

# EXPOSURE DRAFT



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## **Treasury Laws Amendment (Your Future, Your Super—Single Default Account) Regulations 2021**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Treasurer

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## 1 Name

This instrument is the *Treasury Laws Amendment (Your Future, Your Super—Single Default Account) Regulations 2021*.

## 2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Superannuation Guarantee (Administration) Regulations 2018*

#### 1 Section 5

Insert:

*selection period* has the meaning given by subsection 17A(4).

#### 2 At the end of Part 5

Add:

##### 17A Stapled funds—requirements for a fund to be a stapled fund

- (1) For the purposes of section 32Q of the Act, the following requirements are prescribed for working out if a fund is the stapled fund for an employee at a particular time:
  - (a) the requirements in subsection (2);
  - (b) if at that time the requirements in subsection (2) are met for 2 or more funds (the *eligible funds*)—the fund is covered by subsection (3) for the employee at that time.

##### *Basic requirements*

- (2) The requirements in this subsection are that:
  - (a) the fund:
    - (i) is a complying superannuation fund, or a complying superannuation scheme, for the financial year that includes that time; or
    - (ii) is an RSA at that time; and
  - (b) at that time, the employee is:
    - (i) a member of that fund or scheme; or
    - (ii) a holder of that RSA; and
  - (c) at that time, insofar as the Commissioner is aware, that fund, scheme or RSA is able to accept contributions from the employee's employer; and
  - (d) at that time, the Commissioner is able to disclose to the employee's employer (and the employer's agent if necessary) information about:
    - (i) the employee; or
    - (ii) the fund, scheme or RSA.

Note: For paragraph (d), the Commissioner will need to disclose information to the employer's agent if the agent had requested the Commissioner to identify any stapled fund for the employee (see section 32R of the Act).

##### *Tiebreaker requirement*

- (3) A fund (the *selected fund*) is covered by this subsection for the employee at that time if:
  - (a) in the case where during the selection period the Commissioner has given one or more notices under section 32R of the Act identifying an eligible fund that the Commissioner is satisfied is the stapled fund for the

- employee—the selected fund is the eligible fund that was identified in the most recent of those notices; or
- (b) in the case where paragraph (a) does not apply to any eligible fund for the employee at that time—the selected fund is the eligible fund that received the most recent contribution for the benefit of the employee during the selection period, based on statements given to the Commissioner under Subdivision 390-A in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) in the case where paragraphs (a) and (b) do not apply to any eligible fund for the employee at that time—the selected fund held the largest account balance for the employee at the end of the previous financial year out of all the eligible funds; or
  - (d) in the case where paragraphs (a), (b) and (c) do not apply to any eligible fund for the employee at that time—the Commissioner is satisfied that the selected fund is the most appropriate of the eligible funds to be selected as the stapled fund for the employee after having regard to:
    - (i) when the employee became a member, or holder, of each of the eligible funds; and
    - (ii) any other relevant matters.

*Meaning of selection period*

- (4) The **selection period**, for working out if an eligible fund is the stapled fund for an employee at a particular time, is the period:
  - (a) starting at the start of the most recent financial year that has ended before that time; and
  - (b) ending at that time.

## **17B Stapled funds—requirements for making requests to the Commissioner**

A requirement prescribed for the purposes of paragraph 32R(1)(b) of the Act for a request by an employer, or by an employer’s agent, is that the request must be made for the purposes of complying with the aspects of the choice of fund requirements that relate to stapled funds.

## **17C Stapled funds—circumstances for changing an earlier notification**

For the purposes of subsection 32R(3) of the Act, the circumstances in which the Commissioner may change an earlier notification given to an employer in relation to an employee are when:

- (a) the Commissioner has identified an error in the earlier notification; and
- (b) if the earlier notification stated that the Commissioner is satisfied that there is a stapled fund for the employee—the Commissioner is unaware of any contributions being made to the fund by the employer for the benefit of the employee.

Note: The earlier notification will also have been given to the employer’s agent if that agent made the request that resulted in the notification (see paragraph 32R(2)(b) of the Act).