



Superannuation Contributions Tax (Consequential Amendments) Act 1997

No. 71, 1997

**An Act to amend various Acts in consequence of the
enactment of the *Superannuation Contributions Tax
(Assessment and Collection) Act 1997*, and for related
purposes**

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No. 71, 1997

An Act to amend various Acts in consequence of the enactment of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, and for related purposes

[Assented to 5 June 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Income Tax Assessment Act 1936

1 At the end of section 202

Add:

; and (l) to facilitate the administration of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.

2 Subsection 202DH(1)

After “1993,” insert “the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or the *Termination Payments Tax (Assessment and Collection) Act 1997*,”.

Note: The heading to section 202DH is replaced by the heading “Tax file number quoted for superannuation or surcharge purposes taken to be quoted for purposes of the taxation of eligible termination payments”.

3 At the end of Division 4 of Part VA

Add:

202DJ Tax file number quoted for purposes of taxation of eligible termination payments taken to be quoted for surcharge purposes

- (1) If a person who is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme or is the holder of an RSA has quoted his or her tax file number as mentioned in subregulation 98(8) or regulation 100 of the Income Tax Regulations, the person is taken, so long as he or she continues to be such a beneficiary or holder, to have quoted that tax file number to the trustee of the entity or scheme or to the RSA provider, as the case may be, in connection with the operation or possible future operation of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.
- (2) In this section:
eligible superannuation entity and *regulated exempt public sector superannuation scheme* have the same meanings as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

holder, RSA and RSA provider have the same meanings as in the *Retirement Savings Account Act 1997*.

4 After paragraph 214A(2)(e)

Insert:

- or (f) section 21 or 22 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or
- (g) section 13 of the *Termination Payments Tax (Assessment and Collection) Act 1997*;

Schedule 2—Amendment of the Retirement Savings Accounts Act 1997

1 Section 16

Insert:

Surcharge Acts means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.

2 At the end of section 129

Add “and the Surcharge Acts”.

3 At the end of paragraph 130(b)

Add “and the Surcharge Acts”.

4 Paragraph 131(1)(a)

After “this Act”, insert “and the Surcharge Acts”.

5 At the end of section 132

Add “and the Surcharge Acts”.

6 At the end of subsection 133(1)

Add “and the Surcharge Acts”.

7 Paragraph 134(1)(b)

After “this Act,”, insert “or of this Act and the Surcharge Acts,”.

8 At the end of subsection 134(1)

Add “or, if the request was not made before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or possible future operation of this Act and the Surcharge Acts”.

9 Subsection 134(3)

Omit “operation of this Act”, substitute:

operation of:

- (a) if the quotation was given before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or
- (b) otherwise—this Act and the Surcharge Acts.

10 At the end of subsection 135(1)

Add “and the Surcharge Acts”.

11 At the end of paragraph 136(1)(b)

Add “and the Surcharge Acts”.

12 Section 137

After “this Act”, insert “and the Surcharge Acts”.

13 Paragraph 137(b)

After “this Act”, insert “and the Surcharge Acts”.

14 Paragraph 138(c)

After “this Act”, insert “and the Surcharge Acts”.

15 Paragraph 139(a)

Omit “this Act or the *Superannuation Industry (Supervision) Act 1993*”, substitute “this Act and the Surcharge Acts, or the *Superannuation Industry (Supervision) Act 1993* and the Surcharge Acts, as the case may be”.

16 Paragraph 140(2)(a)

After “this Act”, insert “and the Surcharge Acts”.

17 Paragraph 141(a)

After “this Act”, insert “and the Surcharge Acts”.

18 Subparagraph 142(3)(a)(ii)

After “this Act”, insert “and the Surcharge Acts”.

19 At the end of Division 6 of Part 11

Add:

145A Transitional provisions

- (1) Despite the amendments made to this Part by Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, this Part as it applied immediately before the commencement of that Schedule continues to apply to:
- (a) an employee who, before that commencement, quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; or
 - (b) a holder, or a person applying to become a holder, of an RSA who, before that commencement, quoted his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act;

as if those amendments had not been made.

(2) If:

- (a) before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, an employee quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; and
- (b) the employer notifies the employee in writing that the employer intends to inform an RSA provider of the employee's tax file number unless the employee tells the employer, within 30 days after the day on which the notification is received, that the employee objects to the employer informing the RSA provider of the tax file number; and
- (c) the employee does not tell the employer within that period that the employee objects to the employer informing the RSA provider of the tax file number;

subsection (1) does not apply to the employee, and the employee is taken to have quoted the tax file number to the employer in connection with the operation or the possible future operation of this Act and the Surcharge Acts.

(3) If:

- (a) before the commencement of Schedule 2 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, a holder, or a person applying to become a holder, of an RSA has quoted his or her tax file number to the RSA provider in connection with the operation or the possible future operation of this Act; and

- (b) the RSA provider notifies the holder or applicant in writing that the provider intends to inform the Commissioner of Taxation, another RSA provider or the trustee of a superannuation entity or of a regulated exempt public sector superannuation scheme of the tax file number unless the holder or applicant tells the provider, within 30 days after the day on which the notification is received, that the holder or applicant objects to the provider informing the Commissioner of Taxation, the other RSA provider or the trustee of the entity or scheme, as the case may be, of the tax file number; and
- (c) the holder or applicant does not tell the provider within that period that the holder or applicant objects to the provider informing the Commissioner of Taxation, the other RSA provider or the trustee of the entity or scheme, as the case may be, of the tax file number;

subsection (1) does not apply to the holder or applicant, and the holder or applicant is taken to have quoted the tax file number to the RSA provider in connection with the operation or the possible future operation of this Act and the Surcharge Acts.

Schedule 3—Amendment of the Superannuation Industry (Supervision) Act 1993

1 After subsection 67(2)

Insert:

(2A) Subsection (1) does not prohibit the trustee of a regulated superannuation fund from borrowing money if:

- (a) the purpose of the borrowing is to enable the trustee to make a payment of surcharge or advance instalment which the trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and which, apart from the borrowing, the trustee would not be able to make; and
- (b) the period of the borrowing does not exceed 90 days; and
- (c) if the borrowing were to take place, the total amount borrowed by the trustee would not exceed 10% of the value of the assets of the fund.

2 At the end of section 299A

Add “and the Surcharge Acts”.

3 At the end of paragraph 299B(b)

Add “and the Surcharge Acts”.

4 Paragraph 299C(1)(a)

After “this Act”, insert “and the Surcharge Acts”.

5 At the end of section 299D

Add “and the Surcharge Acts”.

6 At the end of subsection 299E(1)

Add “and the Surcharge Acts”.

7 At the end of subsection 299F(1)

Add “or, if the request was not made before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or the possible future operation of this Act and the Surcharge Acts”.

8 Subsection 299F(3)

Omit “operation of this Act”, substitute:

operation of:

- (a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or
- (b) otherwise—this Act and the Surcharge Acts.

9 Paragraph 299G(1)(b)

After “this Act,”, insert “or of this Act and the Surcharge Acts”.

10 At the end of subsection 299G(1)

Add “or, if the request was not made before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, the operation or possible future operation of this Act and the Surcharge Acts”.

11 Subsection 299G(3)

Omit “operation of this Act”, substitute:

operation of:

- (a) if the quotation was given before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*—this Act; or
- (b) otherwise—this Act and the Surcharge Acts.

12 At the end of subsection 299H(1)

Add “and the Surcharge Acts”.

13 At the end of subsection 299J(1)

Add “and the Surcharge Acts”.

14 At the end of subsection 299K(1)

Add “and the Surcharge Acts”.

15 At the end of subsection 299L(1)

Add “and the Surcharge Acts”.

16 At the end of paragraph 299M(1)(b)

Add “and the Surcharge Acts”.

17 At the end of paragraph 299N(1)(b)

Add “and the Surcharge Acts”.

18 Section 299P

After “this Act” (first occurring), insert “and the Surcharge Acts”.

19 Paragraph 299P(b)

After “this Act”, insert “and the Surcharge Acts”.

20 Paragraph 299Q(c)

After “this Act”, insert “and the Surcharge Acts”.

21 Paragraph 299R(1)(a)

After “this Act”, insert “and the Surcharge Acts”.

22 Paragraph 299R(2)(a)

After “this Act”, insert “and the Surcharge Acts”.

23 Paragraph 299S(2)(a)

After “this Act”, insert “and the Surcharge Acts”.

24 Paragraph 299T(d)

After “this Act”, insert “and the Surcharge Acts”.

25 Subparagraph 299U(4)(a)(ii)

After “this Act”, insert “and the Surcharge Acts”.

26 Section 299W

Insert:

Surcharge Acts means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.

27 At the end of Part 25A

Add:

299Z Transitional provisions

- (1) Despite the amendments made to this Part by Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, this Part as it applied immediately before the commencement of that Schedule continues to apply to:
- (a) an employee who, before that commencement, quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; or
 - (b) a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme who, before that commencement, quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or the possible future operation of this Act;
- as if those amendments had not been made.

- (2) If:
- (a) before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, an employee quoted his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; and
 - (b) the employer notifies the employee in writing that the employer intends to inform the trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the employee's tax file number unless the employee tells the employer, within 30 days after the day on which the notification is received, that the employee objects to the employer informing the trustee of the tax file number; and
 - (c) the employee does not tell the employer within that period that the employee objects to the employer informing the trustee of the tax file number;

subsection (1) does not apply to the employee, and the employee is taken to have quoted the tax file number to the employer in connection with the operation or the possible future operation of this Act and the Surcharge Acts.

- (3) If:
- (a) before the commencement of Schedule 3 to the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or

of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or the possible future operation of this Act; and

- (b) the trustee notifies the beneficiary or applicant in writing that the trustee intends to inform the Commissioner of Taxation, the trustee of another such entity or scheme or an RSA provider of the tax file number unless the beneficiary or applicant tells the trustee, within 30 days after the day on which the notification is received, that the beneficiary or applicant objects to the trustee informing the Commissioner of Taxation, the trustee of the other entity or scheme or the RSA provider, as the case may be, of the tax file number; and
- (c) the beneficiary or applicant does not tell the trustee within that period that the beneficiary or applicant objects to the trustee informing the Commissioner of Taxation, the trustee of the other entity or scheme or the RSA provider, as the case may be, of the tax file number;

subsection (1) does not apply to the beneficiary or applicant, and the beneficiary or applicant is taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act and the Surcharge Acts.

Schedule 4—Amendment of the Superannuation (Resolution of Complaints) Act 1993

1 Subsection 3(2) (definition of *complainant*)

After “15B,”, insert “15CA,”.

2 Subsection 3(2) (definition of *complaint*)

After “15B,”, insert “15CA,”.

3 Subsection 3(2) (definition of *review meeting*)

After “trustee”, insert “or superannuation provider”.

4 Subsection 3(2)

Insert:

superannuation provider has the same meaning as in the
Superannuation Contributions Tax (Assessment and Collection)
Act 1997.

5 After section 15C

Insert:

15CA Complaints about statements given to Commissioner of Taxation by superannuation provider

- (1) If a superannuation provider has given the Commissioner of Taxation under section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* a statement setting out an amount or amounts in respect of a person's contributed amounts, the person may make a complaint (other than an excluded complaint) to the Tribunal that the decision to set out the amount or amounts in the statement in respect of the contributed amounts was unfair or unreasonable.
- (2) If a person who is given by a superannuation provider a copy of a statement given by the provider to the Commissioner under section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* is also given by the provider a notice setting out the prescribed period within which the person must complain to the Tribunal about the decision, the person may only

make a complaint to the Tribunal under this section within that period.

- (3) The Tribunal cannot deal with a complaint under this section that must be made within the prescribed period referred to in subsection (2) if the complaint is not made within that period.
- (4) The Tribunal cannot deal with a complaint under this section to the extent that it relates to excluded subject matter.
- (5) A complaint under this section is to be made by sending or delivering a written complaint to the office of the Tribunal.

6 After subsection 17(2)

Insert:

- (2A) If the complainant sends or delivers a complaint under section 15CA to an office of the Tribunal, the Tribunal must:
 - (a) by notice in writing given to the complainant, acknowledge receipt of the complaint; and
 - (b) by notice in writing given to the superannuation provider concerned:
 - (i) tell the provider that a complaint has been made to the Tribunal and identify the complainant; and
 - (ii) give details of the complaint; and
 - (iii) tell the provider of the provider's obligations under section 24AA.

7 After subsection 17A(3)

Insert:

- (3A) If:
 - (a) a person has made a complaint under section 15CA; and
 - (b) the Tribunal decides, under subsection 18(3AA), that a person should be joined as a party to the complaint;the Tribunal must, by notice in writing given to the new party and to all of the existing parties to the complaint:
 - (c) tell them that it has so decided and of its reasons for so deciding; and
 - (d) tell the new party of the party's obligations under section 24AA.

8 Paragraph 17A(4)(a)

After "15B," insert "15CA,".

9 Paragraph 17A(4)(c)

After "(3)(c)," insert "(3AA)(b),".

10 After subsection 18(3)

Insert:

(3AA) The parties to a complaint under section 15CA are:

- (a) the complainant; and
- (b) the superannuation provider; and
- (c) if any other person has applied to the Tribunal to be made a party to the complaint (whether under section 24A or otherwise) and the Tribunal decides that the person should be a party to the complaint—that person.

11 After subsection 19(2)

Insert:

(2A) The Tribunal cannot deal with a complaint under section 15CA unless the complainant satisfies the Tribunal that the complainant has made all reasonable efforts to have the complaint resolved by the superannuation provider to which the complaint relates.

12 After section 24

Insert:

24AA Complaint against superannuation provider: giving material documents to the Tribunal

- (1) Subject to subsection (2), if a superannuation provider is notified under section 17 of the making of a complaint under section 15CA, the provider must, within 28 days after receiving the notice or any longer period that the Tribunal allows, give the Tribunal a copy of all documents or parts of documents:
 - (a) that are in the possession, or under the control, of the provider; and
 - (b) that are considered by the provider to be relevant to the complaint.

- (2) The Tribunal may, on a request being made by a superannuation provider, allow the provider to give a summary of all documents or relevant parts of documents referred to in subsection (1) within a period allowed by the Tribunal for the purpose.
- (3) A request under subsection (2) must be made within the period allowed for giving the Tribunal copies of documents or parts of documents under subsection (1) or any longer period that the Tribunal allows under that subsection.
- (4) If a person is notified under subsection 17A(3A) that the person has been joined as a party to a complaint under section 15AC, the Tribunal may, by notice in writing given to the person before, or while, the complaint is being dealt with, require the person to give the Tribunal, within a period stated in the notice or any longer period that the Tribunal allows, copies of any documents relevant to the complaint that the Tribunal specifies in the notice.
- (5) The superannuation provider, or any other person joined as a party to the complaint, must not intentionally refuse or fail to comply with this section.

Penalty: Imprisonment for 6 months.

13 Paragraph 24A(6)(a)

After “15B,”, insert “15CA,”.

14 Subsection 25(1)

After “24” (wherever occurring), insert “or 24AA”.

15 After subsection 26(1A)

Insert:

- (1AA) Subject to this section, making a complaint under section 15CA about a decision of a superannuation provider to set out an amount in a statement given to the Commissioner of Taxation does not prevent the Commissioner from taking any action on the basis of the amount set out in the statement.

16 After subsection 26(2A)

Insert:

- (2AA) The Tribunal may, on a request being made by a person making a complaint under section 15CA about a decision of a

superannuation provider to set out an amount, in a statement given to the Commissioner of Taxation, as an amount of surchargeable contributions, if it thinks it is desirable to do so after taking into account the interests of any person who may be affected by the request, make an order preventing the Commissioner from taking any action on the basis of the amount set out in the statement.

17 Subsection 26(3)

After “(2A),” insert “(2AA),”.

18 Subsection 26(4)

After “(2A),” (wherever occurring), insert “(2AA),”.

19 Subsection 26(5)

After “(2A),” insert “(2AA),”.

20 After section 37C

Insert:

37CA Tribunal powers: complaint under section 15CA

- (1) For the purpose of reviewing a decision of a superannuation provider that is the subject of a complaint under section 15CA:
 - (a) the Tribunal has all the powers, obligations and discretions that are conferred on the superannuation provider; and
 - (b) subject to subsection (4), must make a determination in accordance with subsection (2).
- (2) On reviewing the decision, the Tribunal must make a determination in writing:
 - (a) affirming the decision; or
 - (b) remitting the matter to which the decision relates to the superannuation provider for reconsideration in accordance with the Tribunal's directions; or
 - (c) varying the decision; or
 - (d) setting aside the decision and substituting a decision for the decision so set aside.
- (3) The Tribunal may only exercise its determination-making power under subsection (2) for the purpose of placing the complainant as nearly as practicable in such a position that the unfairness, unreasonableness, or both, that the Tribunal has determined to

exist in relation to the superannuation provider's decision to which the complaint relates no longer exists.

- (4) The Tribunal must not do anything under subsection (2) that would be contrary to law.
- (5) The Tribunal must affirm a decision referred to in subsection (2) if it is satisfied that the decision, in its operation in relation to the complainant, was fair and reasonable in all the circumstances.

21 After subsection 47(2B)

Insert:

(2C) If:

- (a) an appeal is brought to the Federal Court from a determination of the Tribunal; and
- (b) the Tribunal's determination was made as a result of a complaint under section 15CA;

the Court or a Judge of the Court may make such order or orders preventing the Commissioner of Taxation from taking any action on the basis of an amount:

- (c) set out in the statement referred to in that section as affected by the Tribunal's determination; or
- (d) set out in the statement referred to in that section under the decision that is complained of;

as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

22 Subsection 47(3)

Omit "or (2B)", substitute ", (2B) or (2C)".

23 Subsection 47(4)

Omit "or (2B)", substitute ", (2B) or (2C)".

24 Subsection 59(1)

After "24,", insert "24AA,".

25 Subsection 59(2)

After "(2A),", insert "(2AA),".

Schedule 5—Amendment of the Taxation (Interest on Overpayments and Early Payments) Act 1983

1 After Part IIB

Insert:

Part IIC—Interest on overpayments resulting from certain amendments of assessments made under the Superannuation Contributions Tax (Assessment and Collection) Act 1997

8L Interpretation

Expressions used in this Part that are defined in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* have the same meanings as in that Act.

8M Entitlement to interest

If:

- (a) an assessment is made under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* in respect of a person's liability to pay superannuation contributions surcharge or an advance instalment; and
- (b) the person has paid the assessed amount of the surcharge or instalment; and
- (c) the assessment is amended (otherwise than under section 18 of that Act) reducing the liability of the person to pay surcharge or the instalment;

interest is payable by the Commissioner to the person in accordance with this Part on the amount by which the surcharge or instalment payable by the person under the amended assessment is less than the surcharge or instalment that was paid by the person under the assessment that was amended.

8N Period of interest

The interest is payable for the period that:

- (a) started on the later of the following days:

- (i) the day on which the amount of the surcharge or advance instalment was paid;
 - (ii) the day by which the amount of the surcharge or advance instalment was required to be paid; and
- (b) ends on the day on which the assessment was amended.

8P Rate of interest

Interest under this Part is payable at such annual rate or rates as are provided for by section 214A of the Income Tax Assessment Act, less 4 percentage points.

Part IID—Interest on overpayments resulting from certain amendments of assessments made under the Termination Payments Tax (Assessment and Collection) Act 1997

8Q Interpretation

Expressions used in this Part that are defined in the *Termination Payments Tax (Assessment and Collection) Act 1997* have the same meanings as in that Act.

8R Entitlement to interest

If:

- (a) an assessment is made under the *Termination Payments Tax (Assessment and Collection) Act 1997* in respect of a taxpayer's liability to pay termination payments surcharge; and
- (b) the taxpayer has paid the assessed amount of the surcharge; and
- (c) the assessment is amended reducing the liability of the taxpayer to pay surcharge;

interest is payable by the Commissioner to the taxpayer in accordance with this Part on the amount by which the surcharge payable by the taxpayer under the amended assessment is less than the surcharge that was paid by the taxpayer under the assessment that was amended.

8S Period of interest

The interest is payable for the period that:

(a) started on the later of the following days:

- (i) the day on which the amount of the surcharge was paid;
- (ii) the day by which the amount of the surcharge was required to be paid; and

(b) ends on the day on which the assessment was amended.

8T Rate of interest

Interest under this Part is payable at such annual rate or rates as are provided for by section 214A of the Income Tax Assessment Act, less 4 percentage points.

*[Minister's second reading speech made in—
House of Representatives on 13 February 1997
Senate on 25 March 1997]*