



Occupational Superannuation Laws Amendment Act 1991

No. 55 of 1991

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Occupational Superannuation Laws Amendment Act 1991

No. 55 of 1991

**An Act to amend the *Income Tax Assessment Act 1936*,
the *Insurance and Superannuation Commissioner Act 1987*
and the *Occupational Superannuation Standards Act 1987*,
and for related purposes**

[Assented to 24 April 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Occupational Superannuation Laws Amendment Act 1991*.

Commencement

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

PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

Principal Act

3. In this Part, “**Principal Act**” means the *Income Tax Assessment Act 1936*¹.

Losses and outgoings

4. Section 51 of the Principal Act is amended by adding at the end the following subsection:

“(8) A deduction is not allowable under subsection (1) in respect of so much of levy imposed by the *Superannuation Supervisory Levy Act 1991* as represents the late lodgment amount within the meaning of section 6 of that Act.”.

PART 3—AMENDMENT OF THE INSURANCE AND SUPERANNUATION COMMISSIONER ACT 1987

Principal Act

5. In this Part, “**Principal Act**” means the *Insurance and Superannuation Commissioner Act 1987*².

Interpretation

6. Section 3 of the Principal Act is amended by inserting the following definition:

“‘**pooled superannuation trust**’ has the same meaning as in the *Occupational Superannuation Standards Act 1987*.”.

Insurance and Superannuation Commissioner

7. Section 4 of the Principal Act is amended by inserting in subsection (3) “, a pooled superannuation trust” after “superannuation fund” (wherever occurring).

Disclosure of interests

8. Section 8 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) any pooled superannuation trust or any body corporate that is a trustee of such a trust;”.

Termination of appointment

9. Section 11 of the Principal Act is amended by inserting in subparagraph (2) (c) (ii) “, a pooled superannuation trust” after “superannuation fund”.

**PART 4—AMENDMENT OF THE OCCUPATIONAL
SUPERANNUATION STANDARDS ACT 1987**

Principal Act

10. In this Part, “**Principal Act**” means the *Occupational Superannuation Standards Act 1987*.

Interpretation

11. Section 3 of the Principal Act is amended:

(a) by omitting “or” from paragraph (c) of the definition of “reviewable decision” in subsection (1);

(b) by adding at the end of the definition of “reviewable decision” in subsection (1) the following paragraphs:

“(e) a decision of the Commissioner under subsection 12 (6A), 14 (6A) or 15B (6A); or

(f) a decision of the Commissioner under section 15DF;”;

(c) by inserting in subsection (1) the following definitions:

“**‘approved form’**, in relation to a return under subsection 12 (1), 14 (1) or 15B (1), has the meaning given by section 15CA;

‘basic levy amount’ has the meaning given by section 6 of the *Superannuation Supervisory Levy Act 1991*;

‘data processing device’ means any article or material (for example, a disc) from which information is capable of being reproduced with or without the aid of any other article or device;

‘late lodgment amount’ has the meaning given by section 6 of the *Superannuation Supervisory Levy Act 1991*;

‘late payment penalty’ means penalty payable under section 15DC;

‘levy’ means the levy imposed by the *Superannuation Supervisory Levy Act 1991*;

‘levy avoidance scheme’ means:

(a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) a scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved;

entered into or carried out for the purpose, or for purposes that included the purpose, of enabling trustees to avoid the payment of levy;

‘levy month’ means one of the 12 months of the year;

‘minimum basic levy amount’, in relation to a year of income, means the lowest basic levy amount applicable to returns for

the year of income for funds and unit trusts that are in existence at all times during the year of income;”.

Crown to be bound

12. Section 3A of the Principal Act is amended by inserting “of the Australian Capital Territory,” before “of the Northern Territory” (wherever occurring).

Notices as to satisfaction of the superannuation fund conditions

13. Section 12 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where, after the end of a year of income of a fund, the trustees of the fund give to the Commissioner, in relation to the year of income:

(a) a return, in an approved form, providing information relating to the fund and to the fund’s satisfaction of the superannuation fund conditions during the year of income; and

(b) a certificate by the trustees of the fund, in the prescribed form; and

(c) a certificate by an approved auditor, in the prescribed form;

subsection (3) applies in relation to the fund in relation to the year of income.

“(2) Where a return referred to in paragraph (1) (a) is given otherwise than on a data processing device, a certificate referred to in paragraph (1) (b) or (c) may be endorsed on the return.”;

(b) by omitting from subsection (3) “subsection (6)” and substituting “subsections (6) and (6A)”;

(c) by inserting after subsection (6) the following subsections:

“(6A) The Commissioner may refuse to give a notice under subsection (3) if an amount of levy payable on the lodgment of the return remains unpaid.

“(6B) If the Commissioner makes a decision under subsection (6A) refusing to give a notice under subsection (3), the Commissioner must notify the trustees, in writing, of that decision.”.

Discretion to treat funds as satisfying the superannuation fund conditions

14. Section 13 of the Principal Act is amended:

(a) by omitting from paragraph (1) (a) “, certificates and fee or fees” (wherever occurring) and substituting “and certificates”;

- (b) by adding “and” at the end of paragraph (1) (b);
- (c) by inserting after paragraph (1) (b) the following paragraph:
 - “(c) if the trustees have not lodged a return for the year of income under subsection 12 (1)—the trustees satisfy the Commissioner that the failure of the trustees to lodge the return, and any failure of the fund to satisfy the superannuation fund conditions, were not part of a levy avoidance scheme;”.

Notices as to satisfaction of the approved deposit fund conditions

15. Section 14 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where, after the end of a year of income of a fund, the trustees of the fund give to the Commissioner, in relation to the year of income:

- (a) a return, in an approved form, providing information relating to the fund and to the fund’s satisfaction of the approved deposit fund conditions during the year of income; and
- (b) a certificate by the trustees of the fund, in the prescribed form; and
- (c) a certificate by an approved auditor, in the prescribed form;

subsection (3) applies in relation to the fund in relation to the year of income.

“(2) Where a return referred to in paragraph (1) (a) is given otherwise than on a data processing device, a certificate referred to in paragraph (1) (b) or (c) may be endorsed on the return.”;

- (b) by omitting from subsection (3) “subsection (6)” and substituting “subsections (6) and (6A)”;
- (c) by inserting after subsection (6) the following subsections:

“(6A) The Commissioner may refuse to give a notice under subsection (3) if an amount of levy payable on the lodgment of the return remains unpaid.

“(6B) If the Commissioner makes a decision under subsection (6A) refusing to give a notice under subsection (3), the Commissioner must notify the trustees, in writing, of that decision.”.

Discretion to treat funds as satisfying the approved deposit fund conditions

16. Section 15 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “, certificates and fee or fees” (wherever occurring) and substituting “and certificates”;

- (b) by adding “and” at the end of paragraph (1) (b);
- (c) by inserting after paragraph (1) (b) the following paragraph:
 - “(c) if the trustees have not lodged a return for the year of income under subsection 14 (1)—the trustees satisfy the Commissioner that the failure of the trustees to lodge the return, and any failure of the fund to satisfy the approved deposit fund conditions, were not part of a levy avoidance scheme;”.

Notices as to satisfaction of the pooled superannuation trust conditions

17. Section 15B of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where, after the end of a year of income of a unit trust, the trustees of the unit trust give to the Commissioner, in relation to the year of income:

- (a) a return, in an approved form, providing information relating to the unit trust and to the unit trust’s satisfaction of the pooled superannuation trust conditions during the year of income; and
- (b) a certificate by the trustees of the unit trust, in the prescribed form; and
- (c) a certificate by an approved auditor, in the prescribed form;

subsection (3) applies in relation to the unit trust in relation to the year of income.

“(2) Where a return referred to in paragraph (1) (a) is given otherwise than on a data processing device, a certificate referred to in paragraph (1) (b) or (c) may be endorsed on the return.”;

- (b) by omitting from subsection (3) “subsection (6)” and substituting “subsections (6) and (6A)”;

- (c) by inserting after subsection (6) the following subsections:

“(6A) The Commissioner may refuse to give a notice under subsection (3) if an amount of levy payable on the lodgment of the return remains unpaid.

“(6B) If the Commissioner makes a decision under subsection (6A) refusing to give a notice under subsection (3), the Commissioner must notify the trustees, in writing, of that decision.”.

Discretion to treat unit trusts as satisfying the pooled superannuation trust conditions

18. Section 15C of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “, certificates and fee or fees” (wherever occurring) and substituting “and certificates”;

(b) by adding “and” at the end of paragraph (1) (b);

(c) by inserting after paragraph (1) (b) the following paragraph:

“(c) if the trustees have not lodged a return for the year of income under subsection 15B (1)—the trustees satisfy the Commissioner that the failure of the trustees to lodge the return, and any failure of the unit trust to satisfy the pooled superannuation trust conditions, were not part of a levy avoidance scheme;”.

19. After section 15C of the Principal Act the following section is inserted:

Returns

“15CA. (1) A reference in subsection 12 (1), 14 (1) or 15B (1) to an approved form is a reference to a form approved by the Commissioner, in writing, for the purposes of the subsection concerned.

“(2) An approval may require or permit a return to be given on a specified kind of data processing device in accordance with specified software requirements.”.

20. After section 15D of the Principal Act the following Part is inserted:

**“PART III^{AA}—COLLECTION OF SUPERANNUATION
SUPERVISORY LEVY**

Liability to levy

“15DA. The trustees who lodge a return under subsection 12 (1), 14 (1) or 15B (1) are liable to pay a levy on that lodgment.

When levy due for payment

“15DB. Levy payable by a person on the lodgment of a return is due and payable at the time of lodgment.

Penalty for non-payment of levy

“15DC. (1) If any levy payable by a person in relation to a return for a year of income remains unpaid as at:

(a) the beginning of the first levy month after the time when it became due for payment; or

(b) the beginning of a subsequent levy month;

the person is liable to pay to the Commonwealth, in respect of that levy month, by way of penalty, the monthly amount worked out under subsection (2).

“(2) The monthly amount for a levy month is the amount obtained by calculating whichever is the greater of the following amounts:

(a) whichever is the lesser of the following amounts:

- (i) the amount calculated using the following formula and rounded up to the nearest whole dollar:

$$\text{Unpaid levy} \times \frac{0.2}{12}$$

where:

'Unpaid levy' means the amount of levy unpaid in relation to the return as at the beginning of the levy month;

- (ii) the amount calculated using the following formula and rounded up to the nearest whole dollar:

$$\frac{\text{Basic levy amount}}{\text{amount}} \times \frac{0.2}{12}$$

where:

'Basic levy amount' means the basic levy amount in relation to the return;

- (b) the amount calculated using the following formula and rounded up to the nearest whole dollar:

$$\frac{\text{Minimum basic levy amount}}{\text{amount}} \times 0.125$$

where:

'Minimum basic levy amount' means the minimum basic levy amount for the year of income.

"(3) In calculating, for the purposes of this section, the greater or lesser of 2 amounts, if those amounts are equal, the first-mentioned amount is taken to be greater than the other amount.

"(4) Late payment penalty for a levy month is due and payable at the end of the levy month.

Recovery of levy etc.

"15DD. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) late payment penalty that is due and payable.

Payment of levy and late payment penalty

"15DE. Levy and late payment penalty are payable to the Commissioner.

Remission of levy and penalties

"15DF. The Commissioner may remit the whole or a part of the following:

- (a) so much of an amount of levy as represents a late lodgment amount;
- (b) an amount of late payment penalty.

Application of payments

“15DG. Where:

- (a) 2 or more amounts payable to the Commissioner by a person under this Part would, apart from this section, be debts due to the Commonwealth under this Part; and
- (b) an amount (in this section called the ‘**debt payment**’) is paid to the Commissioner in respect of one or more of those amounts; and
- (c) the sum of the amounts payable exceeds the debt payment;

the following provisions have effect:

- (d) in spite of any direction to the contrary by or on behalf of the person by whom the amounts are payable or the person making the debt payment, the Commissioner may apply the debt payment in partial discharge of the sum of the amounts payable; and
- (e) the Commonwealth may recover as a debt due to the Commonwealth the amount by which the sum of the amounts payable exceeds the debt payment.

Exempting laws ineffective

“15DH. (1) Nothing in a law passed before the commencement of this section exempts a person from liability to levy.

“(2) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability to pay taxes under laws of the Commonwealth or to pay certain taxes under those laws that include levy, other than a law or a provision that expressly exempts a person from liability to pay levy, is not to be construed as exempting the person from liability to pay levy.”.

Approved deposit funds, life assurance companies and registered organisations to provide certain information

21. Section 15F of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) An approval of a form may require or permit a notice to be given, in accordance with specified software requirements, on a specified kind of data processing device.”.

Payers to provide certain information

22. Section 15G of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) An approval of a form may require or permit a notice under subsection (1) to be given, in accordance with specified software requirements, on a specified kind of data processing device.”.

Persons may request copies of previous determinations

23. Section 15Q of the Principal Act is amended by adding at the end the following subsection:

“(2) A request under subsection (1) must be accompanied by such fee (if any) as is prescribed.”.

Review of certain decisions

24. Section 16 of the Principal Act is amended by omitting from subsection (1) “or (d)” and substituting “, (d), (e) or (f)”.

Regulations

25. Section 22 of the Principal Act is amended:

- (a) by omitting “or” from paragraph (c) and substituting “and”;
- (b) by adding at the end the following word and paragraphs:
 - “; and (e) providing for exemptions from levy and for remissions of levy; and
 - (f) providing for the manner of payment for levy and other amounts payable to the Commonwealth under this Act; and
 - (g) providing for the refund (or other application) of overpayments.”.

Application of amendments

26. The amendments made by this Part (other than sections 21, 22 and 23) apply in relation to returns:

- (a) for the year of income commencing on 1 July 1990 or a subsequent year of income; and
- (b) lodged after the commencement of this section.

Transitional—prescribed forms

27. (1) In this section:

“**amended Act**” means the Principal Act as amended by this Act.

(2) For the purposes of the amended Act, a form prescribed for the purposes of a provision of subsection 12 (1), 14 (1) or 15B (1) of the Principal Act has effect as if it had been prescribed for the purposes of the corresponding provision of the amended Act.

Transitional—prior year returns in electronic form

28. (1) This section applies to a return under subsection 12 (1), 14 (1) or 15B (1) of the Principal Act that relates to a year of income earlier than the year of income commencing on 1 July 1990.

(2) The Commissioner may approve, in writing, requirements to be satisfied in relation to the acceptance of returns on specified kinds of data processing devices in accordance with specified software requirements.

(3) Where the requirements are satisfied, the information on the data processing device is taken, for the purposes of the Principal Act, to be a return in the form approved for the purposes of the provision concerned.

Transitional—notices in electronic form given under subsection 15F (1) or 15G (1) or (7) of the Principal Act

29. (1) For the purposes of the Principal Act, if:

- (a) before the commencement of this section, a person gave a data processing device containing particular information to the Commissioner; and
- (b) the Commissioner is satisfied that it is or was reasonable to treat the information on the data processing device as if it were a notice under subsection 15F (1) or 15G (1) or (7) of the Principal Act;

the information is taken to be, and to have been, a notice given in accordance with the subsection concerned.

(2) The Principal Act has effect as if a decision of the Commissioner under subsection (1) of this section were a reviewable decision covered by subsection 16 (1A) of the Principal Act.

Transitional—discretion to accept part payment of certain fees as full payment

30. (1) This section applies to a fee referred to in subsection 12 (1), 14 (1) or 15B (1) of the Principal Act that:

- (a) relates to a return for a year of income earlier than the year of income commencing on 1 July 1990; or
- (b) relates to a return for the year of income commencing on 1 July 1990, being a return lodged before the commencement of this section.

(2) If the Commissioner considers that it is or was reasonable to accept part payment of the fee, the part payment is taken to be, and to have been, full payment for the purposes of the Principal Act.

(3) The Principal Act has effect as if a decision of the Commissioner under subsection (2) of this section were a reviewable decision covered by subsection 16 (1) of the Principal Act.

Transitional—delegation of powers under transitional provisions

31. Section 20 of the Principal Act applies to powers conferred by sections 28, 29 and 30 of this Act as if those sections were provisions of the Principal Act.

NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 73, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); and No. 20, 1990.
2. No. 98, 1987.
3. No. 97, 1987, as amended. For previous amendments, see No. 138, 1987; Nos. 97 and 105, 1989; and Nos. 61 and 135, 1990.

*[Minister's second reading speech made in—
House of Representatives on 7 March 1991
Senate on 11 April 1991]*