



# **Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999**

**No. 131, 1999**

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

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**An Act to amend various Acts in relation to  
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purposes**

*[Assented to 13 October 1999]*

**The Parliament of Australia enacts:**

## **1 Short title**

*This Act may be cited as the **Superannuation Contributions and  
Termination Payments Taxes Legislation Amendment Act 1999.***

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## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 (other than items 43 to 45) is taken to have commenced on 5 June 1997.
- (3) Schedule 2 (other than items 25 to 27) is taken to have commenced on 7 December 1997.
- (4) Schedule 6 is taken to have commenced on 14 October 1997, immediately after the commencement of Schedule 1 to the *Taxation Laws Amendment Act (No. 3) 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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Superannuation Contributions Tax (Assessment and Collection) Act 1997**

### **1 Section 6**

Repeal the section, substitute:

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

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

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| <p>(j) A late payment penalty applies if surcharge or an advance instalment is not paid on time.</p> |
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## 2 Subsections 8(1) and (2)

Repeal the subsections, substitute:

### *Application*

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

### *Member other than a member of a defined benefits superannuation scheme*

(2) If:

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

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

- (c) so much of the amounts referred to in subparagraph (a)(i) of the definition of *contributed amounts* in section 43 as:
- (i) are taxable contributions under subparagraph 274(1)(a)(i), (b)(ii), (ba)(i) or (ba)(iv) or paragraph 274(1)(d) or (e) of the Income Tax Assessment Act; or
- (ii) are allowed as deductions to the member under section 82AAT of that Act; or
- (iii) subject to subsection (2A), 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 amounts referred to in subparagraph (a)(ii) or (iii) of the definition of *contributed amounts* in section 43.

### 3 Subsections 8(3) and (4)

Repeal the subsections, substitute:

*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  
(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 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 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.

## 4 After section 8

Insert:

### 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*

- (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.

## **5 Subsection 10(2)**

Repeal the subsection, substitute:

*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.

## **6 Subsection 10(3)**

Omit “copy”, substitute “notice”.

## **7 After paragraph 10(4)(c)**

Insert:

(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

## **8 Section 11**

After “for a financial year”, insert “under an assessment made before 23 March 1999”.

## **9 Subsection 13(2)**

After “Each superannuation provider”, insert “other than a self-assessing superannuation provider”.

## **10 Subsection 13(5)**

After “this section”, insert “for a financial year earlier than the 1998-99 financial year”.

## **11 After subsection 13(5)**

Insert:

*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.

## **12 Subsection 13(7)**

Repeal the subsection, substitute:

*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 the total of so much of those amounts as are specified roll-over amounts referred to in subparagraph 8(2)(c)(iii); and
    - (ii) the total of any of those amounts that are amounts referred to in subparagraph (a)(ii) or (iii) of that definition; and
  - (b) if the statement is given by a superannuation (defined benefits) provider—the amount of the surchargeable contributions of the member for the financial year.

**13 Subsections 15(1) and (2)**

Repeal the subsections, substitute:

*Commissioner to assess surcharge*

- (1) For each financial year 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.

**14 Subsections 15(5) to (12)**

Repeal the subsections, substitute:

*Assessment taken not to have been made*

- (5) An assessment of surcharge on a member's surchargeable contributions is taken not to have been made if:
  - (a) after the assessment was made the superannuation provider who held the contributions ceased to hold the contributions or began to pay a pension or annuity based on the contributions; and
  - (b) notice of the assessment was not given to the provider before it ceased to hold the contributions or began to pay the pension or annuity.

*Determination taken not to have been made*

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

*What happens if member dies*

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

*Notice of assessment or determination*

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

*No notice if nil amount assessed*

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

*Particulars in notice of assessment*

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

*Particulars in notice of determination*

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

*How a notice is to be given*

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

*Non-compliance not to affect validity of assessment*

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

**15 After section 15**

Insert:

**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.

**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 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.

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

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

*How amounts paid are to be applied*

- (4) When an amount is paid to the Commissioner by a superannuation provider under subsection (3):
-

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

*Offence*

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

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

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

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

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

## **16 After section 17**

Insert:

## **17A Periods within which assessments may be made**

*General provision*

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

made on the Commissioner's own initiative or at the request of the member or the relevant superannuation provider.

*Period for making further amendment*

(2) If:

- (a) an assessment has been amended in any particular in a way that effected a reduction in the amount of surcharge payable; and
- (b) for the purposes of making the amendment, the Commissioner accepted a statement made by or on behalf of a member or a superannuation provider;

the Commissioner may, within 4 years from the date of service of the notice of the amended assessment, further amend the assessment in, or in respect of, that particular in a way that increases the amount of the surcharge payable to the extent that the Commissioner considers necessary.

*Period where avoidance of surcharge*

(3) Subject to this section, if there has been an avoidance of surcharge, the Commissioner may:

- (a) if the Commissioner is of the opinion that the avoidance of surcharge is due to fraud or evasion—at any time; or
- (b) in any other case—within 4 years from the date upon which the surcharge became due and payable under the assessment;

amend the assessment by making such alterations or additions as the Commissioner thinks necessary to correct the assessment.

*Period where amendment reduces surcharge*

(4) An amendment effecting a reduction in the amount of surcharge payable under an assessment is not to be made after the end of 4 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.

*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.

**17 Paragraphs 18(1)(a) and (c)**

Repeal the paragraphs, substitute:

- (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

**18 Paragraph 19(1)(b)**

Repeal the paragraph, substitute:

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

**19 Paragraph 19(2)(c)**

Repeal the paragraph, substitute:

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

**20 Subsection 19(3)**

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

**21 At the end of section 19**

Add:

*Section subject to section 17A*

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

**22 Paragraph 20(1)(b)**

Repeal the paragraph, substitute:

(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.

**23 Paragraph 20(2)(c)**

Repeal the paragraph, substitute:

(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.

**24 At the end of section 20**

Add:

*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.

**25 Section 24 (except the note)**

Repeal the section (except the note), substitute:

**24 Objections against assessments**

*Member or superannuation provider may object against assessment*

(1) If:

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

*Superannuation provider may object against class of assessments*

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

*Matters on which Commissioner may rely in deciding an objection*

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

**26 Subsections 35A(1), (7) and (8) (inserted by item 38 of Schedule 4 to the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*)**

After "14", insert " , 15B".

**27 Section 35A (inserted by item 39 of Schedule 4 to the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997*)**

Renumber as section 35B.

**28 At the end of section 42**

Add:

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- (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.

**29 Section 43 (definition of *assessment*)**

Repeal the definition, substitute:

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

**30 Section 43**

Insert:

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

**31 Section 43 (definition of *contributed amounts*)**

Repeal the definition, substitute:

*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.

**32 Section 43 (definition of *determination*)**

Repeal the definition, substitute:

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

**33 Section 43 (definition of *holder*)**

Repeal the definition, substitute:

*holder* of the surchargeable contributions of a member for a financial year has the meaning given by section 8A.

**34 Section 43 (definition of *interest*)**

Repeal the definition, substitute:

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

**35 Section 43 (at the end of the definition of *member*, but not as part of paragraph (b))**

Add “and includes a person who has been such a member”.

**36 Section 43 (paragraph (b) of the definition of *notification date*)**

Repeal the paragraph, substitute:

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- (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.

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

Repeal the definition.

**38 Section 43 (definition of Second Commissioner)**

Omit “the” substitute “a”.

**39 Section 43**

Insert:

*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.

**40 Section 43**

Insert:

*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.

**41 Section 43**

Insert:

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

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

Repeal the definition, substitute:

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

#### **43 Transitional—superannuation providers to give corrective statements**

- (1) If a superannuation provider has, before the commencement of this item, given a statement to the Commissioner under section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* that did not comply with the requirements that would have applied if the amendments made by items of this Schedule that are taken to have commenced on 5 June 1997 had been in force, the provider must give to the Commissioner not later than a date fixed by the Minister by notice published in the *Gazette*, in substitution for the first-mentioned statement, a further statement that complies with those requirements.
- (2) A superannuation provider who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than 60 penalty units.
  - Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
  - Note 2: The amount of a penalty unit is stated in section 4AA of the *Crimes Act 1914*. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.
- (3) Chapter 2 of the *Criminal Code* applies to offences against subsection (2).

#### **44 Transitional—retrospective objections**

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

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

#### **45 Transitional—amendments of assessments**

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

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

## **Schedule 2—Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997**

### **1 Section 6**

Repeal the section, substitute:

### **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, 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, 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, the Commissioner may amend the assessment.
- (e) The member is liable to pay the surcharge on the member's surchargeable contributions for a financial year, but the surcharge is not payable before benefits become payable.
- (f) If liability for surcharge is increased as a result of an amendment of an assessment, interest is payable on the additional surcharge.
- (g) 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.
- (h) A late payment penalty applies if surcharge is not paid on time.

## **2 Subsections 9(1) and (2)**

Repeal the subsections, substitute:

### *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) the constitutionally protected superannuation fund is a complying superannuation fund for the purposes of the year of income comprising the financial year; and 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 38 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 amounts referred to in subparagraph (a)(ii) or (iii) of the definition of *contributed amount* in section 38.

### **3 Subsections 9(4) and (5)**

Repeal the subsections, substitute:

*Member of defined benefits superannuation scheme*

- (4) 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*

- (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 1996-97 financial year or for either of the next 2 financial years is the amount worked out using the formula:



Annual salary  $\times$  Notional surchargeable  
contributions factor

where:

**annual salary** means:

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

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

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

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

- (6) **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 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 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*

- (7) Regulations made for the purposes of paragraph (6)(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*

- (8) 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.

**4 At the end of section 11**

Add:

*No surcharge payable if member dies*

- (2) However, surcharge is not payable on surchargeable contributions for a member for a financial year in which the member dies or a later financial year.

**5 Subsection 12(4)**

After "subsection (2) or (3)", insert "for a financial year earlier than the 1998-99 financial year".

**6 After subsection 12(4)**

Insert:

*Member may request provider to give particulars*

- (4A) 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*

- (4B) The particulars to be given to a member under subsection (4A) 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.

## **7 Subsection 12(5)**

Repeal the subsection, substitute:

*Particulars to be included in statements*

- (5) 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 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 38—the total of so much of those amounts as are taxable contributions referred to in subparagraph 9(2)(c)(i) and the total of so much of those amounts as are specified roll-over amounts referred to in subparagraph 9(2)(c)(iii); and
    - (ii) the total of any of those amounts that are amounts referred to in subparagraph (a)(ii) or (iii) of that definition; and
  - (b) if the statement is given by a superannuation (defined benefits) provider—the amount of the surchargeable contributions of the member for the financial year.

## **8 Section 14**

Repeal the section, substitute:

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*Commissioner to assess surcharge*

- (1) For each financial year 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.

*What happens if member dies*

- (2) 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*

- (3) When an assessment (including an amended assessment) is made, the Commissioner must, subject to subsection (4), give notice of the assessment to the member.

*No notice if nil amount assessed*

- (4) The Commissioner is not required under subsection (3) to give a notice of an assessment if the assessment states that a nil amount of surcharge is payable.

*Particulars in notice of assessment*

- (5) A notice of assessment must include particulars of the matters contained in the assessment under subsection (1).

*How a notice is to be given*

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

*Non-compliance not to affect validity of assessment*

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

**9 After subsection 15(8)**

Insert:

*Person may direct superannuation provider to pay amount to Commissioner*

(8A) If:

- (a) a person is liable to pay an amount to the Commissioner under subsection (6); and
- (b) neither a lump sum nor a pension is payable by the superannuation provider for the benefit of the person because the person has become:
  - (i) a member of another superannuation fund; or
  - (ii) a member of an approved deposit fund; or
  - (iii) the holder of an RSA; or
  - (iv) the purchaser of an annuity from a life assurance company or from a registered organisation;

the person may direct the trustee of the other superannuation fund or the approved deposit fund, the RSA provider, the life assurance company or the registered organisation to pay to the Commissioner the whole or a part of the amount referred to in paragraph (a) and to make any necessary reductions in the benefits to which the person would otherwise be entitled from the other superannuation fund, the approved deposit fund, or the RSA or to the amount of the annuity to which the person would otherwise be entitled.

*Superannuation provider to comply with direction*

- (8B) A superannuation provider to whom a direction is given under subsection (8A) must comply with the direction.

**10 After section 15**

Insert:

**15A Periods within which assessments may be amended**

*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.

*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;
- the Commissioner may, within 4 years from the date of service of the notice of the amended assessment, further amend the assessment in, or in respect of, that particular in a way that increases the amount of the surcharge payable to the extent that the Commissioner considers necessary.

*Period where avoidance of surcharge*

- (3) Subject to this section, if there has been an avoidance of surcharge, the Commissioner may:
- (a) if the Commissioner is of the opinion that the avoidance of surcharge is due to fraud or evasion—at any time; or

(b) in any other case—within 4 years from the date upon which the surcharge became due and payable under the assessment; amend the assessment by making such alterations or additions as the Commissioner thinks necessary to correct the assessment.

*Period where amendment reduces surcharge*

- (4) An amendment effecting a reduction in the amount of surcharge payable under an assessment is not to be made after the end of 4 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; 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 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 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 any failure of the member to take action that it would have been reasonable for the member 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 in accordance with subsection (5), the member 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 includes a reference to the institution by the member of a proceeding before a court or tribunal.

*Period for further amendment reducing surcharge*

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

*Case when subsection (9) does not apply*

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

*Assessment following application by member*

- (11) If:
- (a) an application for an amendment of an assessment is made by a member within 4 years from the date upon which surcharge became due and payable under the assessment; and
  - (b) the member 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 16.

**11 Paragraph 16(1)(a)**

Omit “a member’s contributions”, substitute “the surchargeable contributions of a member”.

**12 At the end of section 17**

Add:

*Section subject to section 15A*

- (6) This section is subject to section 15A.

**13 Section 20**

Repeal the section, substitute:

## 20 Objections against assessments

*Member may object against assessment*

(1) If:

(a) an assessment of surcharge on a member's surchargeable contributions is made; and

(b) the member is dissatisfied with the assessment;

the member may object against the assessment in the way set out in Part IVC of the *Taxation Administration Act 1953*.

*Matters on which Commissioner may rely in deciding an objection*

(2) 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.

## 14 Section 38 (after paragraph (a) of the definition of *adjusted taxable income*)

Insert:

(aa) the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring subsection 271-105(1) of Schedule 2F to the Income Tax Assessment Act; and

## 15 Section 38 (definition of *assessment*)

Repeal the definition, substitute:

*assessment* means an assessment made under subsection 14(1).

## 16 Section 38

Insert:

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

**17 Section 38 (definition of *contributed amounts*)**

Repeal the definition, substitute:

***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.

**18 Section 38 (at the end of the definition of *member*)**

Add “and includes a person who has been a member of such a fund”.

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**19 Section 38 (definition of *notional surchargeable contributions factor*)**

Repeal the definition.

**20 Section 38 (definition of *Second Commissioner*)**

Omit “the” substitute “a”.

**21 Section 38**

Insert:

*Superannuation Contributions Ruling SCR 97/1* has the same meaning as in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**22 Section 38**

Insert:

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

**23 Section 38**

Insert:

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

**24 Section 38 (definition of *unfunded defined benefits superannuation scheme*)**

Repeal the definition, substitute:

*unfunded defined benefits superannuation scheme* has the same meaning as in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

## **25 Transitional—superannuation providers to give corrective statements**

If a superannuation provider has, before the commencement of this item, given a statement to the Commissioner under section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997* that did not comply with the requirements that would have applied if the amendments made by items of this Schedule that are taken to have commenced on 5 June 1997 had been in force, the provider must give to the Commissioner not later than a date fixed by the Minister by notice published in the *Gazette*, in substitution for the first-mentioned statement, a further statement that complies with those requirements.

## **26 Transitional—retrospective objections**

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

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

## **27 Transitional—amendments of assessments**

Nothing in section 15A of the *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997* prevents the amendment of an assessment for the purpose of giving effect:

- (a) to any amendment made by this Schedule or to item 25 or 26;  
or
  - (b) to anything done under a provision of that Act as amended by this Schedule or under item 25 or 26.
-

## Schedule 3—Termination Payments Tax (Assessment and Collection) Act 1997

### 1 Section 6

Omit:

- The provisions in the *Taxation Administration Act 1953* for objecting against assessment of income tax apply to assessments of surcharge.

substitute:

- A taxpayer may object against an assessment of surcharge in the way set out in Part IVC of the *Taxation Administration Act 1953* for objecting against assessment of income tax.

### 2 Subsection 11(1)

Repeal the subsection, substitute:

*Commissioner to assess surcharge*

- (1) For each financial year in which termination payments are made to or for a taxpayer, the Commissioner must make an assessment that:
- (a) calculates the taxpayer's adjusted taxable income; and
  - (b) if the adjusted taxable income is greater than the surcharge threshold:
    - (i) calculates the termination payments; and
    - (ii) calculates the rate of surcharge that applies to the taxpayer; 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.

### **3 Subsections 11(3) to (5)**

Repeal the subsections, substitute:

*Notice of assessment*

- (3) When an assessment (including an amended assessment) is made, the Commissioner must, subject to subsection (4), give notice of the assessment to the taxpayer.

*No notice if nil amount assessed*

- (4) The Commissioner is not required under subsection (3) to give a notice of an assessment if the assessment states that a nil amount of surcharge is payable.

*Particulars in notice of assessment*

- (5) A notice of assessment must include particulars of the matters contained in the assessment under subsection (1).

*How a notice is to be given*

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

*Non-compliance not to affect validity of assessment*

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

### **4 After section 11**

Insert:

#### **11A Periods within which assessments may be amended**

*General provision*

- (1) The Commissioner may, subject to this section, at any time amend an assessment of surcharge on a termination payment or termination payments made to or for a taxpayer 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.

*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 taxpayer;
- the Commissioner may, within 4 years from the date of service of the notice of the amended assessment, further amend the assessment in, or in respect of, that particular in a way that increases the amount of the surcharge payable to the extent that the Commissioner considers necessary.

*Period where avoidance of surcharge*

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

*Period where amendment reduces surcharge*

- (4) An amendment effecting a reduction in the amount of surcharge payable under an assessment is not to be made after the end of 4 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 taxpayer; 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 taxpayer 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 taxpayer 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 taxpayer or any failure of the taxpayer to take action that it would have been reasonable for the taxpayer 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.

*Taxpayer may extend period*

- (7) If a request is made to the taxpayer in accordance with subsection (5), the taxpayer 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 taxpayer includes a reference to the institution by the taxpayer of a proceeding before a court or tribunal.

*Period for further amendment reducing surcharge*

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

*Case when subsection (9) does not apply*

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

*Assessment following application by taxpayer*

- (11) If:
- (a) an application for an amendment of an assessment is made by a taxpayer within 4 years from the date upon which surcharge became due and payable under the assessment; and
  - (b) the taxpayer 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.

**5 At the end of section 12**

Add:

*This section subject to section 11A*

- (5) This section is subject to section 11A.

**6 Section 31 (definition of *assessment*)**

Repeal the definition, substitute:

*assessment* means an assessment made under subsection 11(1).

**7 Application of amendments**

The amendments made by items 2 to 6 apply to assessments of surcharge payable for the financial year beginning on 1 July 1999 and later financial years.

## Schedule 4—Income Tax Assessment Act 1936

### 1 Subsection 27A(1) (paragraph (r) of the definition of *eligible termination payment*)

Repeal the paragraph, substitute:

(r) an amount:

- (i) received by the taxpayer, or to which the taxpayer is entitled, as the result of the commutation of a pension payable from a constitutionally protected fund (within the meaning of Part IX); and
- (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*); or

(s) an amount:

- (i) received by the taxpayer, or to which the taxpayer is entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and
- (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act).

## **Schedule 5—Superannuation Industry (Supervision) Act 1993**

### **1 At the end of subsection 58(2)**

Add:

- ; or (g) a direction given by a member (within the meaning of the *Superannuation Contributions Tax (members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*) that is permitted to be given by subsection 15(8A) of that Act.

## **Schedule 6—Taxation Laws Amendment Act (No. 3) 1997**

### **1 Item 44 of Schedule 1**

Repeal the item, substitute:

#### **44 Subsection 7(2)**

After “invalidity component”, insert “or CGT exempt component”.

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*[Minister's second reading speech made in—  
House of Representatives on 30 June 1999  
Senate on 12 August 1999]*

(148/99)