Superannuation Guarantee (Administration) Act 1992

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About this compilation

This compilation

This is a compilation of the *Superannuation Guarantee (Administration) Act 1992* that shows the text of the law as amended and in force on 1 July 2017 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the establishment and administration of the Superannuation Guarantee Scheme, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Superannuation Guarantee (Administration) Act 1992*.

2 Commencement

This Act commences on 1 July 1992.

3 Act binds Crown etc.

(1) This Act binds the Crown in right of the Commonwealth, each State, the Australian Capital Territory and the Northern Territory.

(2) Nothing in this Act permits the Crown to be prosecuted for an offence.

4 Application

This Act extends to every external Territory referred to in the definition of ***Australia***.

5 Application of Act to Commonwealth

(1) The Commonwealth, Commonwealth Departments and untaxable Commonwealth authorities are not liable to pay superannuation guarantee charge.

(2) However, subject to this Act and to such modifications as are prescribed, this Act applies in all other respects, in respect of any

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matter or thing in respect of the employment of a Commonwealth employee, as if:

(a) the employee were employed by the responsible Department and not by the Commonwealth; and

(b) the responsible Department were a company and each other Department, and each authority of the Commonwealth, were a company related to the responsible Department; and

(c) the responsible Department were a government body.

(2A) In addition, subject to such modifications as are prescribed, this Act applies in relation to an untaxable Commonwealth authority in the same way as it applies in relation to a Commonwealth Department.

(2B) The Finance Minister may give such directions in writing as are necessary or convenient to be given for carrying out or giving effect to this section and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth or a Commonwealth entity.

(2C) Directions under subsection (2B) have effect, and must be complied with, notwithstanding any other law of the Commonwealth.

(3) Part 8 has effect as if any superannuation guarantee charge for a quarter in respect of a superannuation guarantee shortfall of the Commonwealth had been paid on:

(a) for a quarter beginning on 1 January—28 May in the next quarter; and

(b) for a quarter beginning on 1 April—28 August in the next quarter; and

(c) for a quarter beginning on 1 July—28 November in the next quarter; and

(d) for a quarter beginning on 1 October—28 February in the next quarter.

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(4) Subsection 14ZX(4), section 14ZZ and Divisions 4 and 5 of Part IVC of the *Taxation Administration Act 1953* do not apply to the Commonwealth, Commonwealth Departments or untaxable Commonwealth authorities.

(5) In this section:

Commonwealth Department means:

(a) a Department of State; or

(b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or

(c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service.

Commonwealth entity means a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

Finance Department means the Department administered by the Finance Minister.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

responsible Department, in relation to the employment of a Commonwealth employee, means:

(a) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an annual Appropriation Act—the Commonwealth Department in respect of which the money was appropriated; and

(b) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an Act other than an annual Appropriation Act:

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(i) if the employee performs or performed the duties of that employment in, or in respect of, a Commonwealth Department—that Commonwealth Department; or

(ii) in any other case—the Department of State administered by the Minister who administers the Act under which that money was appropriated, insofar as the Act appropriated that money; and

(c) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated by the Constitution—the Finance Department.

untaxable Commonwealth authority means an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

5A Application of Act to Commonwealth authorities

(1) In this section:

Commonwealth authority means an authority or body that is established by or under a law of the Commonwealth.

(2) If:

(a) a law, or a provision of a law, passed before the commencement of this section purports to exempt a Commonwealth authority from liability to pay:

(i) taxes under the laws of the Commonwealth; or

(ii) certain taxes under the laws of the Commonwealth; and

(b) apart from this subsection, the exemption would apply to superannuation guarantee charge;

that law or provision is taken not to have exempted, or not to exempt, that authority from liability to pay the charge.

(3) If:

(a) a law, or a provision of a law, passed after the commencement of this section purports to exempt a Commonwealth authority from liability to pay:

(i) taxes under the laws of the Commonwealth; or

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(ii) certain taxes under the laws of the Commonwealth; and

(b) apart from this subsection, the exemption would apply to superannuation guarantee charge;

the law or provision is not taken to have exempted, or to exempt, the authority from liability to pay the charge unless the law or provision expressly exempts the authority from liability to pay the charge.

5B Jurisdiction etc. of the Fair Work Commission not affected

(1) To avoid doubt, but subject to subsection (2), nothing in this Act or in the *Superannuation Guarantee Charge Act 1992* affects:

(a) the jurisdiction, functions or powers of the Fair Work Commission; or

(b) the operation of the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* in any other way.

(2) Subsection (1) does not apply to any express reference in the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to this Act or to the *Superannuation Guarantee Charge Act 1992*.

5C Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Part 2—Explanation of terms used in the Act

6 Interpretation—general

(1) In this Act, unless the contrary intention appears:

actuary means a Fellow or Accredited Member of The Institute of Actuaries of Australia.

administration component, in relation to an employer and a quarter, means the amount worked out according to section 32.

approved clearing house has the meaning given by subsection 79A(3).

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

arrangement, for the purposes of section 30, means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) any scheme, plan, proposal, action, course of action or course of conduct.

assessment means:

(a) the ascertainment of an employer's superannuation guarantee shortfall for a quarter and of the superannuation guarantee charge payable on the shortfall; or

(b) the ascertainment of additional superannuation guarantee charge payable under Part 7.

Australia, when used in a geographical sense, has the same meaning as in the *Income Tax Assessment Act 1997*.

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Commissioner means the Commissioner of Taxation.

Commonwealth employee means an employee of the Commonwealth.

Commonwealth industrial award means:

(a) an industrial award or determination made under a law of the Commonwealth; or

(b) an industrial agreement approved or registered under such a law; or

(c) a notional agreement preserving State awards; or

(d) a preserved State agreement.

complying approved deposit fund has the meaning given by section 7A.

complying superannuation fund has the meaning given by section 7.

complying superannuation scheme has the meaning given by section 7.

CSS means the scheme known as the Commonwealth Superannuation Scheme.

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

defined benefit member, subject to section 6AA, means a member entitled on retirement to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

(a) the amount of the member's salary:

(i) at the date of the member's retirement or an earlier date; or

(ii) averaged over a period before retirement;

(b) a specified amount.

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defined benefit superannuation scheme has the meaning given by section 6A.

Deputy Commissioner means a Deputy Commissioner of Taxation.

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

government body means:

(a) the Commonwealth or a State or Territory; or

(b) a Commonwealth, State or Territory authority.

indexation factor, in relation to a year, has the meaning given by section 9.

individual superannuation guarantee shortfall, has the meaning given by section 19.

industrial award means a Commonwealth industrial award, a State industrial award or a Territory industrial award.

liability to the Commonwealth means a liability to the Commonwealth arising under an Act of which the Commissioner has the general administration.

lodge means lodge with the Commissioner.

MySuper member has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

nominal interest component, in relation to an employer and a quarter, has the meaning given by section 31.

occupational superannuation arrangement, in relation to the employment of a person, means an agreement that imposes an obligation on the person's employer to contribute to a superannuation fund for the benefit of the person.

offence against this Act includes an offence relating to this Act against:

(a) the *Crimes Act 1914*; or

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(b) the *Taxation Administration Act 1953*.

ordinary time earnings, in relation to an employee, means:

(a) the total of:

(i) earnings in respect of ordinary hours of work other than earnings consisting of a lump sum payment of any of the following kinds made to the employee on the termination of his or her employment:

(A) a payment in lieu of unused sick leave;

(B) an unused annual leave payment, or unused long service leave payment, within the meaning of the *Income Tax Assessment Act 1997*; and

(ii) earnings consisting of over-award payments, shift-loading or commission; or

(b) if the total ascertained in accordance with paragraph (a) would be greater than the maximum contribution base for the quarter—the maximum contribution base.

part-time employee means a person who is employed to work not more than 30 hours per week.

penalty charge, in respect of superannuation guarantee charge and a quarter, means:

(a) general interest charge in respect of non-payment of the superannuation guarantee charge; or

(b) additional superannuation guarantee charge that is payable under section 59 and calculated by reference to the superannuation guarantee charge.

proceeding under this Act includes:

(a) a proceeding for an offence against this Act; or

(b) a proceeding under the *Taxation Administration Act 1953* relating to this Act.

PSS means the Public Sector Superannuation Scheme within the meaning of the *Superannuation Act 1990*.

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PSSAP means the Public Sector Superannuation Accumulation Plan within the meaning of the *Superannuation Act 2005*.

public sector scheme means a scheme of superannuation established:

(a) by or under a law of the Commonwealth or of a State or Territory; or

(b) under the authority of:

(i) the Commonwealth or the government of a State or Territory; or

(ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory.

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

resident of Australia has the meaning given by section 8.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Second Commissioner means a Second Commissioner of Taxation.

State industrial award means:

(a) an industrial award or determination made under a law of a State; or

(b) an industrial agreement approved or registered under such a law.

superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

superannuation guarantee charge means charge imposed by the *Superannuation Guarantee Charge Act 1992*.

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superannuation guarantee shortfall has the meaning given by section 17.

superannuation guarantee statement means a superannuation guarantee statement under section 33.

superannuation scheme means:

(a) a defined benefit superannuation scheme whether or not embodied in the governing rules of a superannuation fund; or

(b) any other scheme embodied in the governing rules of a superannuation fund.

Territory industrial award means:

(a) an industrial award or determination made under a law of a Territory; or

(b) an industrial agreement approved or registered under such a law.

trustee, in relation to a superannuation scheme, means:

(a) if:

(i) the scheme is embodied in the governing rules of a fund; and

(ii) there is a trustee of the fund;

the trustee of the fund; or

(b) in any other case—the person who manages the scheme.

trustee, except in relation to a superannuation fund or superannuation scheme, includes:

(a) a person appointed or constituted trustee by:

(i) act of parties; or

(ii) order or declaration of a court; or

(iii) operation of law; and

(b) an executor, administrator or other personal representative of a deceased person; and

(c) a guardian or committee; and

(d) a receiver or receiver and manager; and

(e) a liquidator of a company; and

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(f) a person:
(i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust; or
(ii) acting in any fiduciary capacity; or
(iii) having the possession, control or management of any real or personal property of a person under any legal or other disability.

unfunded public sector scheme means a public sector scheme that is a defined benefit superannuation scheme:
(a) in respect of which no fund is established for the purposes of the scheme; or
(b) under which all or some of the amounts that will be required for the payment of benefits are not paid into the fund established for the purposes of the scheme or are not paid until the members become entitled to receive the benefits.

year means financial year.

(2) For the purposes of this Act, a reference to a contribution made by an employer for the benefit of an employee includes a reference to a contribution made on behalf of the employer.

(3) For the purposes of this Act, a reference to salary or wages paid by an employer to an employee includes a reference to a payment made on behalf of the employer.

6AA Interpretation: defined benefit member

The regulations may prescribe:
(a) circumstances in which a member of a superannuation fund is not a ***defined benefit member*** for the purposes of this Act, or a provision of this Act; and
(b) circumstances in which a member of a superannuation fund who is not otherwise a ***defined benefit member*** is to be taken to be a ***defined benefit member*** for the purposes of this Act, or a provision of this Act.

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6A Interpretation: defined benefit superannuation scheme

(1) Subject to subsection (2), a defined benefit superannuation scheme is a scheme under which:

(a) one or more members of the scheme are entitled, on retirement, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

(i) the amount of the member's annual salary:

(A) at the date of the member's retirement; or

(B) at a date before retirement; or

(C) averaged over a period of employment before retirement;

(ii) a specified amount; and

(b) if the scheme is not a public sector scheme—some or all of the contributions under the scheme (out of which, together with earnings on those contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount.

(2) A scheme embodied in the governing rules of a superannuation fund (other than a scheme of the kind referred to in subsection (1)) is a defined benefit superannuation scheme if a conversion notice has effect in relation to the fund or scheme.

(3) If the conversion notice is expressed to take effect on a day before the day on which the notice is given, the scheme in question is taken to have been a defined benefit superannuation scheme from the day on which the notice is expressed to take effect.

(4) Subsection (3) has effect regardless of the making of any assessment, or the payment of any superannuation guarantee charge, in respect of a quarter that ended after the conversion notice took effect.

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6B Interpretation: conversion notice

(1) A conversion notice is a written notice by the trustee of a superannuation fund given to the Commissioner stating that the fund, or a particular superannuation scheme embodied in the governing rules of the fund, is to be treated as a defined benefit superannuation scheme for the purposes of this Act.

(2) Subject to subsection (4), a conversion notice takes effect in relation to the fund or scheme on the day specified in the notice. Subject to subsection (4), the trustee may, by written notice (***revocation notice***) given to the Commissioner, revoke the conversion notice.

(3) A conversion notice may be expressed to take effect on a day that is not earlier than:

(a) if the notice is given before 15 May in a quarter starting on 1 April—1 January in the previous quarter; or

(b) if the notice is given before 15 August in a quarter starting on 1 July—1 April in the previous quarter; or

(c) if the notice is given before 15 November in a quarter starting on 1 October—1 July in the previous quarter; or

(d) if the notice is given before 15 February in a quarter starting on 1 January—1 October in the previous quarter; or

(e) in any other case—the first day of the quarter in which the notice is given.

(4) A conversion notice or a revocation notice will not be effective unless, before it is given, the trustee gives each employer contributing to the fund or scheme for the benefit of employees written notice of:

(a) the trustee's intention to give the notice; and

(b) the proposed date of effect of the notice.

(5) If an employer begins contributing to a superannuation fund or a superannuation scheme for the benefit of employees at a time when a conversion notice has effect in relation to the fund or scheme, the trustee must give the employer written notice of:

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(a) the giving of the conversion notice; and
(b) the date of effect of the notice;

within 30 days of the receipt by the trustee of the employer's first contribution.

(6) A notice under this section may be given by post.

7 Interpretation: complying superannuation fund or scheme

A superannuation fund or scheme is a complying superannuation fund or scheme (as the case may be) in relation to a period for the purposes of this Act if it is a complying superannuation fund in relation to that period for the purposes of the *Income Tax Assessment Act 1997*.

7A Interpretation: complying approved deposit fund

An approved deposit fund is a complying approved deposit fund at a particular time for the purposes of this Act if it is a complying approved deposit fund in relation to the year of income in which that time occurred for the purposes of the *Income Tax Assessment Act 1997*.

8 Interpretation: resident of Australia

A person is a resident of Australia for the purposes of this Act at any time when the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

9 Interpretation: indexation factor

(1) The indexation factor for a year is whichever is the greater of the following:
(a) 1;
(b) the number calculated (to 3 decimal places) by dividing the AWOTE amount for the December quarter in the preceding year by the AWOTE amount for the December quarter in the year preceding that year.

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Note: The December quarter is a quarter beginning on 1 October.

(2) The AWOTE amount for a quarter is the estimate of the full-time adult average weekly ordinary time earnings for persons in Australia for the middle month of the quarter published by the Australian Statistician in relation to the month.

(3) If the Australian Statistician publishes an estimate of full-time adult average weekly ordinary time earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.

(4) If the number calculated for the purposes of paragraph (1)(b) in relation to a year would, if calculated to 4 decimal places, end with a numeral higher than 4, the number is to be taken to be the number calculated to 3 decimal places and increased by 0.001.

10 Interpretation: benefit certificate

(1) A benefit certificate is a certificate by an actuary relating to one or more specified defined benefit superannuation schemes and specifying the rate, expressed as a percentage, that is, in the opinion of the actuary, the notional employer contribution rate, in relation to a specified class of employees (being members of the scheme or schemes, as the case may be), of an employer who is a contributor under the scheme or schemes (as the case may be) for the benefit of an employee in that class.

(2) The notional employer contribution rate, in relation to a class of employees specified in a benefit certificate relating to one or more defined benefit superannuation schemes, is the contribution rate required to meet the expected long-term cost, to an employer who contributes to the scheme or schemes for the benefit of employees in the class, of the minimum benefits accruing in respect of all employees in the class from the date of effect of the benefit certificate onwards.

(3) A benefit certificate has effect from the date specified in the certificate until:

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(a) a superannuation scheme to which it relates is amended in a way that affects, or may affect, the level or method of calculation of the minimum benefits provided under the scheme for the class of employees specified in the certificate; or

(b) another benefit certificate is issued in relation to the same class of employees and the same scheme or schemes; or

(c) a period of 5 years from the date of issue expires; or

(d) in the case of a certificate that relates to a scheme that is a defined benefit superannuation scheme because of the operation of subsection 6A(2)—the conversion notice under section 6B is revoked;

whichever occurs first.

(4) A benefit certificate may be expressed to have effect from:

(a) a day that is no earlier than:

(i) if the certificate is issued before 15 May in a quarter starting on 1 April, or before a later day in that quarter allowed by the Commissioner—1 January in the previous quarter; or

(ii) if the certificate is issued before 15 August in a quarter starting on 1 July, or before a later day in that quarter allowed by the Commissioner—1 April in the previous quarter; or

(iii) if the certificate is issued before 15 November in a quarter starting on 1 October, or before a later day in that quarter allowed by the Commissioner—1 July in the previous quarter; or

(iv) if the certificate is issued before 15 February in a quarter starting on 1 January, or before a later day in that quarter allowed by the Commissioner—1 October in the previous quarter; or

(v) in any other case—the first day of the quarter in which the certificate is issued; and

(b) a day that is no later than the day on which the certificate is issued.

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(6) The regulations may make provision regarding:
  (a) the issue and form of benefit certificates; and
  (b) the way in which the expected long-term cost to an employer of benefits accruing to all employees is to be calculated under subsection (2); and
  (c) the manner in which the contribution rate is to be expressed under subsection (2); and
  (d) the way in which minimum benefits accruing to all employees are to be calculated under subsection (2).

11 Interpretation—salary or wages

(1) In this Act, ***salary or wages*** includes:
  (a) commission; and
  (b) payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate; and
  (ba) payments under a contract referred to in subsection 12(3) that are made in respect of the labour of the person working under the contract; and
  (c) remuneration of a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory; and
  (d) payments to a person for work referred to in subsection 12(8); and
  (e) remuneration of a person referred to in subsection 12(9) or (10).

(2) Remuneration under a contract for the employment of a person, for not more than 30 hours per week, in work that is wholly or principally of a domestic or private nature is not to be taken into account as salary or wages for the purposes of this Act.

(3) Fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986* are not salary or wages for the purposes of this Act.

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12 Interpretation: employee, employer

(1) Subject to this section, in this Act, ***employee*** and ***employer*** have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (11):

(a) expand the meaning of those terms; and

(b) make particular provision to avoid doubt as to the status of certain persons.

(2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.

(3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.

(4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth.

(5) A member of the Parliament of a State is an employee of the State.

(6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.

(7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.

(8) The following are employees for the purposes of this Act:

(a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;

(b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment;

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(c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.

(9) A person who:

(a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or

(b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);

is an employee of the Commonwealth, the State or the Territory, as the case requires. However, this rule does not apply to a person in the capacity of the holder of an office as a member of a local government council.

(9A) Subject to subsection (10), a person who holds office as a member of a local government council is not an employee of the council.

(10) A person covered by paragraph 12-45(1)(e) in Schedule 1 to the *Taxation Administration Act 1953* (about members of local governing bodies subject to PAYG withholding) is an employee of the body mentioned in that paragraph.

(11) A person who is paid to do work wholly or principally of a domestic or private nature for not more than 30 hours per week is not regarded as an employee in relation to that work.

12A Interpretation: references to industrial instruments

(1) In this Act, the following expressions have the same meanings as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*:

(a) ***AWA***;

(b) ***collective agreement***;

(c) ***ITEA***;

(d) ***notional agreement preserving State awards***;

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(e) ***old IR agreement***;

(f) ***pre-reform AWA***;

(g) ***pre-reform certified agreement***;

(h) ***preserved State agreement***;

(i) ***Division 2B State instrument;***

(j) ***State reference transitional award or common rule***.

Note: For an instrument referred to in this subsection, see item 4 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

(2) In this Act, ***enterprise agreement*** has the same meaning as in the *Fair Work Act 2009*.

(3) In this Act, ***workplace determination*** means a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

15 Interpretation: maximum contribution base

(1) The maximum contribution base for a quarter in the 2001-02 year is $27,510.

(3) The maximum contribution base for a quarter in any later year is the amount worked out using the formula:

$$\text{Maximum contribution base for a quarter in the immediately preceding year} \times \text{Indexation factor for the year}$$

(4) Amounts calculated under subsection (3) must be rounded to the nearest 10 dollar multiple (rounding 5 dollars upwards).

(5) Despite subsections (3) and (4), the maximum contribution base for a quarter in the 2017-18 year or any later year is the amount worked out using the following formula, if that amount is less than the amount worked out under those subsections:

$$\text{Concessional contributions cap} \times \frac{100}{\text{Charge percentage}} \times \frac{1}{4}$$

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where:

charge percentage is the number specified in subsection 19(2) for the quarter.

concessional contributions cap is the basic concessional contributions cap, within the meaning of the *Income Tax Assessment Act 1997*, for the financial year in which the quarter occurs.

(6) Amounts calculated under subsection (5) must be rounded down to the nearest 10 dollar multiple.

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Part 3—Liability of employers other than the Commonwealth and tax-exempt Commonwealth authorities to pay superannuation guarantee charge

15B Application of Part to former employees

This Part applies to salary or wages paid to, and contributions for the benefit of, a former employee as if the former employee were an employee of the person who was the former employee's employer.

15C Certificates of coverage for international social security agreements

(1) This section applies if a scheduled international social security agreement (within the meaning of section 5 of the *Social Security (International Agreements) Act 1999*) prevents double coverage of the compulsory retirement savings arrangements under the laws of the parties to the agreement.

(2) An entity mentioned in subsection (3) may apply in writing to the Commissioner for a certificate under subsection (4) covering the employment of a particular employee.

(3) For the purposes of subsection (2), the entity must be:
  (a) if the employee's employer is not a resident of Australia—a related entity (within the meaning of the agreement) of the employer; or
  (b) otherwise—the employee's employer.

(4) The Commissioner may give the entity that made the application a certificate under this subsection if the Commissioner is satisfied that doing so is in accordance with the agreement mentioned in subsection (1).

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(5) The certificate must:

(a) state the name of the employer and the employee; and

(b) state the time at which, or the circumstances in which, the certificate stops covering the employment; and

(c) contain any other information that the Commissioner considers relevant.

(6) The Commissioner may revoke or vary a certificate under subsection (4), if doing so would be in accordance with the administrative arrangements to the agreement mentioned in subsection (1) that are agreed between the parties to the agreement.

(7) A person who is dissatisfied with a decision of the Commissioner under subsection (4) or (6) may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(8) If the entity that made the application is not the employee's employer, this Part (apart from this section) applies to salary or wages relating to employment covered by the certificate that are paid to the employee as if the entity that made the application were the employee's employer.

16 Charge payable by employer

Superannuation guarantee charge imposed on an employer's superannuation guarantee shortfall for a quarter is payable by the employer.

17 Superannuation guarantee shortfall

If an employer has one or more individual superannuation guarantee shortfalls for a quarter, the employer has a superannuation guarantee shortfall for the quarter worked out by adding together:

(a) the total of the employer's individual superannuation guarantee shortfalls for the quarter; and

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(b) the employer's nominal interest component for the quarter; and

(c) the employer's administration component for the quarter.

19 Individual superannuation guarantee shortfalls

(1) An employer's ***individual superannuation guarantee shortfall*** for an employee for a quarter is the amount worked out using the formula:

$$\text{Total salary or wages paid by the employer to the employee for the quarter} \times \frac{\text{Charge percentage for the employer for the quarter}}{100}$$

where:

charge percentage, for an employer for a quarter, means:

(a) the number specified in subsection (2) for the quarter (unless paragraph (b) applies); or

(b) if the number specified in subsection (2) for the quarter is reduced in respect of the employee by either or both sections 22 and 23—the number as reduced.

(2) The charge percentage for a quarter in a year described in an item of the table is the number specified in column 2 of the item.

Charge percentage (unless reduced under section 22 or 23)

Item	Column 1 Year	Column 2 Charge percentage
1	Year starting on 1 July 2013	9.25
2	Year starting on 1 July 2014	9.5
3	Year starting on 1 July 2015	9.5
4	Year starting on 1 July 2016	9.5
5	Year starting on 1 July 2017	9.5
6	Year starting on 1 July 2018	9.5

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Charge percentage (unless reduced under section 22 or 23)		
Item	**Column 1** **Year**	**Column 2** **Charge percentage**
7	Year starting on 1 July 2019	9.5
8	Year starting on 1 July 2020	9.5
9	Year starting on 1 July 2021	10
10	Year starting on 1 July 2022	10.5
11	Year starting on 1 July 2023	11
12	Year starting on 1 July 2024	11.5
13	Year starting on or after 1 July 2025	12

(2A) If an employer makes one or more contributions (the ***no choice contributions***) to an RSA or a complying superannuation fund other than a defined benefit superannuation scheme, for the benefit of an employee during a quarter and the contributions are not made in compliance with the choice of fund requirements, the employer's ***individual superannuation guarantee shortfall*** for the employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)} \right]$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if the no choice contributions had not been made.

Note 1: See also subsection (2E) and section 19A.

Note 2: Part 3A sets out the choice of fund requirements.

(2B) If:

(a) a reduction of the charge percentage for an employee for a quarter is made under subsection 22(2) in respect of a defined benefit superannuation scheme; and

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(b) there is at least one relevant day in the quarter where, if contributions (the ***notional contributions***) had been made to the scheme by the employer for the benefit of the employee on the day, the notional contributions would have been made not in compliance with the choice of fund requirements; and

(c) section 20 (which deals with certain cases where no contributions are required) does not apply to the employer in respect of the employee in respect of the scheme for the quarter;

the employer's ***individual superannuation guarantee shortfall*** for the employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)}\right] \times \frac{\text{Number of breach of condition days}}{\text{Relevant days in quarter}}$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if no reduction were made under subsection 22(2) in respect of the scheme.

number of breach of condition days is the number of relevant days in the quarter on which, if a contribution had been made to the scheme by the employer for the benefit of the employee, those contributions would have been made not in compliance with the choice of fund requirements.

Note 1: See also subsection (2E) and section 19A.

Note 2: Part 3A sets out the choice of fund requirements.

(2C) The following days in a quarter are ***relevant days*** for the purposes of subsection (2B):

(a) if the value of ***B*** in the formula in subsection 22(2) for the quarter is 1—every day in the quarter; or

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(b) in any other case—every day in the quarter that is in the shorter of the scheme membership period or the certificate period referred to in subsection 22(2).

(2CA) For the purposes of paragraph (2B)(b), if the employee is a defined benefit member of a superannuation fund, subsection 32C(2) applies in relation to the employee and the fund as if it did not include paragraph 32C(2)(c) (requirement that fund includes a MySuper product).

(2D) A reference in subsections (2A) and (2B) to an employer's individual superannuation guarantee shortfall being increased includes a reference to the shortfall being increased from nil.

(2E) The Commissioner may, after taking account, wherever appropriate, of the operation of section 19A, reduce (including to nil) the amount of an increase in an employer's individual superannuation guarantee shortfall for an employee for a quarter under subsection (2A) or (2B).

Note: The Commissioner must have regard to written guidelines when deciding whether or not to make a decision under this subsection: see section 21.

(3) If the total salary or wages paid by an employer to an employee in a quarter exceeds the maximum contribution base for the quarter, the total salary or wages to be taken into account for the purposes of the application of subsection (1) in relation to the quarter is the amount equal to the maximum contribution base.

19A Limit on shortfall increases arising from failure to comply with choice of fund requirements

(1) Subject to subsections (2) and (3), if the total of the amounts worked out for an employee for a quarter under subsections 19(2A) and (2B) exceeds $500, the total is taken to be $500.

(2) If:

(a) the total (the ***previous amount***) of the amounts worked out for an employee under subsections 19(2A) and (2B) for

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previous quarters within an employer's notice period for an employee does not exceed $500; and

(b) the current quarter is within the same employer's notice period for the employee; and

(c) the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter and the previous quarters within the employer's notice period for the employee exceeds $500;

then, the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter is taken to be the amount by which $500 exceeds the previous amount.

(3) If a quarter (the ***later quarter***) in an employer's notice period for an employee follows a quarter within that notice period:

(a) to which subsection (1) applied; or

(b) to which paragraph (2)(c) applied;

in respect of the employee, the total of the amounts worked out for the employee under subsections 19(2A) and (2B) for the later quarter is taken to be nil.

(4) An ***employer's notice period*** for an employee:

(a) begins on:

(i) in the case of the first employer's notice period for the employee—the later of 1 July 2005 and the day on which the employee is first employed by the employer; or

(ii) in any other case—when the immediately preceding employer's notice period for the employee ends; and

(b) ends on the day the Commissioner gives the employer written notice that the employer's notice period for the employee has ended.

20 Scheme in surplus or member has accrued maximum benefit

(1) This section applies to an employer in respect of an employee in respect of a defined benefit superannuation scheme for a quarter if

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the employee is a defined benefit member of the scheme and either subsection (2) or (3) is satisfied.

Scheme in surplus

(2) This subsection is satisfied if:

(a) the employee was a defined benefit member of the fund immediately before 1 July 2005 and has not ceased to be such a member since that time and before the start of the quarter; and

(b) an actuary has provided a certificate in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* stating that the employer is not required to make contributions for the quarter and there has been such a certificate covering all times since 1 July 2005; and

(c) an actuary has provided a certificate stating that, in the actuary's opinion, at all times from 1 July 2005 until the end of the quarter, there is a high probability that the assets of the scheme are, and will be, equal to or greater than 110% of the greater of the scheme's liabilities in respect of vested benefits and the scheme's accrued actuarial liabilities.

The certificate under paragraph (c) must have been provided no earlier than 15 months before the end of the quarter.

Member has accrued maximum benefit

(3) This subsection is satisfied if, after the start of the quarter, the defined benefit that has accrued to the employee will not increase other than:

(a) as a result of increases in the employee's salary or remuneration; or

(b) by reference to accruals of investment earnings; or

(c) by reference to indexation based on, or calculated by reference to, a relevant price index or wages index; or

(d) in any other way prescribed for the purposes of this paragraph.

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*Meaning of **scheme's accrued actuarial liabilities** and **scheme's liabilities in respect of vested benefits***

(4) In this section:

scheme's accrued actuarial liabilities, at a particular time, means the total value, as certified by an actuary, of the future benefit entitlements of members of the scheme in respect of membership up to that time based on assumptions about future economic conditions and the future of matters affecting membership of the scheme, being assumptions made in accordance with applicable professional actuarial standards (if any).

scheme's liabilities in respect of vested benefits, at a particular time, means the total value of the benefits payable from the scheme to which the members of the scheme would be entitled if they all voluntarily terminated their service with their employers at that time.

21 Guidelines for reducing an increase in an individual superannuation guarantee shortfall

(1) The Commissioner must develop written guidelines that he or she must have regard to when deciding whether or not to make a decision under subsection 19(2E).

Note: Subsection 19(2E) allows the Commissioner to reduce (including to nil) the amount of an increase in an individual superannuation guarantee shortfall under subsection 19(2A) or (2B).

(2) The guidelines are to be made available for inspection on the internet.

22 Reduction of charge percentage where contribution made to defined benefit superannuation scheme

(1) This section applies only in relation to defined benefit superannuation schemes.

(2) If:

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(a) a benefit certificate in relation to one or more complying superannuation schemes has effect for the whole or part of a quarter; and

(b) a scheme in relation to which the certificate has effect is operating for the benefit of a person as an employee of an employer; and

(c) the certificate specifies a figure as the notional employer contribution rate in relation to a class of employees (being a class that includes the employee referred to in paragraph (b)) as members of the scheme or schemes (as the case may be);

the charge percentage for the employer, as specified in subsection 19(2), in respect of an employee in the class for the quarter, is reduced, in addition to any other such reduction made under this section or section 23, by the amount worked out using the formula:

$$A \times B$$

where:

A is the figure referred to in paragraph (c).

B is:

(A) 1; or

(B) if, in relation to the quarter, the employment period is greater than the scheme membership period or the certificate period—either the fraction that represents the scheme membership period as a proportion of the employment period or the fraction that represents the certificate period as a proportion of the employment period or, if one fraction is smaller than the other, the smaller fraction.

(3) For the purposes of subsection (2):

the employment period means the period, or the aggregate of the periods, in the quarter for which the employee is employed by the employer.

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the scheme membership period means the period, or the aggregate of the periods, in the quarter for which the employee is a member of the superannuation scheme.

the certificate period means the period, or the aggregate of the periods, in the quarter for which the benefit certificate has effect in relation to the scheme.

(4) The charge percentage for an employer for a quarter cannot be reduced below 0.

(5) For the purposes of a calculation under this section in relation to an employer and an employee:

(a) a period of leave of absence without pay granted by the employer to the employee is not to be taken into account as a period for which the employee is employed by the employer; and

(b) a benefit certificate is taken not to have effect in relation to the employee in respect of such a period.

23 Reduction of charge percentage if contribution made to RSA or to fund other than defined benefit superannuation scheme

(1) This section applies only in relation to RSAs and to superannuation funds other than defined benefit superannuation schemes.

Reduction of charge percentage where contributions are made by employer

(2) If, in a quarter, an employer contributes for the benefit of an employee to a complying superannuation fund or an RSA, then the charge percentage for the employer (as specified in subsection 19(2)) for the employee for the quarter is reduced by the number worked out using the formula:

$$\frac{\text{Contribution}}{\text{Ordinary time earnings}} \times 100$$

where:

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contribution is the number of dollars in the amount of the contribution.

ordinary time earnings is the number of dollars in the ordinary time earnings of the employee for the quarter in respect of the employer.

Example: If the contribution is $60 and the ordinary time earnings are $1,000 then the charge percentage is reduced by 6.

(3) A reduction under subsection (2) in respect of a contribution is in addition to:

(a) any other reduction under that subsection in respect of any other contribution; and

(b) any reduction under section 22.

Some contributions made after a quarter ends may be taken into account in the quarter

(6) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee may be taken into account under this section as having been made in a quarter if it is in fact made within the period of 28 days after the end of the quarter.

Certain contributions made before a quarter may be taken into account in the quarter

(7) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee may be taken into account under this section as if it had been made during a particular quarter if the contribution is made not more than 12 months before the beginning of the quarter.

Contributions taken into account for a quarter not to be taken into account for any other quarter

(8) A contribution to a superannuation fund or an RSA made by an employer for the benefit of an employee that is taken into account

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under this section in relation to a quarter is not to be taken into account under this section in relation to any other quarter.

[Contribution made when conversion notice has effect not to be taken into account under this section]

(8A) A contribution to a superannuation fund or superannuation scheme made by an employer for the benefit of an employee at a time when a conversion notice has effect in relation to the fund or scheme is not at any time to be taken into account under this section.

[Contributions to estate of deceased employee]

(9A) If:

(a) an employee has died; and

(b) the employer would, if the employee had not died, have made a contribution to a complying superannuation fund or RSA for the benefit of the employee; and

(c) the employer pays to the legal personal representative of the employee an amount equal to the amount of the contribution that would have been paid;

the amount paid is taken for the purposes of this section to have been a contribution made by the employer to a complying superannuation fund or RSA for the benefit of the employee.

[Charge percentage not to be less than 0]

(10) The charge percentage for an employer for a quarter cannot be reduced below 0.

[Reduction of notional earnings base if amount excluded from employee's salary or wages]

(11) If an employee's notional earnings base includes an amount of the employee's salary or wages that, because of section 27 or 28, is not taken into account for the purpose of making a calculation under

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section 19, the employee's notional earnings base for the purposes of this section is taken to be reduced by that amount.

[Reduction of ordinary time earnings if amount excluded from employee's salary or wages]

(12) If, because of section 27 or 28, an amount of an employee's salary or wages is not taken into account for the purpose of making a calculation under section 19, the employee's ordinary time earnings for the purposes of this section are taken to be reduced by that amount.

(13) Subject to subsection (15), if:

(a) an employer makes a deposit under the *Small Superannuation Accounts Act 1995* in respect of an employee before 1 July 2006; and

(b) the deposit form that accompanied the deposit, in so far as the form relates to the deposit, did not contain a declaration that is false or misleading;

this section has effect as if the deposit were a contribution made by the employer for the benefit of the employee to a complying superannuation fund.

(14) Subsection (13) has effect despite section 9 of the *Small Superannuation Accounts Act 1995*.

(15) If:

(a) an employer makes a deposit under the *Small Superannuation Accounts Act 1995* in respect of an employee; and

(b) the employer receives a payment under Part 8 of that Act by way of a refund of the deposit;

this section has effect as if the deposit had never been made.

(16) In subsections (13) and (15):

deposit has the same meaning as in the *Small Superannuation Accounts Act 1995*.

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deposit form has the same meaning as in the *Small Superannuation Accounts Act 1995*.

23A Offsetting late payments against charge

(1) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee is offset under subsection (3) if:

(a) the contribution is made:

(i) after the end of the period of 28 days after the end of a quarter; and

(ii) before the employer's original assessment for that quarter is made; and

(b) the employer elects, in the approved form, that the contribution be offset.

(2) The election must be made:

(a) in a statement having effect under section 35 as the employer's assessment for the quarter; or

(b) within 4 years after the employer's original assessment for the quarter is made.

The election cannot be revoked.

(3) The contribution is offset, at the time the employer's original assessment for the quarter is made, against the employer's liability to pay superannuation guarantee charge to the extent that the liability relates to:

(a) that part of the employer's nominal interest component for the quarter that relates to the employee; or

(b) the employer's individual superannuation guarantee shortfall for the employee for the quarter.

(4) The contribution is offset against that part of the employer's nominal interest component for the quarter that relates to the employee before any remainder is offset against the employer's individual superannuation guarantee shortfall for the employee for the quarter.

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(4A) If the election happens after the employer's assessment for the quarter is made, then, for the offset to take effect, the assessment must be amended accordingly under section 37.

(5) A contribution to a superannuation fund or an RSA made by an employer for the benefit of an employee that is taken into account under this section in relation to a quarter is not to be taken into account:

(a) under this section in relation to any other quarter; or

(b) under section 22 or 23.

23B Contributions through an approved clearing house

For the purposes of sections 23 and 23A:

(a) treat an employer that, at a particular time, pays an amount to an approved clearing house for the benefit of an employee as having made a contribution of the same amount to a complying superannuation fund or an RSA for the benefit of the employee at that time, if the approved clearing house accepts the payment; and

(b) disregard any contribution that the approved clearing house makes to a complying superannuation fund or an RSA as a result of the payment.

24 Certain benefit certificates presumed to be certificates in relation to complying superannuation scheme

(1) Subject to subsection (4), a benefit certificate that has effect in relation to a superannuation scheme (being a scheme to which an employer has contributed for the benefit of an employee) for the whole or a part of a quarter is, for the purposes of section 22, conclusively presumed, in relation to the employer, to be a certificate that has effect in relation to a complying superannuation scheme for the whole, or that part, as the case may be, of the quarter if:

(a) within 30 days of the starting day in relation to that certificate, the employer obtains a written statement,

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provided by or on behalf of the trustee of the scheme, that the scheme:

(i) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

(ii) is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*; and

(iii) has not been subject to such a direction at any time since the beginning of the day on which the benefit certificate is expressed to take effect; or

(b) in an earlier quarter, the employer has obtained a statement of the kind referred to in paragraph (a).

(2) Subject to subsection (4), a benefit certificate that has effect in relation to a superannuation scheme (being a scheme to which an employer has contributed for the benefit of an employee) for the whole or a part of a quarter is, if the employer obtains a statement of the kind referred to in paragraph (1)(a):

(a) within the quarter; but

(b) later than 30 days after the starting day in relation to that certificate;

for the purposes of section 22, conclusively presumed, in relation to the employer, to be a certificate that has effect in relation to a complying superannuation scheme for the period commencing on the day on which the employer obtains the statement and ending on the last day of the quarter.

(4) A presumption relating to a benefit certificate under subsection (1) or (2) is not, in relation to an employer and a superannuation scheme, effective in respect of any period for which the scheme is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act if, in that period:

(a) the employer:

(i) is the trustee or manager of the scheme; or

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(ii) has an association, within the meaning of section 318 of the *Income Tax Assessment Act 1936*, with the trustee or the manager of the scheme; and

(b) the employer has reasonable grounds for believing that the scheme is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act.

(4A) Section 39 of the *Superannuation Industry (Supervision) Act 1993* applies for the purposes of subsection (4) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 5 of that Act.

(5) In this section:

starting day means:

(a) in relation to a benefit certificate that has effect in relation to a superannuation scheme for the whole of a quarter—the first day of the quarter; or

(b) in relation to a benefit certificate that has effect in relation to a superannuation scheme for a part of a quarter—the first day in the quarter for which the benefit certificate has effect.

25 Certain contributions presumed to be contributions to complying superannuation fund

(1) Subject to subsection (2), a contribution by an employer for the benefit of an employee to a superannuation fund is conclusively presumed to be a contribution to a complying superannuation fund for the purposes of section 23 if, at or before the time the contribution is made, the employer has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund:

(a) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

(b) is not subject to a direction under section 63 of that Act.

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(2) Subsection (1) does not apply to a contribution to a superannuation fund if, at the time the contribution is made:

(a) the employer:

(i) is the trustee or the manager of the fund; or

(ii) has an association, within the meaning of section 318 of the *Income Tax Assessment Act 1936*, with the trustee or the manager of the fund; and

(b) the employer has reasonable grounds for believing that the fund is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act.

(3) Section 39 of the *Superannuation Industry (Supervision) Act 1993* applies for the purposes of subsection (2) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 5 of that Act.

26 Certain periods not to count as periods of employment

(1) Any period in respect of which excluded salary or wages are paid by an employer to an employee is not, for the purposes of section 22 or 23, to be taken into account as a period for which the employee is employed by the employer.

(2) For the purposes of subsection (1), excluded salary or wages are salary or wages that, under section 27 or 28, are not to be taken into account for the purpose of making a calculation under section 19.

27 Salary or wages: general exclusions

(1) The following salary or wages are not to be taken into account for the purpose of making a calculation under section 19:

(b) salary or wages paid to an employee who is not a resident of Australia for work done outside Australia (except to the extent that the salary or wages relate to employment covered by a certificate under section 15C);

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(c) salary or wages paid by an employer who is not a resident of Australia to an employee who is a resident of Australia for work done outside Australia;

(ca) salary or wages paid by an employer to an employee who is not a resident of Australia for work done in the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*);

(d) salary or wages paid to an employee who is a prescribed employee for the purposes of this paragraph;

(e) salary or wages prescribed for the purposes of this paragraph.

(2) If an employer pays an employee less than $450 by way of salary or wages in a calendar month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under section 19.

28 Salary or wages: excluded earnings of young persons

Salary or wages paid to a part-time employee who is under 18 are not to be taken into account for the purpose of making a calculation under section 19.

29 Salary or wages: excluded earnings of members of Reserves

If an employee receives income that is exempt from income tax under item 1.4 of the table in section 51-5 of the *Income Tax Assessment Act 1997*, that income is not to be taken into account for the purposes of this Act.

30 Arrangements to avoid payment of superannuation guarantee charge

If:

(a) an employer makes an arrangement; and

(b) as a result of the arrangement the employer's superannuation guarantee shortfall for a quarter is reduced; and

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(c) in the Commissioner's opinion the arrangement was made solely or principally for the purpose of avoiding payment of superannuation guarantee charge otherwise than in accordance with this Act;

the employer is liable to pay for the quarter an amount of superannuation guarantee charge equal to the amount that, in the Commissioner's opinion, the employer would have been liable to pay if the arrangement had not been made.

31 Nominal interest component

The nominal interest component in relation to an employer for a quarter is the amount that would accrue by way of interest on the total of the employer's individual superannuation guarantee shortfalls for the quarter if interest were calculated at the rate applicable under the regulations for the purposes of this subsection from the beginning of the quarter in question until the date on which superannuation guarantee charge in relation to the total would be payable under this Act.

32 Administration component

An employer's administration component for a quarter is the amount worked out using the formula:

$$\text{Base amount} + \left[\text{N} \times \text{Per capita amount}\right]$$

where:

base amount is the amount (if any) prescribed in the regulations.

N is the number of employees in respect of whom the employer has an individual superannuation guarantee shortfall for the quarter.

Per capita amount is $20 or such other amount as is from time to time prescribed.

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Part 3A—Choice of fund requirements

Division 1—Overview of Part

32A Purpose of Part

This Part sets out the circumstances in which contributions are made in compliance with the choice of fund requirements. This is important because an employer's individual superannuation guarantee shortfall for an employee for a quarter may be increased where contributions do not comply.

32B Structure of Part

The structure of this Part is as follows:

Structure of Part	
Division	**Topic**
Division 1	Overview of Part
Division 2	Which contributions satisfy the choice of fund requirements?
Division 3	Eligible choice funds
Division 4	Choosing a fund
Division 6	Standard choice forms
Division 8	Miscellaneous

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Division 2—Which contributions satisfy the choice of fund requirements?

32C Contributions that satisfy the choice of fund requirements

Contributions to certain funds

(1) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if the contribution is made to a fund that, at the time that the contribution is made, is:

(a) a chosen fund for the employee (see Division 4); or

(b) if the employee is not a Commonwealth employee who is a member of the CSS or the PSS—an unfunded public sector scheme.

Contributions to other funds

(2) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if, at the time the contribution is made:

(a) there is no chosen fund for the employee; and

(b) the fund is an eligible choice fund for the employer; and

(ba) the fund:

(i) is specified under section 32P in the standard choice form provided as the fund to which the employer will contribute for the benefit of the employee if the employee does not make a choice or will be so specified within the time specified in section 32N for the provision of a standard choice form to the employee; or

(ii) if the employer has not contributed, and cannot contribute, to a fund (the ***first employer fund***) that was so specified or that was purportedly so specified—will be so specified within 28 days of the employer becoming aware that the employer cannot contribute to the first employer fund; or

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(iii) meets the requirements to be a successor default fund under subsection (2AB) of this section; and

(c) a class of beneficial interest in the fund is a MySuper product within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

(d) the fund complies with the requirements (if any) set out in the regulations in relation to the provision of a benefit in respect of MySuper members of the fund that is payable only in the event of the death of the member; and

(e) the fund complies with the requirements (if any) set out in the regulations in relation to offering a benefit in respect of members of the fund (other than MySuper members) that is payable only in the event of the death of the member.

(2A) Subsection (2) does not apply if the employer is required under section 32N to give the employee a standard choice form and the employer does not do this by the time specified in the subsection concerned. However, this subsection ceases to apply from the time that the employer gives the standard choice form to the employee.

(2AA) Paragraph (2)(ba) does not apply if the employee is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa.

(2AB) For the purposes of subparagraph (2)(ba)(iii), a fund (the ***new fund***) meets the requirements to be a successor default fund if:

(a) the employee's interest in a fund (the ***original fund***) is transferred to the new fund without the consent of the member; and

(b) the original fund is a fund:

(i) to which subparagraph (2)(ba)(i) applies; or

(ii) to which subparagraph (2)(ba)(ii) applies, or would have applied if the transfer had not occurred; and

(c) the new fund is a successor fund (within the meaning of the *Income Tax Assessment Act 1997*) in relation to the transfer.

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Contributions through an approved clearing house

(2B) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if:

(a) section 79A (which is about a contribution through an approved clearing house) applies to the contribution; and

(b) the employee or the Commissioner gives the employer notice to the effect that the employee wants a fund to be a chosen fund for the employee in accordance with Division 4 of Part 3A (Choosing a fund); and

Note: Under section 32G (Limit on funds that may be chosen), the fund chosen by the employee must be an eligible choice fund and must be a fund to which the employer can make contributions.

(c) the employer passes onto the approved clearing house mentioned in section 79A the information included in the notice, and any other prescribed information:

(i) within 21 days after the employer is given the notice; and

(ii) before or at the time the contribution is made; and

(d) the approved clearing house accepts the information.

Contributions to the CSS

(3) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the CSS. However, this subsection does not apply if the law of the Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions to the PSS

(4) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the PSS. However, this subsection does not apply if the law of the

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Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions under the Superannuation (Productivity Benefit) Act 1988

(5) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under the *Superannuation (Productivity Benefit) Act 1988*. However, this subsection does not apply if that Act has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions under certain agreements and workplace determinations

(6) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with:

(a) a pre-reform certified agreement; or
(b) an AWA; or
(c) a pre-reform AWA; or
(d) a collective agreement; or
(e) an old IR agreement; or
(f) an ITEA; or
(g) a workplace determination; or
(h) an enterprise agreement; or
(i) an award mentioned in paragraph 2(2)(a) of Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
(j) a State reference transitional award or common rule.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

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Contributions under notional agreements preserving State awards

(6A) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made:

(a) under, or in accordance with, a notional agreement preserving State awards; and

(b) in respect of salary or wages paid before 1 July 2006.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

Contributions under preserved State agreements

(6B) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a preserved State agreement.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

Contributions under Division 2B State instruments

(7) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a Division 2B State instrument.

Note: The expression ***Division 2B State instrument*** is defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Contributions under State awards

(8) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a State industrial award.

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Contributions under prescribed legislation

(9) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under a law of the Commonwealth, of a State or of a Territory and the law is prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions made after employees cease employment

(10) If:

(a) an employee ceases to be employed by an employer; and

(b) after the employment ceases, the employer makes a contribution to a fund for the benefit of the employee and in respect of the employment;

then, for the purposes of this section, the contribution is taken to have been made immediately before the employment ceases.

Note: This section is used in determining if an individual superannuation guarantee shortfall is increased under subsection 19(2A) or (2B). Where subsection 19(2B) is relevant, the contributions referred to in this section are the notional contributions referred to in paragraph 19(2B)(b).

32CA Certain contributions taken not to satisfy the choice of fund requirements

Despite section 32C, a contribution to a fund by an employer for the benefit of an employee is taken not to comply with the choice of fund requirements if the employer imposes a direct cost or charge on the employee as a consequence of having to contribute to that fund.

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Division 3—Eligible choice funds

32D What funds are eligible choice funds?

A fund is an eligible choice fund for an employer at a particular time if:

(a) it is a complying superannuation fund at that time; or

(b) it is a complying superannuation scheme at that time; or

(c) it is an RSA; or

(ca) if the time is a time before 1 July 2006—it is the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account; or

(d) at that time, a benefit certificate in relation to the fund is conclusively presumed under section 24, in relation to the employer, to be a certificate in relation to a complying superannuation scheme; or

(e) contributions made by the employer to the fund at that time are conclusively presumed under section 25 to be contributions to a complying superannuation fund.

32E Meaning of *funds*—includes RSAs and schemes

(1) In this Part:

fund means:

(a) a superannuation fund; and

(b) a superannuation scheme; and

(c) an RSA;

and, until immediately before 1 July 2006, includes the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account.

(2) For the purposes of this Part, the holder of an RSA is taken to be a member.

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Division 4—Choosing a fund

32F What is a chosen fund

(1) If an employee wants a fund to be a chosen fund for the employee, the employee must:

(a) give the employer written notice to that effect; or

(b) give the Commissioner a notice to that effect in the approved form.

Note: A fund can only be a chosen fund if the employer is able to make contributions to the fund for the benefit of the employee (see subsection 32G(2)).

(1A) If:

(a) an employer has offered an employee a choice of fund before 1 July 2005; and

(b) the employee has chosen a fund in accordance with the choice of funds that is offered; and

(c) the limitations on that choice are consistent with section 32G or, if the choice was made before the commencement of that section, would have been consistent with section 32G if the section had been in force at the time the choice was made;

then, for the purposes of this Part, any fund chosen by the employee is taken to be the chosen fund for the employee with effect from:

(d) 1 July 2005; or

(e) a date that is 2 months after the fund is so chosen (unless the employer determines an earlier time after 1 July 2005 but within that 2 months);

whichever last occurs.

(2) The fund becomes a chosen fund for the employee 2 months after the employee or the Commissioner gives the notice to the employer, or at such earlier time after the notice is given as the employer determines.

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(3) A fund (the ***selected fund***) cannot become a chosen fund for an employee under this section if:

(a) immediately before the employee gave the notice to the employer or the Commissioner, the employee was a defined benefit member of a defined benefit superannuation scheme; and

(b) even if the selected fund were to become a chosen fund for the employee, the employee would be entitled, on the employee's retirement, resignation or retrenchment, to the same amount of benefit from the defined benefit superannuation scheme as the employee would be entitled if the selected fund were not a chosen fund for the employee.

32FA Employer may refuse to accept certain chosen funds

(1) An employer may refuse to accept the fund chosen by an employee under section 32F and notified under paragraph 32F(1)(a) if the employee does not provide, together with the notice:

(a) a written statement setting out:

(i) contact details for the fund; and

(ii) any other prescribed information; and

(b) written evidence that the fund will accept contributions made by the employer for the benefit of the employee.

(2) An employer may refuse to accept the fund chosen by an employee under section 32F if the employee has chosen another fund within the previous 12 months.

32G Limit on funds that may be chosen

(1) The fund chosen by the employee must be an eligible choice fund for the employer at the time that the choice is made.

(2) The fund chosen by the employee must be a fund to which the employer can make contributions for the benefit of the employee at the time that the choice is made.

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32H When fund ceases to be a chosen fund

(1) A fund (the ***old fund***) ceases to be a chosen fund for an employee if:

(a) there is another fund that is a chosen fund for the employee; and

(b) neither the employee nor the Commissioner has given the employer a written notice stating that the old fund continues to be a chosen fund for the employee.

(1A) The employee may give the employer a written notice, or give the Commissioner a notice in the approved form, stating that the old fund continues to be a chosen fund for the employee.

(2) A fund also ceases to be a chosen fund if the employee requests the employer, under subsection 32N(3), to give him or her a standard choice form and the employer does not do this by the time specified in that subsection.

(3) A fund also ceases to be a chosen fund if it is impossible for the employer to contribute on behalf of the employee to the chosen fund. This may occur immediately after the fund becomes a chosen fund for the employee.

Example: The chosen fund is closed to new members or ceases to accept further contributions.

(4) A fund also ceases to be a chosen fund if the fund ceases to be an eligible choice fund for the employer. This may occur immediately after the fund becomes a chosen fund for the employee.

32J A successor fund may become a chosen fund

For the purposes of this Act, if:

(a) an employee's interest in a superannuation fund (the ***original fund***) is transferred to another superannuation fund without the consent of the member; and

(b) the other fund is a successor fund (within the meaning of the *Income Tax Assessment Act 1997*) in relation to the transfer; and

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(c) immediately before the transfer takes effect, the original fund was a chosen fund for the employee; and

(d) at the time the transfer takes effect, the other fund:

(i) is an eligible choice fund; and

(ii) is a fund to which the employer can make contributions for the benefit of the employee;

from the time the transfer takes effect, the other fund is taken to be a chosen fund for the employee, and the original fund is taken no longer to be a chosen fund for the employee.

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Division 6—Standard choice forms

32N When a standard choice form must be provided

(1) An employer must give a standard choice form before 29 July 2005 to each employee employed by the employer on 1 July 2005.

Note: An employer does not have to provide a standard choice form to an existing employee except in the specific circumstances outlined in this section. See also the further exceptions in section 32NA.

(2) An employer must give a standard choice form to an employee within 28 days of the employee first commencing employment with the employer.

(3) An employer must also give a standard choice form to an employee within 28 days of the employee giving the employer a written request to do so. However, a request is taken never to have been made if the employee has been given a standard choice form within the previous 12 months.

(4) An employer must also give a standard choice form to an employee within 28 days of the employer becoming aware that there ceased to be any chosen fund for the employee because of:

(a) subsection 32H(3) (employer unable to contribute to fund); or

(b) subsection 32H(4) (fund ceasing to be eligible choice fund).

(5) An employer must also give a standard choice form to an employee if:

(a) the employer is making contributions, in accordance with subsection 32C(2), to a fund for the benefit of the employee; and

(b) the employer changes the fund to which the employer makes contributions, in accordance with that subsection, for the benefit of the employee.

The standard choice form must be given within 28 days after the change.

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(5A) An employer must also give a standard choice form (the ***updated standard choice form***) to an employee if:

(a) the employer has specified a fund (the ***employer fund***) in a standard choice form as the fund to which the employer will contribute under subsection 32C(2) in the event of the employee failing to make a choice of fund; and

(b) the employer discovers, after giving an employee the standard choice form, that the employer cannot contribute to the employer fund for the benefit of the employee.

The updated standard choice form must be given within 28 days after the employer first becomes aware that the employer cannot contribute to the employer fund for the benefit of the employee.

(6) An employer may also give a standard choice form at any time.

32NA When a standard choice form does not have to be provided

(1) An employer is not required under section 32N to give an employee a standard choice form if the employee has chosen a fund under section 32F by the time specified in subsection 32N(1), (2), (3) or (4).

(1A) An employer is not required under section 32N to give an employee a standard choice form if:

(a) the employer is making contributions of a kind mentioned in subsection 32C(2) for the benefit of the employee; and

(b) the fund to which the contributions are made meets the requirements to be a successor default fund under subsection 32C(2AB).

(2) An employer is not required under section 32N to give an employee a standard choice form if:

(a) the employer is making contributions of a kind mentioned in subsections 32C(3) to (9) for the benefit of the employee; and

(b) the contributions are made in compliance with the choice of fund requirements.

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(3) Subject to subsections 32N(3) and (4), an employer is not required under section 32N to give an employee a standard choice form if:
  (a) the employee has chosen a fund before 1 July 2005; and
  (b) the fund so chosen is to be taken, in accordance with subsection 32F(1A), to be the chosen fund for that employee.

(4) An employer is not required under section 32N to give an employee a standard choice form if the employee:
  (a) is a member of an unfunded public sector scheme; and
  (b) is not a Commonwealth employee who is a member of the CSS or the PSS.

(5) An employer is not required under section 32N to give an employee a standard choice form if the employee ceases to be an employee before the end of the period for giving a standard choice form to the employee.

(6) An employer is not required under section 32N to give an employee a standard choice form if:
  (a) it is a condition of the employment of that employee that the employee choose a fund from funds that include all funds that are eligible choice funds for the employer at the time the choice is made; and
  (b) the employer does not have an arrangement to pay contributions to a fund for the benefit of an employee in the event that the employee failed or refused to choose a fund.

(7) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
  (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
  (b) subsection 20(2) is satisfied in relation to that scheme and that quarter.

(8) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
  (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and

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(b) subsection 20(3) is satisfied in relation to the defined benefit that has accrued to that member.

(9) An employer is not required under section 32N to give an employee a standard choice form if:

(a) the employee is a defined benefit member of a defined benefit superannuation scheme; and

(b) the employee would be entitled, on the employee's retirement, resignation or retrenchment, to the same amount of benefit from the defined benefit superannuation scheme, whether or not the employee had contributions made by the employer for his or her benefit to a fund other than the defined benefit superannuation scheme.

(10) An employer is not required under section 32N to give an employee a standard choice form if:

(a) the employee is covered by a notional agreement preserving State awards or a preserved State agreement; and

(b) before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*, the employer was required, under a State law, to give the employee a notification that the employee can choose a superannuation fund; and

(c) the employer has given the notification mentioned in paragraph (b) to the employee.

(11) An employer is not required under section 32N to give an employee a standard choice form if the employee is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa.

32P Standard choice form

(1) For the purposes of this Part, a ***standard choice form*** is a form that is in writing and that contains the following information:

(a) a statement that the employee may choose any eligible choice fund for the employer as a chosen fund for the employee;

(c) the name of the fund that the employer will contribute to if the employee does not make a choice;

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(e) other information that is required, under the regulations, to be included in the form;

(g) if the employee is a member of a defined benefits scheme—information in relation to that scheme that is required, under the regulations, to be included.

(2) The regulations may require additional information in relation to funds to be made available to employees and may prescribe where and when such information is to be made available.

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Division 8—Miscellaneous

32W Disclosing tax file numbers provided in standard choice forms

A taxation officer (within the meaning of the *Income Tax Assessment Act 1997*) may disclose another person's tax file number (within the meaning of that Act) if:

(a) the other person provided the number to the Commissioner in a notice given to the Commissioner under paragraph 32F(1)(b); and

(b) the disclosure is to the other person's employer.

32X Application of Part to different employers of an employee

This Part applies separately to each employer of an employee. For example, a fund that is a chosen fund of an employee as a result of a standard choice form being given by an employer is only a chosen fund in relation to the operation of these provisions to that employer.

32Y Notional earnings base to continue to be used

(1) This section applies if:

(a) an employer is contributing to a fund (the ***choice fund***) that is a chosen fund of an employee; and

(b) it is reasonable to assume that, if the choice of fund requirements did not apply, the employer would instead have contributed to a different fund (the ***other fund***) for the benefit of that employee; and

(c) contributions to the other fund would not have been covered by subsection 23(5).

(2) This section also applies if:

(a) an employer is contributing to a fund (the ***choice fund***) that is a chosen fund of an employee; and

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(b) it is reasonable to assume that, if the choice of fund requirements did not apply, that a reduction in the charge percentage for the employer would have been made under subsection 22(2) as a result of a scheme (the ***other fund***) for the benefit of that employee.

(3) In working out the reduction in the charge percentage under subsection 23(2), (3), (4), (4A) or (4D) as a result of a contribution to the choice fund, the employee's notional earnings base is taken to be equal to the lesser of that notional earnings base and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).

(4) In working out the reduction in the charge percentage under subsection 23(5) as a result of a contribution to the choice fund, the employee's ordinary time earnings are taken to be equal to the lesser of those ordinary time earnings and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).

32Z Contributions satisfy Commonwealth or Territory industrial award requirements

A requirement in a Commonwealth industrial award or a Territory industrial award that an employer make contributions to a superannuation fund on behalf of an employee is not enforceable to the extent that the employer instead makes the contributions on behalf of the employee, in compliance with this Part, to another superannuation fund that is a chosen fund.

32ZAA Contributions satisfy State or Territory law requirements

(1) This section applies to an employer that is a corporation to which paragraph 51(xx) of the Constitution applies.

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(2) A requirement in a law of a State or Territory that the employer make contributions to a superannuation fund on behalf of an employee is not enforceable to the extent that the employer instead makes the contributions on behalf of the employee, in compliance with this Part, to another superannuation fund that is a chosen fund.

32ZA Employers not liable for damages

An employer is not liable to compensate any person for loss or damage arising from anything done by the employer in complying with this Part.

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Part 4—Superannuation guarantee statements and assessments

33 Superannuation guarantee statements

(1) An employer who has a superannuation guarantee shortfall for a quarter must lodge a superannuation guarantee statement for the quarter on or before:

(a) for a quarter beginning on 1 January—28 May in the next quarter; and

(b) for a quarter beginning on 1 April—28 August in the next quarter; and

(c) for a quarter beginning on 1 July—28 November in the next quarter; and

(d) for a quarter beginning on 1 October—28 February in the next quarter.

(1A) However, the Commissioner may allow an employer to lodge a superannuation guarantee statement on a later day.

(2) The statement must be in the approved form.

(4) Subsection (1) does not apply to the employer if the employer has previously given the Commissioner a statement for the quarter under section 34.

34 Power to require information where no superannuation guarantee statement

The Commissioner, by written notice, may require a person who was at any time during a quarter an employer and who has not lodged a superannuation guarantee statement for that quarter to give the Commissioner, within a specified period of not less than 14 days, a written statement for the quarter stating whether the person has a superannuation guarantee shortfall for the quarter and

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if so, setting out the matters set out in the approved form referred to in subsection 33(2).

35 First superannuation guarantee statement for a quarter taken to be assessment

(1) If:

(a) an employer lodges a superannuation guarantee statement for a quarter; and

(b) a superannuation guarantee statement has not previously been lodged, and an assessment has not previously been made, for the quarter in relation to the employer;

then:

(c) the statement has effect as an assessment of the employer's superannuation guarantee shortfall for the quarter and of the superannuation guarantee charge payable on the shortfall; and

(d) the assessment is taken to have been made on the later of the day on which the statement was lodged and the following day:

(i) for a quarter beginning on 1 January—28 May in the next quarter; and

(ii) for a quarter beginning on 1 April—28 August in the next quarter; and

(iii) for a quarter beginning on 1 July—28 November in the next quarter; and

(iv) for a quarter beginning on 1 October—28 February in the next quarter; and

(e) the sum of:

(i) the total of the employer's individual superannuation guarantee shortfalls; and

(ii) the employer's nominal interest component; and

(iii) the employer's administration component;

specified in the statement is to be taken to be the amount of superannuation guarantee charge payable by the employer for the quarter; and

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(f) the statement has effect as if it were a notice of assessment signed by the Commissioner and given to the employer on the day on which the assessment is taken to have been made.

(2) In subsection (1), ***superannuation guarantee statement*** includes a statement under section 34 that indicates that an employer has a superannuation guarantee shortfall for a quarter.

36 Default assessments

(1) If:

(a) an employer has not lodged a superannuation guarantee statement for a quarter; and

(b) the Commissioner is of the opinion that the employer is liable to pay superannuation guarantee charge for the quarter;

the Commissioner may make an assessment of the employer's superannuation guarantee shortfall for the quarter and of the superannuation guarantee charge payable on the shortfall.

(2) For the purposes of making an assessment under subsection (1), the superannuation guarantee shortfall is taken to be the amount that in the Commissioner's opinion might reasonably be expected to be the shortfall.

(3) Superannuation guarantee charge in relation to an assessment made under subsection (1) is payable on the day on which the assessment is made.

37 Amendment of assessments

(1) The Commissioner may, subject to this section, at any time amend any assessment by making any alterations or additions that the Commissioner thinks necessary, whether or not superannuation guarantee charge has been paid in relation to the assessment.

(2) Subject to this section, if there has been an avoidance of superannuation guarantee charge, the Commissioner may:

(a) if the Commissioner is of the opinion that the avoidance of the charge is due to fraud or evasion—at any time; or

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(b) in any other case—within 4 years from the day on which the assessment is made;

amend the assessment by making any alterations or additions that the Commissioner thinks necessary to correct the assessment.

(3) An amendment effecting a reduction in an employer's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.

(4) If an assessment has, under this section, been amended in any particular, the Commissioner may, within 4 years from the day on which superannuation guarantee charge became payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Commissioner's opinion, is necessary to effect such reduction in the employer's liability under the assessment as is just.

(5) If:

(a) an employer applies for an amendment of the employer's assessment within 4 years from the day that superannuation guarantee charge became payable under the assessment; and

(b) within that period, the employer lodges all information the Commissioner needs to decide the application;

the Commissioner may amend the assessment when considering the application, even if that period has elapsed.

(6) Nothing in this section prevents the amendment of an assessment to give effect to:

(a) the decision on any review or appeal; or

(b) its amendment by reduction of any particular following the employer's objection or pending any review or appeal.

(7) Superannuation guarantee charge under an amended assessment is taken to have become payable on the day on which charge under the original assessment became payable.

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38 Refund of overpaid amounts

(1) If, because an assessment is amended, a person's liability to superannuation guarantee charge is reduced:

(a) the amount by which the charge is reduced is taken, for the purposes of section 49, never to have been payable; and

(b) the Commissioner must:

(i) refund any overpaid amount; or

(ii) apply any overpaid amount against the person's liability (if any) to the Commonwealth and refund any part of the amount that is not so applied.

(2) In subsection (1):

overpaid amount includes any overpaid amount of additional superannuation guarantee charge under section 49 or Part 7 of this Act or administrative penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953*.

39 Amended assessment to be an assessment

Except as otherwise expressly provided by this Act, an amended assessment is taken to be an assessment for all the purposes of this Act.

40 Notice of assessment or amendment

As soon as practicable after an assessment is made under section 36 or is amended under section 37, the Commissioner must give written notice of the assessment or amendment (as the case may be) to the person liable to pay the superannuation guarantee charge.

41 Validity of assessment

The validity of an assessment is not affected because any provision of this Act has not been complied with.

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42 Objections against assessment

An employer who is dissatisfied with an assessment may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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Part 5—Administration

43 General administration of Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

44 Annual report

After the end of each year, the Commissioner must give the Treasurer a report on the working of this Act during the year for presentation to the Parliament.

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Part 6—Collection and recovery of charge

46 When superannuation guarantee charge becomes payable

(1) Superannuation guarantee charge for a quarter is payable:

(a) if, on or before the lodgment day for the quarter, the employer lodges a superannuation guarantee statement or a statement under section 34 indicating a superannuation guarantee shortfall for that quarter—on the lodgment day; or

(b) if, after the lodgment day, the employer lodges a superannuation guarantee statement or a statement under section 34 indicating a superannuation guarantee shortfall for that quarter—on the day on which the statement is lodged.

Note 1: If a default assessment is made for a quarter then the superannuation guarantee charge is payable on the day on which the assessment is made: see section 36.

Note 2: For provisions about collection and recovery of superannuation guarantee charge, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) In this section:

lodgment day for a quarter means:

(a) for a quarter beginning on 1 January—28 May in the next quarter; and

(b) for a quarter beginning on 1 April—28 August in the next quarter; and

(c) for a quarter beginning on 1 July—28 November in the next quarter; and

(d) for a quarter beginning on 1 October—28 February in the next quarter.

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47 When additional superannuation guarantee charge becomes payable

Additional superannuation guarantee charge under Part 7 becomes payable on the day specified for the purpose in the notice of assessment of the additional charge.

Note: For provisions about collection and recovery of additional superannuation guarantee charge, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

49 Unpaid superannuation guarantee charge

(1) If any of the superannuation guarantee charge which an employer is liable to pay remains unpaid after the time by which it is due to be paid, the employer is liable to pay the general interest charge on the unpaid amount (the ***original unpaid amount***).

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Note 2: Subsections (2) and (3A) deal with reducing the original unpaid amount.

(2) However, the original unpaid amount must be reduced by those amounts in respect of:

(a) the employer's administration component for the quarter; and

(b) the employer's nominal interest component for the quarter.

(3) The employer is liable to pay the general interest charge for each day in the period that:

(a) started at the beginning of the day by which the superannuation guarantee charge was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the superannuation guarantee charge;

(ii) general interest charge on any of the superannuation guarantee charge.

(3A) To avoid doubt, for the purposes of this section and subsection 8AAC(3) of the *Taxation Administration Act 1953*, an

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election under section 23A in relation to the superannuation guarantee has effect from the time the employer's original assessment for the quarter is made.

(4) The amount of the general interest charge is taken to be ***additional superannuation guarantee charge*** payable under this section.

(5) In this section:

superannuation guarantee charge includes additional superannuation guarantee charge under Part 7.

50 Order of payments

The Commissioner must apply payments of superannuation guarantee charge, or related penalty charge, for a quarter that are made by or on behalf an employer, so that the employer's liability to pay the nominal interest component for the quarter is discharged before all other amounts.

57 Public officer of company

(1) The person who is, from time to time, the public officer of a company for the purposes of section 252 of the *Income Tax Assessment Act 1936* is the public officer of the company for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act.

(2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the company for the purposes of this Act, but, if at any time there is no public officer of the company, service on a person acting or appearing to act in the business of the company is sufficient.

Note: See section 57A for alternative ways to give a notice to, or serve another document on, a company (through its officers, attorneys or agents).

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(3) The public officer is answerable for doing all acts required to be done by the company under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.

(5) If, at any time, there is no public officer of the company, this Act applies in relation to the company as if there were no requirement to appoint a public officer of the company.

(6) A proceeding under this Act brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.

57A Notifying and serving companies

For the purposes of this Act, if the Commissioner thinks fit, a notice or process may be given to, or served on, a company by giving the notice to, or serving the process on:

(a) a director, the secretary or another officer of the company; or

(b) an attorney or agent of the company.

Note: See subsection 57(2) for alternative ways to serve a notice or another document on a company (through its public officer or someone else acting or appearing to act for the company).

58 Public officer of trust estate

(1) The person who is, from time to time, the public officer of a trust estate for the purposes of section 252A of the *Income Tax Assessment Act 1936* is the public officer of the trust estate for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act.

(2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on

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the trustee of the trust estate for the purposes of this Act, but, if at any time there is no public officer of the trust estate, service on a person acting or appearing to act in the business of the trust estate is sufficient.

(3) The public officer is answerable for doing all acts required to be done by the trustee of the trust estate under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the trustee of the trust estate.

(5) If, at any time, there is no public officer of the trust estate, this Act applies in relation to the trustee of the trust estate as if there were no requirement to appoint a public officer of the trust estate.

(6) A proceeding under this Act brought against the public officer is taken to have been brought against the trustee of the trust estate, and the trustee is liable jointly with the public officer for any penalty imposed on the public officer.

(7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the trustee or public officer of the trust estate may, if the Commissioner thinks fit, be given to, served on or brought against any agent or attorney of the trustee, and the agent or attorney has the same liability in relation to the notice, process or proceeding as the trustee or public officer would have had if it had been given to, served on or brought against the trustee or public officer.

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Part 7—Additional superannuation guarantee charge

59 Failure to provide statements or information

(1) If an employer other than a government body refuses or fails to provide, when and as required under this Act, a superannuation guarantee statement or information relevant to assessing the employer's liability to pay superannuation guarantee charge for a quarter, the employer is liable to pay, by way of penalty, additional superannuation guarantee charge equal to double the amount of superannuation guarantee charge payable by the employer for the quarter.

(2) An employer liable to pay superannuation guarantee charge for a quarter must:

(a) keep a record in relation to the quarter containing details of the basis of calculation of the following amounts:

(ii) the individual superannuation guarantee shortfalls of the employer for the quarter;

(iii) the employer's nominal interest component for the quarter;

(iv) the employer's administration component for the quarter;

that were specified in a superannuation guarantee statement under section 33 or a statement under section 34; or

(b) produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2)(a) that were specified in a superannuation guarantee statement under section 33 or a statement under section 34.

(3) If the amount of additional superannuation guarantee charge that would, but for this subsection, be payable under subsection (1) or

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(2) is less than $20, the additional superannuation guarantee charge payable is $20.

62 Assessment of additional superannuation guarantee charge

(1) The Commissioner must make an assessment of the additional superannuation guarantee charge payable by an employer under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the employer.

(3) The Commissioner may remit all or part of the additional superannuation guarantee charge payable by an employer under this Part, but, for the purposes of applying subsection 33(1) of the Acts Interpretation Act 1901 to the power of remission conferred by this subsection, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the additional superannuation guarantee charge.

62A Offsets to be disregarded

In working out the amount of superannuation guarantee charge payable by an employer for a quarter for the purposes of this Part, disregard the amount of any offset under section 23A (about offsetting late payments against charge).

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Part 8—Payments of amounts of shortfall components for the benefit of employees

63A Payments to which this Part applies

(1) This Part applies to a charge payment in respect of one or more employees (the ***benefiting employee*** or ***benefiting employees***) that is made by or on behalf of an employer.

(1A) This Part applies to a former employee as if the former employee were an employee of the person who was the former employee's employer.

(2) In this section:

charge payment means a payment of superannuation guarantee charge, or related penalty charge, for a quarter.

Estimates under the Taxation Administration Act 1953

(3) For the purposes of this Part, an amount paid to the Commonwealth is treated as being a payment of superannuation guarantee charge:

(a) in respect of an employee or employees; and

(b) made by or on behalf of an employer;

to the extent that, as a result of the amount being paid to the Commonwealth, a liability of the employer to pay superannuation guarantee charge in respect of that employee or those employees is discharged under subsection 268-20(3), or section 269-40, in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Under Division 268 in that Schedule, the Commissioner may make an estimate of the unpaid and overdue amount of an employer's superannuation guarantee charge for a quarter.

(4) However, subsection (3) does not apply to the amount until the Commissioner knows which employee or employees the liability to pay the superannuation guarantee charge was in respect of.

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63B Overview of this Part

(1) If a payment to which this Part applies is made, the Commissioner is required to pay (or otherwise deal with) an amount, which is called the shortfall component, for the benefit of a benefiting employee under sections 65 to 67.

(2) If there is only one benefiting employee, the shortfall component for the payment is worked out under section 64A.

(3) If there is more than one benefiting employee, there will be separate shortfall components for each of the employees for the payment, worked out under section 64B.

64A The *shortfall component* for one benefiting employee

(1) This section applies if there is only one benefiting employee.

(2) The ***shortfall component*** for the payment is the lesser of the following amounts:

(a) the amount of the payment;

(b) the amount of the employee entitlement, calculated at the time when the payment is made (see subsection (3)).

(3) The ***employee entitlement***, calculated at a particular time, is the sum of the following amounts:

(a) the individual superannuation guarantee shortfall for the employee for the quarter;

(b) any general interest charge, in respect of non-payment of superannuation guarantee charge payable on that shortfall, that has been paid by, or is payable at, the particular time;

(c) any nominal interest component for the quarter that has been paid by, or is payable at, the particular time;

reduced (but not below zero) by the amounts of any previous payments to which this Part applies that relate to the same quarter, employer and employee.

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64B The *shortfall component* for more than one benefiting employee

(1) This section applies if there is more than one benefiting employee. In this situation, separate shortfall components are worked out for each of the benefiting employees.

(2) The ***shortfall component*** for a payment, in respect of a particular employee, is the employee's proportion of the lesser of the following amounts:

(a) the amount of the payment;

(b) the amount of the total employee entitlement, calculated at the time when the payment is made.

(3) Subject to subsection (3A), an ***employee's proportion*** of an amount is the following proportion:

$$\frac{\text{Employer's individual superannuation guarantee shortfall for the employee for the quarter}}{\text{Total of the employer's individual superannuation guarantee shortfalls for the quarter}}$$

(3A) The Commissioner may vary an employee's proportion of an amount if the amount of the charge payment has been affected by:

(a) the application of the monetary limit imposed by subsection 556(1A) of the *Corporations Act 2001* in respect of the employee; or

(b) the application of the monetary limit imposed by paragraph 109(1)(e) of the *Bankruptcy Act 1966* in respect of the employee.

(4) The ***total employee entitlement***, calculated at a particular time, is the sum of the following amounts:

(a) the employer's individual superannuation guarantee shortfalls for the quarter;

(b) any general interest charge, in respect of non-payment of superannuation guarantee charge payable on those shortfalls, that has been paid by, or is payable at, the particular time;

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(c) any nominal interest component for the quarter that has been paid by, or is payable at, the particular time;

reduced (but not below zero) by the amounts of any previous payments to which this Part applies that relate to the same quarter, employer and employees.

65 Payment of shortfall component

(1) Except in a case covered by section 65AA, 65A, 66 or 67, the Commissioner is required to deal with the amount of the shortfall component in one of the following ways:

(a) in any case—pay the amount of the component, for the benefit of the employee, to:

(i) an RSA; or

(ii) an account with a complying superannuation fund; or

(iii) an account with a complying approved deposit fund;

that is held in the name of the employee and that is determined by the Commissioner to belong to the employee;

(b) if the employee has nominated an RSA, a complying superannuation fund or a complying approved deposit fund in accordance with the regulations:

(i) pay the amount of the component to the RSA or fund for the benefit of the employee; or

(ii) make arrangements in accordance with the regulations to enable the amount of the component to be paid to the RSA or fund for the benefit of the employee;

(c) if the employee has not made a nomination under paragraph (b)—credit the amount of the component to an account kept under the *Small Superannuation Accounts Act 1995* in the name of the employee.

(2) A payment of the amount of a shortfall component made or arranged by the Commissioner for the benefit of an employee to a superannuation fund is conclusively presumed to be a payment to a complying superannuation fund for the purposes of subsection (1) if, at the time the payment is made, the Commissioner has obtained

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a written statement, provided by or on behalf of the trustee of the fund, that the fund:

(a) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and

(b) is not subject to a direction under section 63 of that Act.

(3) A payment of the amount of a shortfall component made or arranged by the Commissioner for the benefit of an employee to an approved deposit fund is conclusively presumed to be a payment to a complying approved deposit fund for the purposes of subsection (1) if subsection (4) applies.

(4) This subsection applies if, at the time the payment is made, the Commissioner has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund is operated in accordance with the *Superannuation Industry (Supervision) Act 1993* and regulations under that Act.

(5) If an amount is to be credited under paragraph (1)(c), an amount equal to the credited amount is to be credited to the Superannuation Holding Accounts Special Account.

(6) A payment under paragraph (1)(a) to a particular account is taken to be a payment to the complying superannuation fund or the complying approved deposit fund with which the account is held, for the purposes of this section and any other laws of the Commonwealth that refer to payments under this section.

65AA Shortfall component and former temporary resident

(1) This section applies if the employee is a former temporary resident (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*).

(2) The Commissioner must treat the amount of the shortfall component as if it had been paid to the Commissioner by a superannuation provider in respect of the employee under section 20F of that Act.

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65A Payment to employee who is over 65

Except in a case covered by section 65AA, the Commissioner must pay the amount of the shortfall component directly to the employee (whether or not he or she is still an employee) if:

(a) the employee is 65 years or more; and

(b) the employee has requested the Commissioner in the approved form to pay the amount to him or her.

66 Payment to employee retired due to permanent incapacity or invalidity

Except in a case covered by section 65AA, if:

(a) the employee has retired because of permanent incapacity or permanent invalidity; and

(b) the former employee has lodged with the Commissioner:

(i) written notice of the retirement; and

(ii) a copy of a certificate signed by 2 registered medical practitioners certifying that the former employee is unlikely to be able to work again in a capacity for which he or she is reasonably qualified by education, training or experience;

the Commissioner must pay the amount of the shortfall component to the former employee.

67 Payment where employee deceased

Except in a case covered by section 65AA, if the employee has died, the Commissioner must pay the amount of the shortfall component to the legal personal representative of the employee.

69 Repayment of overpayments in relation to a shortfall component

If an amount paid by the Commissioner under a provision of this Part (other than paragraph 65(1)(c)) exceeds the amount properly payable by the Commissioner under that provision, the party to

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whom the payment has been made is liable to repay to the Commonwealth the amount of the excess.

69A Recovery of shortfall component incorrectly credited to an account kept under the *Small Superannuation Accounts Act 1995*

(1) This section applies if:

(a) an amount credited by the Commissioner under paragraph 65(1)(c) of this Act to an account kept under the *Small Superannuation Accounts Act 1995* exceeds the amount that should have been credited to the account; and

(b) the balance of the account is attributable, in whole or in part, to the credit.

(2) The account is to be debited by the amount of the excess.

(3) An amount equal to the excess is to be debited from the Superannuation Holding Accounts Special Account.

70 Recovery of overpayments

The amount of any excess payment referred to in section 69 may be recovered by the Commonwealth as a debt due to the Commonwealth.

71 Appropriation

Amounts that the Commissioner is required to pay under this Part are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

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Part 9—Miscellaneous

72 Treatment of partnerships

(1) Subject to this section, this Act applies as if a partnership were a legal person.

(2) An obligation that, apart from this subsection, would be imposed by this Act on a partnership is instead imposed on each partner, but may be discharged by any of the partners.

(3) If, apart from this subsection, a liability to pay money would be imposed on a partnership by this Act, the liability is instead imposed on the partners jointly and severally.

(4) If, because of subsection (1), a partnership would be taken to have committed an offence, the offence is instead taken to have been committed by each of the partners.

(5) In a prosecution for an offence taken to have been committed by a person because of subsection (4), it is a defence that the person:

(a) did not aid, abet, counsel or procure the act or omission constituting the offence; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence.

(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

73 Treatment of unincorporated associations

(1) In this section, ***association*** means an unincorporated association or body of persons (other than a partnership).

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(2) Subject to this section, this Act applies as if an association were a legal person.

(3) An obligation that, apart from this subsection, would be imposed on an association is instead imposed on the officers of the association.

(4) If, apart from this subsection, a liability to pay money would be imposed on an association by this Act, the liability is instead imposed on the members of the association jointly and severally.

(5) If, because of subsection (2), an association would be taken to have committed an offence, the offence is instead taken to have been committed by each of the officers of the association.

(6) In a prosecution for an offence taken to have been committed by a person by virtue of subsection (5), it is a defence that the person:

(a) did not aid, abet, counsel or procure the act or omission constituting the offence; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence.

(7) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

79 Records to be kept and retained by employers

(1) An employer must keep records that record and explain all transactions and other acts engaged in by the employer, or required to be engaged in by the employer, under this Act.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) The records must include any documents relevant to ascertaining the individual superannuation guarantee shortfalls of the employer for a quarter.

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(3) The records must be kept:

(a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and

(b) so that the employer's liability under this Act can be readily ascertained.

(4) An employer who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is later.

(5) Nothing in this section requires an employer to retain records if:

(a) the Commissioner has notified the employer that the retention of the records is not required; or

(b) the employer is a company that has gone into liquidation and been finally dissolved.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

(6) An employer who contravenes this section commits an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(6A) Subsection (6) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6A), see subsection 13.3(3) of the *Criminal Code*.

(7) An offence under this section is an offence of strict liability.

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

79A Approved clearing house

(1) This section applies if:

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(a) an employer pays an amount to an approved clearing house for the benefit of an employee; and

(b) as a result, the approved clearing house makes a contribution to an RSA, a superannuation fund or a superannuation scheme for the benefit of the employee.

(2) To avoid doubt, the approved clearing house makes the contribution to the RSA, superannuation fund or superannuation scheme on behalf of the employer, as the employer's agent.

(3) ***Approved clearing house*** means a body specified in the regulations for the purposes of this subsection.

80 Regulations

The Governor-General may make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Guarantee (Administration) Act 1992	111, 1992	21 Aug 1992	1 July 1992 (s 2)	
Taxation Laws Amendment (Superannuation) Act 1992	208, 1992	22 Dec 1992	s 77–89: 22 Dec 1992 (s 2(1))	s 82 and 89
Taxation Laws Amendment (Superannuation) Act 1993	7, 1993	27 May 1993	s 56–61: 27 May 1993 (s 2(1))	s 61
Superannuation Industry (Supervision) Consequential Amendments Act 1993	82, 1993	30 Nov 1993	s 54–59: 1 Dec 1993 (s 2(1))	s 59
Taxation Laws Amendment Act (No. 3) 1993	118, 1993	24 Dec 1993	s 147–152: 24 Dec 1993 (s 2(1)) s 153–155: 25 Dec 1993 (s 2(4))	s 148, 152 and 155
Taxation Laws Amendment Act 1994	56, 1994	7 Apr 1994	s 88–109: 7 Apr 1994 (s 2(1))	s 89, 90(2), 92, 93(2), 94, 97, 98, 99(2), 100, 101(2), 102, 103(2), 104, 105(2), 106, 107(2), 108 and 109(2)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Taxation Laws Amendment Act (No. 4) 1994	181, 1994	19 Dec 1994	Sch 3 (items 118–125 and Sch 5 (items 33–36, 46(11), (12), 47): 19 Dec 1994 (s 2(1))	Sch 3 (items 118, 125) and Sch 5 (items 46(11), (12), 47)
Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995	53, 1995	23 June 1995	Sch 3 (items 1–8): 1 July 1995 (s 2)	Sch 3 (item 8)
Taxation Laws Amendment Act (No. 1) 1995	120, 1995	25 Oct 1995	Sch 2 (items 8–13): 1 July 1994 (s 2(3))	—
Taxation Laws Amendment Act (No. 2) 1995	169, 1995	16 Dec 1995	s 1–3, Sch 4 (items 2–13): 16 Dec 1995 (s 2(1)) Sch 4 (item 1): 1 July 1992 (s 2(3))	Sch 4 (items 5, 10)
Taxation Laws Amendment Act (No. 3) 1995	170, 1995	16 Dec 1995	Sch 3 (items 1–14): 16 Dec 1995 (s 2(1))	Sch 3 (items 10, 14)
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 109): 1 July 1992 (s 2(2))	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 19 (item 50): 25 Nov 1996 (s 2(1))	
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Taxation Laws Amendment Act (No. 2) 1996	76, 1996	18 Dec 1996	Sch 3: (items 1–9): 18 Dec 1996 (s 2(1) item 1)	Sch 3 (item 9)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	Sch 15 (items 1–34): 2 June 1997 (s 2)	—
Tax Law Improvement Act 1997	121, 1997	8 July 1997	Sch 3 (item 75): 1 July 1997 (s 2(2), (3))	—
Taxation Laws Amendment Act (No. 3) 1997	147, 1997	14 Oct 1997	Sch 9 (items 1, 2): 14 Oct 1997 (s 2(1))	Sch 9 (item 2)
Taxation Laws Amendment Act (No. 3) 1999	11, 1999	31 Mar 1999	Sch 1 (items 344, 345): 1 July 1999 (s 2(3))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 224–226): 1 July 1999 (s 3(2), (16) and gaz 1999, No S283)	
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 898–900): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584)	—
A New Tax System (Tax Administration) Act 1999	179, 1999	22 Dec 1999	Sch 2 (items 76–85, 130–134, 136): 22 Dec 1999 (s 2(1))	Sch 2 (items 130–134, 136)
A New Tax System (Tax Administration) Act (No. 2) 2000	91, 2000	30 June 2000	Sch 2 (items 61–67): 1 July 2000 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Sch 2 (items 85, 94, 95): 19 Apr 2001 (s 2(1))	Sch 2 (items 94, 95)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 497): 15 July 2001 (s 2(3) and gaz 2001, No S285)	s 4–14
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (items 280, 281): 11 Mar 2002 (s 2(1), (6) and gaz 2001, No GN42)	—
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001	146, 2001	1 Oct 2001	s 4 and Sch 4 (items 123–128): 15 Dec 2001 (s 2(1))	s 4
Taxation Laws Amendment (Superannuation) Act (No. 2) 2002	51, 2002	29 June 2002	s 4 and Sch 1 (items 193–201): 29 June 2002 (s 2(1) item 3) Sch 1 (items 1–168): 1 July 2003 (s 2(1) item 2) Sch 6 (item 9): 5 May 2003 (s 2(1) item 12 and gaz 2003, No S138)	Sch 1 (items 193–201)
as amended by				
Tax Laws Amendment (2010 Measures No. 2) Act 2010	75, 2010	28 June 2010	Sch 6 (item 108): 29 June 2010 (s 2(1) item 9)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003	10, 2003	2 Apr 2003	Sch 1 (items 76, 77, 83): 2 Apr 2003 (s 2(1) items 5, 7)	Sch 1 (item 83)
Superannuation Laws Amendment (2004 Measures No. 2) Act 2004	93, 2004	29 June 2004	s 4(3): 29 June 2004 (s 2(1) item 1) Sch 1 (items 5–7): 1 July 2008 (s 2(1) item 3)	s 4(3)
Taxation Laws Amendment Act (No. 1) 2004	101, 2004	30 June 2004	Sch 11 (items 96–100, 128, 129): 1 July 2000 (s 2(1) item 14)	Sch 11 (items 100, 129)
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004	102, 2004	30 June 2004	Sch 1 (items 1–22): 1 July 2005 (s 2(1) item 2)	—
Tax Laws Amendment (Superannuation Reporting) Act 2004	142, 2004	14 Dec 2004	14 Dec 2004 (s 2)	Sch 1 (item 2)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4 and Sch 1 (items 417, 418, 496): 22 Feb 2005 (s 2(1) items 1, 2, 10)	s 4 and Sch 1 (item 496)
Tax Laws Amendment (2004 Measures No. 7) Act 2005	41, 2005	1 Apr 2005	Sch 10 (item 232): 1 Apr 2005 (s 2(1) item 5)	—
Superannuation (Consequential Amendments) Act 2005	81, 2005	29 June 2005	Sch 2: 1 July 2005 (s 2(1) item 5)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005	82, 2005	29 June 2005	Sch 1 (items 2, 3, 5–11): 1 July 2005 (s 2(1) items 3, 5) Sch 1 (item 4): 1 July 2005 (s 2(1) item 4)	—
Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005	147, 2005	14 Dec 2005	Sch 6 (items 3–10) and Sch 7 (items 17–20): 14 Dec 2005 (s 2(1) item 6)	Sch 6 (item 10) and Sch 7 (items 19, 20)
Tax Laws Amendment (2006 Measures No. 2) Act 2006	58, 2006	22 June 2006	Sch 6 (items 1, 2) and Sch 7 (items 129, 130): 22 June 2006 (s 2(1) items 5, 6)	Sch 6 (item 2)
Tax Laws Amendment (2006 Measures No. 3) Act 2006	80, 2006	30 June 2006	Sch 7 (items 1–3): 30 June 2006 (s 2(1) item 7)	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 2 (items 925–928, 1017, 1055, 1056) and Sch 6 (items 1, 6–11): 14 Sept 2006 (s 2(1) items 2, 4)	Sch 6 (items 1, 6–11)
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 4 (item 27): 15 Mar 2007 (s 2(1) item 44)	—
Tax Laws Amendment (Simplified Superannuation) Act 2007	9, 2007	15 Mar 2007	Sch 4 (items 6–8, 16): 15 Mar 2007 (s 2(1) items 3, 5)	Sch 4 (item 16)
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 346–350, 406(1)–(3)) and Sch 3 (items 52, 53): 15 Mar 2007 (s 2(1) items 2, 7)	Sch 1 (item 406(1)–(3))

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (2007 Measures No. 1) Act 2007	56, 2007	12 Apr 2007	Sch 2: 12 Apr 2007 (s 2)	Sch 2 (item 2)
Corporations Amendment (Insolvency) Act 2007	132, 2007	20 Aug 2007	Sch 1 (items 11–15): 31 Dec 2007 (s 2(1) item 2)	Sch 1 (items 14, 15)
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	8, 2008	20 Mar 2008	Sch 1 (items 284–286): 28 Mar 2008 (s 2(1) item 2)	—
Tax Laws Amendment (2008 Measures No. 2) Act 2008	38, 2008	24 June 2008	Sch 2: 24 June 2008 (s 2(1) item 2)	
as amended by				
Tax Laws Amendment (2010 Measures No. 1) Act 2010	56, 2010	3 June 2010	Sch 6 (items 106, 107): 23 June 2008 (s 2(1) item 18)	—
Tax Laws Amendment (2008 Measures No. 4) Act 2008	97, 2008	3 Oct 2008	Sch 3 (item 176): 3 Oct 2008 (s 2(1) item 5)	—
Tax Laws Amendment (2008 Measures No. 6) Act 2009	14, 2009	26 Mar 2009	Sch 3: 26 Mar 2009 (s 2(1) item 2)	Sch 3 (item 5)
Tax Laws Amendment (2009 Measures No. 1) Act 2009	27, 2009	26 Mar 2009	Sch 2 (items 60–63): 27 Mar 2009 (s 2(1) item 5)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	s 4: 25 June 2009 (s 2(1) item 1) Sch 18 (items 13–22, 32): (s 2(1) item 41)	s 4 and Sch 18 (item 32)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work Amendment (State Referrals and Other Measures) Act 2009	124, 2009	9 Dec 2009	Sch 2 (items 135, 136): 1 Jan 2010 (s 2(1) item 12)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) item 38)	—
Tax Laws Amendment (2010 Measures No. 1) Act 2010	56, 2010	3 June 2010	Sch 1 (items 2–5, 9): 1 July 2010 (s 2(1) items 2, 5)	Sch 1 (item 9)
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 80–82): 17 Dec 2010 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (item 135): 19 Apr 2011 (s 2(1) item 17)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 1088–1090) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 11, 12)	Sch 3 (items 10, 11)
Superannuation Guarantee (Administration) Amendment Act 2012	22, 2012	29 Mar 2012	Sch 1: 1 July 2013 (s 2(1) item 2) Remainder: 29 Mar 2012 (s 2(1) item 1)	Sch 1 (item 5)
Tax Laws Amendment (2012 Measures No. 2) Act 2012	99, 2012	29 June 2012	Sch 1 (items 35, 47, 48, 57): 30 June 2012 (s 2(1) items 4, 5)	Sch 1 (items 47, 57)
Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012	162, 2012	28 Nov 2012	Sch 1 (item 1): 1 Jan 2014 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 2 (item 1), Sch 4 (items 9, 10), Sch 5 (items 1–3) and Sch 8 (item 1): 1 Jan 2014 (s 2(1) items 12, 20, 22, 26)	—
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 9 (items 1331, 1332): 1 Jan 2013Sch 8 (item 1) (s 2(1) item 5)	—
Personal Liability for Corporate Fault Reform Act 2012	180, 2012	10 Dec 2012	Sch 6 (items 27–29) and Sch 7: 11 Dec 2012 (s 2)	Sch 7
Tax Laws Amendment (2013 Measures No. 2) Act 2013	124, 2013	29 June 2013	Sch 11 (items 30, 31, 32(3)): 30 June 2013 (s 2(1) items 19, 21)	Sch. 11 (item 32(3))
Minerals Resource Rent Tax Repeal and Other Measures Act 2014	96, 2014	5 Sept 2014	Sch 6 (items 1, 2): 5 Sept 2014 (s 2(1) item 3)	Sch 6 (item 2)
Tax and Superannuation Laws Amendment (2014 Measures No. 4) Act 2014	110, 2014	16 Oct 2014	Sch 5 (item 122): 16 Oct 2014 (s 2(1) item 7)	—
Treasury Legislation Amendment (Repeal Day) Act 2015	2, 2015	25 Feb 2015	Sch 2 (items 73, 114, 115) and Sch 4 (items 71–74, 79): 25 Feb 2015 (s 2(1) items 5, 6) Sch 2 (items 62, 63): 1 July 2015 (s 2(1) item 4)	Sch 2 (item 73) and Sch 4 (item 79)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 6 (item 64): 25 Feb 2015 (s 2(1) item 18)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (item 28): 20 Mar 2015 (s 2(1) item 15)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 67, 68, 74–77) and Sch 7: 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Act 2015	53, 2015	26 May 2015	Sch 2: 1 July 2016 (s 2)	Sch 2 (item 2)
Superannuation Guarantee (Administration) Amendment Act 2015	71, 2015	25 June 2015	1 July 2015 (s 2(1) item 1)	Sch 1 (item 3) and Sch 2 (item 7)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 295): 10 Mar 2016 (s 2(1) item 6)	—
Budget Savings (Omnibus) Act 2016	55, 2016	16 Sept 2016	Sch 23 (items 25–34, 36): 1 Oct 2016 (s 2(1) item 25)	Sch 23 (item 36)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016	81, 2016	29 Nov 2016	Sch 2 (item 21) and Sch 10 (items 85, 93): 1 Jan 2017 (s 2(1) items 2, 6)	Sch 10 (item 93)
Treasury Laws Amendment (2017 Measures No. 2) Act 2017	55, 2017	22 June 2017	Sch 1 (items 22, 32): 1 July 2017 (s 2(1) items 5, 7)	Sch 1 (item 32)

Name	Registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 17: 27 Mar 2006 (r 2(b))	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 4	rs No 2, 2015
s 4A	ad No 10, 2003
	rep No 2, 2015
s 5	rs No 56, 1994
	am No 146, 1999; No 51, 2002; No 102, 2004; No 147, 2005; No 5, 2011; No 46, 2011; No 36, 2015
s 5A	ad No 56, 1994
	am No 51, 2002
s 5B	ad No 169, 1995
	am No 60, 1996; SLI 2006 No 50; No 54, 2009; No 174, 2012
s 5C	ad No 146, 2001
Part 2	
s 6	am No 7, 1993; No 82, 1993, No 118, 1993; No 56, 1994; No 62, 1997; No 11, 1999; No 146, 1999; No 51, 2002; No 102, 2004; No 81, 2005; No 147, 2005; SLI No 50, 2006; No 80, 2006; No 101, 2006; No 8, 2007; No 9, 2007; No 15, 2007; No 56, 2010; No 145, 2010; No 46, 2011; No 171, 2012; No 2, 2015
s 6AA	ad No 171, 2012
ss 6A, 6B	ad No 7, 1993
	am No 51, 2002
s 7	am No 15, 2007
s 7A	ad No 118, 1993
	am No 15, 2007
s 9	am No 51, 2002; No 124, 2013
s 10	am No 7, 1993; No 51, 2002; No 110, 2014
s 11	am No 56, 1994
s 12	am No 169, 1995; No 101, 2006
s 12A	ad SLI 2006 No 50

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Endnote 4—Amendment history

Provision affected	How affected
	am No 8, 2008
	rs No 54, 2009
	am No 124, 2009; No 171, 2012
s 13	am No 208, 1992; No 56, 1994; No 170, 1995; No 76, 1996; No 51, 2002
	rep No 93, 2004
s 13A	ad No 56, 1994
	am No 51, 2002
	rep No 93, 2004
s 13B	ad No 76, 1996
	am No 51, 2002
	rep No 93, 2004
s 14	am No 208, 1992; No 170, 1995; No 76, 1996; No 62, 1997; No 51, 2002
	rep No 93, 2004
s 15	am No 208, 1992; No 51, 2002; No 81, 2016; No 55, 2017
s 15A	ad No 170, 1995
	am No 62, 1997; No 101, 2004
	rep No 15, 2007
Part 3	
s 15B	ad No 147, 2005
s 15C	ad No 15, 2007
ss 16, 17	am No 51, 2002
s 18	am No 208, 1992
	rep No 51, 2002
s 19	am No 208, 1992; No 170, 1995; No 51, 2002; No 102, 2004; No 41, 2005; No 82, 2005; No 15, 2007; No 22, 2012; No 171, 2012; No 96, 2014
s 19A	ad No 102, 2004
s 20	rep No 51, 2002
	ad No 102, 2004
	am No 82, 2005
s 21	rep No 51, 2002
	ad No 102, 2004

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Provision affected	How affected
	am No 8, 2010
s 22	am No 208, 1992; No 51, 2002
s 23	am No 208, 1992; No 7, 1993; No 56, 1994; No 53, 1995; No 120, 1995; No 169, 1995; No 76, 1996; No 62, 1997; No 51, 2002; No 93, 2004; No 102, 2004; No 82, 2005; No 22, 2012
s 23A	ad No 51, 2002
	rep No 142, 2004
	ad No 147, 2005
	am No 38, 2008; No 14, 2009
s 23B	ad No 56, 2010
s 24	am No 208, 1992; No 82, 1993; No 181, 1994; No 123, 2001; No 51, 2002; No 101, 2006
s 25	am No 82, 1993; No 181, 1994; No 123, 2001; No 101, 2006
s 25A	ad No 208, 1992; No 56, 1994
	rep No 169, 1995
s 26	am No 51, 2002
s 27	am No 208, 1992; No 147, 1997; No 51, 2002; No 10, 2003; No 15, 2007; No 46, 2011; No 22, 2012; No 2, 2015; No 53, 2015
s 28	am No 51, 2002
s 29	am No 121, 1997; No 10, 2001; No 101, 2006
s 30	am No 51, 2002
s 31	am No 181, 1994; No 51, 2002; No 58, 2006
s 32	am No 51, 2002
Part 3A	
Part 3A	ad No 102, 2004
Division 1	
ss 32A, 32B	ad No 102, 2004
Division 2	
s 32C	ad No 102, 2004
	am No 81, 2005; No 82, 2005; SLI 2006 No 50
	(4A) exp 1 July 2006 (s 32C(4A))

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Endnote 4—Amendment history

Provision affected	How affected
	am No 8, 2008; No 54, 2009; No 124, 2009; No 56, 2010; No 162, 2012; No 171, 2012; No 21, 2015; No 71, 2015; No 55, 2016
s 32CA	ad No 82, 2005
Division 3	
ss 32D, 32E	ad No 102, 2004
	am No 82, 2005
Division 4	
s 32F	ad No 102, 2004
	am No 82, 2005; No 55, 2016
s 32FA	ad No 102, 2004
	am No 55, 2016
s 32G	ad No 102, 2004
s 32H	ad No 102, 2004
	am No 55, 2016
s 32J	ad No 71, 2015
Division 6	
s 32N	ad No 102, 2004
	am No 82, 2005; SLI 2006 No 50
s 32NA	ad No 102, 2004
	am No 82, 2005; SLI 2006 No 50; No 71, 2015
s 32P	ad No 102, 2004
Division 8	
s 32W	ad No 55, 2016
ss 32X–32Z	ad No 102, 2004
s 32ZAA	ad No 58, 2006
s 32ZA	ad No 102, 2004
Part 4	
s 33	am No 51, 2002; No 147, 2005; No 2, 2015
s 34	am No 51, 2002; No 2, 2015
s 35	am No 51, 2002; No 147, 2005; No 97, 2008
s 36	am No 51, 2002

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Provision affected	How affected
s 38	am No 91, 2000
Part 5	
s 43	am No 145, 2010
s 45	am No 146, 1999; No 146, 2001
	rep No 145, 2010
s 45A	ad No 56, 2007
	rep No 145, 2010
Part 6	
s 46	rs No 51, 2002
	am No 179, 1999; No 147, 2005
s 47	am No 179, 1999
s 48	rep No 179, 1999
s 49	am No 181, 1994
	rs No 11, 1999
	am No 51, 2002; No 101, 2006; No 38, 2008; No 14, 2009
s 50	rep No 179, 1999
	ad No 51, 2002
s 51	rep No 179, 1999
s 52	am No 55, 2001; No 51, 2002
	rep No 132, 2007
ss 53–55	rep No 179, 1999
s 56	am No 43, 1996; No 44, 1999
	rep No 179, 1999
s 57	am No 180, 2012
s 57A	ad No 180, 2012
Part 7	
Part 7 heading	rs No 51, 2002
s 59	am No 91, 2000; No 51, 2002
ss 60, 61	rep No 91, 2000
s 62	am No 81, 2016
s 62A	ad No 147, 2005

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Endnote 4—Amendment history

Provision affected	How affected
Part 8	
Part 8 heading	rs No 51, 2002
s 63	rep No 51, 2002
s 63A	ad No 51, 2002
	am No 147, 2005; No 99, 2012
s 63B	ad No 51, 2002
s 64	rep No 51, 2002
s 64A	ad No 51, 2002
s 64B	ad No 51, 2002
	am No 132, 2007
s 65	am No 82, 1993; No 118, 1993; No 181, 1994; No 53, 1995; No 62, 1997; No 51, 2002; No 8, 2005; No 27, 2009
s 65AA	ad No 27, 2009
s 65A	ad No 51, 2002
	am No 27, 2009
s 66	rs No 56, 1994
	am No 53, 1995; No 27, 2009
s 67	am No 27, 2009
s 68	rep No 53, 1995
s 69	am No 53, 1995
s 69A	ad No 53, 1995
	am No 8, 2005
Part 9	
s 74	rep No 2, 2015
s 75	rep No 2, 2015
s 76	am No 91, 2000
	rep No 2, 2015
s 77	rep No 2, 2015
s 78	rep No 179, 1999
	ad No 80, 2006
	rep No 9, 2007

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Endnote 4—Amendment history

Provision affected	How affected
s 78A	ad No 80, 2006
	rep No 9, 2007
s 79	am No 91, 2000; No 146, 2001; No 51, 2002; No 4, 2016
s 79A	ad No 56, 2010
s 80	am No 51, 2002

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