
TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2020: SINGLE DEFAULT ACCOUNT

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
Bill	Treasury Laws Amendment (Measures for Consultation) Bill 2020: Single default account
Commissioner	Commissioner of Taxation
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>

Chapter 1

Single default account

Outline of chapter

1.1 Schedule [#] amends the SGAA to limit the creation of multiple superannuation accounts for employees who do not choose a superannuation fund when they start a new job.

1.2 The amendments generally provide that if a new employee has an existing ‘stapled’ superannuation fund and does not choose a fund to receive contributions, their employer is required to make contributions for the employee into the stapled fund. These amendments increase members’ retirement savings by ensuring unnecessary fees and insurance premiums are not paid on unintended multiple superannuation accounts.

1.3 All legislative references in this chapter are to the SGAA unless otherwise indicated.

Context of amendments

1.4 The amendments in Schedule [#] form part of the Your Future, Your Super reforms, which were announced by the Government on 6 October 2020 in the 2020-21 Budget. These reforms improve outcomes for superannuation fund members by addressing structural flaws in the superannuation system.

1.5 The amendments enact the Government’s responses to Recommendation 1 of the Productivity Commission Superannuation Inquiry and Recommendation 3.5 of the Financial Services Royal Commission.

1.6 The Productivity Commission, in its three year inquiry, highlighted that Australia’s super system needs to adapt to better meet the needs of a modern workforce. Unintended multiple accounts were identified in the Productivity Commission’s final report as a structural flaw in the system that erodes members’ balances through unnecessary fees and insurance. The same issues were identified through the Financial Services Royal Commission.

1.7 The SGAA is an important part of Australia’s superannuation system. It establishes the Superannuation Guarantee Scheme, which ensures that employers pay a minimum level of superannuation contributions on their employees’ behalf. It also ensures that employers comply with the ‘choice of fund’ requirements.

1.8 Currently, if an employee is eligible to choose a superannuation fund to receive contributions and does not do so, their employer may comply with the choice of fund requirements by making contributions on behalf of the employee into the employer's chosen default fund. The employer's chosen default fund must be:

- a complying fund (one that meets specific regulatory requirements and obligations under the superannuation law); and
- registered by the Australian Prudential Regulation Authority to offer a MySuper product.

1.9 The purpose of this rule was to ensure that employers are able to comply with the choice of fund requirements where employees do not choose a superannuation fund when they start a new job.

1.10 However, allowing employers to make contributions on behalf of their employees into their chosen default fund has also resulted in the creation of unintended multiple superannuation accounts. This has caused a reduction in retirement savings for affected members as unnecessary duplicate fees and insurance premiums are being paid on those accounts.

1.11 The amendments in Schedule [#] address this issue by requiring employers to make contributions on behalf of an employee to the employee's existing 'stapled' fund in certain circumstances, including where the employee has not chosen a fund.

1.12 These reforms build on previous reforms introduced by the Government to improve outcomes for members of superannuation funds, including the reforms in the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020*.

Summary of new law

1.13 Schedule [#] to the Bill amends the choice of fund requirements in Part 3A of the SGAA.

1.14 Under the new rules, an employer can satisfy the choice of fund requirements by making contributions into the stapled fund of the employee who:

- started their employment on or after 1 July 2021;
- has a stapled fund; and
- has no chosen fund for receiving superannuation contributions.

1.15 If an employee has a stapled fund, employers can no longer satisfy the choice of fund requirements by making contributions to a:

- default fund chosen by the employer; or
- fund specified under a workplace determination or an enterprise agreement made before 1 January 2021.

1.16 Employers can continue to use these types of contributions to satisfy the choice of fund requirements if an employee has no stapled fund.

1.17 To support these new rules, the amendments make provision for employers to request the Commissioner to identify whether a stapled fund for their employee exists.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
If an employee has a stapled fund and has no chosen fund, their employer can satisfy the choice of fund requirements by making contributions for the employee into the stapled fund.	No equivalent.
<p>If an employee has a stapled fund, their employer is prevented from satisfying the choice of fund requirements for contributions made to a:</p> <ul style="list-style-type: none"> • default fund chosen by the employer, if the employee has no chosen fund; or • fund specified under a workplace determination or an enterprise agreement made before 1 January 2021. 	<p>If an employee has no chosen fund, their employer may satisfy the choice of fund requirements by making contributions on their behalf into the employer's chosen default fund. This applies regardless of whether the employee has an existing fund.</p> <p>Similarly, even if an employee has an existing fund, an employer can satisfy the choice of fund requirements by making contributions to a fund specified under a workplace determination or an enterprise agreement made before 1 January 2021.</p>
Employers may request the Commissioner to identify whether there is a stapled fund for an employee of the employer.	No equivalent.

Detailed explanation of new law

1.18 The amendments introduce a new choice of fund rule relating to stapled funds. Under the new rule, a contribution made by an employer on behalf of an employee can satisfy the choice of fund requirements if:

- the employee's employment started on or after 1 July 2021;
- the employee has no chosen fund for receiving superannuation contributions;
- the employer has requested the Commissioner identify whether the employee has a stapled fund;
- the Commissioner has notified the employer that the employee has a stapled fund; and
- the contribution is made by the employer into the stapled fund.

[Schedule #], item 3, subsection 32C(1A)]

1.19 This ensures that employers who make a contribution to a stapled fund are able to comply with the choice of fund requirements, provided the employee has no chosen fund. It also means that an employer may opt into the new rules if they prefer to make contributions to an employee's stapled fund, rather than in accordance with one of the other choice of fund rules (other than where the employee has a chosen fund).

What is a stapled fund?

1.20 A fund is a stapled fund for an employee if the requirements prescribed by the regulations are met. *[Schedule #], item 8, section 32Q]*

1.21 It is anticipated that the regulations will cover:

- basic requirements that must be satisfied for a fund to be a stapled fund, including the requirement that the fund is an existing fund of the employee and is able to accept contributions;
- tie-breaker rules for selecting a single fund where an employee has multiple existing funds; and
- when a fund ceases to be a stapled fund for an employee.

1.22 It is also anticipated the tie-breaker rules will involve considerations about recent activity and account balances similar to the existing tie-breaker rules in regulation 14 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*.

Default fund rules

1.23 Under the amendments, an employer is prevented from satisfying the choice of fund requirements for contributions made to a default fund chosen by the employer where:

- the employee has no chosen fund;
- the employer has requested the Commissioner identify whether the employee has a stapled fund; and
- the Commissioner has notified the employer that the employee has a stapled fund.

[Schedule #], item 4, paragraph 32C(2)(aa)]

1.24 This ensures that an employer cannot satisfy the choice of fund requirements if the employer makes contributions into the employer's chosen default fund (thereby creating a new superannuation account for the employee) and the employee has a stapled fund.

1.25 In these circumstances, an employer can instead satisfy the choice of fund requirements by making contributions into the employee's stapled fund in compliance with new subsection 32C(1A).

1.26 The requirement to seek information from the Commissioner ensures employers obtain accurate information about whether a stapled fund for the employee exists. This means that employers will not be permitted to independently determine whether an existing fund is a stapled fund. A digital service will be established and maintained by the Australian Taxation Office to receive requests from employers and provide them with notifications.

Contributions made in accordance with a workplace determination or enterprise agreement

1.27 The amendments prevent employers from relying on an existing workplace determination or enterprise agreement where the employee already has a stapled fund and started their employment on or after 1 July 2021. *[Schedule #], items 5-7, paragraphs 36C(6)(g) and (h), and subsection 32C(6AAA)]*

1.28 This means that under the new rules, contributions made in accordance with a workplace determination or enterprise agreement that is made before 1 January 2021 can only satisfy the choice of fund requirements in paragraph 32C(6)(g) or (h) if the employee does not have a stapled fund.

1.29 As with the amendments to the default fund rules, employers must seek information from the Commissioner about whether a stapled fund for the employee exists.

1.30 These changes build on the amendments introduced by the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020* and limit the creation of unintended multiple superannuation accounts for employees.

All employers can use the stapled fund rules

1.31 Employers must comply with the stapled fund rules in order to satisfy the choice of fund requirements with contributions to an employer chosen default fund (where an employee has no chosen fund) or in accordance with a workplace determination or enterprise agreement made before 1 January 2021. As noted above, such employers must have a notification from the Commissioner that an employee has no stapled fund before relying on such contributions.

1.32 Other employers can also use the stapled fund rules to satisfy the choice of fund requirements by making contributions to an employee's stapled fund, irrespective of whether they could have satisfied the choice of fund requirements using some other type of contributions (for example, contributions to an unfunded public sector scheme, or to a fund specified in a preserved or notional State agreement). While such employers are not required to use the stapled fund rules, they are not prevented from relying on them to satisfy the choice of fund requirements. This approach is consistent with such employers being able to contribute to a chosen fund of an employee, even where they could have used other types of contributions to satisfy the choice of fund requirements.

1.33 Access to the stapled fund rules for all employers is provided through new subsection 32C(1A), which applies to all employers, irrespective of whether they could also make contributions under another choice of fund rule. Similarly, the new provisions allowing employees to request the Commissioner identify whether a stapled fund for an employee exists (discussed in greater detail below) are cast broadly to allow all employers to make that request in relation to their employees.

Requests to the Commissioner about stapled funds

1.34 To support the new stapled fund provisions, the amendments make provision for employers to request the Commissioner to identify whether there is a stapled fund for an employee of the employer. Any request must be made in accordance with the requirements prescribed by the regulations. *[Schedule #], item 8, subsection 32R(1)*

1.35 The regulation-making power ensures there is sufficient flexibility about requests to the Commissioner to identify whether a stapled fund for an employee exists. For example, it is anticipated that regulations will be made to ensure requests contain the information necessary for the Commissioner to be able to effectively consider the request.

1.36 Where an employer makes a valid request, the Commissioner must consider the request and notify the employer whether the Commissioner has identified a stapled fund for the employee. The Commissioner's consideration of the request and notification must meet any requirements prescribed by the regulations. *[Schedule #], item 8, subsection 32R(2)*

1.37 This requirement makes clear that taxation officers (who are delegates of the Commissioner) involved in the consideration and notification process do so in the course of performing their duties as a taxation officer. This means that the use and disclosure of any relevant protected information by taxation officers as part of these processes are consistent with the protected information regime in the *Taxation Administration Act 1953*.

1.38 It is anticipated that the regulations will cover matters of a machinery nature. These may include any timeframes for the Commissioner to consider the request and notify the employer, or the form in which the Commissioner must provide notices to employers (for example, through the digital service to be established and maintained by the Australian Taxation Office).

1.39 The regulations may also prescribe circumstances in which the Commissioner may notify an employer of any change to an earlier notification given in relation to an employee. *[Schedule #], item 8, subsection 32R(3)*

Consequential amendments

1.40 The definitions in subsection 6(1) of the SGAA are updated to signpost the new definition of **stapled fund**. *[Schedule #], item 1, subsection 6(1)*

1.41 The overview of the structure of Part 3A of the SGAA, which relates to the choice of fund requirements, is updated to include new Division 7 relating to stapled funds. *[Schedule #], item 2, section 32B]*

1.42 Amendments are also made to ensure that provisions of Commonwealth industrial award or a Territory industrial award that require contributions to be made to a particular fund are not enforceable to the extent that an employer instead makes contributions to a stapled fund. This is consistent with the existing treatment of chosen funds. *[Schedule #], item 9, section 32Z]*

1.43 Similarly, amendments are made to ensure that a requirement in a law of a State or Territory that requires contributions to be made to a particular fund are not enforceable to the extent that an employer instead makes contributions to a stapled fund. *[Schedule #], item 10, subsection 32ZAA(2)]*

Application and transitional provisions

1.44 Schedule [#] applies in relation to an employee's employment where that employment starts on or after 1 July 2021. *[Schedule #], item 11]*

1.45 Therefore, where an employee commences employment on or after 1 July 2021, the amendments in Schedule [#] apply for the duration of the employee's employment and to any subsequent employment they undertake.

1.46 Arrangements for employees who are employed by their employer before 1 July 2021 are not affected by these changes.