holder of a Subclass 482 (Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under the *Migration Act 1958* if:
 - (i) the employee holds a position as a senior executive of a company operating in Australia; and
 - (ii) the employee was nominated as mentioned in clause 482.212 of Schedule 2 to the *Migration Regulations 1994* or in paragraph 457.223(2)(c) or 457.223(4)(a) of that Schedule (as in force before 18 March 2018); and
 - (iii) the employee's position carries substantial executive responsibility; and
 - (iv) the employee's qualifications for the position are appropriate; and
 - (v) the employee's position is a full-time position;

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- (e) an employee who is the holder of a Subclass 482 (Temporary Skill Shortage) visa or a Subclass 457 (Temporary Work (Skilled)) visa granted under the *Migration Act 1958* if:
 - (i) the employee is establishing a business activity in Australia on behalf of the employer; and
 - (ii) the employee's position carries substantial executive responsibility; and
 - (iii) the employee's qualifications for the position are appropriate; and
 - (iv) the employee's position is a full-time position.

12 Certain salary or wages excluded

- (1) For the purposes of paragraph 27(1)(e) of the Act, the following are prescribed:
 - (a) salary or wages paid to an employee for a period of parental leave;
 - (b) salary or wages:
 - (i) paid to an employee who is engaging in an eligible community service activity; and
 - (ii) paid by the employee's usual employer while the employee is absent from his or her usual employment;
 - (c) salary or wages:
 - (i) paid to an employee who is undertaking service with the Australian Defence Force; and
 - (ii) paid by the employee's usual employer while the employee is absent from his or her usual employment;
 - (d) salary or wages consisting of a payment of green army allowance (within the meaning of the *Social Security Act 1991*);
 - (e) if a scheduled international social security agreement provides that an employer to which salary or wages relate is not subject to the Act in relation to the work for which the salary or wages were paid—the salary or wages so paid.
- (2) Paragraph (1)(b) does not apply to the salary or wages of an employee who engages in the eligible community service activity in the capacity of an employee of the employer that carries on the activity.
- (3) Paragraph (1)(c) does not apply to salary or wages paid by the Australian Defence Force (other than salary or wages to which section 29 of the Act applies).
- (4) Paragraphs (1)(b) and (c) do not apply to a payment relating to:
 - (a) annual leave; or
 - (b) sick leave; or
 - (c) long service leave;that is paid in relation to the period during which the employee is engaged in the relevant activity or performing the relevant work.

13 Nominal interest component—rate applicable

For the purposes of section 31 of the Act, the rate applicable is 10% per annum.

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Part 5 Choice of fund requirements

Section 14

Part 5—Choice of fund requirements

14 Requirement for providing or offering insurance in respect of death

MySuper members

- (1) For the purposes of paragraph 32C(2)(d) of the Act, for a MySuper member, other than a member who is a defined benefit member, the requirement is that insurance be provided by the fund in the event of the death of the member:
 - (a) for a person of an age in an age range mentioned in subsection (5)—at the level mentioned or higher; or
 - (b) for a person who is under 56 years—at a premium of at least \$0.50 per week, or the equivalent.
- (2) However, if a MySuper member, other than a member who is a defined benefit member, has elected that insurance in relation to death not be provided, or that insurance in relation to death be provided at a lower level than provided for in subsection (1), the requirement is that insurance be offered by the fund in the event of the death of the member:
 - (a) for a person of an age in an age range mentioned in subsection (5)—at the level mentioned or higher; or
 - (b) for a person who is under 56 years—at a premium of at least \$0.50 per week, or the equivalent.
- (3) The provision, by a regulated superannuation fund, of insurance in respect of death in accordance with subsection (1) is subject to such reasonable conditions as the trustees of the fund determine.

Members other than MySuper members

- (4) For the purposes of paragraph 32C(2)(e) of the Act, for a defined benefit member, or a member other than a MySuper member, the requirement is that insurance be offered by the fund in the event of the death of the member:
 - (a) for a person of an age in an age range mentioned in subsection (5)—at the level mentioned or higher; or
 - (b) for a person who is under 56 years—at a premium of at least \$0.50 per week, or the equivalent; or
 - (c) if the contribution is made to a defined benefit superannuation scheme on behalf of a defined benefit member—that provides a death benefit with a future service component that is at least equivalent to the level of insurance in relation to death mentioned in paragraph (a).

Level of insurance

- (5) For the purposes of paragraph (1)(a), (2)(a) or (4)(a), the level of insurance in respect of death is as follows:
 - (a) if the person is aged from 20 to 34 years—\$50,000;
 - (b) if the person is aged from 35 to 39 years—\$35,000;

- (c) if the person is aged from 40 to 44 years—\$20,000;
- (d) if the person is aged from 45 to 49 years—\$14,000;
- (e) if the person is aged from 50 to 55 years—\$7,000.

Exceptions

- (6) The requirement in subsection (1), (2) or (4) does not apply to an employer:
 - (a) if, on or after 1 July 2005, the employer is making contributions under a Federal award in respect of an employee to a fund that does not meet the requirement—to the extent that the employer continues to contribute to a fund under that award in respect of the employee; or
 - (b) if the employer makes contributions to an RSA on behalf of an employee—to the extent that the requirement relates to the employee; or
 - (c) if the employer makes contributions to a capital guaranteed fund on behalf of an employee—to the extent that the requirement relates to the employee; or
 - (d) to the extent that the requirement relates to an employee in respect of whom an arrangement by the employer results in the provision of insurance cover that includes death cover:
 - (i) other than with the fund that the employer will contribute to if the employee does not make a choice; and
 - (ii) at a level that is at least equivalent to the level mentioned in subsection (1), (2) or (4); and
 - (iii) that does not provide for a potential benefit to the employer following the death of the employee; or
 - (e) if, due to a particular employee's health, occupation, hours worked or other circumstances determined by an insurer, the insurance requirement mentioned in subsection (1), (2) or (4) is not available in respect of the employee from the fund normally used by the employer; or
 - (f) if, in respect of an employee, the employer makes contributions:
 - (i) to a fund or successor fund governed by rules that, on 11 March 2005, determined that an amount of not less than \$50,000 will be payable in respect of the death of an employee; and
 - (ii) that were continuing on, or commenced after, 11 March 2005.

15 Contributions under prescribed legislation

For the purposes of subsection 32C(9) of the Act, a contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if:

- (a) the contribution is made on or after 1 July 2005 under any of the following laws:
 - (i) the *Parliamentary Superannuation Act 2004*;
 - (ii) the *First State Superannuation Act 1992* (NSW);
 - (iii) the *Emergency Services Superannuation Act 1986* (Vic.);
 - (iv) the *Parliamentary Salaries and Superannuation Act 1968* (Vic.);
 - (v) the *State Employees Retirement Benefits Act 1979* (Vic.);

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Part 5 Choice of fund requirements

Section 16

- (vi) the *State Superannuation Act 1988* (Vic.);
- (vii) the *Transport Superannuation Act 1988* (Vic.);
- (viii) the *Coal Industry Superannuation Act 1989* (WA);
- (ix) the *Fire and Emergency Services Superannuation Act 1985* (WA);
- (x) the *State Superannuation Act 2000* (WA);
- (xi) the *Electricity Corporations Act 1994* (SA);
- (xii) the *Local Government Act 1999* (SA); or
- (b) the contribution is made on or after 1 August 2009 under the *Southern State Superannuation Act 2009* (SA); or
- (c) the contribution is made on or after 1 July 2010 under the *Local Government Act 2009* (Qld); or
- (d) the contribution is made on or after 31 March 2017 under the *Public Sector Superannuation Reform Act 2016* (Tas.).

16 Chosen funds—information to be provided by employee

For the purposes of subparagraph 32FA(1)(a)(ii) of the Act, the following information is prescribed:

- (a) the employee's account name in the fund;
- (b) if the fund uses a number or other unique identifier to refer to the employee's account—the number or identifier that relates to the account;
- (c) the full name of the fund;
- (d) if the fund has an Australian Business Number—the number;
- (e) a written statement that complies with subsection 25(1) of the Act from the trustee of the fund;
- (f) if the fund is a self managed superannuation fund within the meaning of section 17A of the *Superannuation Industry (Supervision) Act 1993*—evidence from the Australian Taxation Office that the fund is a regulated superannuation fund (within the meaning of that Act);
- (g) information concerning the method of payment for the employee's contributions, and details necessary to make the payment;
- (h) if the fund uses a number or other unique identifier to refer to its superannuation products—the number or identifier that relates to the product provided to the employee;
- (i) if the employer uses a number or other unique identifier to refer to the employee—the number or identifier that relates to the employee.

17 Standard choice form

For the purposes of paragraphs 32P(1)(e) and (g) of the Act, the standard choice form is the form approved for those paragraphs under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

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Part 6—Payments of amounts of shortfall components for the benefit of employees

18 Employee must be notified of certain shortfall components

- (1) The Commissioner must give written notice to an employee if the employee's shortfall component exceeds \$20.
- (2) The Commissioner may give written notice to an employee if the employee's shortfall component is equal to or less than \$20.
- (3) A notice must:
 - (a) state the date of the notice; and
 - (b) state the name of the employer; and
 - (c) state the amount, or the sum of the amounts, of the shortfall component.
- (4) A notice may also specify a relevant fund for the purposes of subsection 19(5).
- (5) The Commissioner may give more than one notice under this section.

19 Responses to notice of a shortfall component

- (1) This section applies to an employee who receives a notice under section 18.
- (2) If the employee is under 55 years and has retired from the workforce because of permanent incapacity or permanent invalidity, the employee must lodge the documents mentioned in paragraph 66(b) of the Act.
- (3) If the employee has died, the legal personal representative of the deceased employee must lodge:
 - (a) written notice of the death, signed by the legal personal representative; and
 - (b) a copy of the death certificate of the deceased employee.
- (4) If subsections (2) and (3) do not apply, and the notice does not specify a relevant fund, the employee may:
 - (a) request in writing the responsible officers of a relevant fund to collect from the Commissioner the amount, or the sum of the amounts, of the shortfall component; or
 - (b) lodge a written nomination of a relevant fund.
- (5) If:
 - (a) subsections (2) and (3) do not apply; and
 - (b) the notice specifies a relevant fund; and
 - (c) the employee does not wish to have the amount, or the sum of the amounts, of the shortfall component paid into the relevant fund specified in the notice;the employee may lodge a written nomination of another relevant fund.

EXPOSURE DRAFT

Part 6 Payments of amounts of shortfall components for the benefit of employees

Section 20

20 Obligation of responsible officers who receive a request from an employee

- (1) This section applies if the responsible officers of a relevant fund receive a request under paragraph 19(4)(a) or 22(a).
- (2) The responsible officers must:
 - (a) give the employee written notice of receipt of the request; and
 - (b) specify in the notice the date of its receipt.

Penalty: 5 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

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

- (4) If the responsible officers decline to comply with the request, the responsible officers must notify the employee within 14 days after receiving the request.

Penalty: 5 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

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

- (6) If the responsible officers agree to comply with the request, the responsible officers must lodge the request, or a copy of it, at an office of the Australian Taxation Office, within:

- (a) 14 days after receiving the request; or
- (b) a further period determined by the Commissioner in writing.

Penalty: 5 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

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

21 Responses to notice are nominations

- (1) If a request, or a copy of the request, is lodged by the responsible officers of a relevant fund under subsection 20(6), the employee is taken to have nominated the fund specified in the request for the purposes of paragraph 65(1)(b) of the Act.
- (2) A written nomination of a relevant fund lodged under paragraph 19(4)(b), subsection 19(5) or paragraph 22(b) is a nomination for the purposes of paragraph 65(1)(b) of the Act.
- (3) If a notice given under section 18 specifies a relevant fund, and the employee does not otherwise nominate another relevant fund within 28 days after the date of the notice, the employee is taken, for the purposes of paragraph 65(1)(b) of the Act, to have nominated the relevant fund specified in the notice.

EXPOSURE DRAFT

Payments of amounts of shortfall components for the benefit of employees **Part 6**

Section 22

22 Nomination of relevant fund by employee

Whether or not the Commissioner has given an employee a notice under section 18, the employee may:

- (a) request in writing the responsible officers of a relevant fund to collect from the Commissioner the amount, or the sum of the amounts, of the employee's shortfall component; or
- (b) lodge, at an office of the Australian Taxation Office, a written nomination of a relevant fund.

23 Shortfall component not to be paid in certain circumstances

The Commissioner must not pay the amount of a shortfall component in respect of an employee unless sufficient information is reasonably available to the Commissioner to allow him or her to identify the employee.

EXPOSURE DRAFT

Part 7 Miscellaneous

Section 24

Part 7—Miscellaneous

24 Approved clearing houses

For the purposes of subsection 79A(3) of the Act, the Australian Taxation Office is an *approved clearing house*.

Part 8—Application and transitional provisions

25 Application—contributions

Paragraph 15(d) applies in relation to contributions made on or after 31 March 2017 under the *Public Sector Superannuation Reform Act 2016* (Tas.).

26 Things done under the *Superannuation Guarantee (Administration) Regulations 1993*

- (1) If:
 - (a) a thing was done for a particular purpose under the *Superannuation Guarantee (Administration) Regulations 1993* as in force immediately before those Regulations were repealed; and
 - (b) the thing could be done for that purpose under this instrument;
the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

EXPOSURE DRAFT

Schedule 1 Repeals

Schedule 1—Repeals

Superannuation Guarantee (Administration) Regulations 1993

1 The whole of the instrument

Repeal the instrument.