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Superannuation (Government Co-contribution for Low Income Earners) Bill 2002

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Superannuation (Government Co-contribution for Low Income Earners) Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent

Purpose

To provide for superannuation contributions to be made by Government for the benefit of low income earners.

Background

Federal and State legislation require employers to make provision for employees' retirement by making them contribute to superannuation funds on behalf of their employees.[1] In addition to using compulsion, the Federal income tax laws provide numerous incentives to encourage employers and employees to contribute to superannuation funds, including the following:

- employer superannuation contributions (for the benefit of employees) are deductible to the employer
- superannuation fund earnings and capital gains are taxed at concessional rates
- employee (or undeducted) superannuation contributions are exempt from tax
- superannuation benefits taken at retirement age are taxed at concessional rates
- an 18 per cent rebate on spouse contributions of up to $3000 per annum to the superannuation fund of a spouse who has an assessable income of $10 800 or less per annum. The rebate phases out and is not available when the low-income spouse's assessable income is $13 800 or more per annum.

- a 15 per cent tax rebate on the assessable part of certain annuity or pension payments, and
- low income employees are entitled to a tax rebate of up to $100 for personal contributions made to a superannuation fund (called the 'low income superannuation rebate' (LISR)).

This Bill introduces a Government co-contribution that will replace the LISR. The LISR is:

- payable to an employee who receives any form of employer superannuation support (but is not a 'self employed person')
- a tax rebate of up to $100 for personal contributions made to a complying superannuation fund
- payable to employee's who have assessable (i.e. gross) income less than $31 000
- calculated as ten per cent of the lesser of:
  - $1000 reduced by 25 cents for each dollar of the taxpayer's assessable income over $27 000, or
  - the contribution actually made.[2]

Basis of policy commitment

During the 2001 election campaign, the Government released *A Better Superannuation System*[3] containing 13 proposed reforms to superannuation, including a promise to replace the LISR with a more generous Government co-contribution for low income earners.

The 2002-03 Budget provided further details about the implementation of these proposals. The following sections are reproductions of the Budget announcements on the Government co-contribution.

A Better Superannuation System — Government superannuation co-contribution for low income earners

Expenses ($m)

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	95.0	100.0	105.0

Explanation

From 1 July 2002, a Government superannuation co-contribution will be introduced in place of the existing rebate for personal superannuation contributions made by eligible low income earners. The co-contribution will match personal undeducted contributions by low income earners made on or after 1 July 2002.

A maximum co-contribution of $1000 will be payable in respect of individuals whose assessable income and reportable fringe benefits do not exceed $20 000 per annum. The maximum co-contribution will be reduced by 8 cents for each dollar of assessable income and reportable fringe benefits over $20 000 (up to $32 500). The co-contribution will be treated as an undeducted contribution for tax purposes.

To be eligible for the co-contribution, an individual must not be aged 71 or more and must be ineligible to claim a tax deduction for their personal contributions. Persons who receive spouse, but not employer, superannuation support will be eligible for a tax deduction for their personal contributions.

See the related expense measure titled *A Better Superannuation System — Government superannuation co-contribution for low income earners — implementation and administration* and also the related revenue measure titled *A Better Superannuation System — replacement of the rebate for personal superannuation contributions* in the Treasury portfolio.

A Better Superannuation System — replacement of the rebate for personal superannuation contributions

Revenue ($m)

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	10.0	10.0	10.0

Explanation

From 1 July 2002, the existing rebate for personal undeducted superannuation contributions will be replaced with a more generous Government co-contribution. The Government co-contribution will match personal undeducted superannuation contributions made by eligible low income earners up to a maximum of $1000 a year depending on the individual's level of income and contributions.

Low income earners are currently entitled to a maximum rebate of $100 in respect of personal undeducted superannuation contributions. Eligible persons will still be able to claim the rebate in respect of contributions made up to 30 June 2002.

See also the related expense measures titled *A Better Superannuation System — Government superannuation co-contribution for low income earners* and *A Better*

Superannuation System — Government superannuation co-contribution for low income earners — implementation and administration in the Treasury portfolio.[4]

Position of significant interest groups/press commentary

Superannuation expert Dr Vince FitzGerald has proposed changes to the Government co-contribution that may increase its impact. Dr FitzGerald suggested that reducing the Government co-contribution from a dollar for dollar basis to 50 cents for each dollar contributed could enable the level of income earners targeted to increase range upward from the Government's proposed $20 000 to $30 000.[5]

Under Dr FitzGerald's proposal, a woman returning to the workforce at age 45, earning $35 000 a year, and who works for 15 years until retirement at age 60 could improve her retirement income from $15 681 a year (or 58.6 per cent of pre-retirement consumption expenditure) to $17 371 a year (or 64.9 per cent of pre-retirement consumption expenditure) through 15 years of voluntary contributions at $1000 a year with a co-contribution of $500 a year. Dr FitzGerald also claims that under his proposal, improved levels of adequacy could be achieved for a cost not much higher than the estimated cost of the co-contributions scheme in the 2002 Federal Budget. He claims that a scheme offering $1 for $2 up to annual income of $30 000 would cost $102 million a year for total extra contributions of $251 million a year. A scheme offering $1 for $2 up to annual income of $40 000 would cost $158 million a year for total extra contributions of $371 million a year.[6]

Pros and cons of the Government co-contribution

The following arguments are based on the assumptions that a Government co-contribution is one possible method of increasing the retirement savings of low income earners.

Advantages

- Free money for low income earners. The Bill will improve the retirement income of lower income earners. Compulsory superannuation (in particularly the Superannuation Guarantee system) was designed to improve the retirement income of people beyond what would be received on the age pension alone. This Bill targets low income earners, those persons most likely to receive an age pension, and improves their retirement income.

- The Bill improves the vertical equity in the superannuation system. It provides a targeted incentive for lower income taxpayers, particularly those earning less than $20 000 per year, who make personal superannuation contributions. For every dollar up to $1000 they contribute to a superannuation fund, the Government will provide a co-contribution on a dollar-for dollar basis. Persons earning up to $32 000 will also benefit.

- The Bill minimises the impact on superannuation funds by largely using existing superannuation reporting systems[7] to obtain the information required to determine eligibility for a Government co-contribution.

- The Bill does not impose any additional costs or burdens on low income earners as it uses existing reporting systems to determine who is eligible for a Government co-contribution.

Disadvantages

- The Bill narrows the tax base. It abolishes a relatively inexpensive rebate (costing $10 million per year) and replaces it with a Government superannuation co-contribution scheme initially costing $95 million per year – an increased outlay of $85 million per year.

- The Bill does not enhance horizontal equity. Different taxpayers receive different relative advantages by saving through superannuation. The Government's major superannuation reforms to date[8] have been the superannuation surcharge (a tax on high income earners) and the Government co-contribution (a hand-out for low income earners). Superannuation policy has been based on a kind of 'Robin Hood' principle (take from the rich and give to the poor) rather than detailed economic arguments.

- No reduction in complexity for low income earners. The Bill abolishes a rebate that taxpayers have to apply for on their tax return. The Bill replaces the rebate with a Government co-contribution where a low income earner will need to claim their entitlement to a Government co-contribution by answering 'additional questions on the tax return.'[9] The taxpayer will have to provide the *exact* name of their superannuation fund (including superannuation fund number, member number, account details).

- The Bill entrenches aspects of the superannuation surcharge by using its reporting system in the collection of information for assessing entitlement to Government co-contribution. The superannuation surcharge has been criticised for its complex administration, clumsy assessment procedures and on-going administration costs that are born not just by high income earners, but all superannuation fund members.[10] Basing the Government co-contribution information provisions on the superannuation surcharge information collection and reporting mechanisms entrenches a much maligned and inefficient surcharge administration system.

- Additional costs on superannuation funds. Despite largely using existing superannuation reporting systems, the Bill will require superannuation funds to change their systems to report personal superannuation contributions to the Australian Taxation Office. Some defined benefit superannuation funds will have to change their rules to permit the acceptance of Government co-contributions.[11]

Main Provisions

The Bill is comprised of nine parts, each of which is discussed below.

Calculating the Government co-contribution

Part 2 of the Bill sets out the details of who is eligible for a Government co-contribution, and the amount of the co-contribution.

Item 6 provides that a Government co-contribution is payable to a person if:

- the person makes an 'eligible personal superannuation contribution' during an income year, and
- the person has employer-supported superannuation for the income year, and
- the person's 'total income' for the income year is less than $32 500, and
- an income tax return for the person has been lodged, and
- the person is less than 71 years old at the end of the income year, and
- the person does not hold an eligible temporary resident visa at any time.

Item 7 defines 'eligible personal superannuation contribution' as a contribution made after 1 July 2002 to a complying superannuation fund or retirement savings account (RSA). **Item 8** defines 'total income' as the sum of a person's assessable income and reportable fringe benefits for the income year.

Item 9 establishes a general rule that the Government co-contribution is equal to the sum of the 'eligible personal superannuation contributions' the person makes in an income year. This general rule is subject to **proposed sections 10**, **11**, **12**, **21**, **22** and **23**.

Item 10 sets the maximum Government co-contribution at $1000 for total incomes of $20 000 and less. For persons with total income between $20 000 and $32 000, the $1000 maximum is reduced by 8 cents for each dollar by which the person's total income exceeds $20 000. **Item 10** is subject to **proposed sections**, **11**, **12**, **21**, **22** and **23**.

Item 11 provides that if the Government contribution calculated under **items 9** and **10** is less than $20, the amount of Government co-contribution is to be increased to $20.

Item 12 enables the Government co-contribution to be increased by an interest component if the Government co-contribution is paid late. The interest is calculated on:

- the amount of Government co-contribution unpaid on the payment date

- the period from the payment date for the Government co-contribution until the day on which it is paid in full, and
- on a daily basis using a rate specified in the regulations.

Amount of Government co-contribution

How the Commissioner of Taxation determines whether a Government co-contribution is payable to a person is covered by **Part 3**.

Item 13 provides that the Commissioner of Taxation must determine that a Government co-contribution can be paid to a superannuation fund if the person is entitled to a Government co-contribution. Regulations may be made to prescribe the time in which such determinations are to be made.

In deciding whether to make such a determination, **item 14** requires that the Commissioner of Taxation have regard to the income tax return lodged for the person for the income year, and information about contributions made to a complying superannuation fund or RSA under superannuation surcharge legislation.[12] This enables the Commissioner to determine whether the person has employer provided superannuation support using the employer contributed amounts reported by providers under those Acts. In essence, the Government co-contribution 'piggy-backs' off the information provided under surcharge legislation. In making a determination, the Commissioner can also use information provided in statements given under **items 26**, **30** and **31**.

Payment of the Government co-contribution

How a Government co-contribution is paid, namely to whom and when it is to be paid, as well as the information that will be given when a co-contribution is paid is covered by **Part 4**.

Item 15 provides that where the Commissioner has determined that a Government co-contribution is be paid, the Commissioner must determine whether the co-contribution is to be paid to a member's account in a complying superannuation fund, RSA, the Superannuation Holding Accounts Reserve (SHAR), the person or their legal representative. **Item 16** requires superannuation fund trustees and RSA providers to repay Government co-contributions to the Commonwealth (and provide the Commissioner prescribed information) if the trustee of RSA provider is unable to credit the member's account with the co-contribution. Failure to comply is an offence of strict liability.

The Commissioner must also give information in relation to the co-contribution at the time it is paid to the trustee of a complying superannuation fund, RSA provider, the person or their legal representative (**item 18**).

Underpayments and overpayments

Overpayments and underpayments of Government co-contributions are covered by **Part 5** of the Bill.

In some instances, the Commissioner may make a co-contribution less than the correct amount, that is, makes an underpayment (**item 19(2)**). If the Commissioner is satisfied that there has been an underpayment, the amount of underpayment must be determined and then paid to the trustee of a complying superannuation fund, RSA provider, the person or their legal representative, or SHAR (**items 19(1) (3)** and **(4)**). The Commissioner must also determine which account the underpaid amount is to be paid to (**item 19(5)**). Regulations may also prescribe the times within which the determination is to be made (**item 19(7)**).

Item 20 requires superannuation fund trustees and RSA providers to repay underpaid amounts to the Commonwealth (and provide the Commissioner prescribed information) if the trustee of RSA provider is unable to credit the underpaid amount member's account. Failure to comply is an offence of strict liability.

Item 21 enables the Government co-contribution to be increased by an interest component if the underpaid amount is paid late. The interest is calculated on:

- the amount of unpaid amount that is not paid by its payment date
- the period from the payment date for the unpaid amount until the day on which it is paid in full, and
- on a daily basis using a rate specified in the regulations.

In some instances, the Commissioner may make a co-contribution greater than the correct amount, or make a co-contribution to a person not entitled to such a payment for that income year. Such a payment is called an overpayment (**item 24(2)**). If the Commissioner is satisfied that there has been an overpayment, the amount of overpayment must be recovered by one of the following methods (**item 24(3)**):

- deducting the whole or part of the amount overpaid from any Government co-contribution
- debiting the whole or part of the amount overpaid an account of the person in the SHAR
- recovering the whole or part of the amount overpaid from a superannuation fund or RSA provider, the person or their legal representative as a debt due to the Commonwealth

Information gathering

Part 6 covers the Commissioner's gathering of information needed to make a decision about Government co-contributions. Information gathering is an essential part of the administration of the co-contribution scheme.

This part obliges:

- superannuation funds and RSA providers to give statements and information to the Commissioner (**items 26** and **31**)
- superannuation funds and RSA providers to give statements to other superannuation funds and RSA providers where contributed amounts are transferred (**item 27**)
- superannuation funds and RSA providers to give statements to member on request (**item 28**)
- superannuation funds and RSA providers to provide information in a particular form required by the Commissioner (**item 29**)
- a member or their legal representatives to provide the Commissioner with information (when requested to do so) (**item 30**)
- a superannuation provider to give the Commissioner information (when required to do so) (**item 31**)
- records to be kept and retained by the superannuation fund/RSA provider (**item 32**)

If the Commissioner has reasonable grounds to believe a superannuation fund or RSA provider has committed an offence, an infringement notice may be served (**item 33**).

If an infringement notice has been served, it has to contain certain information in relation to the person on whom it is served and the various matters relating to the offence (**item 34**).

Other administrative matters

Parts 7 to 9 provide details of various administrative matters, including:

- the Commissioner having the general administration of the Bill (**item 46**)
- the review of decision by the Commissioner and under judicial review under the *Administrative Decisions (Judicial Review) Act 1977*, but not the Administrative Appeals Tribunal or the courts (**items 49** to **51**)

- secrecy provisions consistent with other acts administered by the Commissioner (**item 53**)
- providing a regulation making power enabling the Governor-General to make regulations (**item 55**), and
- a dictionary, or an explanation of the terms that are defined to have a particular meaning when used in this Bill (**item 56**).

Concluding Comments

Low income earners are the beneficiary of this Bill. They will receive 'free money' in the form of a deposit into their retirement savings held in their superannuation fund or RSA. Over time, through additional contributions and the compounding of interest, recipients will have a higher retirement benefit than they would have without Government contributions. If higher retirement incomes for low wage earners are the goal, questions should arise over whether a Government co-contribution, in the method proposed by this Bill is the best method to achieve such a goal. The implementation mechanism should prompt such inquiries: it uses the information collection mechanism of the superannuation surcharge, a mechanism that has been derided for its complex administration, clumsy assessment procedures and on-going administration costs born by all superannuation fund members.

Endnotes

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1 Superannuation funds are trusts, run and administered by trustees for the benefit of members.

2 See *Income Tax Assessment Act 1936*, subdivision AAC of Division 17 of Part III.

3 Liberal Party of Australia, press release, 5 November 2001. <http://search.aph.gov.au/search/ParlInfo.ASP?Folder=PRESSREL&Criteria=item_id:646581;&action=bookmark>

4 The Hon. Peter Costello, MP, Treasurer, *Budget Measures 2002-03 Budget Paper No. 2*, pp. 15, 161.

5 Barrie Dunstan, 'Charge of the light-on brigade,' *The Australian Financial Review*, 7 August 2002.

6 Investment and Financial Services Association, *Extending super co-contributions worthy of serious consideration*, press release of 5 August 2002. <http://www.ifsa.com.au>

7 That is, those reporting systems employed under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

8 Except possibly, choice of superannuation fund. This was been rejected by the previous Parliament and reintroduced in the Superannuation Legislation amendment (Choice of Superannuation Funds) Bill 2002.

9 Superannuation (Government Co-contribution for Low Income Earners) Bill 2002, *Explanatory Memorandum*, p. 35.

10 See the 23rd report of the former Senate Select Committee on Superannuation, *Superannuation Surcharge Legislation*, especially Chapter 4: The Proposed Collection Mechanism.

11 Superannuation (Government Co-contribution for Low Income Earners) Bill 2002, *Explanatory Memorandum*, pp. 33, 34.

12 That is, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.