Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997

No. 191, 1997

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An Act to amend various Acts in relation to superannuation contributions taxes and termination payments taxes, and for related purposes

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**Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997**

**No. 191, 1997**

An Act to amend various Acts in relation to superannuation contributions taxes and termination payments taxes, and for related purposes

[*Assented to 7 December 1997*]

The Parliament of Australia enacts:

##### 1 Short title

This Act may be cited as the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*.

##### 2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 3 is taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Application to the Commonwealth) Act 1997*.

(3) Items 1 and 2, and 4 to 50, of Schedule 4 are taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

(4) Schedule 5 is taken to have commenced on 5 June 1997, immediately after the commencement of the *Superannuation Contributions Tax (Consequential Amendments) Act 1997*.

(5) Schedule 9 is taken to have commenced on 5 June 1997, immediately after the commencement of the *Termination Payments Tax (Assessment and Collection) Act 1997*.

##### 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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Income Tax Assessment Act 1936

1 Subsection 27A(1) (at the end of the definition of *eligible termination payment)*

Add:

or (r) an amount received by the taxpayer as a result of the commutation of a pension payable from a constitutionally protected fund (within the meaning of Part IX) solely for the purpose of paying a superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*).

2 Paragraph 202(l) and subsection 202DH(1)

After “1997” (first occurring), insert “, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*”.

3 Subsection 202DJ(1)

Repeal the subsection, substitute:

(1) If a person who is:

(a) a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; or

(b) a member of a constitutionally protected superannuation fund; or

(c) 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, member or holder, to have quoted that tax file number to the trustee of the entity, scheme or fund 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*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*.

4 Subsection 202DJ(2)

Insert:

***constitutionally protected superannuation fund*** has the same meaning as ***constitutionally protected fund*** has in Part IX.

5 After paragraph 214A(2)(f)

Insert:

(fa) section 18 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or

###### Schedule 2—Amendment of the Income Tax Assessment Act 1997

1 Section 12-5

Insert in their appropriate alphabetical positions, determined on a letter‑by‑letter basis:

|  |  |
| --- | --- |
| superannuation contributions surcharge |  |
| no deduction | 26-60 |
| termination payments surcharge |  |
| no deduction | 26-65 |

2 After section 26‑55

Insert:

##### 26‑60 Superannuation contributions surcharge

You cannot deduct under this Act:

(a) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or

(b) a superannuation contributions surcharge within the meaning of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

##### 26-65 Termination payments surcharge

You cannot deduct under this Act a termination payments surcharge within the meaning of the *Termination Payments Tax (Assessment and Collection) Act 1997*.

###### Schedule 3—Amendment of the Superannuation Contributions Tax (Application to the Commonwealth) Act 1997

1 Section 3

Omit “Any”, substitute “Subject to subsection (2), any”.

2 At the end of section 3

Add:

(2) For the purposes of the application of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* to a trustee of an unfunded defined benefits superannuation scheme to whom section 5 of this Act applies, a reference in that Act to superannuation contributions surcharge includes a reference to superannuation contributions surcharge that is payable because of the operation of that section.

###### Schedule 4—Amendment of the Superannuation Contributions Tax (Assessment and Collection) Act 1997

1 Section 6 (seventh dot point)

Omit “the contributions are withdrawn from the fund in which they are held or are rolled over, or”.

2 Section 6 (ninth dot point)

Omit:

• A superannuation provider may reduce a member’s benefit to take account of surcharge or advance contribution paid on the member’s contributions.

3 At the end of section 7

Add:

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*.

4 At the end of subsection 8(1)

Add:

• In the case of members of accumulated benefits schemes, the surchargeable contributions are calculated by reference to amounts actually paid to the superannuation providers.

• In the case of members of defined benefits schemes, the surchargeable contributions are based on their respective annual salaries multiplied by a notional factor to equate the effective increase in the values of the benefits under the schemes in the financial year to the level of contributions to equivalent accumulated benefits schemes.

5 Paragraph 8(2)(a)

Repeal the paragraph, substitute:

(a) either of the following applies:

(i) any amounts are paid for or by a member to a superannuation (accumulated benefits) provider for a financial year;

(ii) there is an allocated surplus amount in relation to a member in respect of a financial year after the 1996-97 financial year; and

6 Subsection 8(2)

Omit all the words after paragraph (b), substitute:

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

(c) so much of the amounts referred to in subparagraph (a)(i) 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), are specified roll-over amounts that 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 allocated surplus amounts referred to in subparagraph (a)(ii).

7 After subsection 8(2)

Insert:

(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 and before 20 August 2001, surcharge is payable only on the part of the eligible termination payment that is worked out using the formula:



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.

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

8 Paragraph 8(4)(a)

Repeal the paragraph, substitute:

(a) if any amounts were paid for or by the member to a superannuation (accumulated benefits) provider for the financial year or there was an allocated surplus amount in relation to the member in respect of the financial year—the part of so much of those amounts that would otherwise be the member’s surchargeable contributions as was paid to the provider or allocated to the member after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996; or

Note: The heading to subsection 10(3) is altered by omitting “*hold*” and substituting “*be the holder of the*”.

9 Subsection 13(1)

Repeal the subsection, substitute:

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

10 Subsection 13(2)

Omit all the words before paragraph (a), substitute:

Each superannuation provider must, after the end of each financial year 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:

Note: The heading to subsection 13(2) is replaced by “*Superannuation provider to give statement to Commissioner at end of financial year*”*.*

11 Subsection 13(3)

Omit all the words before paragraph (a), substitute:

If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996, 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:

12 At the end of subsection 13(3)

Add:

; and (d) any other matters required by the regulations.

13 Paragraph 13(4)(a)

After “transferred” (last occurring), insert “or such later date (if any) as the Commissioner allows”.

14 Before subparagraph 13(4)(a)(i)

Insert:

(ia) the name and address of the other provider; and

15 Subparagraph 13(4)(a)(ii)

Repeal the subparagraph, substitute:

(ii) the particulars referred to in subsection (7); and

(iii) any other matters required by the regulations; or

Note: The heading to subsection 13(4) is replaced by “*Statements to be given by superannuation provider that transfers contributed amounts to another superannuation provider*”.

16 At the end of paragraph 13(4)(b)

Add “and any other matters required by the regulations”.

17 After subsection 13(4)

Insert:

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, 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.

18 Subsection 13(5)

Repeal the subsection, substitute:

Information to be given to member

(5) A superannuation provider who is required to give a statement to the Commissioner under this section 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.

19 Subsection 13(6)

Repeal the subsection, substitute:

Offences

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

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

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

20 Subsection 13(7)

After “transferred amounts”, insert “(if any) in relation to the member for the financial year”.

21 Subparagraph 13(7)(a)(i)

Omit “paragraph 8(2)(c)”, substitute “subparagraph 8(2)(c)(i)”.

22 Subparagraph 13(7)(a)(ii)

Omit “paragraph 8(2)(e)”, substitute “subparagraph 8(2)(c)(iii)”.

23 At the end of paragraph 13(7)(a)

Add:

(iii) the total of the allocated surplus amounts referred to in paragraph 8(2)(d); or

24 Subsection 14(4)

Repeal the subsection, substitute:

Offences

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

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

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

25 After section 14

Insert:

##### 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; 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.

26 Subsection 16(6)

After “Commissioner”, insert “, within one month after the day on which the lump sum, or the first instalment of pension or annuity, becomes payable,”.

27 Subsection 16(7)

Omit “deferred amount in the surcharge debt account”, substitute “amount by which the surcharge debt account is in debit”.

28 Subsections 17(2) and (3)

Repeal the subsections, substitute:

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.

29 Paragraph 18(1)(b)

Repeal the paragraph.

30 Subsection 19(3)

Omit “(2)(c)”, substitute “(2)(a), (b) or (c)”.

31 Subsection 19(5)

Repeal the subsection, substitute:

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.

32 Paragraph 20(6)(b)

Repeal the paragraph, substitute:

(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.

33 Section 24

Omit “the member may object”, substitute “the member or a superannuation provider may object”.

34 Subsections 25(1), (2) and (3)

Repeal the subsections, substitute:

Penalty for non‑payment

(1) If an amount of surcharge, advance instalment, interest under section 21 or 22, or penalty payable under a previous application of this subsection, that is payable by a person remains unpaid after the time when it became due and payable, the person is liable to pay to the Commonwealth, for each day on which the amount remains unpaid, a penalty on the unpaid amount at such annual rate or rates as are provided for interest payments by section 214A of the Income Tax Assessment Act.

When late payment penalty becomes due and payable

(2) Late payment penalty on an amount of surcharge, advance instalment, or interest under section 21 or 22, is due and payable on the day after the day on which the amount of surcharge, advance instalment or interest became due and payable.

(3) Late payment penalty on an amount of penalty payable under subsection (1) is due and payable on the day after the day on which that amount of penalty became due and payable.

Judgment for payment

(3A) If judgment is given by, or entered in, a court for the payment of:

(a) an amount of surcharge, advance instalment, interest under section 21 or 22 or late payment penalty; or

(b) an amount that includes an amount of surcharge, advance instalment, interest under section 21 or 22 or late payment penalty;

the amount of surcharge, advance instalment, interest or late payment penalty is not taken, for the purposes of subsection (1), to have ceased to be due and payable merely because of the giving or entering of the judgment.

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, interest or late payment penalty at any time after it becomes due and payable.

35 Subsection 32(2) (note)

Repeal the note, substitute:

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

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

36 At the end of subsection 32(8)

Add:

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

37 After section 34

Insert:

##### 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.

38 Section 35

Repeal the section, substitute:

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

(1) A superannuation provider who makes a payment to the Commissioner of surcharge or advance instalment on a member’s surchargeable contributions for a financial year must give the Commissioner, within a period notified to the provider by the Commissioner, a statement setting out such information as is required by the regulations.

(2) The information that may be required includes information about other members or former members in relation to whom the provider is or was a superannuation provider.

Penalty: 60 penalty units.

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

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

##### 35A Contravention notices

Service of notice

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

Particulars to be included in the notice

(2) A contravention notice is to set out:

(a) particulars of the alleged contravention; and

(b) the prescribed penalty for the contravention and the person to whom, the place at which, and the manner in which, the penalty may be paid; and

(c) the date of the notice and a statement that the penalty may be paid within 14 days after that date;

and may contain any other particulars that the Commissioner thinks necessary.

Notification that person may pay prescribed penalty

(3) A contravention notice is to state that, if the provider does not wish the matter to be dealt with by a court, the provider may lodge with the Commissioner a signed statement to that effect in the manner stated in the notice and pay the prescribed penalty for the contravention.

Prescribed penalty

(4) For the purposes of this section, the prescribed penalty for a contravention is $500 for each week or part of a week during which the contravention continues.

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 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 or 35 in relation to which a contravention notice has not been served.

39 After section 35

Insert:

##### 35A 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.

40 Section 36

Omit “this Act”, substitute “this Part”.

41 Subsection 40(5)

Repeal the subsection, substitute:

Offences

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

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

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

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

42 After section 40

Insert:

##### 40A Commissioner may collect money from person who owes money to a surcharge payer

(1) This section allows the Commissioner to collect money from a person who owes money to a surcharge payer who has a surcharge debt.

(2) The Commissioner may direct a person (the ***third party***) who owes, or may later owe, money (the ***available money***) to the surcharge payer to pay some or all of the available money to the Commissioner in accordance with the direction. The Commissioner must send a copy of the direction to the surcharge payer to the last place of address known to the Commissioner.

(3) The direction cannot require an amount to be paid to the Commissioner at a time before it becomes owing by the third party to the surcharge payer.

(4) The third party must comply with the direction, so far as the third party is able to do so.

Penalty: 20 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.

(5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commissioner an amount up to the amount involved in the refusal or failure of the third party.

(6) Any payment made by the third party under this section is taken to have been made with the authority of the surcharge payer and of all other persons concerned, and the third party is indemnified for the payment.

(7) If the whole of the surcharge debt of the surcharge payer is discharged before any payment is made by the third party, the Commissioner must immediately give notice to the third party of that fact.

(8) The third party is taken to owe money to the surcharge payer if:

(a) money is due or accruing by the third party to the surcharge payer; or

(b) the third party holds money for or on account of the surcharge payer; or

(c) the third party holds money on account of some other person for payment to the surcharge payer; or

(d) the third party has authority from some other person to pay money to the surcharge payer;

whether or not the payment of the money to the surcharge payer is dependent on a pre‑condition that has not been fulfilled.

(9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:

(a) if the money is repayable on demand—money due by the building society to the person; or

(b) if the money is not repayable on demand—money that may become due by the building society to the person.

(10) In this section:

***building society*** means a society registered or incorporated as a building society, co‑operative housing society or other similar society under the law in force in a State or Territory.

***person*** includes:

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

(b) a public authority of the Commonwealth or of a State or Territory, whether or not the authority is incorporated.

***surcharge debt*** means any of the following amounts payable by a person (whether or not the amount has become due for payment):

(a) superannuation contributions surcharge;

(b) advance instalment;

(c) interest;

(d) late payment penalty;

(e) a judgment debt, or costs, for surcharge, advance instalment, interest or late payment penalty;

(f) a fine, or costs, that a court has imposed for an offence against this Act;

(g) an amount that a court has ordered the person to pay to the Commissioner, following conviction of the person for an offence against this Act.

***surcharge payer*** means a person who is liable to pay the superannuation contributions surcharge on a member’s surchargeable contributions for a financial year.

43 Section 42

Repeal the section, substitute:

##### 42 Regulations

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.

44 Section 43 (at the end of subparagraph (a)(i) of the definition of *adjusted taxable income*)

Add “or”.

45 Section 43

Insert:

***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.

46 Section 43 (definition of *contributed amounts*)

Repeal the definition, substitute:

***contributed amounts***, in relation to a member in relation to a financial year, means:

(a) amounts paid for or by the member to a superannuation provider for the financial year; or

(b) any allocated surplus amount in relation to the member in respect of the financial year.

47 Section 43 (definition of *notional surchargeable contributions factor*)

Omit “for amounts paid”, substitute “in relation”.

48 Section 43 (definition of *superannuation contributions surcharge* or *surcharge*)

Repeal the definition, substitute:

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

49 Section 43 (definition of *surcharge*)

Repeal the definition.

50 Section 43 (definition of *unfunded defined benefits superannuation scheme*)

Repeal the definition, substitute:

***unfunded defined benefits superannuation scheme*** means a defined benefits superannuation scheme:

(a) in respect of which no fund is established for the purposes of the scheme; or

(b) under which all or some of the amounts that will be required for the payment of benefits are not paid into the fund established for the purposes of the scheme or are not so paid until the members become entitled to receive the benefits.

###### Schedule 5—Amendment of the Superannuation Contributions Tax (Consequential Amendments) Act 1997

1 Item 2 of Schedule 2

Omit “**129**”, substitute “**131**”.

2 Item 3 of Schedule 2

Omit “**130(b)**”, substitute “**132(b)**”.

3 Item 4 of Schedule 2

Omit “**131(1)(a)**”, substitute “**133(1)(a)**”.

4 Item 5 of Schedule 2

Omit “**132**”, substitute “**134**”.

5 Item 6 of Schedule 2

Omit “**133(1)**”, substitute “**135(1)**”.

6 Item 7 of Schedule 2

Omit “**134(1)(b)**”, substitute “**136(1)(b)**”.

7 Item 8 of Schedule 2

Omit “**134(1)**”, substitute “**136(1)**”.

8 Item 9 of Schedule 2

Omit “**134(3)**”, substitute “**136(3)**”.

9 Item 10 of Schedule 2

Omit “**135(1)**”, substitute “**137(1)**”.

10 Item 11 of Schedule 2

Omit “**136(1)(b)**”, substitute “**138(1)(b)**”.

11 Item 12 of Schedule 2

Omit “**137**”, substitute “**139**”.

12 Item 13 of Schedule 2

Omit “**137(b)**”, substitute “**139(b)**”.

13 Item 14 of Schedule 2

Omit “**138(c)**”, substitute “**140(c)**”.

14 Item 15 of Schedule 2

Omit “**139(a)**”, substitute “**141(a)**”.

15 Item 16 of Schedule 2

Omit “**140(2)(a)**”, substitute “**142(2)(a)**”.

16 Item 17 of Schedule 2

Omit “**141(a)**”, substitute “**143(a)**”.

17 Item 18 of Schedule 2

Omit “**142(3)(a)(ii)**”, substitute “**144(3)(a)(ii)**”.

18 Item 19 of Schedule 2

Omit “**145A**”, substitute “**147A**”.

###### Schedule 6—Amendment of the Superannuation Industry (Supervision) Act 1993

1 Section 299W (definition of *Surcharge Acts*)

Repeal the definition, substitute:

***Surcharge Acts*** means:

(a) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and

(b) the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; and

(c) the *Termination Payments Tax (Assessment and Collection) Act 1997*.

###### Schedule 7—Amendment of the Superannuation (Resolution of Complaints) Act 1993

1 Subsection 3(2) (definition of *superannuation provider*)

Repeal the definition, substitute:

***superannuation provider*** means a person who is a superannuation provider within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

2 Subsection 15CA(1)

Repeal the subsection, substitute:

(1) If a superannuation provider has given the Commissioner of Taxation a statement under:

(a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or

(b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

setting out an amount or amounts in respect of a person, 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 was unfair or unreasonable.

3 Subsection 15CA(2)

After “*1997*”, insert “or section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*”.

###### Schedule 8—Amendment of the Taxation (Interest on Overpayments and Early Payments) Act 1983

1 After Part IID

Insert:

## Part IIE—Interest on overpayments resulting from certain amendments of assessments made under the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

##### 8U Interpretation

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

##### 8V Entitlement to interest

If:

(a) an assessment is made under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* in respect of a person’s liability to pay superannuation contributions surcharge; and

(b) the person has paid the assessed amount of the surcharge; and

(c) the assessment is amended (otherwise than under section 16 of that Act) reducing the liability of the person to pay surcharge;

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

##### 8W 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.

##### 8X 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 IIF—Interest on overpayments resulting from certain amendments of assessments made under the Superannuation Contributions Tax (Assessment and Collection) Act 1997

##### 8Y 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.

##### 8Z Entitlement to interest

If:

(a) an assessment is made under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* in respect of a superannuation provider’s liability to pay superannuation contributions surcharge in respect of a person who has failed to provide a tax file number; and

(b) the superannuation provider has paid the assessed amount of the surcharge in respect of the person; and

(c) the assessment is amended under section 18 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* after the person provides a tax file number reducing the liability of the provider to pay surcharge;

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

##### 8ZA 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.

##### 8ZB 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.

###### Schedule 9—Amendment of the Termination Payments Tax (Assessment and Collection) Act 1997

1 Subsection 12(4)

Repeal the subsection, substitute:

Amendment reducing surcharge

(4) 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 taxpayer to the Commonwealth under this Act, and refund to the taxpayer any part of that amount not so applied.

2 Subsections 16(1), (2) and (3)

Repeal the subsections, substitute:

Penalty for non‑payment

(1) If an amount of surcharge, interest under section 13 or penalty payable under a previous application of this subsection, that is payable by a taxpayer remains unpaid after the time when it became due and payable, the taxpayer is liable to pay to the Commonwealth, for each day on which the amount remains unpaid, a penalty on the unpaid amount at such annual rate or rates as are provided for interest payments by section 214A of the Income Tax Assessment Act.

When late payment penalty becomes due and payable

(2) Late payment penalty on an amount of surcharge or on an amount of interest under section 13 is due and payable on the day after the day on which the amount of surcharge or interest became due and payable.

(3) Late payment penalty on an amount of penalty payable under subsection (1) is due and payable on the day after the day on which that amount of penalty became due and payable.

Judgment for payment

(3A) If judgment is given by, or entered in, a court for the payment of:

(a) an amount of surcharge, interest or late payment penalty; or

(b) an amount that includes an amount of surcharge, interest or late payment penalty;

the amount of surcharge, interest or late payment penalty is not taken, for the purposes of subsection (1), to have ceased to be due and payable merely because of the giving or entering of the judgment.

Commissioner’s right to sue not affected

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

3 Subsection 23(2) (note)

Repeal the note, substitute:

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

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

4 Section 24

Omit “this Act”, substitute “this Part”.

5 Subsection 28(5)

Repeal the subsection, substitute:

Offences

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

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

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

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

6 After section 28

Insert:

##### 28A Commissioner may collect money from person who owes money to a surcharge payer

(1) This section allows the Commissioner to collect money from a person who owes money to a surcharge payer who has a surcharge debt.

(2) The Commissioner may direct a person (the ***third party***) who owes, or may later owe, money (the ***available money***) to the surcharge payer to pay some or all of the available money to the Commissioner in accordance with the direction. The Commissioner must send a copy of the direction to the surcharge payer to the last place of address known to the Commissioner.

(3) The direction cannot require an amount to be paid to the Commissioner at a time before it becomes owing by the third party to the surcharge payer.

(4) The third party must comply with the direction, so far as the third party is able to do so.

Penalty: 20 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.

(5) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subsection (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commissioner an amount up to the amount involved in the refusal or failure of the third party.

(6) Any payment made by the third party under this section is taken to have been made with the authority of the surcharge payer and of all other persons concerned, and the third party is indemnified for the payment.

(7) If the whole of the surcharge debt of the surcharge payer is discharged before any payment is made by the third party, the Commissioner must immediately give notice to the third party of that fact.

(8) The third party is taken to owe money to the surcharge payer if:

(a) money is due or accruing by the third party to the surcharge payer; or

(b) the third party holds money for or on account of the surcharge payer; or

(c) the third party holds money on account of some other person for payment to the surcharge payer; or

(d) the third party has authority from some other person to pay money to the surcharge payer;

whether or not the payment of the money to the surcharge payer is dependent on a pre‑condition that has not been fulfilled.

(9) For the purposes of this section, money that has been paid by a person to a building society for the issue of withdrawable shares in the capital of the society, but has not been repaid, is taken to be:

(a) if the money is repayable on demand—money due by the building society to the person; or

(b) if the money is not repayable on demand—money that may become due by the building society to the person.

(10) In this section:

***building society*** means a society registered or incorporated as a building society, co‑operative housing society or other similar society under the law in force in a State or Territory.

***person*** includes:

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

(b) a public authority of the Commonwealth or of a State or Territory, whether or not the authority is incorporated.

***surcharge debt*** means any of the following amounts payable by a person (whether or not the amount has become due for payment):

(a) termination payments surcharge;

(b) interest;

(c) late payment penalty;

(d) a judgment debt, or costs, for surcharge, interest or late payment penalty;

(e) a fine, or costs, that a court has imposed for an offence against this Act;

(f) an amount that a court has ordered the person to pay to the Commissioner, following conviction of the person for an offence against this Act.

***surcharge payer*** means a person who is liable to pay termination payments surcharge.

7 Section 31 (definition of *termination payments surcharge* or *surcharge*)

Repeal the definition, substitute:

***termination payments surcharge*** or ***surcharge*** means the tax imposed by the *Termination Payments Tax Imposition Act 1997*.

(186/97)

[*Minister's second reading speech made in the*

*House of Representatives on 2 October 1997*

*Senate on 22 October 1997*]