

2002-2003

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION (GOVERNMENT CO-CONTRIBUTION FOR LOW INCOME
EARNERS) BILL 2003

SUPERANNUATION (GOVERNMENT CO-CONTRIBUTION FOR LOW INCOME
EARNERS) (CONSEQUENTIAL AMENDMENTS) BILL 2003

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello, MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
CPF	constitutionally protected fund
CPF Act 1997	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>
CSS	Commonwealth Superannuation Scheme
CSS Board	Commonwealth Superannuation Scheme Board
DFRDB	Defence Force Retirement and Death Benefits
GIC	general interest charge
Government Co-contribution Bill	<i>Superannuation (Government Co-contribution for Low Income Earners) Bill 2003</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MSBS	Military Superannuation Benefits Scheme
RSA	retirement savings account
RSA Regulations 1997	Retirement Savings Account Regulations 1997
RSAA 1997	<i>Retirement Savings Account Act 1997</i>
SA 1976	<i>Superannuation Act 1976</i>
SCTACA 1997	<i>Superannuation Contributions Tax (Assessment and Collection Act) 1997</i>
SHAR	Superannuation Holding Accounts Reserve
SROCA 1993	<i>Superannuation (Resolution of Complaints) Act 1993</i>
SSAA 1995	<i>Small Superannuation Accounts Act 1995</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TFN	tax file number

General outline and financial impact

Superannuation (Government Co-contribution for Low Income Earners) Bill 2003

This bill will provide for contributions to be made by the Government towards the superannuation of low income earners and outlines:

- how the Government will determine the persons in respect of whom a Government co-contribution is payable and the amount of the Government co-contribution;
- the method of payment of the Government co-contribution and where adjustments may be necessary for underpayments and overpayments;
- information gathering by the Commissioner and between superannuation providers and members; and
- powers of the Commissioner and other general administrative arrangements, including the review of decisions.

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003

This bill will amend various Acts. These amendments are as a consequence of the Government Co-contribution Bill.

These amendments relate to the:

- eligibility for Government co-contributions;
- taxation treatment of Government co-contributions;
- co-contribution arrangements for certain Defence personnel and Commonwealth employees;
- review of certain decisions about the administration of the Government co-contributions;

- use of the SHAR for Government co-contributions in some circumstances; and
- interest that may be levied on late repayments of Government co-contribution overpayments.

Date of effect: The measure generally applies in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2002.

Proposal announced: The measure was foreshadowed in the Government's policy statement *A Better Superannuation System* on 5 November 2001, and clarified in the Minister for Revenue and Assistant Treasurer's Press Release No. 43 of 14 May 2002.

Financial impact: The measure is expected to result in a budgetary cost of \$115 million in 2003-2004, \$125 million in 2004-2005 and \$115 million in 2005-2006.

Compliance cost impact: No estimates are available. Superannuation providers affected by this bill will be expected to change their systems to provide additional data to the ATO to enable the Government co-contributions to be determined without imposing additional burdens on the contributors.

Summary of regulation impact statement

Regulation impact on business

Impact: The administrative arrangements chosen are the most appropriate for administering the measure. Although the arrangements impose some initial additional costs on the superannuation industry, these costs are lower than under the alternative arrangements considered. The arrangements chosen enable the co-contributions to be determined and paid without imposing additional burdens on the contributors themselves or their employers.

Main points:

- Affected superannuation providers will be expected to change their systems to provide additional data to the ATO to enable the Government co-contributions to be determined.

- This initial additional cost is not expected to be large as the ATO will use, as far as possible, existing reporting mechanisms. The ongoing costs of these changes are not expected to be significant.
- Some additional costs are also expected to enable existing reporting mechanisms between funds and their members to be used for notification purposes.
- Some funds and providers may also need to change their rules to enable the co-contributions to be accepted on behalf of their members.

Chapter 1

Superannuation (Government Co-contribution for Low Income Earners) Bill 2003

Outline of chapter

1.1 The Superannuation (Government Co-contribution for Low Income Earners) Bill 2003 will provide for contributions to be made by the Government towards the superannuation of low income earners and outlines:

- how the Government will determine the persons in respect of whom a Government co-contribution is payable and the amount of the Government co-contribution;
- the method of payment of the Government co-contribution and where adjustments may be necessary for underpayments and overpayments;
- information gathering by the Commissioner and between superannuation providers and members; and
- powers of the Commissioner and other general administrative arrangements, including the review of decisions.

Context of reform

1.2 The measure was foreshadowed in the Government's policy statement *A Better Superannuation System* on 5 November 2001, and clarified in the Minister for Revenue and Assistant Treasurer's Press Release No. 43 of 14 May 2002.

1.3 Under this measure the Government will contribute towards the superannuation savings of eligible low income earners where they make eligible personal contributions to superannuation. Those on low incomes are currently entitled to a maximum rebate of \$100 (10% of contributions up to \$1,000) for undeducted personal superannuation contributions. The maximum rebate applies to those on or below an income of \$27,000 and tapers off for those on incomes between \$27,000 and \$31,000.

1.4 Under this measure from 1 July 2002, the Government will replace this rebate with a far more generous Government co-contribution scheme to help low income earners save for their retirement. This will be done by matching the eligible personal superannuation contributions of qualifying low income earners up to an annual amount of \$1,000. The maximum Government co-contribution would apply to those on or below an income of \$20,000 and would taper off for those on incomes between \$20,000 and \$32,500.

Summary of new law

- 1.5 This bill explains:
- who the people are in respect of whom a Government co-contribution is payable;
 - how much the Government co-contribution will be;
 - how the Commissioner determines whether a Government co-contribution is payable in respect of a person;
 - how the Government co-contribution is paid;
 - what happens if there is an overpayment or an underpayment of a Government co-contribution;
 - how the Commissioner gathers information needed for making decisions about Government co-contributions; and
 - other administrative matters, including the powers and responsibilities of the Commissioner and how to obtain a review of any decision about Government co-contributions made by the Commissioner.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>A Government co-contribution towards the superannuation of eligible low income earners will be available for qualifying personal superannuation contributions made on or after 1 July 2002.</p> <p>A maximum Government co-contribution of \$1,000 will be available for a \$1,000 contribution.</p>	<p>Rebates of taxation are currently provided for in Subdivision AAC of Division 17 of Part III of the ITAA 1936 for eligible personal superannuation contributions by eligible low income earners.</p> <p>A maximum rebate of \$100 is available for a \$1,000 contribution.</p>

Detailed explanation of new law

Preliminary provisions

1.6 Part 1 sets out the preliminary details of this bill and will commence on the day on which it receives Royal Assent (although the Act will apply to eligible personal superannuation contributions made on or after 1 July 2002 in accordance with section 7). *[Sections 1 and 2]*

1.7 This bill will bind the Crown in the Commonwealth, the Australian Capital Territory, the Northern Territory, Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island. *[Sections 3 and 4]*

1.8 This bill provides for Government co-contributions to be made towards the superannuation of low income earners. The Government co-contribution replaces the taxation rebate that was provided for in Subdivision AAC of Division 17 of Part III of the ITAA 1936. *[Section 5]*

Working out the Government co-contributions

1.9 Part 2 of this bill sets out the details of the Government co-contribution in respect of low income earners. The purpose of the provisions is to provide details of:

- the persons in respect of whom Government co-contributions will be payable;
- the contributions that attract matching Government co-contributions; and

- the rules that are required to work out the amount of a Government co-contribution, including maximum and minimum amounts and tapers.

1.10 A Government co-contribution is payable in respect of a person for an income year if a person has satisfied all of the conditions contained in section 6. [*Subsection 6(1)*]

1.11 A person must have made eligible personal superannuation contributions during the income year. This definition has been reworded slightly but has the same effect as it did in Subdivision AAC of Division 17 of Part III of the ITAA 1936 for the purposes of the taxation rebates provided for low income earners. For the contributions to qualify for the Government co-contribution they must be made on or after 1 July 2002 and must be made into a complying superannuation fund or an RSA for the purposes of obtaining superannuation benefits for the person or for the dependants of the person in the event of the person's death. [*Paragraph 6(1)(a)*]

1.12 If the contributions are made into a fund that fund must be a complying superannuation fund (for the purposes of the *Superannuation Industry (Supervision) Act 1993*) for the year of income in which the contribution is made. If a fund is subsequently found to have been a non complying superannuation fund for that income year then any contributions made to that fund will no longer be eligible personal superannuation contributions and an amount of overpaid Government co-contribution may result. [*Section 7*]

1.13 A person must have employer supported superannuation for the income year. A person must not be an eligible person for the purposes of the definition contained in Subdivision AB of Division 3 of Part III of the ITAA 1936. This definition is being amended by the Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003 to make the test revolve around this concept of employer support, as opposed to the current 'support' test which is a much broader concept. This means that a person cannot during an income year receive a deduction for eligible personal superannuation contributions under Subdivision AB of Division 3 of Part III of the ITAA 1936 and also receive a Government co-contribution. The 2 benefits will be mutually exclusive because they will both ultimately rely on whether a person is an eligible person for the purposes of that Subdivision. [*Paragraph 6(1)(b) and subsection 6(2)*]

1.14 A person's total income for the income year must be less than \$32,500. Total income is defined as the sum of a person's 'assessable income' and 'reportable fringe benefits total' for the income year, with

these concepts having the same meanings as those contained in the ITAA 1997 and the ITAA 1936 respectively. In this respect the concept of income used is identical to that used for the taxation rebates that are provided for low income earners. These amounts are derived by the Commissioner in the administration of this measure from the income tax return lodged for the person. *[Paragraph 6(1)(c) and section 8]*

1.15 A person must have an income tax return lodged for the income year. This condition is to capture those cases where ordinarily the person may not have needed to lodge an income tax return for any other reason and therefore did not do so. For example, where a person has worked but no taxation has been withheld under the PAYG withholding system. In these cases if an income tax return is not lodged no Government co-contribution will be payable. *[Paragraph 6(1)(d)]*

1.16 A person must be less than 71 years old at the end of the income year. For example, if a person's 71st birthday is on 30 June of the income year then a Government co-contribution will not be payable for that person, even if all the other conditions are satisfied. The form of test for this provision (at the end of the income year) has been used to fit into the administrative arrangements for superannuation providers and the Commissioner. The age of 71 years old is used (as opposed to 70) for this provision to ensure that people who were making eligible personal superannuation contributions whilst they were 69 years of age may still be eligible for a Government co-contribution. *[Paragraph 6(1)(e)]*

1.17 A person must not have held an eligible temporary residents visa at any time during the income year. The purpose of this condition is to ensure that persons who would otherwise receive the Government co-contribution and proceed to leave Australia could not receive this money. These people are not likely to be retiring in Australia and the policy intent of the measure is to enhance the retirement savings of low income earners but not to the benefit of temporary residents. The visa classes will be the same as those detailed in the Superannuation Industry (Supervision) Regulations 1994. *[Paragraph 6(1)(f)]*

1.18 The basic rule for working out the amount of the Government co-contribution, for persons for whom an amount is payable, is that the amount is equal to the sum of the eligible personal superannuation contributions made during the income year. This may be as a result of one or more contributions made during the year of income. This amount however is subject to various adjustments, including:

- a taper and maximum, based on the total income of the person;

- a minimum amount payable; and
- an increased amount if interest is payable.

1.19 Generally a co-contribution for an income year cannot exceed the amount of eligible personal superannuation contributions unless that person's circumstances are captured by the minimum payment rules or there is interest payable. *[Section 9]*

1.20 The amount of a Government co-contribution payable for a person for any one income year must not exceed \$1,000 if the person's total income for the income year is \$20,000 or less. Persons who make more than \$1,000 in eligible personal superannuation contributions will only ever receive the maximum available unless interest is also payable. For persons whose total income is more than \$20,000 but less than \$32,500, a taper applies to the maximum amount of Government co-contribution that may be payable for that person at each dollar of income between these amounts. *[Section 10]*

1.21 This taper is 8 cents for every whole dollar that exceeds a total income of \$20,000. For example, a person whose total income is \$27,000 has a maximum Government co-contribution available of \$440 if they make \$440 or more in eligible personal superannuation contributions. Again this may be increased if any interest is also payable on that amount. A Government co-contribution is not payable for a person whose income is \$32,500 or more under paragraph 6(1)(c). *[Section 10]*

1.22 If an amount of Government co-contribution payable for a person for any one income year is less than \$20 (either by virtue of the taper rule or contributions made that total less than \$20 for the income year) then the Government will pay a minimum amount for that person of \$20. For example, a person whose total income is \$32,450 would be entitled under sections 9 and 10 to a maximum Government co-contribution of \$4 had this rule not applied. This person will instead receive \$20. Another example is a person who may have only made a small eligible personal superannuation contribution (possibly because they only worked for one week during the year). If this amount is less than \$20, but not nil (paragraph 6(1)(a)) they will still receive \$20. This will ameliorate, to an extent, the payment of further small amounts in the superannuation industry that might have been caused by this bill. *[Section 11]*

1.23 The amount of the Government co-contribution is increased by an interest amount if the Government co-contribution is paid late in certain circumstances. That is, if the Commissioner does not pay the amount of the Government co-contribution on or before the payment date

for that co-contribution. The payment dates will be worked out in accordance with the regulations and will rely on the timing of the determinations [subsections 13(2) and 17(2)]. The purpose of this provision is to make any interest that is payable form part of the actual Government co-contribution. Therefore it will be treated for all purposes in the same manner (e.g. for taxation purposes) [subsection 12(1)].

1.24 The increase in the Government co-contribution from any interest payable (apart from interest on underpaid amounts which is dealt with under sections 19 to 23) is to be calculated under subsection 12(2):

- on the amount of the Government co-contribution that remains unpaid on the payment date (which in most of these cases will be the whole amount);
- for the period from the payment date for the Government co-contribution until the day on which the Commissioner first pays an amount in satisfaction of that co-contribution; and
- on a daily basis using a rate specified in the regulations.

Payment of Government co-contributions

1.25 Part 3 of this bill sets out the details of how the Commissioner makes determinations of any Government co-contribution payable. The purpose of the provision is to provide details of such determinations and the matters the Commissioner has regard to in making such determinations.

1.26 The Commissioner must determine that a Government co-contribution is payable in respect of a person for an income year if the Commissioner is satisfied that the Government co-contribution is payable. The Commissioner will not ordinarily notify persons affected by any determination, however persons will be notified by either their superannuation fund, RSA or the Commissioner of various details once an amount of Government co-contribution is payable [subsection 18(1)]. If the Commissioner is not satisfied that a Government co-contribution is payable for a person for an income year then no determination is made [subsection 13(1)]. However this does not mean that a decision has not been made. The Commissioner has made a decision not to make a determination [section 56, definition of 'decision']. The regulations may prescribe the time within which determinations under this section are to be made [subsection 13(2)]. In deciding whether to make a determination under section 13, the Commissioner must have regard to the items stated in paragraphs 1.27 to 1.30 [section 14].

1.27 The Commissioner must have regard to the income tax return lodged for the person for the relevant income year. This is to determine the assessable income and reportable fringe benefits total for the person as well as secondary evidence to determine whether a person has employer supported superannuation. These include income tax returns lodged for the person by the person's legal personal representative. *[Paragraph 14(1)(a)]*

1.28 The Commissioner must have regard to the information about the contributions, in respect of the person, contained in statements given to the Commissioner by the superannuation providers under the SCTACA 1997 and the CPF Act 1997. This is to determine whether a person has employer supported superannuation using the employer contributed amounts reported by providers under those Acts. In addition, for the first year of operation of this scheme, these statements will be the primary source of information used to estimate the eligible personal superannuation contributions made by persons during the income year, using the contributed amounts reported under those Acts. *[Subparagraphs 14(1)(b)(i) and (ii)]*

1.29 The Commissioner must also have regard to the information about the contributions made to a complying superannuation fund or RSA by the person contained in statements given to the Commissioner under section 26. These statements will only be for financial years that start on or after 1 July 2003. The information in these statements will be primarily used by the Commissioner to determine the amount of eligible personal superannuation contributions. *[Subparagraph 14(1)(b)(iii)]*

1.30 The Commissioner must have regard to the information provided in response to a request by the Commissioner under sections 30 and 31. This includes information from persons or their legal personal representatives or superannuation providers. This information will supplement any information provided under paragraphs 14(1)(a) and (b) originating from income tax returns and statements from superannuation providers. To avoid doubt, subsection 6(1) means that the requirement for a person to lodge an income tax return remains despite this provision. *[Paragraph 14(1)(c)]*

1.31 The Commissioner is not required to have regard to the statements, if there are any, if a person dies during the income year and the trustee of the person's estate requests the Commissioner to make a determination before the statements referred to in paragraph 14(1)(b) are given to the Commissioner. For example, a person may die in November 2003, the trustee believes that the person may be entitled to a Government co-contribution for contributions made between July and November 2003 and the trustee requests the Commissioner to make a determination. In the absence of this provision the Commissioner would have to wait until the statements under 14(1)(b) were given to the Commissioner by the superannuation provider. *[Subsection 14(2)]*

1.32 Part 4 of this bill sets out the details of how the Commissioner makes a payment of any Government co-contribution payable. The purpose of the provision is to provide details of:

- to whom the Government co-contribution will be paid;
- when the Government co-contribution will be paid; and
- what information will be given (and by whom) when a Government co-contribution is paid.

1.33 Section 15 states that the Commissioner must determine where the Government co-contribution payment is to be directed if a determination has been made under section 13 (a Government co-contribution is payable for a person in an income year). The Commissioner will not ordinarily notify persons affected by any determination, however persons should be notified, by either their superannuation fund, RSA or the Commissioner of various details once an amount of Government co-contribution is payable. *[Subsections 15(1) and 18(1)]*

1.34 The Commissioner will only be able to pay the Government co-contribution to those persons or places listed in subsection 15(1). This subsection will not enable a person to know where the payment will be made as this will depend on the circumstances at the time of payment. The Commissioner will make the determination in the subsection in accordance with the regulations made for this section. *[Subsections 15(1) and (3)]*

1.35 The Commissioner may determine to pay the Government co-contribution to the trustee of a complying superannuation fund for crediting to an account of the person within that fund *[paragraph 15(1)(a)]*. The Commissioner may also determine to pay the Government co-contribution to the provider of an RSA for crediting to the RSA *[paragraph 15(1)(b)]*. If the Commissioner makes either of the

abovementioned determinations then the Commissioner must also determine which particular account the Government co-contribution is to be paid into [subsection 15(2)]. This is to avoid any confusion about who the Government co-contribution is to be credited for. For the purposes of crediting to an RSA provided by a life insurance company, credit means to pay as a premium in relation to that policy [section 56, definition of 'credit'].

1.36 The Commissioner may also determine to pay the Government co-contribution to the person or the person's legal personal representative or into an account of the person in the SHAR. [Paragraphs 15(1)(c) to (e)]

1.37 The payment rules may be prescribed in the regulations that deal with the determinations under subsections 15(1) and 15(2) will take account of the following circumstances (and other circumstances as they arise):

- the person has died since making the eligible personal superannuation contributions;
- the person no longer has a fund or RSA because of retirement and payout;
- a person only has a fund that has commenced paying a pension;
- the person has a fund or RSA that will not accept payments of Government co-contributions;
- the person wishes to nominate a new fund or RSA (or alternative to the expected fund or RSA that the Commissioner may decide to pay into); and
- the person no longer has a complying superannuation fund in existence.

1.38 The circumstances that will necessitate the use of the SHAR for making Government co-contribution payments will be dealt with in the regulations. The use of the SHAR is a last resort option where all other avenues have been reasonably pursued. It will be used as a holding account until the Commissioner can find a superannuation fund or RSA of the person into which the Government co-contribution can be transferred. The amendments contained in the Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003 will facilitate these transfers.

1.39 The regulations may prescribe the time within which determinations are to be made. [Subsection 15(5)]

1.40 If the Commissioner pays a Government co-contribution to a superannuation fund or RSA and the trustee or provider is not able to credit the co-contribution to an account, the trustee or provider must repay the co-contribution to the Commonwealth and give the Commissioner certain prescribed information at the time that the amount is repaid. The trustee or provider may not be able to credit the amount because the fund rules do not allow acceptance of Government co-contributions, or the person no longer has an account with that fund or RSA. The information required can be prescribed in the regulations and may assist the Commissioner to identify the unsuccessful Government co-contribution payment, including the person and amount. If the trustee fails to give the Commissioner this prescribed information, it is a strict liability offence and the penalty is 50 penalty units. [Subsections 16(1), (3) and (4)]

1.41 This is a strict liability offence because the Commissioner's reliance on that information in the administration of this measure should override the need to prove fault. Failure to comply with this regulatory provision could result in persons not receiving a Government co-contribution, as there is no application mechanism for persons in this measure. This information will be readily available and provided through existing reporting system. The Commissioner may recover from the trustee or provider the amount that the trustee or provider is liable to repay as a debt due to the Commonwealth. [Subsection 16(2)]

1.42 The Commissioner may revoke a determination under section 15 (about where to pay a Government co-contribution) if the Commissioner is satisfied that payment of the Government co-contribution cannot be effected in accordance with the determination (or it is otherwise appropriate in the circumstances) [subsection 15(4)]. For example, if a superannuation fund or RSA repays an amount under section 16, the Commissioner may choose to revoke the determination. This will mean that the *unsuccessful payment* will not have triggered the payment of any interest under section 12 since the original payment date will no longer be applicable as a result of the revocation of that determination. The Commissioner must then issue a new determination as subsection 15(1) still applies as a Government co-contribution must still be paid.

1.43 The Commissioner must pay, in accordance with the determinations under sections 13 and 15, the Government co-contribution on or before the payment date for that co-contribution. This means that the Commissioner can only pay a Government co-contribution if determinations have been made under both section 13 and section 15. The payment dates will be worked out in accordance with the regulations and

will, through the regulations, rely on the timing of these determinations (see subsections 13(2) and 15(6)). The regulations may specify a period after (or dates after) those determination dates. *[Subsections 17(1) and (2)]*

1.44 To avoid doubt the intention of the Government is that a liability to the Commonwealth arising under, or by virtue of, another taxation law, should not be offset by the Commissioner against any Government co-contribution payable. Any Government co-contribution payable may not be treated as a credit under a taxation law for the purposes of the TAA 1953.

1.45 The payment date for a Government co-contribution may be prescribed by the regulations. In some circumstances, this could be a day that occurs before the determinations are made *[subsection 17(3)]*. This will allow the Commissioner to specify a payment date earlier than the determinations for the purposes of calculating interest under paragraph 12(2)(b). This may be because no determination was made under section 13 (because the Commissioner was not satisfied at the time that a determination should be made), but the Commissioner then realises that a determination should have been made at that time. Otherwise the payment date will rely on, and be locked into, the need for determinations under sections 13 and 15 and interest will be calculated on this later than the desired date.

1.46 If the Commissioner pays a Government co-contribution to a person or their legal personal representative, the Commissioner must give the person or the representative details of the co-contribution which may be specified in the regulations. This must be done at the time the co-contribution is paid. These details when prescribed should be sufficient to explain what the payment is for and on what basis the Commissioner has made the decisions. This may include:

- the amount of the Government co-contribution;
- the income year for which it is paid; and
- the basis of the calculation.

[Subsection 18(1)]

1.47 If the Government co-contribution has been paid by the Commissioner to a trustee of a complying superannuation fund or provider of an RSA (for crediting on behalf of the person) then the Commissioner must give the trustee or provider details as specified by the regulations. This must be done at the time the Government co-contribution is paid. These details should be sufficient to allow the trustee or provider to identify for which persons and into which accounts they must credit the payment of Government co-contributions they have received from the Commissioner. *[Subsection 18(2)]*

1.48 In addition to the above, if the Government co-contribution has been paid by the Commissioner to a trustee of a complying superannuation fund or provider of an RSA (for crediting on behalf of the person) the trustee or provider will be required by the Corporations Regulations 2001 to give details of the Government co-contribution to the person together with the existing statements already required under those regulations (e.g. the annual and exit statements to members). If the Commissioner has paid the Government co-contribution into an account of the person in the SHAR, the Commissioner will be required to report the details of that deposit as provided for by Part 3 of Division 6 of the SSAA 1995 (e.g. opening statements and annual statements).
[Note to subsection 18(1)]

Underpayments and overpayments

1.49 Part 5 of this bill sets out what happens if there is an underpayment or overpayment of a Government co-contribution. The purpose of the provision is to provide details of:

- what is an underpayment;
- underpayment determinations;
- interest on underpaid amounts;
- rules for small underpayments;
- what is an overpayment;
- recovery of amounts overpaid; and
- when interest is charged as a result of a late repayment of an overpayment.

1.50 An underpayment occurs when the Commissioner pays an amount of a Government co-contribution and is satisfied that the amount

paid is less than the correct amount. This underpayment is therefore the amount by which the correct amount exceeds the amount paid.

[Subsections 19(1) and (2)]

1.51 If an underpaid amount exists, the Commissioner must determine that this underpaid amount is to be paid in respect of the person for the income year, that is, a determination is made in respect of this underpayment, much like a determination under section 13.

[Subsection 19(3)]

1.52 The Commissioner will not ordinarily notify persons affected by any determination. If the Commissioner makes such a determination the Commissioner must also determine where to pay the underpaid amount, much like a determination under section 15. Again, if the Commissioner makes a determination under paragraph 19(4)(a) or (b) the Commissioner must also determine which particular account the underpaid amount is to be paid into, and must make the subsection 19(4) and (5) determinations in accordance with the regulations. *[Subsections 19(4) to (6)]*

1.53 The regulations may prescribe the time within which determinations under section 19 are to be made, again much like sections 13 and 15. The Commissioner may revoke a determination under subsection 19(4), again much like subsection 15(4), (about where to pay the underpaid amount) if the Commissioner is satisfied that payment of the Government co-contribution cannot be affected in accordance with the determination (or it is otherwise appropriate in the circumstances). The Commissioner must pay, in accordance with the determinations under section 19, the Government co-contribution on or before the payment date for that co-contribution. *[Subsections 19(7) to (9)]*

1.54 Typically underpayments may arise in the following situations:

- a person has made eligible personal superannuation contributions to more than one superannuation fund or RSA and those providers have not lodged their contribution information with the Commissioner at the same time;
- where revised information is sent by superannuation providers about a person's contributions; and
- a person's total income was originally overstated and an amended assessment has been issued.

1.55 If the Commissioner pays an underpaid amount of Government co-contribution to a superannuation fund or RSA and the trustee or provider is not able to credit the underpaid amount to an account, the trustee or provider must repay this amount to the Commonwealth and give

the Commissioner certain prescribed information at the time that the amount is repaid. *[Subsection 20(1)]*

1.56 The trustee or provider may not be able to credit the amount because the superannuation fund rules do not allow acceptance of Government co-contributions, or the person no longer has an account with that fund or RSA. The information required will be prescribed in the regulations and will assist the Commissioner to identify the unsuccessful co-contribution underpaid amount, including the person and amount. If the trustee fails to give the Commissioner this prescribed information it is a strict liability offence and the penalty is 50 penalty units. *[Subsections 20(3) and (4)]*

1.57 This is a strict liability offence because the Commissioner's reliance on that information in the administration of this measure should override the need to prove fault. Failure to comply with this regulatory provision could result in persons not receiving a Government co-contribution, as there is no application mechanism for persons in this measure. This information will be readily available and provided through an existing reporting system. The Commissioner may recover from the trustee or provider the amount that the trustee or provider is liable to repay under this section as a debt due to the Commonwealth. *[Subsection 20(2)]*

1.58 The amount of the Government co-contribution is increased by an interest amount if the underpaid amount is not paid on or before the payment date for that amount. The payment dates will be worked out in accordance with the requirements to be prescribed in the regulations and will be reliant on the timing of the determinations. This is very similar to section 12 and only differs in respect of the payment dates and the amount that is being paid. *[Subsections 21(1) and (2)]*

1.59 The increase to the Government co-contribution by an interest payable is to be calculated (much like section 12) as follows:

- on the underpaid amount that remains unpaid on the payment date;
- for the period from the payment date for the underpaid amount until the day on which that amount is paid; and
- on a daily basis using a rate specified in the regulations.

[Subsection 21(3)]

1.60 If the Commissioner has made a determination about an underpaid amount, and the determination is necessary to correct an administrative error, a 'payment shortfall' will exist. This payment shortfall is the difference between what is the correct amount of the Government co-contribution payable in respect of a person for an income

year and what has already been paid before the determination.
[Subsections 22(1) and (2)]

1.61 The amount of the Government co-contribution is then increased by an amount of interest and is calculated:

- on the amount of the payment shortfall;
- for the period from the payment date for the Government co-contribution until the payment date for the underpaid amount; and
- on a daily basis using a rate specified in the regulations.

[Subsections 22(3) and (4)]

1.62 This construction means that interest will be calculated separately if the Commissioner has made an error and also paid that amount after the new payment date. What constitutes an administrative error for this section (and what does not) may be specified in the regulations. For example, a contribution amount from a fund may be translated incorrectly by the Commissioner. This may result in the *wrong* amount being paid to the person and would clearly be a case for such an administrative error. [Subsection 22(5)]

1.63 Any amount of underpayment will be paid under these provisions so that no person misses out on any amount payable. While funds may need to process small underpayments, the use of electronic payments will minimise compliance costs. If the Commissioner makes a determination in relation to an underpaid amount and that amount is less than \$5, the amount is to be paid by cheque to a person or their legal personal representative, then the amount will be increased to \$5 and \$5 will be paid out. This will avoid very small cheque amounts being sent to recipients. [Section 23]

1.64 An overpayment occurs if the Commissioner pays an amount of Government co-contribution for a person for an income year, and either the amount paid is more than the correct amount of the co-contribution, or no co-contribution was payable. The amount overpaid is therefore the whole of the amount already paid if no co-contribution was payable, or the amount by which the amount paid exceeds the correct amount of co-contribution. [Subsections 24(1) and (2)]

1.65 Typically, overpayments may arise because of revised information sent by superannuation providers about a person's contributions, or a person's total income was originally understated and an amended assessment has issued. The Commissioner may take action to recover an overpayment and will have several methods of recovery at his

disposal subject to certain conditions being satisfied (see paragraphs 1.66 to 1.71). It is intended that no interest will be charged on the actual amount overpaid.

1.66 The Commissioner may deduct the whole or part of the amount overpaid from any Government co-contribution payable in respect of a person [*subsection 24(3), item 1 in the table*]. This method only requires there to be a *future* Government co-contribution payable from which the Commissioner is able to then deduct the amount overpaid before sending any difference on as a 'net' payment. It is envisaged that this will be the primary method of recovery of overpayments used by the Commissioner. If the Commissioner uses this method the Commissioner must give certain details to the person within 28 days of the deduction being made [*subsection 24(7)*]. These details may be specified in the regulations and when made should be sufficient to explain what has occurred and on what basis the Commissioner has made the decisions.

1.67 The Commissioner may debit an account of the person in the SHAR with the whole or a part of the amount overpaid [*subsection 24(3), item 2 in the table*]. This method does have some conditions attached, that is, the account must still include one or more Government co-contributions in respect of the person, and the amount debited must not exceed the amount of those co-contributions. This prevents the Commissioner debiting the account where only non-Government co-contribution deposits exist in the person's SHAR account (i.e. only employer deposits). If the Commissioner uses this method the Commissioner must, as for deductions under item 1 of subsection 24(2), give certain details to the person within 28 days of the deduction being made [*subsection 24(7)*]. These details may be specified in the regulations and when made should be sufficient to explain what has occurred and on what basis the Commissioner has made the decisions.

1.68 The Commissioner may recover the whole or part of the amount overpaid from the person (or the person's legal personal representative) as a debt due by the person (or the representative) to the Commonwealth in some circumstances [*subsection 24(3), item 3 in the table*]. This method does have some conditions attached, the main one being that the Government co-contribution must have been paid to the person (or representative) by the Commissioner. That is, if the Government co-contribution was paid to a superannuation provider then the Commissioner may not recover the debt from the person directly. In addition, the Commissioner must also give the person (or representative) written notice of the proposed recovery, to be prescribed in the regulations (including the amount to be recovered) and at least 28 days in which to pay the amount. After that time the Commissioner may, if he so chooses, instigate proceedings to recover the amount overpaid.

1.69 The Commissioner may recover the whole or part of the amount overpaid from a superannuation provider to whom either the Commissioner has paid the Government co-contribution for the person, or another superannuation provider if the Government co-contribution has been transferred. This amount will be a debt due by the superannuation provider to the Commonwealth [*subsection 24(3), item 4 in the table*]. The Government will be making changes to the appropriate regulations that will allow the superannuation providers to reduce a member's benefit by the value of the overpayment that is repaid to the Commissioner. The Government also recognises that some providers may have rules that conflict with these proposed regulations, and does not propose to legislate to force providers to change their rules.

1.70 As with the method for item 3 in the table in subsection 24(3), the method under item 4 has some conditions attached, the main one being that the superannuation provider must hold one or more Government co-contributions in respect of a person. That is, the Commissioner may not seek recovery of an overpayment from a superannuation fund or RSA of a person for whom (at the time of the notice being given by the Commissioner to the provider) they no longer hold Government co-contributions. If the Commissioner gives a notice to the provider (and the provider held the Government co-contributions at that time) the Commissioner may if he so chooses continue to seek recovery from the provider even if the provider does not continue to hold the Government co-contributions after that time. [*Subsection 24(3), item 4 in the table and subsection 24(4)*]

1.71 In addition, item 4 in the table in subsection 24(3) has some further conditions that the Commissioner needs to satisfy in seeking recovery of overpayments from providers. These include that the Commissioner must give the provider written notice of the proposed recovery, as prescribed in the regulations (including the amount to be recovered), and at least 28 days in which to pay the amount. After that time the Commissioner may, if he so chooses, instigate proceedings to recover the amount overpaid.

1.72 The Commissioner may revoke a notice under item 3 or 4 in the table in subsection 24(3) (recovery from persons or providers) if the Commissioner is satisfied that it is appropriate to do so. This may include consideration of the circumstances that led to the overpayment and the circumstances in which the person or provider find themselves in at the time the Commissioner is seeking recovery. This also then allows the Commissioner to seek recovery under one of the other methods without the possibility of breaching the rule, which states that the Commissioner's deductions, debits and other recoveries must not exceed the amount overpaid. [*Subsections 24(5) and (6)*]

1.73 If the Commissioner gives a person a notice under item 3 or 4 in the table in subsection 24(3) (recovery from persons or providers) and the person or provider does not pay the Commissioner the amount in that notice within 28 days after the notice is given, the person or provider is liable to pay the GIC on the amount that remains unpaid after the time by which it was due to be paid [section 25]. The GIC component of such a recovery will be administered by the Commissioner in accordance with the applicable provisions in the TAA 1953. If a notice has been revoked under subsection 24(5) then no GIC would be payable even if the 28 day period had already lapsed.

Information gathering

1.74 Part 6 of this bill sets out the information gathering that is necessary for the purposes of administering the Government co-contribution scheme. It is intended that the information gathering requirements will be administered by the Commissioner using, as far as possible, the existing mechanisms employed under the SCTACA 1997 and the CPF Act 1997. This has been done to maximise the use of processes that are part of the existing normal business operations of superannuation providers. The purpose of the provisions is to provide details of:

- what superannuation providers must give to the Commissioner, other providers and members;
- the form in which this information is to be provided;
- the records to be kept and retained;
- the powers of access of the Commissioner; and
- the offences and penalties that arise for failure to comply with these information gathering requirements.

1.75 Superannuation providers must give statements to the Commissioner for Government co-contributions purposes from 1 July 2003. The nature of the reporting that is required by these statements will be prescribed information set out in regulations. This will provide the opportunity for superannuation providers to implement alterations to their systems to allow reporting of appropriate information in these statements. This may involve the Commissioner relying primarily on the existing information collected through income tax returns and the SCTACA 1997 and CPF Act 1997 for a transitional period. [Subsection 26(1)]

1.76 Superannuation providers for the purposes of this Part are the trustees of complying superannuation funds, the providers of an RSA and constitutionally protected funds. [*Section 56, definition of ‘superannuation providers’*]

1.77 If a superannuation provider fails to give the Commissioner any statement under this section the provider commits a strict liability offence and the penalty is 50 penalty units [*subsection 26(4)*]. This is a strict liability offence because the Commissioner’s reliance on that information in the administration of this measure should override the need to prove fault. Failure to comply with this regulatory provision could result in persons not receiving a Government co-contribution, as there is no application mechanism for persons in this measure. This information will be readily available and provided through existing reporting systems.

1.78 Superannuation providers will have to provide statements setting out prescribed information for certain members. These members are those for whom the provider is a superannuation provider at the end of a financial year and those members for whom the superannuation provider paid contributed amounts (e.g. an eligible termination payment) in relation to the member during the financial year (in these cases the members may no longer be members at the end of a financial year). This is similar to the provisions that currently exist in the SCTACA 1997 and the CPF Act 1997, with the difference being in the prescribed information that may be requested. [*Paragraphs 26(2)(a) and (3)(a)*]

1.79 The prescribed information that may be contained in the regulations will be information that will be required by the Commissioner to determine the correct amount of Government co-contributions and for related compliance activities. This is likely to include a request for superannuation providers to provide the ‘personal contributed amounts’ for each member.

1.80 The superannuation providers must provide these statements on or before the prescribed date for the financial year or a later date that the Commissioner allows. The dates that may be prescribed in the regulations or other notices by the Commissioner are likely to reflect the notification dates used for the SCTACA 1997 and the CPF Act 1997. This is since the intention of the Commissioner is to use the existing member contribution statements and merely add the additional labels necessary to capture the prescribed information required. [*Paragraphs 26(2)(b) and (3)(b)*]

1.81 The provisions in the SCTACA 1997 already provide that where contributed amounts have been transferred (i.e. rolled over) between superannuation providers, the transferring provider and receiving provider must exchange certain personal and contribution information between one another. This ensures that the provider who holds the contributed amounts

at the end of the financial year is able to report all contributed amounts, even when the member has changed providers during the year. The provision in this bill now requires that further additional information, as prescribed, will be required to be given by the transferring provider to the receiving provider for Government co-contributions purposes from 1 July 2003. The nature of the reporting that is required by these statements will be prescribed information set out in regulations. This will provide the opportunity for superannuation providers to implement alterations to their systems to allow reporting of appropriate information in these statements. This may involve the Commissioner relying primarily on the existing information collected through income tax returns and the SCTACA 1997 for a transitional period. *[Subsection 27(1)]*

1.82 If a superannuation provider fails to give the other provider any statement the provider commits a strict liability offence and the penalty is 50 penalty units. *[Subsection 27(3)]*

1.83 Superannuation providers will have to provide statements setting out prescribed information for certain members for whom the provider transfers to another superannuation provider any of the contributed amounts in relation to the member during the financial year. This is similar to the provisions that currently exist in the SCTACA 1997, with the differences being in the prescribed information that will be requested and no additional requirements on the part of the receiving provider back to the transferring provider. *[Paragraph 27(2)(a)]*

1.84 As with section 26, the prescribed information that may be contained in the regulations will be information that will be required by the Commissioner to determine the correct amount of Government co-contributions to be paid and for related compliance activities. This will ensure that the receiving providers are able to report all the prescribed information requested by the Commissioner under section 26 at the end of each financial year.

1.85 The superannuation providers must provide these statements within 30 days after the day on which the amounts are transferred, again reflecting the requirements of the SCTACA 1997 since the intention of the Commissioner is to use the existing transfer statements and merely add the additional labels necessary to capture the prescribed information required. *[Paragraph 27(2)(b)]*

1.86 A member, or the trustee of a deceased former member's estate may ask the superannuation provider to give them the same information that they have provided to the Commissioner under section 26. For example, this information may be given as part of their reporting obligations under the Superannuation Industry (Supervision) Regulations

1994 and RSA Regulations 1997. The member or trustee may request that this information be provided in writing. If they do not ask for it in writing the provider may provide the information in a way that it considers appropriate. [Subsections 28(1) and (5)]

1.87 If a superannuation provider fails to comply with this request within 30 days of receiving the request the provider commits a strict liability offence and the penalty is 50 penalty units. The provider does not commit an offence if the provider has previously given the same information to the member or trustee. [Subsections 28(2) to (4)]

1.88 The Commissioner may, by a notice published in the Gazette, set out the way in which information is to be given to the Commissioner or other providers under sections 26 or 27. That notice has effect on and after the day stated in that notice. [Subsections 29(1) and (7)]

1.89 Whilst this allows the Commissioner flexibility to ensure the most efficient reporting systems are adopted, the Commissioner is likely to administer this scheme as far as possible by using the existing processes and systems employed for administration of the SCTACA 1997 and the CPF Act 1997. It is therefore likely that the Commissioner will require this information to be included in the statements used for the purposes of those Acts. The Commissioner may also require the information to be given electronically, (in order to reduce compliance costs for providers), however the Commissioner may exempt certain providers from this requirement. [Subsections 29(2) to (4)]

1.90 An exemption under subsection 29(4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. If a superannuation provider fails to comply with the requirements of this section and is not covered by an exemption under subsection 29(4) the provider commits a strict liability offence and the penalty is 50 penalty units. This is a strict liability offence because the Commissioner's reliance on that information in the administration of this measure should override the need to prove fault. Failure to comply with this regulatory provision could result in persons not receiving a Government co-contribution, as there is no application mechanism for persons in this measure. This information will be readily available and provided through existing reporting systems. [Subsections 29(5) to (7)]

1.91 The Commissioner may require a member or legal personal representative, through a written notice, to give the Commissioner information to determine:

- whether a Government co-contribution is payable;
- the amount of any Government co-contribution; and

- any other matters prescribed by the regulations.

[Paragraphs 30(1)(a) and (d)]

1.92 The Commissioner may also require a member, through a written notice, to provide information to enable the Commissioner to determine where the Government co-contribution should be paid in respect of the member. *[Paragraph 30(1)(b)]*

1.93 The Commissioner may require a member or legal personal representative, through a written notice, to provide information to enable the Commissioner to determine:

- whether an overpayment amount is recoverable under section 24 in respect of the member; and
- the amount overpaid.

[Paragraph 30(1)(c)]

1.94 If the member or legal personal representative fails to comply with such a notice (in relation to overpayments) an offence is committed and the penalty is 60 penalty units. *[Subsection 30(2)]*

1.95 Notices can be given at any time however must specify the period (not less than 21 days after the notice is given) in which compliance with the notice is required. *[Subsection 30(3)]*

1.96 If the superannuation provider fails to comply with a notice, an offence is committed and the penalty is 60 penalty units *[section 31]*. A written notice from the Commissioner may require a superannuation provider to give the Commissioner information to enable the Commissioner to determine:

- whether a Government co-contribution is payable;
- the amount of any Government co-contribution;
- where the Government co-contribution should be paid in respect of the member;
- whether an overpayment amount is recoverable in respect of the member;
- the amount overpaid; and
- any other matters prescribed by the regulations.

1.97 The record keeping requirements are mirrored on the provisions of the SCTACA 1997 and the CPF Act 1997. If a superannuation provider fails to keep the records that explain all the transactions and other acts it engages, in a similar manner, then an offence is committed and the penalty is 30 penalty units. The records must be kept in English or be readily accessible and convertible into English so that the Commissioner may readily be able to administer the provisions in this bill. If not, then an offence is committed and the penalty is 30 penalty units. The records must be kept for at least 5 years (from the day on which the records were prepared or obtained), and until the completion of the transactions or acts to which those records relate if this is more than 5 years. If not, then an offence is committed and the penalty is 30 penalty units. These provisions do not apply if the Commissioner notifies the provider that this is not required or the provider is a company that has gone into liquidation and been finally dissolved. *[Section 32]*

1.98 If the Commissioner has reasonable grounds to believe a superannuation provider has committed an offence, he may cause an infringement notice to be served. *[Section 33]*

1.99 If an infringement notice has been served it must contain various matters in relation to the person on whom it is served, including that it is served on behalf of the Commissioner, various matters dealing with the offence, and any other matters that the Commissioner considers necessary. *[Section 34]*

1.100 A person may make written representations to the Commissioner seeking withdrawal of the infringement notice. The Commissioner must then have regard to deciding whether or not to withdraw such a notice. *[Section 35]*

1.101 A person may have paid the penalties that were imposed by the infringement notice before the end of the period specified in the notice but the infringement notice has not been withdrawn. In that case, the notice and offence is taken to have been discharged and the person is not regarded as having been convicted of the offence in that notice. *[Section 36]*

1.102 More than one infringement notice may not be served for the same offence. *[Section 37]*

1.103 An infringement notice is not required to be served on a person. Whether a notice has been served or not, or whether it has been withdrawn or not, does not affect the liability of the person to be prosecuted for an offence. *[Section 38]*

1.104 The Commissioner may extend the period for payment of any penalty. *[Section 39]*

1.105 The provisions as stated in paragraph 1.98 to 1.104 are consistent with the *Crimes Act 1914*.

1.106 The Commissioner may appoint a person or class of persons to be authorised persons for the purposes of the access to premises provisions in sections 41 to 45. *[Section 40]*

1.107 The Commissioner requires powers for authorised persons to be able to enter the premises of persons. These powers may be used to ensure that a superannuation provider (or other persons) have reported the correct information and where it may be necessary to inspect documents which might otherwise not be available for inspection if access powers were not available. The issues that the Commissioner may be seeking to resolve through the use of these access powers may be in relation to more than one person's Government co-contribution payable and as such there may be a significant revenue risk involved. An authorised person may with the consent of the occupier, or person in charge of the premises, or in accordance with a warrant issued under section 44, enter the premises. They must enter the premises only for the purposes of determining:

- whether a Government co-contribution amount is payable;
- the amount of any Government co-contribution amount; and
- whether a person has contravened a provision of this bill.

If an authorised person enters any premises they may search the premises for, inspect, examine, take extracts from, and make copies of, any examinable documents. *[Section 41]*

1.108 A person is guilty of an offence if the person obstructs or hinders an authorised person in the exercise of the authorised person's power under section 41, and the authorised person exercises that power in accordance with a warrant issued under section 44. The penalty for contravention of this provision is 30 penalty units. *[Section 42]*

1.109 If an authorised person enters any premises under section 41 in accordance with a warrant issued under section 44, the occupier or person in charge must, if requested to do so by the authorised person, provide reasonable assistance to the authorised person in the exercise of his or her powers. The penalty for contravention of this provision is 30 penalty units. *[Section 43]*

1.110 A magistrate, on application by an authorised person, may issue a warrant authorising the authorised person to enter the particular premises with such assistance and by such force as is necessary and reasonable, and during the hours that the warrant specifies. A warrant for this provision must specify the powers exercisable under subsection 41(2) and the day on which the warrant ceases to have effect. *[Section 44]*

1.111 The Commissioner may cause an identity card to be issued to an authorised person. This card must contain a recent photograph of the authorised person and be in a form approved by the Commissioner. If an authorised person intends to enter premises without a warrant under section 44 the authorised person must produce the card to the occupier or person in charge of the premises for inspection, otherwise the authorised person is not entitled to enter the premises. A person who ceases to be an authorised person and does not immediately return the card to the Commissioner commits an offence and the penalty is one penalty unit. *[Section 45]*

Other administrative matters and terms used

1.112 Parts 7 and 8 (sections 46-55) provide details of various administrative matters, including:

- the general administration of this bill;
- meaning of decisions of the Commissioner;
- reviews of Commissioner's decisions and other matters under this bill;
- the use of TFNs and secrecy matters;
- annual reporting by the Commissioner; and
- the power to make regulations.

1.113 The Commissioner has the general administration of this bill. These responsibilities include determining for whom a Government co-contribution is payable, the amounts that are payable, payment of the amounts and compliance activities. *[Section 46]*

1.114 A decision by the Commissioner must be recorded in writing, but this can include electronic recording. Computer programs may be used to make these decisions, which are taken to be decisions of the Commissioner. A decision includes a decision not to make a determination under sections 13, 15, or 19. *[Sections 47, 48, and 56, definition of 'decision']*

1.115 Any person affected by a decision may ask the Commissioner for a review of that decision. The Commissioner will then arrange for an independent review to be undertaken and will either affirm, vary or set aside and substitute a new decision. In that process the Commissioner may arrange for an authorised review officer to undertake the review. *[Section 49]*

1.116 A formal review and appeal process (via the AAT and courts) was not seen as necessary as the matters are all factual in nature as opposed to containing discretionary elements. As such it was believed that an administrative remedy of this nature would be satisfactory. The internal review process would be directed to ensuring that the decision included all the relevant information rather than reviewing the merits of the decision.

1.117 If a person is still dissatisfied with the manner in which the Commissioner has handled the decision they will still have recourse to a judicial review under the *Administrative Decisions (Judicial Review) Act 1977* or other avenues such as the Commonwealth Ombudsman. Issues such as a taxpayer's assessable income and reportable fringe benefits amount will continue to be appealable to the AAT separately under the TAA 1953.

1.118 For persons who are dissatisfied with the statements given to the Commissioner by the superannuation providers a person may make a complaint to the Superannuation Complaints Tribunal under the SROCA 1993, as they currently do for the purposes of the SCTACA 1997 and the CPF Act 1997.

1.119 The Commissioner must authorise taxation officers to be authorised review officers. *[Section 50]*

1.120 A review applicant may at any time withdraw the application and if this occurs the application is taken to have never been made. This withdrawal may be done in writing or another manner as approved by the Commissioner. *[Section 51]*

1.121 The Commissioner may use TFNs, where the TFNs have been provided to the Commissioner for taxation or superannuation purposes. TFNs are essential for the Commissioner to be able to match a person's income details from income tax returns to the contribution details from the superannuation providers to enable the determination of who is entitled, calculation of the amount and payment of any amounts payable. However, TFNs will continue to be provided on a voluntary basis. *[Section 52]*

1.122 The secrecy provisions in this bill impose an obligation of secrecy on persons who, in the course of their duties, acquire information on the affairs of another person. The secrecy provisions contained here are

consistent with those in other Commonwealth Acts administered by the Commissioner. *[Section 53]*

1.123 The Commissioner will be required to provide an annual report on the workings of this bill to the Minister for tabling in Parliament. *[Section 54]*

Chapter 2

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003

Outline of chapter

2.1 Schedule 1 to the Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003 amends various Acts in relation to the:

- eligibility for Government co-contributions;
- taxation treatment of Government co-contributions;
- Government co-contribution arrangements for certain Defence personnel and Commonwealth employees;
- review of certain decisions about Government co-contributions administration;
- use of the SHAR for Government co-contributions in some circumstances; and
- interest that may be levied on late repayments of Government co-contribution overpayments.

Context of amendments

2.2 These amendments are as a consequence of the Government Co-contribution Bill, as outlined in Chapter 1.

Summary of new law

- 2.3 This bill amends legislation to:
- assist in determining the eligibility of persons for Government co-contributions around the employer superannuation support principle;
 - enable the taxation treatment of Government co-contributions to mirror that of any other undeducted superannuation contribution;
 - make arrangements for certain Defence personnel and Commonwealth employees to receive Government co-contributions in their funds or schemes;
 - enable persons to seek review of the information that their superannuation providers give to the Commissioner for the purposes of Government co-contributions; and
 - enable the general interest charge to be levied on late repayments of Government co-contribution overpaid amounts.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>A Government co-contribution towards the superannuation of qualifying low income earners' superannuation will be available for eligible personal superannuation contributions made on or after 1 July 2002.</p> <p>A maximum Government co-contribution of \$1,000 will be available for a \$1,000 contribution.</p>	<p>Rebates of taxation are currently provided for in Subdivision AAC of Division 17 of Part III of the ITAA 1936 for eligible personal superannuation contributions by eligible low income earners.</p> <p>A maximum rebate of \$100 is available for a \$1,000 contribution.</p>

Detailed explanation of new law

Preliminary

2.4 This bill may be cited as the Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003.

2.5 Each Act that is specified in Schedule 1 is amended or repealed as set out in the applicable items in this schedule and any other items has effect according to its terms.

2.6 This schedule contains Part 1 (the amendments) and Part 2 (the application of amendments). The application of amendments made by Part 1 applies in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2002. [*Schedule 1, Part 2, item 25*]

2.7 For the Commissioner to be satisfied that a Government co-contribution is payable in respect of a person in the Government Co-contribution Bill the person must have employer superannuation support. The Government Co-contribution Bill refers to the provisions in section 82AAS of the ITAA 1936 and the definition of ‘not an eligible person’ under this provision. The previous provision meant that any type of ‘superannuation support’, for example, whether this be from a spouse, relative, friend or employer, would mean a person was not an eligible person.

2.8 The policy intention for Government co-contributions was that only those low income earners who also had employer superannuation support should receive a Government co-contribution. In order for this provision to maintain the previous subparagraphs 82AAS(2)(b)(i) and (ii) structure (to reflect the funded and unfunded scheme types), capture this new intent, and maintain a mutual exclusion between those persons who could receive a taxation deduction and those persons who may receive a Government co-contribution, it was necessary to make these amendments.

2.9 The test for ‘not an eligible person’ is now narrower and related to whether a person had received superannuation contributions (or should have received superannuation contributions) or will receive superannuation benefits out of moneys in connection with their eligible employment. Eligible employment is already defined in the existing provision at subsection 82AAS(1) and used in subsection 82AAS(3) and this continues the use of that term in relation to this new intent.

2.10 As a result, this amendment will repeal paragraph 82AAS(2)(b) and substitute it with the new provision. Therefore, the concept of an eligible person under this new provision will be broader, for example, persons who 'only' receive either spouse, relative or friend superannuation support, will now be entitled to a tax deduction. The previous provision would have classed these people as 'supported'. They could therefore have received a taxation rebate (which will also be repealed by this bill). [*Schedule 1, Part 1, item 1*]

2.11 The amendment to subparagraph 82AAS(3)(c)(i) of the ITAA 1936 that now inserts the words 'required to be made', has also been made as part of the amendment to paragraph 82AAS(2)(b) [*Schedule 1, Part 1, item 1*]. This has been done to take account of situations where persons have an obligation to make superannuation contributions on behalf of other persons in connection with the eligible employment of those persons (e.g. superannuation guarantee for their employees). If those obligations are not met this should not affect the status of the person in relation to the eligible person test. Therefore a person who should have received contributions from their employer but did not, is not an eligible person for the purposes of the ITAA 1936. In the Government co-contributions context they can still be seen as having employer superannuation support and receive a Government co-contribution if they are otherwise entitled in the Government Co-contribution Bill. [*Schedule 1, Part 1, item 2*]

2.12 This amendment repeals Subdivision AAC of Division 17 of Part III of the ITAA 1936 and therefore the previously available taxation rebate for personal superannuation contributions by low income earners. The application of these amendments apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2002. For clarification this means that the rebate is still in force for contributions made before that date and therefore rebates that are claimed in tax returns after the day on which this bill receives Royal Assent. [*Schedule 1, Part 1, item 3*]

2.13 These amendments ensure that Government co-contributions paid into complying superannuation funds, RSAs and the SHAR are not treated as taxable contributions for the purposes of section 274 of the ITAA 1936. These amendments to the definition of taxable contributions also ensures that for the SCTACA 1997 and the CPF Act 1997 that these Government co-contributions are not treated as surchargeable contributions for accumulation schemes. [*Schedule 1, Part 1, items 4 to 6*]

2.14 Consistent with the Government's intention that Government co-contributions not be taxable, the amendments to sections 11-10 and 51-65 of the ITAA 1997 mean that Government co-contribution amounts that are paid to the person directly or their legal personal representatives, including amounts paid as a result of claims to the SHAR, are exempt from income tax in the ITAA 1997. According to ordinary concepts, if the amount was paid to the complying superannuation fund or RSA (and not to the person directly or their representative) then it would also not be the person's income. *[Schedule 1, Part 1, items 7 and 8]*

2.15 This amendment to section 5 of the *Military Superannuation Benefits Act 1991* that inserts new subsection 5(1AA) deals with the payment of Government co-contributions to Defence personnel. Of the 2 main Defence personnel schemes, the DFRDB scheme cannot accept Government co-contribution payments for their members. This amendment will allow the Minister of Defence to amend the trust deed of the MSBS to authorise the Military Superannuation Benefits Board to accept Government co-contributions for people who are not MSBS members (in this case DFRDB members) and deal with these under the deed, including:

- the manner in which to deal with these contributions;
- the benefits that will be payable as a result; and
- the circumstances in which the entitlements to receive those benefits will arise.

[Schedule 1, Part 1, item 9]

2.16 This amendment at the end of section 3 of the SSAA 1995 outlines that the accounts in the SHAR may also be used to hold Government co-contributions payable under the Government Co-contribution Bill and that the rules for these deposits differ in some respects from those that apply to other deposits into the SHAR. *[Schedule 1, Part 1, item 10]*

2.17 The amendments to section 4 of the SSAA 1995 insert definitions of Government co-contribution and complying superannuation fund, for the purposes of the Government co-contribution changes to the SSAA 1995. For an individual a Government co-contribution is one that is payable in respect of an individual under the Government Co-contribution Bill. Complying superannuation fund has the same meaning as it does for the Government Co-contribution Bill. *[Schedule 1, Part 1, items 11 and 12]*

2.18 The amendment to paragraph 16(b) of the SSAA 1995 will mean that the Commissioner may also close an individual's account if the

balance of the account is nil and the balance was withdrawn under a transfer request arising under section 61 of the SSAA 1995 or a transfer out by the Commissioner without a request under new provisions 61A or 91E of the SSAA 1995. *[Schedule 1, Part 1, item 13]*

2.19 The new provisions that will be located in section 61A of the SSAA 1995 will allow the Commissioner to pay the balance of an individual's account to an RSA of an individual or to the trustee of a complying superannuation fund for the benefit of the individual without a request from the individual, that would previously have been necessary under section 61 of the SSAA 1995.

2.20 This pay out may include employer deposits and Government co-contribution deposits, and does not necessarily have to involve Government co-contribution deposits at all. This will facilitate the use of the SHAR for the Government co-contributions measure as an effective holding reserve, and the eventual intention for the Government co-contributions to benefit an individual's retirement, rather than as previously occurred that deposits could not be transferred out without a request from an individual. Where the Commissioner pays out a balance under this new provision the SHAR is debited for that purpose and the individual's account is debited by that amount. A definition of trustee, which has the same meaning as it does for the Government Co-contribution Bill, has also been inserted. *[Schedule 1, Part 1, item 14]*

2.21 A number of amendments are required to the SSAA 1995 to deal with deposits of Government co-contributions payable in respect of persons into the SHAR. For the purposes of new Part 12A (that has been created to deal with these necessary amendments) deposits will include any interest that may accrue on these deposits. *[Schedule 1, Part 1, item 15]*

2.22 New sections 91A, 91B and 91C mean that these Government co-contribution deposits are Part 12A deposits and not to be treated as Part 4 employer deposits unless otherwise stated. The new sections also state that only section 33 of the SSAA 1995 will apply to both Part 4 and Part 12A deposits (deposits not held on trust).

2.23 New section 91D means that the Government co-contribution deposits under Part 12A should also not be credited to the SHAR in the same way as other deposits under Part 5. The process that will be followed for these deposits is that an amount equal to the amount to be deposited will be transferred from the Consolidated Revenue Fund to the SHAR. As soon as is practicable after this, the individual's account is to be credited with an amount equal to that deposit.

2.24 New sections 91DA and 91E allow the Commissioner to debit the accounts in the cases where an overpayment of Government co-contribution has occurred under the Government Co-contribution Bill. This may only be done if the account still holds an amount of Government co-contribution deposit, with employer deposits not to be debited for this purpose.

2.25 In respect of other withdrawals the account is not frozen for 14 days for Government co-contribution deposits as it applies for other deposits in the SHAR. In line with new section 61A and the intention for Government co-contribution payments, new subsection 91E(3) means that Government co-contribution deposits should only be transferred to complying superannuation funds or RSAs. This is despite the situation where an individual might request the amount be transferred to a regulated superannuation fund, which may be a non-complying superannuation fund. A complying superannuation fund has the same meaning as for the Government Co-contribution Bill.

2.26 As the deposits under Part 12A are 'Government' co-contributions the refund of deposits provisions of Part 8 of the SSAA 1995 are not necessary for Government co-contribution deposits.

2.27 The amendments proposed for section 130A and subsection 130B(1) of the SA 1976 deal with the acceptance of Government co-contribution payments in relation to employees who are members of the CSS. It will do this by redefining a transferred amount to now include an amount payable in respect of the person under the Government Co-contribution Bill. After subsection 130B(1) new subsection (1A) will be inserted that allows the Commissioner to pay to the CSS Board an amount payable in respect of a person under the Government Co-contribution Bill. These amendments commence on a day which is the later of:

- the day on which this bill receives Royal Assent; and
- immediately after the commencement of item 48 of Schedule 1 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2002*.

[Schedule 1, Part 1, items 16 and 17]

2.28 The amendments to paragraphs 8(5)(a) and (b) of the SCTACA 1997, and paragraphs 9(6)(a) and (b) of the CPF Act 1997, will make it clear that surchargeable contributions for the purposes of a defined benefit scheme do not include Government co-contribution paid under the Government Co-contribution Bill. *[Schedule 1, Part 1, items 18 to 21]*

2.29 The amendments to paragraph 15CA(1)(b) and subsection 15CA(2) of the *Superannuation (Resolution of Complaints) Act 1993* will allow persons to make a complaint to the Superannuation Complaints Tribunal if they are persons to whom the superannuation providers have provided statements to the Commissioner under section 26 of the Government Co-contribution Bill. This means that similar review processes for disputes about contribution information will apply for the surcharge and Government co-contributions measures, and this is consistent with the use of the same reporting mechanism likely to be adopted by the Commissioner. *[Schedule 1, Part 1, items 22 and 23]*

2.30 This amendment to section 23 of the *Taxation Administration Act 1953* will allow the Commissioner to impose the general interest charge for the late payment of repayment of overpaid amounts by persons under section 25 of the Government Co-contribution Bill. *[Schedule 1, Part 1, item 24]*

Chapter 3

Regulation impact statement

Policy objective

3.1 The Government co-contribution seeks to improve the standard of living in retirement of low income earners. Low income earners who make personal undeducted contributions to a superannuation fund or RSA will be eligible for a co-contribution paid by the Government.

3.2 From 1 July 2002, the existing low income superannuation contributions rebate (a maximum of \$100) will be replaced with a \$1,000 Government superannuation co-contribution for personal undeducted superannuation contributions by individuals on incomes up to \$20,000, with a reduced co-contribution available for individuals with incomes up to \$32,500.

3.3 In any one year of income, the Government co-contribution will be the lesser of:

- \$1,000, reduced by 8 cents for each \$1 of the taxpayer's assessable income and reportable fringe benefits over \$20,000; and
- the total amount of personal undeducted contributions made by the member in the year of income.

3.4 Where this calculation results in a Government co-contribution amount less than \$20, then a co-contribution of \$20 will be paid, as long as the person's income is below \$32,500 and the person has made personal undeducted superannuation contributions during the year.

3.5 This measure is expected to result in a budgetary cost of \$115 million in 2003-2004, \$125 million in 2004-2005 and \$115 million in 2005-2006.

Implementation options

3.6 To determine eligibility for a Government co-contribution the ATO will need to be aware of a person's assessable income and reportable

fringe benefits, and the amount of personal undeducted contributions made by a person. Two possible options were raised in industry consultation on how the Government co-contributions could be administered.

Option 1

3.7 Under option 1:

- a superannuation fund would report all personal undeducted contributions made in the previous financial year to the ATO by 31 October;
- the ATO would determine if a person is eligible for a Government co-contribution by matching this information with the person's income (which will be determined from their tax return);
- if the person is eligible for a Government co-contribution it will be paid directly to a superannuation fund nominated by the person, or if there is no nomination, to a fund determined by the Commissioner as belonging to the person. The Government co-contribution will be paid directly to a person who has retired or their estate if they have died; and
- once the payment has been made the person will be notified by the fund (except retirees and deceased who will be notified by the ATO) of the Government co-contribution. This will be done at the next normal reporting date between the funds and their members.

Option 2

3.8 Under option 2:

- the low income earner would apply for a Government co-contribution through the income tax return;
- the low income earner would need to supply the ATO with the account details of their superannuation fund and evidence that they have made personal undeducted contributions;
- superannuation funds would be required to provide this information to all members on or before 28 July each year to allow these people to finalise their tax return;
- the ATO would pay the Government co-contribution to the fund specified in the income tax return. The co-contribution

would be paid directly to a person who has retired or their estate if they have died; and

- once the payment has been made the person would be notified by the fund (except retirees and deceased persons who will be notified by the ATO) of the Government co-contribution. This will be done at the next normal reporting date between the funds and their members.

Assessment of impacts

3.9 The potential compliance and administrative impacts of these options have been carefully considered in consultation with the superannuation industry. Option 1 places the costs of providing the required information onto the superannuation industry while option 2 places these requirements on both the industry and low income earners.

Impact group identification

3.10 Groups affected by this measure are:

- superannuation funds, RSA providers (approximately 254,000 will be affected);
- low income earners (the policy has been costed on approximately 350,000 people being eligible for a Government co-contribution);
- tax agents, who have clients who are on low incomes (if option 2 is adopted); and
- the ATO.

Analysis of costs / benefits

Option 1

Compliance costs

3.11 This option relies on superannuation funds reporting personal contributions to the ATO every year. The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* already requires superannuation funds to report all superannuation contributions to the ATO.

3.12 However, funds are not currently required to separately identify personal contributions. To satisfy this requirement, funds will need to change their systems to enable them to provide this data to the ATO. This system change will impose an initial cost on superannuation funds. Given that the reporting systems are already in place this is not expected to be a large cost. The ATO will release specifications to superannuation funds to assist them in reporting this information. This will reduce the overall costs to the funds in meeting their requirements. Once these system changes are in place the ongoing costs of reporting personal contributions to the ATO are not expected to be substantial.

3.13 Funds will also have to amend their member reporting systems to advise their eligible members that they have received a Government co-contribution. To ensure no additional mailing costs are imposed on funds, they will not have to provide the co-contribution information until the next time they report to their members.

3.14 To assist industry in making the necessary system changes, the new reporting arrangements will only apply after 1 July 2003.

3.15 Some funds may also need to amend their governing rules to accept the Government co-contribution. However it is expected that this will only affect a minority of defined benefit funds whose rules do not accept additional contributions. The industry has advised that the overwhelming majority of funds will already be able to accept the Government co-contribution. (The APRA has estimated that there are 722 defined benefit funds of which it is estimated less than 10% may be affected.)

Administration costs

3.16 The ATO has estimated that costs in administering the Government co-contribution are:

<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>
\$16.8 million	\$4.5 million	\$4.1 million	\$4.1 million

Benefits

3.17 The main advantage of this system is that it does not impose additional costs or burdens on low income earners as it uses existing industry reporting systems to determine who is eligible for a Government co-contribution. Options which rely on the low income earner applying for the Government co-contribution would require the member to seek out the relevant information from their fund to accurately determine their entitlement.

3.18 This option will also identify all low income earners who are eligible for a Government co-contribution thus satisfying the policy intent of seeking to provide a higher standard of living in retirement for these members of the community. Where low income earners have to apply for the Government co-contribution there is the possibility that some people will not receive their entitlement because they fail to claim it.

Option 2

Compliance costs

3.19 A low income earner will need to claim their entitlement to a Government co-contribution by answering an additional question on the tax return. The tax return is already perceived by some sectors of the community as being large and complex and a question such as this may be lost in the quantum of information already being requested of taxpayers. This may lead to the low income earner bearing a cost of not applying for the Government co-contribution even though they are eligible to receive one, or additional tax agent fees incurred in complying with the new requirements.

3.20 To pay the Government co-contribution to the correct fund the taxpayer will need to provide the exact name of their fund (e.g. ABC Fund would not be sufficient if it runs multiple superannuation funds), the fund's identification number, their account details and the amount of personal undeducted contributions they have made in the year. If either the fund and/or account identification information is incorrect the ATO will not be able to pay the Government co-contribution to a fund. This would require intensive follow-up between the ATO and the member and/or tax agent. This will slow down lodgment and payment of tax refunds to individuals.

3.21 Members will not be readily aware of the required information. Therefore, this will have to be provided by their superannuation fund on or before 28 July to allow them to finalise their tax return. A similar requirement is placed on health insurance funds to allow taxpayers to complete the questions relating to the Medicare surcharge and the private health insurance rebate.

3.22 The APRA has estimated that there are approximately 25 million accounts of superannuation fund members and RSA account holders. Placing a requirement on funds to advise each of these members (through each of these accounts) of their personal undeducted contributions and identification details before 28 July each year would impose a significant ongoing cost on the superannuation industry.

3.23 Furthermore, the Government co-contribution (of up to \$1,000) is more generous than the current 10% rebate (maximum \$100) that currently applies to personal undeducted contributions made by low income earners. As such, the risk to revenue caused by false claims (intentional and unintentional) will greatly increase. To reduce this risk and to assist in compliance and audit activities, funds would be required to report these personal undeducted contributions to the ATO. This is consistent with the requirements placed on banks to report interest payments and companies to report dividends. Therefore, under this option funds would incur the same costs as under option 1.

3.24 As for option 1, funds will also have to amend their member reporting systems to advise eligible members that they have received a Government co-contribution. To ensure no additional mailing costs are imposed on funds, they would not have to provide the Government co-contribution information until the next time they report to their members.

3.25 As for option 1, some funds may also need to amend their governing rules to accept the Government co-contribution. However, it is expected that this will only affect a minority of defined benefit funds whose rules do not accept additional contributions. The industry has advised that the overwhelming majority of funds will already be able to accept the Government co-contribution. (The APRA has estimated that there are 722 defined benefit funds of which it is estimated less than 10% may be affected.)

Administration costs

3.26 The costs on the ATO are the same as in option 1.

Benefits

3.27 Low income earners may be more aware of the Government co-contribution and may be able to better identify the fund to which they wish the payment to be made.

Other issues – consultation

3.28 The Government has consulted with a wide range of superannuation funds, RSA providers, industry associations and fund administrators on the design of the administration system for the Government co-contribution.

3.29 It is expected that industry will be broadly supportive of the Government co-contribution administration arrangements. In particular,

the 12 month transitional period will provide funds with a window to implement any necessary system changes. In discussions with industry there was also a recognition that option 1 would be a more automated and seamless way to administer the Government co-contribution.

Conclusion and recommended option

3.30 Option 1 is the most appropriate method to administer the Government co-contribution for low income earners.

3.31 Although option 1 does impose some initial cost on the industry, these costs are lower than the substantial ongoing costs which would be imposed on the industry under option 2. Option 1 also has the advantage over option 2 of providing funds with a 4-month timeframe to provide the information to the ATO as opposed to a one-month time frame for the statement to members.

3.32 It is preferable not to impose compliance costs on low income earners (such as option 2). Option 1 is the only method that meets this criteria.

3.33 Option 1 also best meets the policy objective of improving the standard of living in retirement of low income earners. Qualifying persons who have income of less than \$32,500 and have made personal contributions will automatically receive a Government co-contribution thus increasing their potential retirement benefits.

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