



Superannuation Guarantee (Consequential Amendments) Act 1992

No. 92 of 1992

**An Act to make certain amendments in consequence of the
enactment of the *Superannuation Guarantee
(Administration) Act 1992*, and for related purposes**

[Assented to 30 June 1992]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Superannuation Guarantee
(Consequential Amendments) Act 1992*.

5 Commencement

2. This Act commences on 1 July 1992.

Amendments

3. The Acts specified in the Schedule are amended as set out in the
Schedule.

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SCHEDULE

Section 3

Administrative Decisions (Judicial Review) Act 1977

Paragraph (e) of Schedule 1:

After "Acts providing for the assessment of sales tax" insert "*Superannuation Guarantee (Administration) Act 1992*".

Crimes (Taxation Offences) Act 1980

Subsection 3(1):

Insert the following definitions:

"**'Superannuation Guarantee (Administration) Act'** means the *Superannuation Guarantee (Administration) Act 1992*;

'superannuation guarantee charge' means charge imposed by the *Superannuation Guarantee Charge Act 1992*, as assessed under the Superannuation Guarantee (Administration) Act, and includes additional superannuation guarantee charge payable under section 49 or Part 7 of the Superannuation Guarantee (Administration) Act;"

Section 4:

Add at the end the following subsection:

"(4) Section 45 of the Superannuation Guarantee (Administration) Act has effect as if this Act were part of that Act."

After Part VI:

Add the following Part:

**"PART VII—OFFENCES RELATING TO SUPERANNUATION
GUARANTEE CHARGE**

Application of Parts I and II in relation to superannuation guarantee charge

"17.(1) Without prejudice to their effect apart from this section, subsection 3(3), paragraph 3(4)(e) and the provisions of Part II (other than section 8 and subsection 10(3)) also have the effect they would have if:

- (a) a reference in any of those provisions to sales tax were a reference to superannuation guarantee charge; and
- (b) a reference in any of those provisions to future sales tax were a reference to future superannuation guarantee charge; and
- (c) a reference in any of those provisions to some one or other of the Sales Tax Assessment Acts were a reference to the Superannuation Guarantee (Administration) Act; and

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SCHEDULE—continued

- (d) a reference in any of those provisions, in relation to a company or trustee, to sales tax moneys, were a reference to superannuation guarantee charge moneys.

“(2) In applying the provisions of Part II (other than section 8 and subsection 10(3)) in accordance with subsection (1):

- (a) a reference in any of those provisions to the superannuation guarantee charge payable by a company or trustee, in relation to the purpose, or a purpose, of a person’s entering into, or a person’s knowledge or belief concerning, an arrangement or transaction is to be read as a reference to some or all of the superannuation guarantee charge due and payable by the company or the trustee at the time when the arrangement or transaction was entered into; and
- (b) a reference in any of those provisions to future superannuation guarantee charge payable by a company or trustee, in relation to the purpose, or a purpose, of a person’s entering into, or a person’s knowledge or belief concerning, an arrangement or transaction is to be read as a reference to some or all of the superannuation guarantee charge that may reasonably be expected by that person to become payable by the company or trustee after the arrangement or transaction is entered into; and
- (c) a reference in any of those provisions (other than subsections 10(1) and (2)), in relation to a company or trustee, to superannuation guarantee charge moneys is to be read as a reference to:
 - (i) superannuation guarantee charge payable by the company or trustee; and
 - (ii) costs ordered by a court against a company or trustee in a proceeding for the recovery of superannuation guarantee charge; and
- (d) a reference in subsections 10(1) and (2) to superannuation guarantee charge moneys is to be read as a reference to superannuation guarantee charge assessed under the Superannuation Guarantee (Administration) Act.

“(3) In applying subsection 10(2) and sections 11 and 12 in accordance with subsections (1) and (2), the liability of a company or trustee in respect of superannuation guarantee charge moneys that have been assessed is not to be taken not to be finally determined merely because of the possibility of the Commissioner’s amending the assessment (otherwise than as a result of allowing an objection or to give effect to a decision of the Administrative Appeals Tribunal or a court).”.

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SCHEDULE—continued

Defence Act 1903

After subsection 52(3):

Insert:

“(3A) The Minister may not make a determination that would have the effect that the Commonwealth, as employer, would have an individual superannuation guarantee shortfall in respect of a member referred to in subsection (1) for any contribution period under the *Superannuation Guarantee (Administration) Act 1992*.”.

Defence Force Retirement and Death Benefits Act 1973

Paragraph 61B(3)(a):

Omit the paragraph, substitute:

“(a) intends to resume full-time service as a member of the Emergency Forces or the Reserve Forces for a continuous period of less than 12 months; and”.

Fringe Benefits Tax Assessment Act 1986

After paragraph 96(7)(ca):

Insert:

“(cb) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Income Tax Assessment Act 1936

Section 51:

Add at the end the following subsection:

[Superannuation guarantee charge]

“(9) A deduction is not allowable under subsection (1) in respect of charge imposed by the *Superannuation Guarantee Charge Act 1992*.”.

Section 202:

Add at the end the following word and paragraph:

“; and (f) to facilitate the administration of any legislation enacted by the Parliament in relation to the imposition of charge on an employer’s superannuation guarantee shortfall.”.

After paragraph 215(3D)(b):

Insert:

“(ba) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

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SCHEDULE—continued

Paragraph 274(1)(b):

Omit the paragraph, substitute:

“(b) if the eligible entity is a complying superannuation fund:

- (i) a contribution made by a person (in this section called the ‘contributor’) to obtain superannuation benefits for the contributor or, in the event of the death of the contributor, for dependants of the contributor, but not including so much of such a contribution as is deemed by section 27D to have been expended in making a payment as mentioned in paragraph 27A(12)(a);
- (ii) a contribution under section 65 of the *Superannuation Guarantee (Administration) Act 1992*.”.

Industrial Relations Act 1988

After section 90:

Insert:

Commission to have regard to operation of Superannuation Guarantee legislation when making National Wage Case decision

“90A. In making a National Wage Case decision, the Commission must have regard to the operation of:

- (a) the *Superannuation Guarantee Charge Act 1992*; and
- (b) the *Superannuation Guarantee (Administration) Act 1992*.”.

Military Superannuation and Benefits Act 1991

Paragraphs 6(1)(c) and (d):

Omit the paragraphs, substitute:

“(c) a member of the Emergency Forces or the Reserve Forces who is rendering continuous full-time service under an undertaking to serve for a period of less than 12 months unless that member has elected not to become a member of the Scheme under section 61B of the DFRDB Act.”.

Section 7:

Omit the section.

Occupational Superannuation Standards Act 1987

Subsection 3(1):

Insert:

“‘employer sponsor’, in relation to a superannuation fund, means an employer who has contributed to the fund for the benefit of an employee;”.

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SCHEDULE—continued

Subsection 10(1):

Omit the subsection, substitute:

“(1) The trustees of a superannuation fund established on or after 1 July 1992 must, within the prescribed period after establishment, give the Commissioner the prescribed information.

“(1AAA) The trustees of an approved deposit fund established on or after 1 July 1992 must, within the prescribed period after establishment, give the Commissioner the prescribed information.”.

After subsection 10(2):

Insert:

“(3) If the trustee of a superannuation fund provides the information prescribed for the purposes of subsection (1) to the Commissioner, the Commissioner must give notice in writing to the trustee acknowledging receipt of that information.”.

After subsection 12(3):

Insert:

“(3A) In making a decision under subsection (3) in relation to a fund and a year of income, the Commissioner must disregard a breach of a superannuation fund condition by the fund if:

- (a) the trustee of the fund:
 - (i) notified the Commissioner and all employer sponsors in relation to the fund of the breach as soon as practicable after becoming aware of the breach; and
 - (ii) caused the breach to be rectified within a period of 30 days (or such further period as the Commissioner allows) after becoming aware of the breach; or
 - (b) within the period referred to in subparagraph (a)(ii), moneys in the fund equal in amount to the accrued benefits of members of the fund at the time of transfer have been transferred to another fund in respect of which the Commissioner has given:
 - (i) notice under subsection (3) stating that the Commissioner is satisfied that the superannuation fund conditions have been satisfied in relation to the year of income; or
 - (ii) a notice under subsection 13(3) stating that the fund should be treated as if it had satisfied the conditions in relation to the year of income;
- and the moneys are in such a fund at the time the Commissioner's decision is made.”.

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SCHEDULE—continued

After subsection 18(2):

Insert:

“(2A) Nothing in subsection (2) is to be read as preventing the Commissioner from publishing a list containing:

- (a) the names of superannuation funds in respect of which a notice, or a particular kind of notice, has been given by the Commissioner under section 10, 12 or 13, and the addresses at which business relating to those funds is transacted; and
- (b) such other information as is reasonably necessary to enable members of the public to contact a person who has a function in relation to the fund;

or from disclosing, by any other means, the information referred to in paragraphs (a) and (b).”.

Pay-roll Tax (Territories) Assessment Act 1971

After paragraph 30(3C)(b):

Insert:

“(ba) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Petroleum Resource Rent Tax Assessment Act 1987

After paragraph 88(7)(d):

Insert:

“(da) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Sales Tax Assessment Act (No. 1) 1930

After paragraph 32(2D)(c):

Insert:

“(ca) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Taxation Administration Act 1953

After paragraph 8J(2)(n):

Insert:

“(na) paragraph 76(1)(c) of the *Superannuation Guarantee (Administration) Act 1992*; or”.

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SCHEDULE—continued

Paragraph 8WA(1)(b):

Omit “(c) or (d)”, substitute “(c), (d) or (f)”.

Paragraph 8WB(1)(d):

Omit “(d) or (e)”, substitute “(d), (e) or (f)”.

Paragraph 8WB(1)(e):

Omit “(d) or (e)”, substitute “(d), (e) or (f)”.

After paragraph 8ZE(3)(g):

Insert:

“(ga) section 59 or 60 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Section 14ZQ (after paragraph (e) of the definition of “delayed administration (beneficiary) objection”):

Insert:

“(ea) subsection 55(3) of the *Superannuation Guarantee (Administration) Act 1992*.”.

Section 14ZQ (after paragraph (e) of the definition of “delayed administration (trustee) objection”):

Insert:

“(ea) subsection 55(5) of the *Superannuation Guarantee (Administration) Act 1992*.”.

Tobacco Charges Assessment Act 1955

After paragraph 27(3C)(c):

Insert:

“(caa) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

Training Guarantee (Administration) Act 1990

Subsection 78(10) (after paragraph (e) of the definition of “prescribed tax provision”):

Insert:

“(ea) section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

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SCHEDULE—continued

Wool Tax (Administration) Act 1964

After paragraph 47(3C)(c):

Insert:

“(ca) notified charge amount within the meaning of section 53 of the *Superannuation Guarantee (Administration) Act 1992*; or”.

[*Minister's second reading speech made in—*
House of Representatives on 30 April 1992
Senate on 7 May 1992]