



Superannuation Contributions Tax (Assessment and Collection) Act 1997

Act No. 70 of 1997 as amended

This compilation was prepared on 29 September 2006
taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to the assessment and collection of superannuation contributions tax, and for related purposes

Part 1—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

2 Commencement *[see Note 1]*

This Act commences on the day on which it receives the Royal Assent.

3 Act to bind Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

4 Extension to Territories

This Act extends to Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

5 Object of Act

The object of this Act is to provide for the assessment and collection of the superannuation contributions surcharge payable on surchargeable contributions for high-income individuals.

6 Simplified outline of Act

The following is a simplified outline of this Act.

- (a) If there are surchargeable contributions for a member for the 1996-97 financial year or a later financial year (being a financial year that ends before 1 July 2005), the Commissioner will calculate the member's adjusted taxable income for the financial year.
- (b) If the amount calculated is greater than the surcharge threshold amount, the Commissioner will calculate the rate of surcharge and the amount of the surcharge payable on the surchargeable contributions. Only surchargeable contributions calculated for a period after 7.30 pm on 20 August 1996 are subject to surcharge.
- (c) For a defined benefits superannuation scheme, the surcharge is payable on an amount calculated to be the actuarial value of the benefits that accrued to, and the value of the administration expenses and risk benefits provided in respect of, the member for the financial year.
- (d) If surcharge is payable for a member for a financial year under an assessment made before 23 March 1999, an advance instalment of one-half of the surcharge is payable on account of surcharge payable for the member for the next financial year. However, no instalment is payable if the contributions for the next financial year are held under an unfunded defined benefits superannuation scheme.
- (e) If, after the assessment of surcharge, the member's adjusted taxable income is found to be different from the amount that was previously calculated or the surchargeable contributions are found to be different from the amount on which the assessment was based:

- (i) if the person who was liable to pay the assessed surcharge is still the holder of the contributions—the Commissioner may amend the assessment; or
 - (ii) otherwise—the Commissioner may make a further assessment of surcharge.
- (f) The holder of a member's surchargeable contributions for a financial year is liable to pay:
 - (i) the surcharge on those contributions; and
 - (ii) if the liability to pay the surcharge arose under an assessment made before 23 March 1999—any advance instalment on the member's surchargeable contributions for the next financial year;within prescribed periods.
- (g) However, if the holder is a superannuation (unfunded defined benefits) provider, the surcharge is not payable until benefits become payable.
- (h) If liability for surcharge is increased as a result of an amendment of an assessment or the making of a further assessment, interest is payable on the additional surcharge.
- (i) Either a superannuation provider or a member may object against an assessment of surcharge in the way set out in Part IVC of the *Taxation Administration Act 1953* for objecting against assessments of income tax.
- (j) A late payment penalty applies if surcharge or an advance instalment is not paid on time.

Part 2—Liability to surcharge and advance instalments

7 Superannuation contributions surcharge

Financial years to which surcharge applies

- (1) Superannuation contributions surcharge is payable on a member's surchargeable contributions for the financial year that began on 1 July 1996 or a later financial year that ends before 1 July 2005.

No surcharge is payable unless adjusted taxable income is greater than surcharge threshold

- (2) Surcharge is not payable for a financial year unless the member's adjusted taxable income for the financial year is greater than the surcharge threshold for the financial year.

No surcharge is payable by residents of external Territories

- (3) Surcharge is not payable for a financial year if the person who would be liable to pay the surcharge is the trustee of a Territory trust, a Territory company or a Territory resident for the purposes of Division 1A of Part III of the Income Tax Assessment Act as it applies to the year of income that comprises that financial year.

Note: In certain other circumstances surcharge is not payable (see subsection 10(4)).

No surcharge is payable if surcharge is payable under another Act

- (4) Surcharge is not payable on a member's surchargeable contributions if surcharge is payable on those contributions under the *Superannuation Contributions Tax (Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

7A Adjusted taxable income—first case

- (1) This section applies to a member for a financial year if:
 - (a) no payments that were eligible termination payments for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act because of paragraph (a) of the definition of *eligible termination payment* in subsection 27A(1) of that Act were made to or for the member in the financial year; or
 - (b) one or more such payments were so made but the total of the reduced amounts of the payments (other than payments that were rolled over before 1 July 1997) was equal to or greater than the amount specified in subsection 5(2) of the *Superannuation Contributions Tax Imposition Act 1997* as altered under section 7 of that Act for the financial year.
- (2) The *reduced amount* of an eligible termination payment is the amount (if any) remaining after deducting from the amount of the payment the amount of any post-June 1994 invalidity component or CGT exempt component of the payment or any part of the payment that was made from an employee share acquisition scheme.
- (3) The adjusted taxable income of the member for the financial year is the sum of:
 - (a) the member's taxable income of the year of income comprising the financial year less any amounts included in the member's assessable income of that year of income:
 - (i) that were eligible termination payments for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act (other than amounts that were such payments because of paragraph (a) of the definition of *eligible termination payment* in subsection 27A(1) of that Act); or
 - (ii) that were so included under section 26AC or under subsection 26AD(2), (3) or (4) of the Income Tax Assessment Act in respect of a bona fide redundancy amount, an early retirement scheme amount or an invalidity amount as defined in section 159S of that Act; and

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- (b) in respect of the financial year beginning on 1 July 1996 or the following financial year—the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring subsection 271-105(1) of Schedule 2F to the Income Tax Assessment Act; and
- (c) in respect of the financial year beginning on 1 July 1998 or a later financial year—the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring paragraphs 102UK(2)(b) and 102UM(2)(b) of, and subsection 271-105(1) of Schedule 2F to, the Income Tax Assessment Act; and
- (d) the member's surchargeable contributions for the financial year, worked out ignoring subsection 8(8) of this Act and subsection 9(9) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; and
- (e) in respect of a financial year beginning on or after 1 July 1999—if the member is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) who has a reportable fringe benefits total (as defined in that Act) for the year of income comprising the financial year—the reportable fringe benefits total for the year of income.

7B Adjusted taxable income—second case

- (1) This section applies to a member for a financial year if:
 - (a) one or more payments that were eligible termination payments for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act because of paragraph (a) of the definition of *eligible termination payment* in subsection 27A(1) of that Act were made to or for the member in the financial year; and
 - (b) the total of the reduced amounts of the payments (other than payments that were rolled over before 1 July 1997) was less than the amount specified in subsection 5(2) of the *Superannuation Contributions Tax Imposition Act 1997* as altered under section 7 of that Act for the financial year.

- (2) The **reduced amount** of an eligible termination payment is the amount (if any) remaining after deducting from the amount of the payment the amount of any post-June 1994 invalidity component or CGT exempt component of the payment or any part of the payment that was made from an employee share acquisition scheme.
- (3) The adjusted taxable income of the member for the financial year is the sum of:
- (a) the member's taxable income of the year of income comprising the financial year less any of the following amounts included in the member's assessable income of that year of income:
 - (i) amounts that were eligible termination payments for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act;
 - (ii) amounts that were so included under section 26AC or under subsection 26AD(2), (3) or (4) of the Income Tax Assessment Act in respect of a bona fide redundancy amount, an early retirement scheme amount or an invalidity amount as defined in section 159S of that Act; and
 - (b) in respect of the financial year beginning on 1 July 1996 or the following financial year—the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring subsection 271-105(1) of Schedule 2F to the Income Tax Assessment Act; and
 - (c) in respect of the financial year beginning on 1 July 1998 or a later financial year—the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring paragraphs 102UK(2)(b) and 102UM(2)(b) of, and subsection 271-105(1) of Schedule 2F to, the Income Tax Assessment Act; and
 - (d) in respect of each eligible termination payment referred to in subsection (1)—whichever of the following amounts is appropriate:
 - (i) if the post-20 August 1996 period is less than 365 days—the amount (excluding any cents, cent or fraction

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of a cent included in that amount) worked out using the formula:

$$\frac{\text{Post-20 August 1996 period}}{\text{Total period}} \times \text{ETP}$$

- (ii) otherwise—the amount (excluding any cents, cent or fraction of a cent included in that amount) worked out using the formula:

$$\frac{365}{\text{Total period}} \times \text{ETP}$$

where:

ETP means:

- (a) if no part of the payment was rolled-over—so much of the amount of the payment as is included in the member's taxable income of the year of income comprising the financial year; or
- (b) if any of the payment was rolled-over—the sum of:
- (i) so much of the part (if any) of the payment that was not rolled-over as is included in the member's taxable income of the year of income comprising the financial year; and
 - (ii) so much of the part of the payment that was rolled-over after 30 June 1997 as would have been included in that taxable income if that part of the payment had not been rolled-over.

post-20 August 1996 period means the number of days in the period of the member's employment for which the eligible termination payment was made that occurred after 20 August 1996.

total period means the number of days in the period of the member's employment for which the eligible termination payment was made; and

- (e) the member's surchargeable contributions for the financial year, worked out ignoring subsection 8(8) of this Act and subsection 9(9) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*, less any amounts included in those surchargeable contributions because of subparagraph 8(2)(c)(iii); and
-

- (f) in respect of a financial year beginning on or after 1 July 1999—if the member is an employee (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) who has a reportable fringe benefits total (as defined in that Act) for the year of income comprising the financial year—the reportable fringe benefits total for the year of income.

8 Surchargeable contributions

Application

- (1) This section explains what are the surchargeable contributions of a member for a financial year and how they are to be worked out.

Member other than a member of a defined benefits superannuation scheme

- (2) If:
- (a) there are any contributed amounts for a financial year in relation to a member other than a member of a defined benefits superannuation scheme; and
 - (b) where the relevant superannuation provider is the trustee of a superannuation fund or of an approved deposit fund—the superannuation fund is a complying superannuation fund or the approved deposit fund is a complying approved deposit fund, as the case may be, for the purposes of the year of income comprising the financial year;

the ***surchargeable contributions*** of the member for the financial year are the sum of:

- (c) so much of the amounts referred to in subparagraph (a)(i) of the definition of ***contributed amounts*** in section 43 as:
 - (i) are taxable contributions under subparagraph 274(1)(a)(i), (b)(ii), (ba)(i) or (ba)(iv) or paragraph 274(1)(d) or (e) of the Income Tax Assessment Act; or
 - (ii) are allowed as deductions to the member under section 82AAT of that Act; or
 - (iii) subject to subsection (2A), constitute amounts accrued after 20 August 1996 that are eligible termination payments under paragraph (a) of the definition of ***eligible termination payment*** in subsection 27A(1) of that Act and are rolled-over on or after 1 July 1997; and

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(d) any amounts referred to in subparagraph (a)(ii) or (iii) of the definition of *contributed amounts* in section 43.

- (2A) If an eligible termination payment within the meaning of subparagraph (2)(c)(iii) has been made or is made to or for a taxpayer after 20 August 1996, surcharge is payable only on the part of the reduced amount of the eligible termination payment that is worked out using the formula:

$$\frac{\text{Post-20 August 1996 period}}{\text{Total period}} \times \text{Eligible termination payment}$$

where:

post-20 August 1996 period means the number of days in the period of the taxpayer's employment for which the eligible termination payment was made that occurred after 20 August 1996.

reduced amount of an eligible termination payment is the amount remaining after deducting from the amount of the payment any post-June 1994 invalidity component or CGT exempt component of the payment or any part of the payment that was made from an employee share acquisition scheme.

total period means the number of days in the period of the taxpayer's employment for which the eligible termination payment was made.

Member of defined benefits superannuation scheme

- (3) The *surchargeable contributions* for a financial year of a member of a defined benefits superannuation scheme are the amounts that constitute the actuarial value of the benefits that accrued to, and the value of the administration expenses and risk benefits provided in respect of, the member for the financial year.

Value of benefits and expenses—financial year earlier than 1999-2000 financial year

- (4) The *actuarial value of the benefits that accrued to, and the value of the administration expenses and risk benefits provided in respect of*, a member of a defined benefits superannuation scheme for the 1996-97 financial year or for either of the next 2 financial years is the amount worked out using the formula:
-

Annual salary \times Notional surchargeable
contributions factor

where:

annual salary means:

- (a) if paragraph (b) does not apply—the amount that is the member’s annual salary for the financial year; or
- (b) if another amount is taken to be the member’s annual salary for the purposes of the scheme as it applies to the member for the financial year—that other amount.

notional surchargeable contributions factor means the factor applying to the member for the financial year worked out by an eligible actuary in accordance with:

- (a) the method set out in Superannuation Contributions Ruling SCR 97/1; or
- (b) if the Commissioner approves in writing another method as being appropriate in relation to the member for the financial year, being a method that excludes contributions made by the member for which the member is not entitled to an income tax deduction under the Income Tax Assessment Act or under the *Income Tax Assessment Act 1997*—the method so approved.

Value of benefits and expenses—1999-2000 financial year or a later financial year

- (5) The **actuarial value of the benefits that accrued to, and the value of the administration expenses and risk benefits provided in respect of**, a member of a defined benefits superannuation scheme for the 1999-2000 financial year or a later financial year is an amount worked out using:
 - (a) the method set out in the regulations, being a method that excludes Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and contributions made by the member for which the member is not entitled to an income tax deduction under the Income Tax Assessment Act or under the *Income Tax Assessment Act 1997*; or
 - (b) if the Commissioner approves in writing another method as being appropriate in relation to the member for the financial

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year, being a method that excludes Government co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and contributions made by the member for which the member is not entitled to an income tax deduction under the Income Tax Assessment Act or under the *Income Tax Assessment Act 1997*—the method so approved.

Regulations

- (6) Regulations made for the purposes of paragraph (5)(a) may specify, or make provision for the Commissioner to specify in writing, different methods in relation to different superannuation schemes, different classes of superannuation schemes or different classes of members of a superannuation scheme.

Transitional provision for 1996-97 financial year

- (7) For the 1996-97 financial year, a member's surchargeable contributions are to be worked out only for the part of that financial year that started immediately after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996.

Reduced surchargeable contributions

- (8) The amount of the **surchargeable contributions** of a member for a financial year is the amount worked out under subsection (2) or (3) (as appropriate), reduced by the amount worked out under subsection (9), if:
- (a) an eligible termination payment is made to the member in the financial year from the superannuation fund, approved deposit fund or RSA; and
 - (b) the eligible termination payment has an excessive component.

- (9) The amount of the reduction is worked out as follows:

Amount of the reduction

- Step 1.* Work out the amount that would have been the taxed element of the retained amount of the post-June 83 component of the eligible termination payment if the amount of the excessive component of the eligible termination payment had been nil.
- Step 2.* Work out the taxed element of the retained amount of the post-June 83 component of the eligible termination payment.
- Step 3.* Subtract the result of step 2 from the result of step 1.
- Step 4.* Divide the result of step 3 by 0.85.
- Step 5.* Subtract the result of step 3 from the result of step 4.
- Step 6.* Add the result of step 5 to the excessive component of the eligible termination payment.
- Step 7.* Identify the amount of the surchargeable contributions (apart from subsection (8)) of the member reported for the financial year by the entity that paid the eligible termination payment.
- Step 8.* Identify the lesser of the results of steps 6 and 7 (or either result if they are the same).

8A Holder of surchargeable contributions of a member

Application

- (1) This section explains who is to be regarded as the holder of the surchargeable contributions of a member for a particular financial year in respect of which surcharge is payable on those contributions.

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Where there are contributed amounts and no payment of benefit has been made

(1A) This section is subject to section 10A.

(2) Subject to subsection (3), if:

- (a) there were any contributed amounts in respect of a member for a financial year; and
- (b) a lump sum has not been paid, and a pension or annuity has not begun to be paid, to or in respect of the member by the relevant superannuation provider;

a reference in this Act to the **holder** of the surchargeable contributions of the member for the financial year is a reference to:

- (c) if only one superannuation provider holds the contributed amounts referred to in paragraph (a) at the time when an assessment is made of the surcharge payable on the surchargeable contributions of the member for the financial year—that superannuation provider; or
- (d) otherwise—each superannuation provider who holds any of those contributed amounts at that time, to the extent to which the surchargeable contributions of the member for the financial year are included in the contributed amounts held by that provider.

What happens if member dies

(3) If:

- (a) a superannuation provider would, apart from this subsection, be taken under subsection (2) to be the holder of surchargeable contributions of a member for the financial year; and
- (b) the member died in the financial year;

subsection (2) does not apply in relation to the member in respect of the financial year and later financial years.

Where there are contributed amounts and a payment of benefit has been made

(4) If there were any contributed amounts in respect of a member for a financial year:

- (a) that have been paid to a person other than a superannuation provider; or
- (b) in respect of which a pension or annuity has begun to be paid;

a reference in this Act to the **holder** of the surchargeable contributions of the member for the financial year is a reference to the person to whom the amounts were paid or the pension or annuity has begun to be paid, as the case may be.

9 Surcharge threshold

Surcharge threshold for 1996-97 financial year

- (1) The **surcharge threshold** for the 1996-97 financial year is \$70,000.

Surcharge threshold for later financial year

- (2) The **surcharge threshold** for a later financial year is the amount calculated using the formula:

Previous surcharge threshold \times Indexation factor

where:

previous surcharge threshold means the surcharge threshold for the financial year immediately before the financial year for which the surcharge threshold is being calculated.

indexation factor means the number calculated under subsections (4) and (5) for the financial year for which the surcharge threshold is being calculated.

Rounding off of amount of surcharge threshold

- (3) If an amount worked out for the purposes of subsection (2) is an amount of dollars and cents:
 - (a) if the number of cents is less than 50—the amount is to be rounded down to the nearest whole dollar; or
 - (b) otherwise—the amount is to be rounded up to the nearest whole dollar.

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Indexation factor

- (4) The **indexation factor** for a financial year is the number calculated, to 3 decimal places, using the formula:

$$\frac{\text{Index number for last quarter in current March year}}{\text{Index number for last quarter in previous March year}}$$

where:

index number, for a quarter, means the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter published by the Australian Statistician.

current March year means the period of 12 months ending on 31 March immediately before the financial year for which the surcharge threshold is being calculated.

previous March year means the period of 12 months immediately before the current March year.

Rounding up of indexation factor

- (5) If the number calculated under subsection (4) for a financial year would, if it were worked out to 4 decimal places, end with a number greater than 4, the number so calculated is increased by 0.001.

Change in index numbers

- (6) If at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published for the quarter, the publication of the later index number is to be disregarded.

Surcharge threshold to be published

- (7) The Commissioner must publish before, or as soon as practicable after, the start of the 1997-98 financial year, and before the start of each later financial year (being a financial year that ends before 1 July 2005), the surcharge threshold for the financial year.

Note: For the purposes of this section, **Australian Statistician** means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

10 Liability to pay surcharge*Application*

- (1) This section identifies the person liable to pay the superannuation contributions surcharge on a member's surchargeable contributions for a financial year.
- (1A) This section is subject to section 10A.

Superannuation provider who holds surchargeable contributions liable to pay surcharge

- (2) If a superannuation provider is the holder of the surchargeable contributions when an assessment of the surcharge on those contributions is made, the provider is liable to pay the surcharge.

Superannuation provider ceasing to be the holder of the contributions, or starting to pay pension or annuity, before receiving copy of assessment

- (3) However, subsection (2) does not apply to a superannuation provider that ceases to be the holder of the contributions, or begins to pay a pension or annuity based on the contributions, before a notice of the assessment is given to it.

Contributions withdrawn or pension or annuity starts to be paid

- (4) If:
- (a) the contributions have been paid to a person other than a superannuation provider or a pension or annuity based on the contributions has begun to be paid; and
 - (b) no superannuation provider is liable under subsection (2) to pay the surcharge;

the following paragraphs have effect:

- (c) if the surchargeable contributions were paid, or the pension or annuity began to be paid, to the member—the member is liable to pay the surcharge; or
- (ca) if the surchargeable contributions were paid, or the pension or annuity began to be paid, to a person other than the member—the other person is liable to pay the surcharge; or
- (d) otherwise—the surcharge is not payable.

Section 10A

10A Payment splits or interest splits on marriage breakdown

Liability to pay surcharge

- (1) If:
- (a) in respect of an interest (the **original interest**) that a person has as a member:
 - (i) a payment split applies to a splittable payment; or
 - (ii) an interest in a superannuation fund, an approved deposit fund or an RSA is created for the non-member spouse in relation to the original interest in circumstances prescribed by the regulations; or
 - (iii) an amount is transferred to a superannuation fund, an approved deposit fund or an RSA, in circumstances prescribed by the regulations, for the benefit of the non-member spouse in relation to the original interest; and
 - (b) an assessment is then made that surcharge is payable on the surchargeable contributions of the member in respect of the original interest;
- then:
- (c) if a superannuation provider holds those contributions for the member—the provider is taken to be the **holder** of those contributions and liable to pay the surcharge; or
 - (d) otherwise—the member is taken to be the **holder** of those contributions and liable to pay the surcharge.
- (2) In this section:

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

payment split means a payment split under Part VIIIIB of the *Family Law Act 1975*.

splittable payment has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

11 Advance instalment of superannuation contributions surcharge

If superannuation contributions surcharge is payable for a member for a financial year under an assessment made before 23 March

1999, an advance instalment of one-half of the amount of the surcharge is payable on account of surcharge payable for the member for the following financial year.

Note: In certain circumstances an advance instalment is not payable (see subsections 12(2) and (3).

12 Liability to pay advance instalment

Application

- (1) This section identifies the person liable to pay the advance instalment of superannuation contributions surcharge on a member's surchargeable contributions for a financial year and sets out circumstances when no instalment is payable.

Contributions withdrawn or pension or annuity begins to be paid before 15 June in financial year

- (2) If, before 15 June in the financial year, the contributions were paid to a person other than a superannuation provider or a pension or annuity based on the contributions began to be paid, the advance instalment is not payable.

Contributions held on 15 June in financial year by superannuation (unfunded defined benefits) provider

- (3) If, on 15 June in the financial year, a superannuation (unfunded defined benefits) provider is the holder of the contributions, the advance instalment is not payable.

Contributions held on 15 June in financial year by any other superannuation provider

- (4) If, on 15 June in the financial year, a superannuation provider other than a superannuation (unfunded defined benefits) provider is the holder of the contributions, the superannuation provider who was liable to pay the surcharge on the member's surchargeable contributions for the preceding financial year is liable to pay the advance instalment.

Part 3—Assessment and collection of surcharge and advance instalments

13 Superannuation providers to give statements

Application

- (1) This section applies in respect of every member.

Superannuation provider to give statement to Commissioner at end of financial year

- (2) Each superannuation provider other than a self-assessing superannuation provider must, after the end of each financial year (being a financial year that ends before 1 July 2005) but not later than the notification date for the financial year or such later date (if any) as the Commissioner allows, give the Commissioner, in respect of each member in relation to whom the provider was a superannuation provider at the end of the financial year, a statement setting out:
- (a) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
 - (b) the particulars referred to in subsection (7); and
 - (c) any other matters required by the regulations.

Superannuation provider that pays out contributed amounts to the member

- (3) If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996 and before 1 July 2005, any of the contributed amounts in relation to the member were or are paid by a superannuation provider to the member, the provider must, not later than the notification date for the financial year in which the payment was or is made or such later date (if any) as the Commissioner allows, give the Commissioner a statement setting out:

- (a) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
- (b) the particulars referred to in subsection (7); and
- (c) the date of the payment; and
- (d) any other matters required by the regulations.

Statements to be given by superannuation provider that transfers contributed amounts to another superannuation provider

- (4) If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996 and before 1 July 2005, any of the contributed amounts were or are transferred by a superannuation provider to another superannuation provider, the provider that transferred the amounts must:
 - (a) if the amounts were or are transferred in the 1996-97 financial year or the 1997-1998 financial year—give the Commissioner, not later than the notification date for the financial year in which the amounts were or are transferred or such later date (if any) as the Commissioner allows, a statement setting out:
 - (ia) the name and address of the other provider; and
 - (i) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
 - (ii) the particulars referred to in subsection (7); and
 - (iii) any other matters required by the regulations; or
 - (b) if the amounts were or are transferred in a later financial year—give the other provider, within 30 days after the day on which the amounts were or are transferred, a statement setting out the particulars referred to in subsection (7) and any other matters required by the regulations.

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Statement to be given by superannuation provider to which contributed amounts have been transferred

- (4A) If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996 and before 1 July 2005, any of the contributed amounts were or are transferred by a superannuation provider to another superannuation provider, the other provider must give to the provider:
- (a) if the amounts were or are transferred in the 1996-97 financial year or the 1997-98 financial year—not later than the notification date for the financial year in which the amounts were or are transferred; or
 - (b) if the amounts were or are transferred in a later financial year—within 30 days after the day on which the amounts were or are transferred;
- a statement setting out any matters required by the regulations.

Information to be given to member

- (5) A superannuation provider who is required to give a statement to the Commissioner under this section for a financial year earlier than the 1998-99 financial year must, not later than 12 months after the statement is given, give to the member the particulars referred to in subsection (7) that are required to be included in the statement.

Member may request provider to give particulars

- (5A) If a member requests a superannuation provider who has given a statement to the Commissioner under this section for the 1998-99 financial year or a later financial year to give to the member the particulars referred to in subsection (7) relating to the member that are included in the statement (other than particulars that the provider has previously given to the member), the provider must comply with the request within 30 days after receiving it.

How particulars are to be given

- (5B) The particulars to be given to a member under subsection (5A) are to be given:
- (a) if the request asked for them to be given in writing—in writing; or

- (b) otherwise—in such manner as the superannuation provider considers appropriate.

Offences

- (6) A superannuation provider who contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Particulars to be included in statements

- (7) The particulars that are required to be given in a statement under this section are the total of the contributed amounts (if any) in relation to the member for the financial year or the total of the part of those amounts that has been transferred, as the case may be, and:
- (a) if the statement is given by a superannuation (accumulated benefits) provider:
 - (i) if any of those amounts are amounts referred to in subparagraph (a)(i) of the definition of **contributed amounts** in section 43—the total of so much of those amounts as are taxable contributions referred to in subparagraph 8(2)(c)(i); and
 - (ii) the total of any of those amounts that are amounts referred to in subparagraph (a)(ii) or (iii) of that definition; and
 - (b) if the statement is given by a superannuation (defined benefits) provider—the amount of the surchargeable contributions of the member for the financial year.

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14 Giving of information in certain form

Notice stating how information to be given

- (1) The Commissioner may, by notice published in the *Gazette*, set out the way in which information to be contained in a statement under section 13 is to be given.

Date of effect of notice

- (2) The notice has effect on and after the day stated in the notice.

Superannuation provider to comply with notice

- (3) If any of the information that a superannuation provider is required to give under section 13 is kept by or on behalf of the provider by a data processing device, the provider must give the information in a way set out in the notice.

Offences

- (4) A person who contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Exemption

- (5) The Commissioner may, by legislative instrument, exempt a superannuation provider from subsection (3).

Burden of proof about exemption

- (6) In a prosecution for an offence against subsection (4), the burden of proving that an exemption is not in force under subsection (5) is on the prosecution.

14A Commissioner may require member to provide information as to the holder of the member's surchargeable contributions

- (1) The Commissioner may, at any time and from time to time, by written notice served on a member for a financial year that ends before 1 July 2005, require the member to give the Commissioner, within a period stated in the notice (being a period of not less than 21 days from the date of service of the notice), a statement setting out:
 - (a) the name and address of any person who is the holder of surchargeable contributions of the member; and
 - (b) any other matters required by the regulations.
- (2) A person on whom such a notice is served must not fail to comply with the notice.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

15 Assessment of liability to pay surcharge and determination of advance instalment

Commissioner to assess surcharge

- (1) For each financial year (being a financial year that ends before 1 July 2005) for which there are surchargeable contributions for a member, the Commissioner must make an assessment that:
 - (a) calculates the member's adjusted taxable income; and
 - (b) if the adjusted taxable income is greater than the surcharge threshold:
 - (i) calculates the surchargeable contributions; and
 - (ii) calculates the rate of surcharge that applies to the member; and

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- (iii) specifies the amount of the surcharge payable or, if no surcharge is payable, states that a nil amount of surcharge is payable; and
- (c) if the adjusted taxable income is equal to or less than the surcharge threshold—states that a nil amount of surcharge is payable.

Commissioner to determine advance instalment in certain cases

- (2) If, under an assessment of superannuation contributions surcharge for a financial year made before 23 March 1999, an amount (other than a nil amount) of surcharge is payable, the Commissioner must make a determination specifying:
 - (a) the amount of the member's surchargeable contributions for that financial year; and
 - (b) the amount of the advance instalment payable in respect of the surcharge on the member's surchargeable contributions for the next financial year; and
 - (c) the day by which the instalment is payable.

When surcharge is payable

- (3) Unless section 16 applies, surcharge assessed under subsection (1) is payable within 1 month after the day on which the assessment is made.

When advance instalment is payable

- (4) An advance instalment determined under subsection (2) of surcharge for a financial year is payable not later than 15 June in that financial year.

Note: For provisions about collection and recovery of superannuation contributions surcharge and other related amounts, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

Assessment taken not to have been made

- (5) An assessment of surcharge on a member's surchargeable contributions is taken not to have been made if:
 - (a) after the assessment was made the superannuation provider who held the contributions ceased to hold the contributions

or began to pay a pension or annuity based on the contributions; and

- (b) notice of the assessment was not given to the provider before it ceased to hold the contributions or began to pay the pension or annuity.

Determination taken not to have been made

- (6) A determination of an advance instalment of surcharge on a member's surchargeable contributions for a financial year is taken not to have been made if the superannuation provider who would, apart from this subsection, be liable to pay the instalment is not liable because of subsection (5) to pay the surcharge on the member's surchargeable contributions for the preceding financial year.

What happens if member dies

- (7) If:
 - (a) a member has died, whether before or after the commencement of this subsection; and
 - (b) after the death an assessment was or is made of surcharge on the member's surchargeable contributions for the financial year in which the member died or a later financial year; the assessment is taken not to have been made.

Notice of assessment or determination

- (8) When an assessment (including an amended assessment) or a determination is made, the Commissioner must, subject to subsection (9):
 - (a) give notice of the assessment or determination to the person who is liable to pay the surcharge or instalment, as the case may be, being a notice stating that the person is liable to pay the surcharge or instalment and specifying the day by which it is required to be paid; and
 - (b) if that person is the superannuation provider—also give notice of the assessment or determination to the member.

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No notice if nil amount assessed

- (9) The Commissioner is not required under subsection (8) to give a notice of an assessment if the assessment states that a nil amount of surcharge is payable.

Particulars in notice of assessment

- (10) A notice of assessment must include particulars of the matters contained in the assessment under subsection (1). However, if the notice is given to a superannuation provider, the notice is not to include the calculation of the member's adjusted taxable income.

Particulars in notice of determination

- (11) A notice of determination must include particulars of the matters contained in the determination under subsection (2).

How a notice is to be given

- (12) A notice of assessment or notice of determination may be given in any manner prescribed by the regulations.

Non-compliance not to affect validity of assessment

- (13) The validity of any assessment or determination is not affected by any non-compliance with a provision of this Act.

15A Self-assessing superannuation providers

Determination of self-assessing superannuation providers

- (1) The Commissioner may, by writing:
- (a) determine that a specified superannuation provider, or each of the superannuation providers included in a specified class of superannuation providers, is a self-assessing superannuation provider in respect of a specified financial year or specified financial years; and
 - (b) determine the date that is the notification date for that financial year, or the dates that are the respective notification dates for those financial years, for that superannuation provider or each of those superannuation providers, as the case may be.

Definition

(2) In this section:

financial year means the 1998-99 financial year or a later financial year that ends before 1 July 2005.

15B Statement etc. by self-assessing superannuation provider*Application*

- (1) This section applies to a superannuation provider in relation to a member for a financial year that ends before 1 July 2005 if:
- (a) the superannuation provider is a self-assessing superannuation provider for the financial year; and
 - (b) the superannuation provider holds contributed amounts in relation to the member for the financial year; and
 - (c) the superannuation provider does not give a statement to the Commissioner under subsection 13(2) in relation to the member for the financial year on or before 31 October following the financial year or such later date (if any) as the Commissioner allowed under that subsection.

Statement by superannuation provider

- (2) The superannuation provider must, not later than the notification date for the financial year:
- (a) prepare a statement in relation to each member that contains the particulars referred to in subsection 13(2); and
 - (b) calculate the member's adjusted taxable income for the financial year; and
 - (c) if the adjusted taxable income is greater than the surcharge threshold:
 - (i) calculate the surchargeable contributions; and
 - (ii) calculate the rate of surcharge that applies to the member; and
 - (iii) calculate any surcharge payable; and
 - (d) give the statement to the Commissioner by electronic transmission.

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Provider to pay surcharge in respect of 1999-2000 financial year or later financial years

- (3) If the financial year is the 1999-2000 financial year or a later financial year, the superannuation provider must pay to the Commissioner, not later than 7 days after the day on which the statement is given to the Commissioner under paragraph (2)(d), an amount equal to the total of the amounts of surcharge so calculated to be payable in respect of all the members.

How amounts paid are to be applied

- (4) When an amount is paid to the Commissioner by a superannuation provider under subsection (3):
- (a) the Commissioner is to apply the amount in reduction of any surcharge that is assessed to be payable on the member's surchargeable contributions for the financial year; and
 - (b) if the amount exceeds the surcharge:
 - (i) the excess is to be applied in reduction of any liability of the provider in respect of the member under this Act; and
 - (ii) any amount remaining is to be paid to the provider.

Offence

- (5) A superannuation provider who contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Superannuation provider not required to give information about calculation of adjusted taxable income

- (6) A member is not required to give to a superannuation provider any information relevant to the calculation of the member's adjusted taxable income for a financial year.

16 Deferment of liability for surcharge payable by superannuation (unfunded defined benefits) providers*Deferment of liability for surcharge*

- (1) This section makes provision for the deferment of the liability of a superannuation (unfunded defined benefits) provider to pay surcharge on the surchargeable contributions of a member of the relevant unfunded defined benefits superannuation scheme, and for interest to accrue on the deferred amount.

Accounts to be kept

- (2) The provider must keep a surcharge debt account for each member.

Account to be debited for surcharge

- (3) The provider must debit the account for surcharge assessed to be payable on the member's surchargeable contributions.

Interest to be debited

- (4) If the member's account is in debit at the end of a financial year, the provider must debit the account for interest on the amount by which the account is in debit, calculated at the Treasury bond rate for the last day of the financial year for bonds with a 10 year term.

Rate of interest

- (5) The **Treasury bond rate** for the last day of a financial year for bonds with a 10 year term is:
 - (a) if any Treasury bonds with that term were issued on that day—the annual yield on those bonds; or
 - (b) otherwise—the annual yield on Treasury bonds with that term, as published by the Reserve Bank of Australia for that day.

Payment to be made when benefit becomes payable

- (6) Subject to subsection (6A), when a lump sum, or a pension or annuity, becomes payable by a superannuation provider for the benefit of a member whose account is in debit, the provider must pay to the Commissioner, within one month after the day on which

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the lump sum, or the first instalment of pension or annuity, becomes payable, the amount by which the account is in debit. The payment discharges the provider's liability for the surcharge.

(6A) If:

- (a) a payment split applies to a splittable payment in respect of an interest that a person has as a member; and
- (b) the splittable payment becomes payable in circumstances where the member's surcharge account is in debit;

then the superannuation provider concerned must pay to the Commissioner, within one month after the day the splittable payment became payable, the amount by which the account is in debit (which discharges the provider's liability for the surcharge).

Surcharge debt may be reduced

- (7) The member may make payments to the provider for the purpose of reducing the amount by which the surcharge debt account is in debit.
- (8) If a member makes a payment under subsection (7), the provider must:
 - (a) credit the payment to the surcharge debt account; and
 - (b) acknowledge receipt of the payment to the member; and
 - (c) advise the member of the revised balance of the surcharge debt account.
- (9) A payment received by the provider under subsection (7) must be forwarded to the Commissioner within one month of receipt.

Offences

- (10) A body corporate that contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 300 penalty units.

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

Definitions

(11) In this section:

payment split means a payment split under Part VIIIIB of the *Family Law Act 1975*.

splittable payment has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

17 Credit or refund of advance instalment*Application*

(1) This section applies to an advance instalment, paid by a superannuation provider, of surcharge on a member's surchargeable contributions for a financial year.

Advance instalment to reduce surcharge

(2) If surcharge is assessed on the contributions:

- (a) the Commissioner is to apply the advance instalment to reduce the surcharge payable; and
- (b) if the instalment exceeds the surcharge:
 - (i) the excess is to be applied in reduction of any liability of the holder of the contributions under this Act; and
 - (ii) any amount remaining is to be paid to the holder of the contributions.

Repayment of advance instalment if no surcharge

(3) If no surcharge is assessed on the contributions:

- (a) the advance instalment is to be applied in reduction of any liability of the holder of the contributions under this Act; and
- (b) any amount remaining is to be paid to the holder of the contributions.

Section 17A

17A Periods within which assessments may be made

General provision

- (1) The Commissioner may, subject to this section, at any time amend an assessment of surcharge on a member's surchargeable contributions by making such alterations or additions as the Commissioner thinks necessary, even though surcharge has been paid in respect of the assessment. Such an amendment may be made on the Commissioner's own initiative or at the request of the member or the relevant superannuation provider.

Period for making further amendment

- (2) If:
 - (a) an assessment has been amended in any particular in a way that effected a reduction in the amount of surcharge payable; and
 - (b) for the purposes of making the amendment, the Commissioner accepted a statement made by or on behalf of a member or a superannuation provider;the Commissioner may, within 4 years from the date of service of the notice of the amended assessment, further amend the assessment in, or in respect of, that particular in a way that increases the amount of the surcharge payable to the extent that the Commissioner considers necessary.

Period where avoidance of surcharge

- (3) Subject to this section, if there has been an avoidance of surcharge, the Commissioner may:
 - (a) if the Commissioner is of the opinion that the avoidance of surcharge is due to fraud or evasion—at any time; or
 - (b) in any other case—within 4 years from the date upon which the surcharge became due and payable under the assessment;amend the assessment by making such alterations or additions as the Commissioner thinks necessary to correct the assessment.

Period where amendment reduces surcharge

- (4) An amendment effecting a reduction in the amount of surcharge payable under an assessment is not to be made after the end of 4
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years from the date upon which the surcharge became due and payable under the assessment.

Application or request for extension of period

- (5) If:
- (a) the Commissioner has begun an examination of the affairs of a member or a superannuation provider; and
 - (b) the examination was not completed within the period within which the Commissioner may amend an assessment to which the examination relates under subsection (3) or, if that period has been extended by any previous order or orders of the Federal Court of Australia made under subsection (6), or by any previous consent or consents of the member or provider given under subsection (7), within that period as so extended;
- the Commissioner may, before the end of the period referred to in paragraph (b) of this subsection, apply to the Federal Court for an order extending, or request the member or provider to consent to the extension of, the period within which the Commissioner may amend the assessment under paragraph (3)(b).

Court may extend period

- (6) If, on application made to the Federal Court of Australia in accordance with subsection (5), the Court is satisfied that it was not reasonably practicable, or it was inappropriate, for the Commissioner to complete the examination within the period referred to in paragraph (5)(b) because of any action taken by the member or superannuation provider or any failure of the member or superannuation provider to take action that it would have been reasonable for the member or provider to take, the Court may make an order extending the period within which the Commissioner may amend the assessment under paragraph (3)(b) for such period as the Court considers appropriate.

Member or provider may extend period

- (7) If a request is made to the member or superannuation provider in accordance with subsection (5), the member or provider may, by writing, consent to the extension of the period within which the Commissioner may amend the assessment under paragraph (3)(b) for such period as is specified in the instrument of consent.

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Meaning of take action

- (8) In subsection (6), a reference to action taken by a member or superannuation provider includes a reference to the institution by the member or provider of a proceeding before a court or tribunal.

Period for further amendment reducing surcharge

- (9) If an assessment has, under this section, been amended in any particular, the Commissioner may, within 4 years from the date upon which surcharge became due under the amended assessment, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in the amount of surcharge payable under the assessment as is just.

Case when subsection (9) does not apply

- (10) Subsection (9) does not authorise the further amendment of an earlier further amendment of an assessment made under subsection (2).

Assessment following application by member or superannuation provider

- (11) If:
- (a) an application for an amendment of an assessment is made by a member or superannuation provider within 4 years from the date upon which surcharge became due and payable under the assessment; and
 - (b) the member or provider has given to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application;
- the Commissioner may amend the assessment when he or she decides the application even though that period has elapsed.

How application for amendment is to be made

- (12) An application for amendment must be made in writing, on a data processing device or by way of electronic transmission and must be signed in accordance with the regulations.

Information to be contained in application

- (13) An application for amendment must be given in the prescribed manner and contain the prescribed information.

Certain other powers of amendment not affected

- (14) Nothing in this section prevents:
- (a) the amendment of an assessment in order to give effect to the decision upon any appeal or review; or
 - (b) the amendment of an assessment by way of reduction in the amount of surcharge payable pursuant to an objection made against the assessment or pending any appeal or review; or
 - (c) the amendment of an assessment under section 18.

18 Amendment of assessment if tax file number quoted or found out after assessment*Application*

- (1) This section applies if:
- (a) an assessment of surcharge on the surchargeable contributions of a member for a financial year has been made; and
 - (b) the member did not, before the assessment was made, quote his or her tax file number to the relevant superannuation provider in connection with the operation or the possible future operation of this Act and the Commissioner did not know the tax file number when the assessment was made; and
 - (d) the assessed amount was more than it would have been if the member had quoted the tax file number to the provider; and
 - (e) after the assessment was made:
 - (i) the member quoted the tax file number to the provider in connection with the operation or the possible future operation of this Act and the provider informed the Commissioner of the tax file number; or
 - (ii) the Commissioner found out the tax file number.

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Amendment of assessment

- (2) The Commissioner must amend the assessment to reduce the amount of surcharge to the amount that would have been payable if the Commissioner had known the tax file number when the assessment was made.

19 Amendment of assessments

Application

- (1) This section applies if:
- (a) after the making of an assessment of surcharge on a member's surchargeable contributions for a financial year:
 - (i) the member's adjusted taxable income for the financial year is increased or reduced and the increase or reduction affects a person's liability to pay the surcharge; or
 - (ii) the amount of the contributions is greater or less than the amount that was taken to be the amount of the contributions for the purposes of the assessment; or
 - (iii) the Commissioner is required or permitted under any other provision of this Act to amend the assessment; and
 - (b) the person who was the holder of the surchargeable contributions when the assessment was made is still the holder of the surchargeable contributions.

Additional application

- (2) This section also applies if:
- (a) under an assessment of surcharge on a member's surchargeable contributions for a financial year, the rate of surcharge that applies to the member on particular surchargeable contributions for the financial year was assessed to be nil because paragraph 5(3)(e) of the *Superannuation Contributions Tax Imposition Act 1997* applied to the member; and
 - (b) the rate of surcharge that applies to the member on these contributions for that financial year is afterwards determined to be greater than nil; and

- (c) the person who was the holder of the surchargeable contributions when the assessment was made is still the holder of the surchargeable contributions.

Commissioner may amend assessment

- (3) The Commissioner may amend the assessment to take account of any matter referred to in subparagraph (1)(a)(i), (ii) or (iii) or paragraph (2)(a) or (b).

Amendment increasing surcharge

- (4) If, as a result of the amendment of the assessment, the amount of surcharge is increased, then, subject to section 16, the amount of the increase is payable within 1 month after the day on which the assessment is amended.

Amendment reducing surcharge

- (5) If, as a result of the amendment of the assessment, the amount of surcharge is reduced:
 - (a) the amount by which the surcharge is reduced is taken never to have been payable; and
 - (b) the Commissioner must:
 - (i) refund the amount of any surcharge overpaid; or
 - (ii) apply that amount against any liability of the holder of the surchargeable contributions to the Commonwealth under this Act, and refund to the holder any part of that amount not so applied.

Section subject to section 17A

- (6) This section is subject to section 17A.

20 Assessment of liability to additional surcharge

Application

- (1) This section applies if:
 - (a) after the making of an assessment of surcharge (the *previous assessment*) on a member's surchargeable contributions for a financial year:

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- (i) the member's adjusted taxable income for the financial year is increased or reduced and the increase or reduction affects a person's liability to pay the surcharge; or
 - (ii) the amount of the contributions is greater or less than the amount that was taken to be the amount of the contributions for the purposes of the previous assessment; and
- (b) the person who was the holder of the surchargeable contributions when the previous assessment was made is no longer the holder of the surchargeable contributions.

Additional application

- (2) This section also applies if:
- (a) under an assessment of surcharge (the ***previous assessment***) on a member's surchargeable contributions for a financial year, the rate of surcharge that applies to the member on particular surchargeable contributions for that financial year was assessed to be nil because paragraph 5(3)(e) of the *Superannuation Contributions Tax Imposition Act 1997* applied to the member; and
 - (b) the rate of surcharge that applies to the member on those contributions for that financial year is afterwards determined to be greater than nil; and
 - (c) the person who was the holder of the surchargeable contributions when the previous assessment was made is no longer the holder of the surchargeable contributions.

Further assessment

- (3) The Commissioner must comply with subsection 15(1) in respect of the member for the financial year as if the action previously taken by the Commissioner under that subsection had not been taken. However, nothing in this section affects the action previously taken.

Increase in surcharge

- (4) If, under an assessment (the ***new assessment***) made because of subsection (3), the amount of surcharge payable exceeds the

amount payable under the previous assessment, only the amount of the excess is to be assessed as payable under the new assessment.

No change in surcharge

- (5) If, under an assessment (the ***new assessment***) made because of subsection (3), the amount of surcharge payable is equal to the amount payable under the previous assessment, no amount of surcharge is to be assessed as payable under the new assessment.

Reduction in surcharge

- (6) If, under an assessment (the ***new assessment***) made because of subsection (3), the amount of surcharge payable is less than the amount payable under the previous assessment:
- (a) no amount of surcharge is to be assessed as payable under the new assessment; and
 - (b) the difference is to be applied in reduction of any liability of the holder of the surchargeable contributions under this Act; and
 - (c) any amount remaining is to be paid to the holder of the surchargeable contributions.

New assessment not to be made in certain circumstances

- (7) The Commissioner must not make a new assessment if, were the new assessment an amendment of the previous assessment, section 17A would have precluded the amendment of the previous assessment.

21 Payment of the general interest charge if liability increased by an amendment of an assessment

- (1) If an amendment of an assessment increasing a person's liability to pay surcharge for a financial year is made, the person is liable to pay the general interest charge on the amount of the increase for each day in the period that:
- (a) started at the beginning of 15 June in the financial year; and
 - (b) finishes at the end of the day before the amended assessment is made.

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

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Amendment of nil assessment

- (3) If:
- (a) the Commissioner has calculated that no surcharge is payable by a person on a member's surchargeable contributions for a financial year; and
 - (b) the Commissioner afterwards makes an assessment of surcharge payable by the person on those contributions for the financial year;
- the assessment referred to in paragraph (b) is taken to be an amended assessment.

22 Payment of general interest charge if surcharge payable under a further assessment

If, under an assessment (the *new assessment*) made under subsection 15(1) because of subsection 20(3), a person is liable to pay an amount of surcharge for a financial year, the person is liable to pay the general interest charge on that amount for each day in the period that:

- (a) started at the beginning of 15 June in the financial year; and
- (b) finishes at the end of the day before the new assessment is made.

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

23 Tax file numbers

Commissioner may use any tax file numbers for purposes of this Act

- (1) The Commissioner may use for the purposes of this Act a tax file number that has been provided for any other purpose under a law relating to taxation or superannuation.

Commissioner may seek member's authority to give tax file number to superannuation provider

- (2) If:
- (a) the Commissioner knows a member's tax file number; and
 - (b) the Commissioner:

- (i) has amended, or proposes to amend, an assessment of surcharge payable on the member's surchargeable contributions for a financial year; or
- (ii) has made, or proposes to make, an assessment, under section 15 as it applies because of section 20, of surcharge payable on the member's surchargeable contributions for a financial year;

the Commissioner may:

- (c) request the member to authorise the Commissioner to inform the superannuation provider who is the holder of the contributions of the member's tax file number; and
- (d) if the member so authorises the Commissioner, inform the provider accordingly.

24 Objections against assessments

Member or superannuation provider may object against assessment

- (1) If:
 - (a) an assessment of surcharge on a member's surchargeable contributions is made; and
 - (b) the member, or a superannuation provider who is the holder of the contributions, is dissatisfied with the assessment;the member or provider may object against the assessment in the way set out in Part IVC of the *Taxation Administration Act 1953*.

Superannuation provider may object against class of assessments

- (2) An objection made by a superannuation provider may relate to all the assessments included in a class of assessments. A decision on the objection is taken to be a single decision for the purpose of calculating any fee payable in respect of lodging a reference or appeal in respect of the decision.

Matters on which Commissioner may rely in deciding an objection

- (3) In making a decision on the objection in so far as the objection relates to the calculation of the member's adjusted taxable income, the Commissioner is entitled to rely on:

Section 24

- (a) the latest assessment of the member's taxable income under the Income Tax Assessment Act; and
- (b) the latest statement of the member's surchargeable contributions given to the Commissioner by the superannuation provider.

Note: If a member is dissatisfied with an assessment in so far as it relates to the calculation of the member's surchargeable contributions, as based on an amount or amounts set out in a statement given to the Commissioner by a superannuation provider under section 13, the member may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* about the unfairness or unreasonableness of the superannuation provider's decision to set out the amount or any of the amounts in the statement.

Part 4—Recovery of unpaid surcharge, advance instalment, general interest charge or late payment penalty

25 Penalty for non-payment of surcharge or advance instalment

Liability to pay general interest charge

- (1) If an amount of surcharge or advance instalment that a person is liable to pay remains unpaid after the time by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount.

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

General interest charge period

- (2) The person 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 surcharge or advance instalment 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 surcharge;
 - (ii) the advance instalment;
 - (iii) general interest charge on any of the surcharge or the advance instalment.

Commissioner's right to sue not affected

- (3B) This section does not prevent the Commissioner from suing for the recovery of any unpaid surcharge, advance instalment, general interest charge or late payment penalty at any time after it becomes due and payable.

Section 25A

25A Additional liability to pay general interest charge

Commissioner may give notice

- (1) If general interest charge (the **primary general interest charge**) is payable by a person under section 21 or 22, the Commissioner may give a notice to the person specifying a date after which general interest charge will apply under this section. The specified date must be at least 30 days after the notice is given.

Liability to pay general interest charge

- (2) If any of the primary general interest charge remains unpaid after the day specified in the notice, the person is liable to pay general interest charge on the unpaid amount.

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

General interest charge period

- (3) The person is liable to pay the general interest charge for each day in the period that:
 - (a) started at the beginning of the day specified in the notice; 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) primary general interest charge;
 - (ii) general interest charge on primary general interest charge.

Part 5—Administration

30 General administration of Act

The Commissioner has the general administration of this Act.

31 Annual report

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

32 Secrecy

Definitions

(1) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

person to whom this section applies means a person who is or has been:

- (a) the Commissioner, a Second Commissioner or a Deputy Commissioner; or
- (b) a person engaged under the *Public Service Act 1999* in the Agency (within the meaning of that Act) of which the Commissioner is the Agency Head; or
- (c) otherwise appointed or employed by, or a provider of services for, the Commonwealth.

produce includes permit access to.

protected document means a document that:

- (a) contains information about a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

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protected information means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

Information may be recorded or divulged only for purposes of Act

- (2) A person to whom this section applies must not:
 - (a) make a record of any protected information; or
 - (b) whether directly or indirectly, divulge or communicate to a person any protected information about another person; unless the record is made, or the information is divulged or communicated:
 - (c) under or for the purposes of this Act; or
 - (d) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on an individual is worked out by multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Information may be divulged to persons performing duties under Acts administered by Commissioner

- (3) Subsection (2) does not prohibit the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any protected information to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties.

Divulging of information to Minister

- (4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to a Minister.

Court may not require information or documents

- (5) A person to whom this section applies is not required:
- (a) to divulge or communicate protected information to a court;
 - or
 - (b) to produce a protected document in court;
- except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

Information may be divulged to persons performing duties under this Act

- (6) Nothing in this or any other Act of which the Commissioner has the general administration prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

Information may be divulged to court for purposes of this Act

- (7) Nothing in this or any other Act of which the Commissioner has the general administration prohibits the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:
- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
 - (b) producing in court a document obtained or made under or for the purposes of such an Act;
- where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

Section 32

Information may be divulged for the purpose of the Superannuation Industry (Supervision) Act 1993

- (8) Nothing in this section prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any protected information to the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission, for the purpose of the administration of the *Superannuation Industry (Supervision) Act 1993*.

Note: In a prosecution for an offence against subsection (2), the defendant bears an evidential burden in relation to the matters in paragraphs (2)(c) and (d) and subsections (3), (6), (7) and (8) (see subsection 13.3(3) of the *Criminal Code*).

Oath or declaration of secrecy

- (9) A person to whom this section applies must, if and when required by the Commissioner, a Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form determined by the Commissioner in writing, to maintain secrecy in accordance with this section.

Part 6—Miscellaneous

33 No amount payable by Commonwealth under this Act

Nothing in this Act makes the Commonwealth liable to pay any amount.

34 Act not to operate so as to contravene Constitution

This Act does not apply in any circumstance where its application would or might result in a contravention of the Constitution.

34A Exclusion of certain members

This Act does not apply to a person who is a member because he or she is a judge of a court of a Territory at the commencement of this Act.

35 Information to be given to Commissioner by superannuation provider who pays surcharge or advance instalment

- (1) A superannuation provider who makes a payment to the Commissioner of surcharge or advance instalment on a member's surchargeable contributions for a financial year must give the Commissioner, within a period notified to the provider by the Commissioner, a statement setting out such information as is required by the regulations.
- (2) The information that may be required includes information about other members or former members in relation to whom the provider is or was a superannuation provider.

Penalty: 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Section 35B

35B Prohibition of avoidance schemes

A superannuation provider or fund trustee must not enter into, commence to carry out, or carry out, a scheme if the superannuation provider or fund trustee entered into, commenced to carry out, or carried out, the scheme or any part of the scheme with the intention that the scheme would result, or be likely to result, in the avoidance of the surcharge tax, including through the use of allocated surplus amounts.

35A Contravention notices

Service of notice

- (1) If the Commissioner has reason to believe that a superannuation provider has contravened section 13, 14, 15B or 35, the Commissioner may cause a notice (a **contravention notice**) to be served on the provider in accordance with the regulations.

Particulars to be included in the notice

- (2) A contravention notice is to set out:
 - (a) particulars of the alleged contravention; and
 - (b) the prescribed penalty for the contravention and the person to whom, the place at which, and the manner in which, the penalty may be paid; and
 - (c) the date of the notice and a statement that the penalty may be paid within 14 days after that date;and may contain any other particulars that the Commissioner thinks necessary.

Notification that person may pay prescribed penalty

- (3) A contravention notice is to state that, if the provider does not wish the matter to be dealt with by a court, the provider may lodge with the Commissioner a signed statement to that effect in the manner stated in the notice and pay the prescribed penalty for the contravention.
- (4) The prescribed penalty is 5 penalty units for each week or part of a week during which the contravention continues.

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

Consequences of payment of prescribed penalty

- (5) If:
- (a) a contravention notice has been served on a superannuation provider; and
 - (b) before the end of the period of 14 days stated in the notice or, if the Commissioner so allows, at any time before service of a summons in respect of the contravention, the amount of the prescribed penalty is paid in accordance with the notice; and
 - (c) a statement, signed by the provider, to the effect that the provider does not wish the matter to be dealt with by a court, is received by the person to whom the amount of the penalty is paid; and
 - (d) the contravention that resulted in the service of the contravention notice has ceased;
- the following provisions have effect:
- (e) any liability of the provider in respect of the contravention is taken to be discharged;
 - (f) no further proceedings are to be taken in respect of the contravention;
 - (g) no conviction for the contravention is taken to have been recorded.

Payment by cheque

- (6) If the amount of the prescribed penalty is paid by cheque, payment is taken not to be made unless the cheque is honoured upon presentation.

Other proceedings not affected

- (7) Except as provided by subsection (5), this section does not prejudice or affect the institution or prosecution of proceedings in respect of a contravention of section 13, 14, 15B or 35 or limit the amount of the fine that may be imposed by a court in respect of such a contravention.

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No requirement to serve contravention notice

- (8) This section does not require the service of a contravention notice or affect the liability of a person to be prosecuted in a court in respect of a contravention of section 13, 14, 15B or 35 in relation to which a contravention notice has not been served.

36 Authorised officers

The Commissioner may, by writing, authorise a person who is engaged under the *Public Service Act 1999* to be an authorised officer for the purposes of a provision or provisions of this Part.

37 Evidence

Assessment or determination to be evidence of correctness of calculations

- (1) The mere production of:
- (a) an assessment or determination; or
 - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of an assessment or determination;
- is conclusive evidence of the due making of the assessment or determination and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment or determination are correct.

Copies of documents

- (2) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is prima facie evidence that the second-mentioned document was so issued or given.

Copies of, or extracts from, assessments or determinations

- (3) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, an assessment or determination is evidence of the matter set

out in the document to the same extent as the original assessment or determination, as the case may be, would be if it were produced.

Certificates

- (4) A certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that an amount stated in the certificate was, on the day of the certificate, payable by a person as an amount of surcharge, advance instalment, general interest charge or late payment penalty, is prima facie evidence of the matters stated in the certificate.

38 Access to premises etc.

Powers of authorised officers

- (1) For the purposes of this Act, an authorised officer:
- (a) may, at any reasonable time, enter and remain on any land or premises; and
 - (b) is entitled to full and free access at any reasonable time to all documents; and
 - (c) may inspect, examine, make copies of, or take extracts from, any documents.

Proof of authority to be produced

- (2) An authorised officer is not entitled to enter or remain on any land or premises if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce a written authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

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Occupier to help authorised officer

- (3) The occupier of land or premises entered or proposed to be entered by an authorised officer under subsection (1) must, for the purpose of enabling the effective exercise of the officer's powers under this section, provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

39 Obtaining information and evidence

Power of Commissioner to obtain information or documents

- (1) The Commissioner may, for the purposes of this Act, by written notice, require a person:
- (a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, stated in the notice, any information that the Commissioner requires; and
 - (b) to attend before the Commissioner, or an authorised officer, at a reasonable time and place stated in the notice, and answer questions; and
 - (c) to produce to the Commissioner, at a reasonable time and place stated in the notice, any documents in the custody or under the control of the person.

Power to require information on oath or affirmation

- (2) The Commissioner may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner or an authorised officer may administer an oath or affirmation.

Nature of oath or affirmation

- (3) The oath to be taken or affirmation to be made by a person is an oath or affirmation that the information or answers the person will give will be true.

Expenses of attendance

- (4) The regulations are to prescribe scales of expenses to be allowed to persons required to attend under this section.

40 Records to be kept and retained by superannuation provider*Superannuation provider to keep records*

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

How records to be kept

- (2) 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 provider's liability under this Act can be readily worked out.

Period for retention of records

- (3) A superannuation provider 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 they were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later.

When records need not be kept

- (4) This section does not require a superannuation provider to retain records if:
- (a) the Commissioner has notified the provider that the retention of the records is not required; or

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

Offences

- (5) A superannuation provider who contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Note 3: In a prosecution for an offence against subsection (5), the defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

41 Application of the Criminal Code

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

42 Regulations

- (1) The Governor-General may make regulations prescribing 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, prescribing:
 - (c) how statements are to be given to the Commissioner; and
 - (d) penalties, not exceeding a fine of 5 penalty units, for offences against the regulations.
- (2) The regulations may modify Superannuation Contributions Ruling SCR 97/1 by doing any one or more of the following:
 - (a) inserting a provision in the ruling;
 - (b) omitting a provision from the ruling;
 - (c) altering a provision in the ruling.

Part 7—Interpretation

43 Definitions

In this Act, unless the contrary intention applies:

adjusted taxable income has the meaning given by section 7A or 7B, whichever is applicable.

advance instalment has the meaning given by section 11.

allocated surplus amount, in relation to a member of a superannuation fund in relation to a financial year, means an amount that is allocated by the relevant superannuation (accumulated benefits) provider for the benefit of the member in respect of the financial year (other than an amount paid for or by the member to the provider) to the extent to which the allocated amount exceeds an amount that, in the opinion of an eligible actuary according to Australian actuarial practice, is reasonable having regard to:

- (a) the amounts paid by or for the member to the provider; and
- (b) the fund's investment earnings relating to the member's interest in the fund; and
- (c) any other relevant matters.

annuity has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993* and includes a deferred annuity as defined in subsection 27A(1) of the Income Tax Assessment Act.

approved deposit fund has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

assessment means an assessment made under subsection 15(1).

authorised officer means a person engaged under the *Public Service Act 1999* who has been authorised in writing by the Commissioner for the purposes of the provision in which the expression occurs.

Section 43

class: a single member may constitute a class of members and a single superannuation scheme may constitute a class of superannuation schemes.

Commissioner means the Commissioner of Taxation.

complying approved deposit fund has the meaning given by section 47 of the *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund has the meaning given by section 45 of the *Superannuation Industry (Supervision) Act 1993*.

contributed amounts:

- (a) in relation to a member (other than a member of a defined benefits superannuation scheme) for a financial year, means:
 - (i) any amounts paid for or by the member to, or otherwise credited or attributed to an account for the member by, a superannuation provider for the financial year other than amounts to which subparagraph (ii) or (iii) applies, less any part of such an amount that is, under the regulations, to be regarded as reasonably attributable to interest; and
 - (ii) if there are any regulations in force for the purposes of this subparagraph in respect of the financial year—any amounts referred to in the regulations that are credited, allocated or attributable to the member for the financial year less any part of such an amount that is, under the regulations, to be regarded as reasonably attributable to interest; and
 - (iii) if there are no regulations in force for the purposes of subparagraph (ii) and the financial year is later than the 1996-97 financial year—any allocated surplus amount in relation to the member in respect of the financial year; or
- (b) in relation to a member of a defined benefits superannuation scheme for a financial year:
 - (i) means the surchargeable contributions of the member for the financial year; and
 - (ii) includes any other amount that may be reasonably regarded as attributable to the member under the scheme for the financial year.

defined benefits superannuation scheme means:

- (a) a public sector superannuation scheme that:
 - (i) is a regulated superannuation fund or an exempt public sector superannuation scheme; and
 - (ii) has at least 1 defined benefit member; or
- (b) a regulated superannuation fund (other than a public sector superannuation scheme):
 - (i) that has at least 1 defined benefit member; and
 - (ii) some or all of the contributions to which are not allocated to any individual member but are paid into and accumulated in a fund in the form of an aggregate amount.

defined benefit member means a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
 - (i) the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement or an earlier date; or
 - (ii) the member's salary averaged over a period before retirement;
- (b) a stated amount.

Deputy Commissioner means the Deputy Commissioner of Taxation.

determination means a determination made under subsection 15(2).

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

eligible termination payment has the same meaning as in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

excessive component of an eligible termination payment has the meaning given by subsection 27A(1) of the Income Tax Assessment Act.

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exempt public sector superannuation scheme has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

funded defined benefits superannuation scheme means a defined benefits superannuation scheme that is not an unfunded defined benefits superannuation scheme.

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

holder of the surchargeable contributions of a member for a financial year has the meaning given by sections 8A and 10A.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936*.

interest (except in the definition in this section of **contributed amounts**) means the general interest charge payable under section 21 or 22.

late payment penalty means general interest charge payable under section 25 or 25A.

life assurance company has the same meaning as in subsection 6(1) of the *Income Tax Assessment Act*.

member means a member of a superannuation fund or of an approved deposit fund and includes:

- (a) the holder of an RSA; and
 - (b) the purchaser of an annuity from a life assurance company;
- and includes a person who has been such a member.

notification date means:

- (a) for the 1996-97 financial year—15 December 1997; or
- (b) for the 1997-98 financial year—31 October following the financial year; or
- (c) for a later financial year:
 - (i) if the relevant superannuation provider is a self-assessing superannuation provider for the financial year—the date determined by the Commissioner in relation to the provider for the financial year under section 15A; or

(ii) otherwise—31 October following the financial year.

post-June 83 component of an eligible termination payment has the meaning given by section 27AA of the Income Tax Assessment Act.

public sector superannuation scheme means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of the Commonwealth, a law of a State or a law of a 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, a law of a State or a law of a Territory.

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

retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

rolled-over has the meaning given by paragraph 27A(13)(a) of the Income Tax Assessment Act.

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.

self-assessing superannuation provider, in relation to a financial year, means a superannuation provider specified, or included in a class of superannuation providers specified, in a determination in force under paragraph 15A(1)(a) in respect of that financial year.

Section 43

superannuation (accumulated benefits) provider means a superannuation provider that is not a superannuation (defined benefits) provider.

Superannuation Contributions Ruling SCR 97/1 means:

- (a) the instrument known as Superannuation Contributions Ruling SCR 97/1 that was made available by the Commissioner before the commencement of this definition as that instrument existed immediately before that commencement; or
- (b) if that instrument has been modified by the regulations after that commencement—that instrument as so modified.

superannuation contributions surcharge or ***surcharge*** means the tax imposed by the *Superannuation Contributions Tax Imposition Act 1997*.

superannuation (defined benefits) provider means a superannuation (funded defined benefits) provider or a superannuation (unfunded defined benefits) provider.

superannuation fund means:

- (a) a fund that:
 - (i) is an indefinitely continuing fund; and
 - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme.

superannuation (funded defined benefits) provider means a superannuation provider that is the trustee of a superannuation fund established for the purposes of a funded defined benefits superannuation scheme.

superannuation provider means:

- (a) the trustee of a superannuation fund or of an approved deposit fund; or
- (b) an RSA provider; or
- (c) a life assurance company.

superannuation (unfunded defined benefits) provider means a superannuation provider that is the trustee of a superannuation fund established for the purposes of a superannuation scheme that is an unfunded defined benefits superannuation scheme.

surchargeable contributions has the meaning given by section 8.

surcharge threshold has the meaning given by section 9.

taxable income of a member for a year of income means the member's taxable income of that year of income as assessed under the Income Tax Assessment Act.

taxed element of the retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

the 1996-97 financial year means the financial year starting on 1 July 1996.

the 1997-98 financial year means the financial year starting on 1 July 1997.

the 1998-99 financial year means the financial year starting on 1 July 1998.

the 1999-2000 financial year means the financial year starting on 1 July 1999.

trustee, in relation to a superannuation fund, means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund—the trustee; or
- (b) otherwise—the person who manages the fund.

unfunded defined benefits superannuation scheme means a superannuation scheme that is declared by the regulations to be an unfunded defined benefits superannuation scheme.

year of income means a year of income for the purposes of the Income Tax Assessment Act as that Act applies to individuals.

Table of Acts

Notes to the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

Note 1

The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* as shown in this compilation comprises Act No. 70, 1997 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	70, 1997	5 June 1997	5 June 1997	
<i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997</i>	191, 1997	7 Dec 1997	Schedule 4 (items 1, 2, 4–50): 5 June 1997 (a) Schedule 4 (item 3): Royal Assent (a)	—
<i>Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998</i>	17, 1998	16 Apr 1998	16 Apr 1998	Sch. 1 (item 34)
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (item 182): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (b)	—
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 1 (items 309–326): 1 July 1999 (c)	—
<i>A New Tax System (Fringe Benefits Reporting) Act 1999</i>	17, 1999	19 Apr 1999	Schedule 2 (item 14): 17 May 1999 Remainder Royal Assent	—

Notes to the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (items 218–220): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (d)	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
as amended by				
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
<i>A New Tax System (Closely Held Trusts) Act 1999</i>	70, 1999	8 July 1999	8 July 1999	Sch. 2 (item 16)
<i>Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999</i>	131, 1999	13 Oct 1999	Schedule 1 (items 1–42): 5 June 1997 (e) Schedule 1 (items 43–45): Royal Assent (e)	Sch. 1 (items 43–45)
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 892–894): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (f)	—
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 2 (items 70–72, 130, 132): (g)	Sch. 2 (items 130, 132)
<i>A New Tax System (Tax Administration) Act (No. 1) 2000</i>	44, 2000	3 May 2000	Schedule 3 (item 51): (h)	—
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 2 (items 57–60): (i)	—
<i>Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Act 2001</i>	96, 2001	15 Aug 2001	Schedule 1: 5 June 1997 (j)	Sch. 1 (item 9)
<i>Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001</i>	114, 2001	18 Sept 2001	(k)	—
<i>Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003</i>	111, 2003	12 Nov 2003	12 Nov 2003	Sch. 1 (item 25)

Notes to the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 5) 2003</i>	142, 2003	17 Dec 2003	Schedule 6 (items 9–15, 21): Royal Assent	Sch. 6 (item 21)
<i>Taxation Laws Amendment Act (No. 1) 2004</i>	101, 2004	30 June 2004	Schedule 11 (items 36, 37): (I) Schedule 11 (items 90–95): (I)	Sch. 11 (items 37, 91, 95)
<i>Superannuation Laws Amendment (Abolition of Surcharge) Act 2005</i>	102, 2005	12 Aug 2005	12 Aug 2005	—
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 7 (items 264, 265): Royal Assent	—
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (items 1017, 1046–1050) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)

Act Notes

- (a) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 4 (items 1–50) only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (3) Items 1 and 2, and 4 to 50, of Schedule 4 are taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.
- (b) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 1 (item 182) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (c) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 1 (items 309–326) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) and (5), Schedule 1 commences on 1 July 1999.
- (d) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 7 (items 218–220) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
 - (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
 - (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (e) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 1 (items 1–42) only of the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Schedule 1 (other than items 43 to 45) is taken to have commenced on 5 June 1997.
- (f) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 1 (items 892–894) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (g) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 2 (items 70–72) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- Section 1 commenced on 22 December 1999.

Act Notes

- (h) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 3 (item 51) only of the *A New Tax System (Tax Administration) Act (No. 1) 2000*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (i) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 2 (items 57–60) only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsection 3(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.
- Section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999* commenced on 1 July 2000.
- (j) The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* was amended by Schedule 1 only of the *Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Act 2001*, subsection 2(2) of which provides as follows:
- (2) Schedule 1 is taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.
- (k) Section 2 of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* provides as follows:
- 2 This Act commences immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.
- The *Family Law Legislation Amendment (Superannuation) Act 2001* came into operation on 28 December 2002.
- (l) Subsection 2(1) (items 13 and 14) of the *Taxation Laws Amendment Act (No. 1) 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
13. Schedule 11, Part 3	Immediately after the start of 30 June 2000	30 June 2000
14. Schedule 11, Part 4	Immediately after the start of 1 July 2000	1 July 2000

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 6.....	am. No. 191, 1997; No. 11, 1999 rs. No. 131, 1999 am. No. 102, 2005
Part 2	
S. 7.....	am. No. 191, 1997; No. 102, 2005
Ss. 7A, 7B.....	ad. No. 96, 2001 am. No. 142, 2003
S. 8.....	am. No. 191, 1997; No. 131, 1999; No. 96, 2001; Nos. 111 and 142, 2003
S. 8A.....	ad. No. 131, 1999 am. No. 114, 2001
S. 9.....	am. No. 102, 2005
Subhead. to s. 10(3).....	am. No. 191, 1997
S. 10.....	am. No. 131, 1999; No. 114, 2001
S. 10A.....	ad. No. 114, 2001
S. 11.....	am. No. 131, 1999
Part 3	
Subhead. to s. 13(2).....	rs. No. 191, 1997
Subhead. to s. 13(4).....	rs. No. 191, 1997
S. 13.....	am. No. 191, 1997; No. 131, 1999; No. 96, 2001; No. 102, 2005
S. 14.....	am. No. 191, 1997; No. 58, 2006
S. 14A.....	ad. No. 191, 1997 am. No. 102, 2005
S. 15.....	am. No. 131, 1999; No. 102, 2005
Note to s. 15(4).....	ad. No. 44, 2000
Ss. 15A, 15B.....	ad. No. 131, 1999 am. No. 102, 2005
S. 16.....	am. No. 191, 1997; No. 114, 2001
S. 17.....	am. No. 191, 1997
S. 17A.....	ad. No. 131, 1999
Ss. 18–20.....	am. No. 191, 1997; No. 131, 1999
Heading to s. 21.....	am. No. 11, 1999
S. 21.....	am. No. 11, 1999
Note to s. 21(1).....	am. No. 101, 2006
S. 22.....	rs. No. 11, 1999
Note to s. 22.....	am. No. 101, 2006
S. 24.....	am. No. 191, 1997; No. 131, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 4	
Heading to Part 4	rs. No. 11, 1999
S. 25	am. No. 191, 1997; No. 11, 1999
Note to s. 25(1)	am. No. 101, 2006
S. 25A	ad. No. 11, 1999
Note to s. 25A(2)	am. No. 101, 2006
S. 26	am. No. 11, 1999 rep. No. 179, 1999
Heading to s. 27	am. No. 11, 1999 rep. No. 179, 1999
S. 27	am. No. 11, 1999 rep. No. 179, 1999
Ss. 28, 29	rep. No. 11, 1999
Part 5	
Subhead. to s. 32(8)	am. No. 48, 1998
S. 32	am. No. 48, 1998; No. 146, 1999
Note to s. 32(2)	rs. No. 191, 1997
Note to s. 32(8)	ad. No. 191, 1997
Part 6	
S. 34A	ad. No. 191, 1997
S. 35	rs. No. 191, 1997
S. 35A	ad. No. 191, 1997
Renumbered s. 35B	No. 131, 1999
S. 35A	ad. No. 191, 1997 am. No. 131, 1999; No. 91, 2000
S. 36	am. No. 191, 1997; No. 146, 1999
S. 37	am. No. 11, 1999
S. 38	am. No. 91, 2000
Note to s. 38(3) Renumbered Note 1	No. 91, 2000
Note 2 to s. 38(3)	ad. No. 91, 2000
S. 40	am. No. 191, 1997
S. 40A	ad. No. 191, 1997 am. No. 44, 1999 rep. No. 179, 1999
S. 42	rs. No. 191, 1997 am. No. 131, 1999
Part 7	
S. 43	am. No. 191, 1997; No. 17, 1998; Nos. 11, 17, 70, 131 and 146, 1999; Nos. 96 and 114, 2001; No. 142, 2003; No. 101, 2004; No. 101, 2006

Table A

Table A

Application, saving or transitional provisions

Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998
(No. 17, 1998)

34 Application

The amendment made by this Part applies to the calculation of adjusted taxable income for the financial year that began on 1 July 1996 or a later financial year.

A New Tax System (Closely Held Trusts) Act 1999 (No. 70, 1999)

Schedule 2

16 Application

The amendment made by this Part applies to the calculation of adjusted taxable income for the financial year that began on 1 July 1998 or a later financial year.

Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999 (No. 131, 1999)

Schedule 1

43 Transitional—superannuation providers to give corrective statements

- (1) If a superannuation provider has, before the commencement of this item, given a statement to the Commissioner under section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* that did not comply with the requirements that would have applied if the amendments made by items of this Schedule that are taken to have commenced on 5 June 1997 had been in force, the provider must give to the Commissioner not later than a date fixed by the Minister by notice

Table A

published in the *Gazette*, in substitution for the first-mentioned statement, a further statement that complies with those requirements.

- (2) A superannuation provider who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

- (3) Chapter 2 of the *Criminal Code* applies to offences against subsection (2).

44 Transitional—retrospective objections

If a notice of assessment was given to a member or a superannuation provider before the day on which this Act received the Royal Assent:

- (a) if the member or provider did not object against the assessment before that day, then, for the purpose of calculating under section 14ZW of the *Taxation Administration Act 1953* the period within which the member or provider may object against the assessment, the notice is taken to have been served on that day; and
- (b) if the member or provider objected against the assessment before the day on which this Act received the Royal Assent, the member or provider may make a further objection against the assessment and, for the purpose of calculating under section 14ZW of the *Taxation Administration Act 1953* the period within which the member or provider may make the further objection against the assessment, the notice is taken to have been served on that day.

45 Transitional—amendments of assessments

Nothing in section 17A of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* prevents the amendment of an assessment for the purpose of giving effect:

- (a) to any amendment made by this Schedule or to item 43 or 44;
or

Table A

(b) to anything done under a provision of that Act as amended by this Schedule or under item 43 or 44.

A New Tax System (Tax Administration) Act 1999 (No. 179, 1999)

Schedule 2

130 Recovery of a tax-related liability that is due and payable

Despite its repeal, a provision listed in the table continues to have effect in relation to an amount that became due and payable before 1 July 2000.

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 94
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 86
3	<i>Sales Tax Assessment Act 1992</i>	section 69
4	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 26 or 27
5	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 22 or 23
6	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 50
7	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 17 or 18
8	<i>Taxation Administration Act 1953</i>	subsection 8AAV(1) or (2)
9	<i>Tobacco Charges Assessment Act 1955</i>	section 21
10	<i>Wool Tax (Administration) Act 1964</i>	section 44

132 Collecting amounts from third parties

Despite the repeal of a provision listed in the table:

- (a) anything done under that provision before 1 July 2000 continues to have effect on and after that day as if the provision had not been repealed; and

Table A

(b) anything done on or after that day, under that provision as it continues to have effect because of this item, has effect as if the provision had not been repealed.

Collecting amounts from third parties		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 99
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 91
3	<i>Sales Tax Assessment Act 1992</i>	section 74
4	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 40A
5	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 35
6	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 56
7	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 28A
8	<i>Wool Tax (Administration) Act 1964</i>	section 54

Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Act 2001 (No. 96, 2001)

Schedule 1

9 Amendment of assessments

Nothing in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* prevents the amendment of an assessment of surcharge on a member's surchargeable contributions for a financial year for the purpose of giving effect to an amendment of that Act made by this Schedule if the Commissioner has sufficient information to satisfy himself or herself that the amendment is required or permitted for that purpose and the amendment does not increase the amount of surcharge payable in respect of those contributions.

Table A

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003 (No. 111, 2003)

Schedule 1

25 Application of amendments

The amendments made by Part 1 of this Schedule apply in relation to contributions made to complying superannuation funds and RSAs on or after 1 July 2003.

Taxation Laws Amendment Act (No. 5) 2003 (No. 142, 2003)

Schedule 6

21 Application

The amendments made by this Part apply to eligible termination payments (as defined in section 27A of the *Income Tax Assessment Act 1936*) made on or after 1 July 2002.

Taxation Laws Amendment Act (No. 1) 2004 (No. 101, 2004)

Schedule 11

37 Application

The amendment of section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* made by this Division applies in relation to financial years ending after 30 June 2000.

91 Saving

If, immediately before 1 July 2000, a person was a member as defined in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (as in force at that time), the person does not cease to be a member for the purposes of that Act because of the amendment of the definition of *member* in that section made by this Division.

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95 Saving

If, immediately before 1 July 2000, an entity (as defined in the *Income Tax Assessment Act 1997*) was a superannuation provider as defined in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (as in force at that time), the entity does not cease to be a superannuation provider for the purposes of that Act because of the amendments of the definition of *superannuation provider* in that section made by this Division.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

Table A

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act*

Table A

1936. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

Table A

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.