



# **Superannuation Industry (Supervision) Amendment Act 1997**

**No. 172, 1997**

**An Act to amend the *Superannuation Industry  
(Supervision) Act 1993*, and for related purposes**

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## **An Act to amend the *Superannuation Industry (Supervision) Act 1993*, and for related purposes**

*[Assented to 17 November 1997]*

**The Parliament of Australia enacts:**

### **1 Short title**

This Act may be cited as the *Superannuation Industry  
(Supervision) Amendment Act 1997*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 is taken to have commenced on 1 July 1996.

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### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Superannuation Industry (Supervision) Act 1993**

### **1 Subsection 10(1) (after paragraph (f) of the definition of *reviewable decision*)**

Insert:

- (fa) a decision of the Commissioner under subsection 42(1AA) or (1AC) or paragraph 50(1)(c); or

### **2 After subsection 42(1)**

Insert:

(1AA) An entity is also a complying superannuation fund in relation to the 1994-95 year of income or a later year of income if:

- (a) the entity:
  - (i) is a superannuation fund that came into existence during the year of income; or
  - (ii) was a resident approved deposit fund that became a superannuation fund during the year of income; and
- (b) the entity complied with subsections 19(2) to (4):
  - (i) within 60 days after the day on which it came into existence or became a superannuation fund, as the case may be; or
  - (ii) within such further period, if any, as the Commissioner (whether before or after the end of the period of 60 days) allows; and
- (c) either of the following conditions is satisfied:
  - (i) the trustee did not contravene this Act or the regulations in relation to the entity in respect of the whole of the period (the *pre-lodgment period*) that began when the entity came into existence or became a superannuation fund, as the case may be, and ended when the entity complied with subsections 19(2) to (4);
  - (ii) the trustee contravened this Act or the regulations in relation to the entity in respect of the pre-lodgment period on one or more occasions but the trustee satisfies the Commissioner that, because of special circumstances that existed in relation to the fund during the pre-lodgment period, it would be reasonable for the

fund to be treated as if it had satisfied this Act and the regulations; and

(d) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the pre-lodgment period; and

(e) either of the conditions stated in paragraph (1)(b) is satisfied in relation to the entity in respect of the part of the year of income occurring after the end of the pre-lodgment period.

(1AB) In determining for the purpose of paragraph (1AA)(c) whether this Act or the regulations were contravened in respect of the entity in respect of the pre-lodgment period, this Act and the regulations are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.

(1AC) An entity is also a complying superannuation fund in relation to the 1994-95 year of income or a later year of income if:

(a) the trustee of the entity has purported to make an election under subsection 19(4); and

(b) the requirements of subsections 19(2) to (4) (to the extent that they have not already been complied with) are complied with within 28 days after the trustee finds out (whether by written notice from the Commissioner or otherwise) that they were not complied with, or within such further period, if any, as the Commissioner (whether before or after the end of the period of 28 days) allows; and

(c) except where the trustee received written notice from the Commissioner about the non-compliance—the trustee tells the Commissioner in writing of the compliance within 7 days after the requirements are complied with or within such further period, if any, as the Commissioner (whether before or after the end of the period of 7 days) allows; and

(d) either of the following conditions is satisfied:

(i) the trustee did not contravene this Act or the regulations in relation to the entity in respect of the whole of the period (the *rectification period*) that began when the trustee of the entity lodged the purported election under subsection 19(4) and ended when the entity complied with subsections 19(2) to (4);

(ii) the trustee contravened this Act or the regulations in relation to the entity in respect of the rectification period on one or more occasions but the trustee satisfies the

Commissioner that, because of special circumstances that existed in relation to the fund during the rectification period, it would be reasonable for the fund to be treated as if it had satisfied this Act and the regulations; and

- (e) if the fund was in existence before the beginning of its 1994-95 year of income—under regulations made for the purposes of section 50, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period that began at the beginning of the fund's 1994-95 year of income and ended when the trustee of the entity lodged the purported election under subsection 19(4); and
  - (f) the entity was a resident regulated superannuation fund at all times during the part of the year of income occurring after the end of the rectification period; and
  - (g) either of the conditions stated in paragraph (1)(b) is satisfied in relation to the entity in respect of the part of the year of income occurring after the end of the rectification period.
- (1AD) In determining for the purpose of paragraph (1AC)(d) whether this Act or the regulations were contravened in respect of the entity in respect of the rectification period, this Act and the regulations are taken to have applied in relation to the entity in respect of that period as if the entity were a resident regulated superannuation fund during that period.

Note: Subsection 50(2) provides that certain superannuation funds that have been wound up or terminated are taken to have been complying superannuation funds before the winding up or termination.

### **3 Subsections 50(1) to (4)**

Repeal the subsections, substitute:

- (1) For the purposes of subsection 41(3), paragraph 42(1)(a) and subsection 45(2), if:
  - (a) on a particular day (the *lodgment day*), the trustee of a superannuation fund has lodged or lodges an election under section 19; and
  - (b) the lodgment day was or is after 28 July 1994; and
  - (c) the trustee satisfies the Commissioner that this subsection should apply in relation to the fund; and
  - (d) the trustee has complied with such requirements relating to notifying members of the fund about:

- (i) the delay in lodging the election; and
    - (ii) the reasons for the delay;as are set out in regulations made for the purposes of this paragraph; and
  - (e) under the regulations, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period (the *pre-lodgment period*):
    - (i) beginning at the beginning of the fund's 1994-95 year of income; and
    - (ii) ending at the end of the lodgment day;the fund is taken to be a regulated superannuation fund at all times during the pre-lodgment period.
- (2) For the purposes of this Part, if:
- (a) a superannuation fund is wound up or terminated; and
  - (b) the winding up or termination is completed on a particular day (the *termination day*); and
  - (c) the termination day is before a day named by the Commissioner in a written notice given to the trustee of the fund for the purposes of this paragraph; and
  - (d) the trustee told the Commissioner in writing before the commencement of this subsection that it:
    - (i) did not intend to lodge an election under section 19 in respect of the fund; and
    - (ii) intended to take advantage of the subsection (4A) that, immediately before 1 July 1996, was taken to be inserted in this section by a declaration made under subsection 333(1); and
  - (e) the trustee has complied with such requirements relating to notifying members and prospective members of the fund that:
    - (i) the fund would be wound up or terminated; and
    - (ii) the trustee intended to take advantage of the subsection (4A) mentioned in subparagraph (d)(ii);as were set out in regulations made for the purposes of that subsection (4A); and
  - (f) as soon as practicable after the termination day, the trustee tells the Commissioner in writing that the winding up or termination of the fund had been completed; and
  - (g) under the regulations, the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period (the *pre-termination period*):



- (i) beginning at the beginning of the fund's 1994-95 year of income; and
  - (ii) ending at the end of the termination day;
- the fund is taken to have been a complying superannuation fund at all times during the pre-termination period.

**4 Subsection 50(5)**

Omit "(1)(c), (2)(c), (3)(c) or (4)(e)", substitute "(1)(e) or (2)(g)".

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*[Minister's second reading speech made in—  
House of Representatives on 1 October 1997  
Senate on 27 October 1997]*