



Superannuation Contributions Tax (Assessment and Collection) Act 1997

No. 70, 1997

Compilation No. 27

Compilation date: 28 September 2022

Includes amendments up to: Act No. 112, 2020

Registered: 6 October 2022

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* that shows the text of the law as amended and in force on 28 September 2022 (the **compilation date**).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Act to bind Crown	1
4 Extension to Territories	1
5 Object of Act	1
6 Simplified outline of Act	2
Part 2—Liability to surcharge and advance instalments	4
7 Superannuation contributions surcharge	4
7A Adjusted taxable income—first case	5
7B Adjusted taxable income—second case	6
8 Surchargeable contributions	9
8A Holder of surchargeable contributions of a member	14
9 Surcharge threshold	16
10 Liability to pay surcharge	18
10A Payment splits or interest splits on marriage breakdown	19
11 Advance instalment of superannuation contributions surcharge	20
12 Liability to pay advance instalment	20
Part 3—Assessment and collection of surcharge and advance instalments	22
13 Superannuation providers to give statements	22
14 Giving of information in certain form	26
14A Commissioner may require member to provide information as to the holder of the member's surchargeable contributions	27
15 Assessment of liability to pay surcharge and determination of advance instalment	28
15A Self-assessing superannuation providers	31
15B Statement etc. by self-assessing superannuation provider	32
16 Deferment of liability for surcharge payable by superannuation (unfunded defined benefits) providers	34
17 Credit or refund of advance instalment	36
17A Periods within which assessments may be made	37
18 Amendment of assessment if tax file number quoted or found out after assessment	41
19 Amendment of assessments	41

20	Assessment of liability to additional surcharge	43
21	Payment of the general interest charge if liability increased by an amendment of an assessment	45
22	Payment of general interest charge if surcharge payable under a further assessment	46
23	Tax file numbers	46
24	Objections against assessments	47
Part 4—Recovery of unpaid surcharge, advance instalment, general interest charge or late payment penalty		49
25	Penalty for non-payment of surcharge or advance instalment	49
25A	Additional liability to pay general interest charge	50
Part 5—Administration		51
30	General administration of Act	51
31	Annual report	51
Part 6—Miscellaneous		52
33	No amount payable by Commonwealth under this Act	52
34	Act not to operate so as to contravene Constitution	52
34A	Exclusion of certain members	52
35	Information to be given to Commissioner by superannuation provider who pays surcharge or advance instalment	52
35B	Prohibition of avoidance schemes	53
35A	Contravention notices	53
40	Records to be kept and retained by superannuation provider	55
41	Application of the <i>Criminal Code</i>	56
42	Regulations	57
Part 7—Interpretation		58
43	Definitions	58
Endnotes		66
Endnote 1—About the endnotes		66
Endnote 2—Abbreviation key		68
Endnote 3—Legislation history		69
Endnote 4—Amendment history		74

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

Part 1—Preliminary

1 Short title

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

2 Commencement

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 and of the Northern Territory.
- (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.

Section 6

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:

Section 6

- (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

Section 7B

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) in 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) in 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

Section 7B

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) in 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) in Schedule 2F to, the Income Tax Assessment Act; and

Section 7B

(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 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;

Section 8

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
 - (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:

$$\text{Annual salary} \times \frac{\text{Notional surchargeable contributions factor}}{\text{contributions factor}}$$

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

Section 8

- (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 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.

Section 8A

- 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.

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.

Section 9

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 × 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.

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*.

Section 10

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

Section 10A

- (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.

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 means a non-member spouse within the meaning of Part VIIIB or VIIC of the *Family Law Act 1975*.

Section 11

payment split means a payment split within the meaning of Part VIIIB or VIIC of the *Family Law Act 1975*.

splittable payment means a splittable payment within the meaning of Part VIIIB or VIIC 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.

Section 12

*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.

Section 13

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

Section 13

setting out the particulars referred to in subsection (7) and any other matters required by the regulations.

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 commits 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

Section 14

- (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.

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 commits 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, 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 for a financial year that ends before 1 July 2005; 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.

Section 15

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
 - (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.

Section 15

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.

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.

Section 15A

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.

Section 15B

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.

Section 15B

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 commits 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.

Section 16

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 superannuation benefit (within the meaning of the *Income Tax Assessment Act 1997*) 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 the superannuation benefit 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.

Section 17

- (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 commits 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 within the meaning of Part VIIIB or VIIC of the *Family Law Act 1975*.

splittable payment means a splittable payment within the meaning of Part VIIIB or VIIC 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.

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.

Section 17A

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 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.

*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.

Section 17A

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.

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:
-

Section 19

- (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:
 - (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

Section 20

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.

Section 22

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

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

Section 24

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:
- (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 under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*) 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.

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

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.

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.

Section 35B

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.

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.

Section 35A

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.

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.

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.

Section 41

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

Offences

- (5) A superannuation provider who contravenes this section commits 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 such an annuity that is not presently payable.

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).

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

Section 43

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.

Section 43

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.

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

Section 43

- (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.

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.

Section 43

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:

Section 43

- (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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Contributions Tax (Assessment and Collection) Act 1997	70, 1997	5 June 1997	5 June 1997	
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997	191, 1997	7 Dec 1997	Sch 4 (items 1, 2, 4–50): 5 June 1997 (s 2(3)) Sch 4 (item 3): 7 Dec 1997 (s 2(1))	—
Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998	17, 1998	16 Apr 1998	16 Apr 1998	Sch. 1 (item 34)
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (item 182): 1 July 1998 (s 2(2))	—
Taxation Laws Amendment Act (No. 3) 1999	11, 1999	31 Mar 1999	Sch 1 (items 309–326): 1 July 1999 (s 2(3))	—
A New Tax System (Fringe Benefits Reporting) Act 1999	17, 1999	19 Apr 1999	Schedule 2 (item 14): 17 May 1999 Remainder: Royal Assent	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 218–220): 1 July 1999 (s 3(2)(e), (16) and gaz 1999, No S283)	—

Superannuation Contributions Tax (Assessment and Collection) Act 1997

69

Compilation No. 27

Compilation date: 28/09/2022

Registered: 06/10/2022

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—
A New Tax System (Closely Held Trusts) Act 1999	70, 1999	8 July 1999	8 July 1999	Sch. 2 (item 16)
Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999	131, 1999	13 Oct 1999	Sch 1 (items 1–42): 5 June 1997 (s 2(2)) Sch 1 (items 43–45): 13 Oct 1999 (s 2(1))	Sch. 1 (items 43–45)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 892–894): 5 Dec 1999 (s 2(1), (2))	—
A New Tax System (Tax Administration) Act 1999	179, 1999	22 Dec 1999	Sch 2 (items 70–72, 130, 132): 22 Dec 1999 (s 2(1))	Sch. 2 (items 130, 132)
A New Tax System (Tax Administration) Act (No. 1) 2000	44, 2000	3 May 2000	Sch 3 (item 51): 22 Dec 1999 (s 2(1))	—
A New Tax System (Tax Administration) Act (No. 2) 2000	91, 2000	30 June 2000	Sch 2 (items 57–60): 1 July 2000 (s 3(1))	—
Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Act 2001	96, 2001	15 Aug 2001	Sch 1: 5 June 1997 (s 2(2))	Sch 1 (item 9)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001	114, 2001	18 Sept 2001	Sch 1 (items 26–32): 28 Dec 2002 (s 2)	—
Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003	111, 2003	12 Nov 2003	Sch 1 (items 18, 19, 25): 12 Nov 2003 (s 2(1) item 4)	Sch 1 (item 25)
Taxation Laws Amendment Act (No. 5) 2003	142, 2003	17 Dec 2003	Sch 6 (items 9–15, 21): 17 Dec 2003 (s 2(1) item 8)	Sch 6 (item 21)
Taxation Laws Amendment Act (No. 1) 2004	101, 2004	30 June 2004	Sch 11 (items 36, 37): 30 June 2000 (s 2(1) item 13) Sch 11 (items 90–95): 1 July 2000 (s 2(1) item 14)	Sch 11 (items 37, 91, 95)
Superannuation Laws Amendment (Abolition of Surcharge) Act 2005	102, 2005	12 Aug 2005	Sch 1 (items 1, 8–15): 12 Aug 2005 (s 2)	—
Tax Laws Amendment (2006 Measures No. 2) Act 2006	58, 2006	22 June 2006	Sch 7 (items 264, 265): 22 June 2006 (s 2(1) item 24)	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 2 (items 1017, 1046–1050) and Sch 6 (items 1, 6–11): 14 Sept 2006 (s 2(1) items 2, 4)	Sch 6 (items 1, 6–11)
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 328–330, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2)	Sch 1 (item 406(1)–(3))

Superannuation Contributions Tax (Assessment and Collection) Act 1997

71

Compilation No. 27

Compilation date: 28/09/2022

Registered: 06/10/2022

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 70, 71): 17 Dec 2010 (s 2(1) item 2)	—
Tax Laws Amendment (2011 Measures No. 2) Act 2011	41, 2011	27 June 2011	Sch 5 (item 399): 27 June 2011 (s 2(1) item 23)	—
Treasury Legislation Amendment (Repeal Day) Act 2015	2, 2015	25 Feb 2015	Sch 2 (items 50, 51): 1 July 2015 (s 2(1) item 4) Sch 2 (item 73): 25 Feb 2015 (s 2(1) item 5)	Sch 2 (item 73)
as amended by				
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 6 (item 64): 25 Feb 2015 (s 2(1) item 18)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 338): 1 July 2016: (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 294): 10 Mar 2016 (s 2(1) item 6)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Putting Consumers First— Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 1 (items 19, 31(1), 52, 58): 6 Mar 2018 (s 2(1) items 2, 6)	s 4 and Sch 1 (items 31(1), 58)
Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020	112, 2020	8 Dec 2020	Sch 3 (items 94, 95): 28 Sept 2022 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 59, 2015
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; No. 41, 2011
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
s. 10	am. No. 191, 1997; No. 131, 1999; No. 114, 2001
s 10A	ad No 114, 2001 am No 112, 2020
s. 11	am. No. 131, 1999
Part 3	
s. 13	am. No. 191, 1997; No. 131, 1999; No. 96, 2001; No. 102, 2005; No 4, 2016
s. 14	am. No. 191, 1997; No. 58, 2006; No 4, 2016
s. 14A	ad. No. 191, 1997 am. No. 102, 2005
s. 15	am. No. 131, 1999; No. 44, 2000; No. 102, 2005
s 15A	ad No 131, 1999 am No 102, 2005
s 15B	ad No 131, 1999 am No 102, 2005; No 4, 2016

Endnote 4—Amendment history

Provision affected	How affected
s 16.....	am No 191, 1997; No 114, 2001; No 15, 2007; No 4, 2016; No 112, 2020
s. 17.....	am. No. 191, 1997
s. 17A.....	ad. No. 131, 1999
ss. 18–20.....	am. No. 191, 1997; No. 131, 1999
s. 21.....	am. No. 11, 1999; No. 101, 2006
s. 22.....	rs. No. 11, 1999; No. 101, 2006
s 24.....	am No. 191, 1997; No. 131, 1999; No 13, 2018
Part 4	
Part 4 heading.....	rs. No. 11, 1999
s. 25.....	am. No. 191, 1997; No. 11, 1999; No. 101, 2006
s. 25A.....	ad. No. 11, 1999; No. 101, 2006
s. 26.....	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	
s. 30.....	am. No. 145, 2010
s. 32.....	am. No. 48, 1998; No. 191, 1997; No. 146, 1999 rep. No. 145, 2010
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 rep No 2, 2015
s. 37.....	am. No. 11, 1999 rep No 2, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 38	am. No. 91, 2000 rep No 2, 2015
s 39	rep No 2, 2015
s 40	am No 191, 1997; No 4, 2016
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; No. 15, 2007; No 2, 2015