



Superannuation Contributions Tax (Assessment and Collection) Act 1997

No. 70, 1997

**An Act relating to the assessment and collection of
superannuation contributions tax, and for related
purposes**

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**An Act relating to the assessment and collection of
superannuation contributions tax, and for related
purposes**

[Assented to 5 June 1997]

The Parliament of Australia enacts:

Part 1 Preliminary

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

2 Commencement

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

3 Act to bind Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

4 Extension to Territories

This Act extends to Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

5 Object of Act

The object of this Act is to provide for the assessment and collection of the superannuation contributions surcharge payable on surchargeable contributions for high-income individuals.

6 Outline of Act

The following is a simplified outline of this Act.

- 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.
- If the amount calculated is greater than the surcharge threshold amount, the Commissioner will calculate the rate of surcharge and make an assessment, directed to the holder of the contributions, of surcharge payable on the contributions. Only contributions paid, or relating to a time, after 7.30 pm on 20 August 1996 are subject to surcharge.
- If the contributions are held under a defined benefits superannuation scheme, the surcharge is payable on an amount calculated by reference to a notional surchargeable contributions factor determined for the member and the member's annual salary for the purposes of the scheme.
- If surcharge is payable for a member for a financial year, an advance instalment of one-half of the surcharge is payable on account of surcharge payable for the member for the following financial year. However, no instalment is payable if the contributions for the following year are held under an unfunded defined benefits superannuation scheme.
- 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:
 - (a) if the person assessed is still the holder of the contributions—the Commissioner may amend the assessment; or
 - (b) otherwise—the Commissioner may make a further assessment of surcharge directed to the new holder of the contributions.
- The holder of a member's surchargeable contributions for a financial year is liable to pay the surcharge on those contributions, and to pay any advance instalment of surcharge on the member's contributions for the next financial year, within stated periods.
- However, if the contributions are held under an unfunded defined benefits superannuation scheme, the surcharge is not

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payable until the contributions are withdrawn from the fund in which they are held or are rolled over, or benefits become payable.

- 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.
- A superannuation provider may reduce a member's benefit to take account of surcharge or advance contribution paid on the member's contributions.
- The provisions in the *Taxation Administration Act 1953* for objecting against assessments of income tax apply to assessments of surcharge in so far as the assessments relate to the calculation of a member's adjusted taxable income.
- A late payment penalty applies if surcharge or advance payment is not paid on time.
- The Commissioner may remit interest or late payment penalty: a refusal to remit is reviewable by the Administrative Appeals Tribunal.

Part 2—Liability to surcharge and advance instalments

7 Superannuation contributions surcharge

Financial years to which surcharge applies

- (1) Superannuation contributions surcharge is payable on a member's surchargeable contributions for the financial year that began on 1 July 1996 or a later financial year.

No surcharge is payable unless adjusted taxable income is greater than surcharge threshold

- (2) Surcharge is not payable for a financial year unless the member's adjusted taxable income for the financial year is greater than the surcharge threshold for the financial year.

No surcharge is payable by residents of external Territories

- (3) Surcharge is not payable for a financial year if the person who would be liable to pay the surcharge is the trustee of a Territory trust, a Territory company or a Territory resident for the purposes of Division 1A of Part III of the Income Tax Assessment Act as it applies to the year of income that comprises that financial year.

Note: In certain other circumstances surcharge is not payable (see subsection 10(4)).

8 Surchargeable contributions

Application

- (1) This section explains what are a member's surchargeable contributions for a financial year.

When amounts are paid to superannuation (accumulated benefits) provider

- (2) If:
 - (a) any amounts (the *contributed amounts*) are paid for or by a member to a superannuation (accumulated benefits) provider for a financial year; and
 - (b) where the provider is the trustee of a superannuation fund or of an approved deposit fund—the superannuation fund is a

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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 member's *surchargeable contributions* for the financial year are the sum of so much of the contributed amounts as:

- (c) 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
- (d) are allowed as deductions to the member under section 82AAT of that Act; or
- (e) are specified roll-over amounts that constitute the roll-over of amounts that are eligible termination payments under paragraph (a) of the definition of *eligible termination payment* in subsection 27A(1) of that Act.

Defined benefits superannuation scheme

- (3) The *surchargeable contributions* for a financial year of a member of a defined benefits superannuation scheme are taken to be the amount worked out using the formula:

Annual salary × 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 notional surchargeable contributions factor applying to the member for the financial year.

Transitional provision for 1996-97 financial year

- (4) For the 1996-97 financial year, a member's surchargeable contributions are:
- (a) if the contributed amounts were paid to a superannuation (accumulated benefits) provider—the part of so much of those amounts that would otherwise be the member's surchargeable contributions as was paid to the provider after

7.30 pm by legal time in the Australian Capital Territory on 20 August 1996; or

- (b) if the member is a member of a defined benefits superannuation scheme—so much of the amounts that would otherwise be the member's surchargeable contributions as is certified by an eligible actuary, according to Australian actuarial practice, to relate to the part of the financial year that started immediately after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996.

9 Surcharge threshold

Surcharge threshold for 1996-97 financial year

- (1) The *surcharge threshold* for the 1996-97 financial year is \$70,000.

Surcharge threshold for later financial year

- (2) The *surcharge threshold* for a later financial year is the amount calculated using the formula:

Previous surcharge threshold × Indexation factor

where:

previous surcharge threshold means the surcharge threshold for the financial year immediately before the financial year for which the surcharge threshold is being calculated.

indexation factor means the number calculated under subsections (4) and (5) for the financial year for which the surcharge threshold is being calculated.

Rounding off of amount of surcharge threshold

- (3) If an amount worked out for the purposes of subsection (2) is an amount of dollars and cents:
- (a) if the number of cents is less than 50—the amount is to be rounded down to the nearest whole dollar; or
 - (b) otherwise—the amount is to be rounded up to the nearest whole dollar.

Indexation factor

- (4) The *indexation factor* for a financial year is the number calculated, to 3 decimal places, using the formula:

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$$\frac{\text{Index number for last quarter in current March year}}{\text{Index number for last quarter in previous March year}}$$

where:

index number, for a quarter, means the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter published by the Australian Statistician.

current March year means the period of 12 months ending on 31 March immediately before the financial year for which the surcharge threshold is being calculated.

previous March year means the period of 12 months immediately before the current March year.

Rounding up of indexation factor

- (5) If the number calculated under subsection (4) for a financial year would, if it were worked out to 4 decimal places, end with a number greater than 4, the number so calculated is increased by 0.001.

Change in index numbers

- (6) If at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published for the quarter, the publication of the later index number is to be disregarded.

Surcharge threshold to be published

- (7) The Commissioner must publish before, or as soon as practicable after, the start of the 1997-98 financial year, and before the start of each later financial year, the surcharge threshold for the financial year.

Note: For the purposes of this section, ***Australian Statistician*** means the Australian Statistician referred to in subsection 5(2) of the ***Australian Bureau of Statistics Act 1975***.

10 Liability to pay surcharge

Application

- (1) This section identifies the person liable to pay the superannuation contributions surcharge on a member's surchargeable contributions for a financial year.

Contributions held by superannuation provider

- (2) If a superannuation provider is the holder of the contributions when an assessment of the surcharge, directed to the provider, is made, the provider is liable to pay the surcharge.

Superannuation provider ceasing to hold contributions, or starting to pay pension or annuity, before receiving copy of assessment

- (3) However, subsection (2) does not apply to a superannuation provider that ceases to be the holder of the contributions, or begins to pay a pension or annuity based on the contributions, before a copy of the assessment is given to it.

Contributions withdrawn or pension or annuity starts to be paid

- (4) If:
- (a) the contributions have been paid to a person other than a superannuation provider or a pension or annuity based on the contributions has begun to be paid; and
 - (b) no superannuation provider is liable under subsection (2) to pay the surcharge;
- the following paragraphs have effect:
- (c) if the surchargeable contributions were paid, or the pension or annuity began to be paid, to the member—the member is liable to pay the surcharge; or
 - (d) otherwise—the surcharge is not payable.

11 Advance instalment of superannuation contributions surcharge

If superannuation contributions surcharge is payable for a member for a financial year, an advance instalment of one-half of the amount of the surcharge is payable on account of surcharge payable for the member for the following financial year.

Note: In certain circumstances an advance instalment is not payable (see subsections 12(2) and (3)).

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12 Liability to pay advance instalment

Application

- (1) This section identifies the person liable to pay the advance instalment of superannuation contributions surcharge on a member's surchargeable contributions for a financial year and sets out circumstances when no instalment is payable.

Contributions withdrawn or pension or annuity begins to be paid before 15 June in financial year

- (2) If, before 15 June in the financial year, the contributions were paid to a person other than a superannuation provider or a pension or annuity based on the contributions began to be paid, the advance instalment is not payable.

Contributions held on 15 June in financial year by superannuation (unfunded defined benefits) provider

- (3) If, on 15 June in the financial year, a superannuation (unfunded defined benefits) provider is the holder of the contributions, the advance instalment is not payable.

Contributions held on 15 June in financial year by any other superannuation provider

- (4) If, on 15 June in the financial year, a superannuation provider other than a superannuation (unfunded defined benefits) provider is the holder of the contributions, the superannuation provider who was liable to pay the surcharge on the member's surchargeable contributions for the preceding financial year is liable to pay the advance instalment.

Part 3—Assessment and collection of surcharge and advance instalments

13 Superannuation providers to give statements

Application

- (1) This section applies to a member's contributed amounts for a financial year.

Superannuation provider is the holder of contributed amounts at end of financial year

- (2) If, at the end of the financial year, a superannuation provider is the holder of any of the contributed amounts, the provider must give the Commissioner, not later than the notification date for the financial year, a statement setting out:
- (a) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
 - (b) the particulars referred to in subsection (7); and
 - (c) any other matters required by the regulations.

Superannuation provider that pays out contributed amounts to the member

- (3) If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996, any of the contributed amounts were or are paid by a superannuation provider to the member, the provider must, not later than the notification date for the financial year in

which the payment was or is made, give the Commissioner a statement setting out:

- (a) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
- (b) the particulars referred to in subsection (7); and

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(c) the date of the payment.

Statement to be given by superannuation provider to another superannuation provider to which contributed amounts are transferred

- (4) If, after 7.30 pm by legal time in the Australian Capital Territory on 20 August 1996, any of the contributed amounts were or are transferred by a superannuation provider to another superannuation provider, the provider that transferred the amounts must:
- (a) if the amounts were or are transferred in the 1996-97 financial year or the 1997-1998 financial year—give the Commissioner, not later than the notification date for the financial year in which the amounts were or are transferred, a statement setting out:
 - (i) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
 - (ii) the particulars referred to in subsection (7); or
 - (b) if the amounts were or are transferred in a later financial year—give the other provider, within 30 days after the day on which the amounts were or are transferred, a statement setting out the particulars referred to in subsection (7).

Copy of statement to be given to member

- (5) A superannuation provider that gives a statement under this section must, within 12 months after the statement is given, give a copy of the statement to the member.

Offences

- (6) A body corporate that contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 300 penalty units.

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

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 or transferred amounts, as the case may be, and:

- (a) if the statement is given by a superannuation (accumulated benefits) provider:
 - (i) the total of so much of those amounts as are taxable contributions referred to in paragraph 8(2)(c); and
 - (ii) the total of so much of those amounts as are specified roll-over amounts referred to in paragraph 8(2)(e); and
- (b) if the statement is given by a superannuation (defined benefits) provider—the amount, calculated under subsection 8(3), of the member's surchargeable contributions for the financial year.

14 Giving of information in certain form

Notice stating how information to be given

- (1) The Commissioner may, by notice published in the *Gazette*, set out the way in which information to be contained in a statement under section 13 is to be given.

Date of effect of notice

- (2) The notice has effect on and after the day stated in the notice.

Superannuation provider to comply with notice

- (3) If any of the information that a superannuation provider is required to give under section 13 is kept by or on behalf of the provider by a data processing device, the provider must give the information in a way set out in the notice.

Offences

- (4) A body corporate that contravenes subsection (3) is guilty of an offence punishable on conviction by a fine of not more than 300 penalty units.

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

Exemption

- (5) The Commissioner may, by writing, exempt a superannuation provider from subsection (3).

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Burden of proof about exemption

- (6) In a prosecution for an offence against subsection (4), the burden of proving that an exemption is not in force under subsection (5) is on the prosecution.

Disallowable instrument

- (7) An exemption under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

15 Assessment of liability to pay surcharge and determination of advance instalment

Commissioner to assess surcharge

- (1) For each financial year for which there are surchargeable contributions for a member, the Commissioner must:
- (a) calculate the member's adjusted taxable income; and
 - (b) 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) make an assessment, directed to the holder of the surchargeable contributions, of any surcharge payable.

Commissioner to determine advance instalment in certain circumstances

- (2) If superannuation contributions surcharge is assessed for a financial year, the Commissioner must make a determination, directed to the holder of the member's surchargeable contributions for that financial year, of an advance instalment of the surcharge on the member's surchargeable contributions for the next financial year.

When surcharge is payable

- (3) Unless section 16 applies, surcharge assessed under subsection (1) is payable within 1 month after the day on which the assessment is made.

When advance instalment is payable

- (4) An advance instalment determined under subsection (2) of surcharge for a financial year is payable not later than 15 June in that financial year.

Assessment taken not to have been made

- (5) An assessment, directed to a superannuation provider, of surcharge on surchargeable contributions is taken not to have been made if:
- (a) after the assessment was made the provider ceased to be the holder of the contributions or began to pay a pension or annuity based on the contributions; and
 - (b) a copy of the assessment was not given to the provider before it ceased to be the holder of the contributions or began to pay the pension or annuity.

Determination taken not to have been made

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

Information to be included in an assessment

- (7) An assessment of surcharge must set out the amount of surchargeable contributions, the amount of surcharge payable and the day by which the surcharge is payable.

Information to be included in determination

- (8) A determination of advance instalment of surcharge for a financial year must set out the amount of surchargeable contributions for the previous financial year, the amount of advance instalment payable and the day by which the instalment is payable.

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Copy of assessment or determination to be given to person to whom it is directed

- (9) When an assessment (including an amended assessment) or determination is made, the Commissioner must give a copy to the person to whom it is directed.

Notice of assessment to be given to member

- (10) When an assessment (including an amended assessment) is made for a financial year, the Commissioner must give the member a notice explaining the calculations on which the assessment was based, including particulars of the member's adjusted taxable income for the financial year and the surchargeable contributions, and setting out the amount of surcharge.

Notice of determination to be given to member

- (11) When a determination is made for a financial year, the Commissioner must give the member a notice explaining the calculations on which the determination was based and setting out the amount of the instalment.

Nil assessment

- (12) If the Commissioner calculates that no surcharge is payable on a member's surchargeable contributions for a financial year, the calculation is taken, for the purposes of this Act other than subsections (9) and (10), to be an assessment on which a nil amount of surcharge was due and payable.

16 Deferment of liability for surcharge payable by superannuation (unfunded defined benefits) providers

Deferment of liability for surcharge

- (1) This section makes provision for the deferment of the liability of a superannuation (unfunded defined benefits) provider to pay

surcharge on the surchargeable contributions of a member of the relevant unfunded defined benefits superannuation scheme, and for interest to accrue on the deferred amount.

Accounts to be kept

- (2) The provider must keep a surcharge debt account for each member.

Account to be debited for surcharge

- (3) The provider must debit the account for surcharge assessed to be payable on the member's surchargeable contributions.

Interest to be debited

- (4) If the member's account is in debit at the end of a financial year, the provider must debit the account for interest on the amount by which the account is in debit, calculated at the Treasury bond rate for the last day of the financial year for bonds with a 10 year term.

Rate of interest

- (5) The **Treasury bond rate** for the last day of a financial year for bonds with a 10 year term is:
- (a) if any Treasury bonds with that term were issued on that day—the annual yield on those bonds; or
 - (b) otherwise—the annual yield on Treasury bonds with that term, as published by the Reserve Bank of Australia for that day.

Payment to be made when benefit becomes payable

- (6) When a lump sum, or a pension or annuity, becomes payable by a superannuation provider for the benefit of a member whose account is in debit, the provider must pay to the Commissioner the amount by which the account is in debit. The payment discharges the provider's liability for the surcharge.

Surcharge debt may be reduced

- (7) The member may make payments to the provider for the purpose of reducing the deferred amount in the surcharge debt account.
- (8) If a member makes a payment under subsection (7), the provider must:
- (a) credit the payment to the surcharge debt account; and
 - (b) acknowledge receipt of the payment to the member; and
 - (c) advise the member of the revised balance of the surcharge debt account.
- (9) A payment received by the provider under subsection (7) must be forwarded to the Commissioner within one month of receipt.

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Offences

- (10) A body corporate that contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 300 penalty units.

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

17 Credit or refund of advance instalment

Application

- (1) This section applies to an advance instalment, paid by a superannuation provider, of surcharge on a member's surchargeable contributions for a financial year.

Advance instalment to reduce surcharge

- (2) If surcharge is assessed on the contributions, the Commissioner is to apply the advance instalment to reduce the surcharge payable. If the instalment exceeds the surcharge, the excess is to be paid to the holder of the contributions.

Repayment of advance instalment if no surcharge

- (3) If no surcharge is assessed on the contributions, the advance instalment is to be paid to the holder of the contributions.

18 Amendment of assessment if tax file number quoted or found out after assessment

Application

- (1) This section applies if:
- (a) an assessment, directed to a superannuation provider, of surcharge on a member's contributions for a financial year has been made; and
 - (b) the provider has paid the assessed amount; and
 - (c) the member did not, before the assessment was made, quote his or her tax file number to the 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
 - (d) the assessed amount was more than it would have been if the member had quoted the tax file number to the provider; and
 - (e) after the assessment was made:

- (i) the member quoted the tax file number to the provider in connection with the operation or the possible future operation of this Act and the provider informed the Commissioner of the tax file number; or
- (ii) the Commissioner found out the tax file number.

Amendment of assessment

- (2) The Commissioner must amend the assessment to reduce the amount of surcharge to the amount that would have been payable if the Commissioner had known the tax file number when the assessment was made.

19 Amendment of assessments

Application

- (1) This section applies if:
 - (a) after the making of an assessment of surcharge on a member's surchargeable contributions for a financial year:
 - (i) the member's adjusted taxable income for the financial year is increased or reduced and the increase or reduction affects a person's liability to pay the surcharge; or
 - (ii) the amount of the contributions is greater or less than the amount that was taken to be the amount of the contributions for the purposes of the assessment; or
 - (iii) the Commissioner is required or permitted under any other provision of this Act to amend the assessment; and
 - (b) the person to whom the assessment was directed is still the holder of the surchargeable contributions.

Additional application

- (2) This section also applies if:
 - (a) under an assessment of surcharge on a member's surchargeable contributions for a financial year, the rate of surcharge that applies to the member on particular surchargeable contributions for the financial year was assessed to be nil because paragraph 5(3)(e) of the *Superannuation Contributions Tax Imposition Act 1997* applied to the member; and

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- (b) the rate of surcharge that applies to the member on these contributions for that financial year is afterwards determined to be greater than nil; and
- (c) the person to whom the nil assessment was directed is still the holder of the contributions.

Commissioner may amend assessment

- (3) The Commissioner may amend the assessment to take account of any matter referred to in subparagraph (1)(a)(i), (ii) or (iii) or paragraph (2)(c).

Amendment increasing surcharge

- (4) If, as a result of the amendment of the assessment, the amount of surcharge is increased, then, subject to section 16, the amount of the increase is payable within 1 month after the day on which the assessment is amended.

Amendment reducing surcharge

- (5) If:
 - (a) as a result of the amendment of the assessment, the amount of surcharge is reduced; and
 - (b) the amount previously assessed to be paid has been paid;the amount by which the surcharge is reduced is to be paid to the holder of the surchargeable contributions.

20 Assessment of liability to additional surcharge

Application

- (1) This section applies if:
 - (a) after the making of an assessment of surcharge (the *previous assessment*) on a member's surchargeable contributions for a financial year:
 - (i) the member's adjusted taxable income for the financial year is increased or reduced and the increase or reduction affects a person's liability to pay the surcharge; or
 - (ii) the amount of the contributions is greater or less than the amount that was taken to be the amount of the contributions for the purposes of the previous assessment; and

- (b) the person to whom the previous assessment was directed is no longer the holder of the contributions.

Additional application

- (2) This section also applies if:
- (a) under an assessment of surcharge (the *previous assessment*) on a member's surchargeable contributions for a financial year, the rate of surcharge that applies to the member on particular surchargeable contributions for that financial year was assessed to be nil because paragraph 5(3)(e) of the *Superannuation Contributions Tax Imposition Act 1997* applied to the member; and
 - (b) the rate of surcharge that applies to the member on those contributions for that financial year is afterwards determined to be greater than nil; and
 - (c) the person to whom the previous assessment was directed is no longer the holder of the surchargeable contributions.

Further assessment

- (3) The Commissioner must comply with subsection 15(1) in respect of the member for the financial year as if the action previously taken by the Commissioner under that subsection had not been taken. However, nothing in this section affects the action previously taken.

Increase in surcharge

- (4) If, under an assessment (the *new assessment*) made because of subsection (3), the amount of surcharge payable exceeds the amount payable under the previous assessment, only the amount of the excess is to be assessed as payable under the new assessment.

No change in surcharge

- (5) If, under an assessment (the *new assessment*) made because of subsection (3), the amount of surcharge payable is equal to the amount payable under the previous assessment, no amount of surcharge is to be assessed as payable under the new assessment.

Reduction in surcharge

- (6) If, under an assessment (the *new assessment*) made because of subsection (3), the amount of surcharge payable is less than the amount payable under the previous assessment:

Section 21

- (a) no amount of surcharge is to be assessed as payable under the new assessment; and
- (b) the difference is to be paid to the holder of the surchargeable contributions.

21 Payment of interest to Commonwealth if liability increased by an amendment of an assessment

Liability to pay interest

- (1) If an amendment of an assessment increasing a person's liability to pay surcharge is made, the person must pay interest to the Commonwealth, calculated in accordance with subsection (2), on the amount of the increase.

Calculation of interest

- (2) Interest payable by a person under subsection (1) as a result of an amended assessment (the *current amended assessment*) of surcharge on a member's surchargeable contributions for a financial year is to be calculated:
 - (a) for the period:
 - (i) starting on 15 June in the financial year; and
 - (ii) ending on the day on which the current amended assessment is made; and
 - (b) at such annual rate or rates of interest as are provided for by section 214A of the Income Tax Assessment Act.

Amendment of nil assessment

- (3) If:
 - (a) the Commissioner has calculated that no surcharge is payable by a person on a member's surchargeable contributions for a financial year; and
 - (b) the Commissioner afterwards makes an assessment of surcharge payable by the person on those contributions for the financial year;the assessment referred to in paragraph (b) is taken to be an amended assessment.

Interest less than 50 cents

- (4) If the amount of interest that would be payable under subsection (1) by a person on a member's surchargeable contributions is less than 50 cents, the interest is not payable.

Notice of interest to be given

- (5) If a person is liable to pay interest under this section, the Commissioner must notify the person of:
- (a) the period for which the person is liable to pay the interest; and
 - (b) the amount of the interest; and
 - (c) a date (not earlier than 30 days after the day on which the notification was given) as the due date for payment of the interest;
- and the amount is due and payable on that date.

Commissioner may remit interest

- (6) The Commissioner may remit the whole or part of any interest payable by a person under this section.

Note: A refusal to remit interest is reviewable by the Administrative Appeals Tribunal (see section 29).

22 Payment of interest to Commonwealth if surcharge payable under a further assessment

Liability to pay interest

- (1) If, under an assessment (the *new assessment*) made under subsection 15(1) because of subsection 20(3), a person is liable to pay an amount of surcharge for a financial year, the person must pay interest to the Commonwealth, calculated in accordance with subsection (2), on that amount.

Calculation of interest

- (2) Interest payable by a person under subsection (1) is to be calculated:
- (a) for the period:
 - (i) starting on 15 June in the financial year; and
 - (ii) ending on the day on which the new assessment is made; and
 - (b) at such annual rate or rates of interest as are provided for by section 214A of the Income Tax Assessment Act.

Section 23

Interest less than 50 cents

- (3) If the amount of interest that would be payable under subsection (1) by a person on a member's surchargeable contributions is less than 50 cents, the interest is not payable.

Notice of interest to be given

- (4) If a person is liable to pay interest under this section, the Commissioner must notify the person of:
- (a) the period for which the person is liable to pay the interest; and
 - (b) the amount of the interest; and
 - (c) a date (not earlier than 30 days after the day on which the notification is given) as the due date for payment of the interest;
- and the amount is due and payable on that date.

Commissioner may remit interest

- (5) The Commissioner may remit the whole or part of any interest payable by a person under this section.

Note: A refusal to remit interest is reviewable by the Administrative Appeals Tribunal (see section 29).

23 Tax file numbers

Commissioner may use any tax file numbers for purposes of this Act

- (1) The Commissioner may use for the purposes of this Act a tax file number that has been provided for any other purpose under a law relating to taxation or superannuation.

Commissioner may seek member's authority to give tax file number to superannuation provider

- (2) If:
- (a) the Commissioner knows a member's tax file number; and
 - (b) the Commissioner:
 - (i) has amended, or proposes to amend, an assessment of surcharge payable on the member's surchargeable contributions for a financial year; or

- (ii) has made, or proposes to make, an assessment, under section 15 as it applies because of section 20, of surcharge payable on the member's surchargeable contributions for a financial year;

the Commissioner may:

- (c) request the member to authorise the Commissioner to inform the superannuation provider who is the holder of the contributions of the member's tax file number; and
- (d) if the member so authorises the Commissioner, inform the provider accordingly.

24 Objections against assessments

If:

- (a) an assessment of surcharge on a member's surchargeable contributions is made; and
- (b) the member is dissatisfied with the assessment in so far as it is based on the calculation of the member's adjusted taxable income;

the member may object against it in respect of that calculation in the way set out in Part IVC of the *Taxation Administration Act 1953*.

Note: If a member is dissatisfied with an assessment in so far as it relates to the calculation of the member's surchargeable contributions, as based on an amount or amounts set out in a statement given to the Commissioner by a superannuation provider under section 13, the member may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* about the unfairness or unreasonableness of the superannuation provider's decision to set out the amount or any of the amounts in the statement.

Section 25

Part 4—Recovery of unpaid surcharge, advance instalment, interest or late payment penalty

25 Penalty for non-payment of surcharge or advance instalment

Monthly penalty for non-payment

- (1) If an amount of surcharge or advance instalment payable by a person remains unpaid throughout the whole or part of:
- (a) the calendar month starting on the day after the day on which the amount became due and payable; or
 - (b) any following calendar month;

the person must pay to the Commonwealth, for that calendar month, a penalty worked out under subsection (2). However, this subsection does not apply if the amount was fully paid before the 15th day of the calendar month referred to in paragraph (a).

Note: *Calendar month* is defined by section 22 of the *Acts Interpretation Act 1901*.

Calculation of penalty

- (2) The penalty for a calendar month is the amount worked out using the following formula and rounded up to the nearest whole dollar:

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

where:

unpaid amount means the surcharge or advance instalment unpaid at the start of the calendar month.

When penalty is payable

- (3) Late payment penalty for a calendar month is due and payable at the end of that month.

Commissioner may remit penalty

- (4) The Commissioner may remit the whole or part of an amount of late payment penalty.

Note: A refusal to remit late payment penalty is reviewable by the Administrative Appeals Tribunal (see section 29).

26 Recovery of unpaid amounts

The following may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) surcharge that is due and payable;
- (b) advance instalment that is due and payable;
- (c) interest that is due and payable;
- (d) late payment penalty that is due and payable.

27 Payment of surcharge, advance instalment, interest or late payment penalty

Surcharge, advance instalment, interest and late payment penalty are payable to the Commissioner.

28 Application of payments

If:

- (a) 2 or more debts are due to the Commonwealth under this Part; and
 - (b) an amount is paid to the Commissioner on account of one or more of the debts; and
 - (c) the total amount of the debts exceeds the amount paid;
- the following provisions have effect:
- (d) the Commissioner may apply the amount paid in partial discharge of the total amount of the debts; and
 - (e) the Commonwealth may recover the balance.

29 Review of decision not to remit interest or late payment penalty

Application of section

- (1) This section applies if the Commissioner decides not to remit the whole or part of any interest or late payment penalty.

Section 29

Request to reconsider decision

- (2) The person liable to pay the interest or penalty may, within 21 days after the day on which the person receives notice of the decision, or within any further period that the Commissioner allows, request the Commissioner to reconsider the decision.

Reasons for request to be stated

- (3) The request is to set out the reasons for making it.

Commissioner to reconsider decision

- (4) On receipt of the request, the Commissioner must reconsider the decision and may confirm or revoke the decision or vary the decision in any way.

Reconsideration not completed within 21 days

- (5) If the Commissioner does not confirm, revoke or vary the decision within 21 days after the day on which the Commissioner received the request, the Commissioner is taken, at the end of that period, to have confirmed the decision.

Notice of reconsideration

- (6) If the Commissioner confirms, revokes or varies a decision within the period referred to in subsection (5), the Commissioner must tell the person the result of the reconsideration and the reasons for confirming, varying or revoking the decision, as the case may be.

Application for review of decision

- (7) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner that have been confirmed or varied.

Manner of applying for review

- (8) If a decision is taken, because of subsection (5), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision was the period starting on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.

Operation of decision that is subject to review

- (9) If a request is made under subsection (2) for the reconsideration of a decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of the decision.

Hearing of review to be in private

- (10) The hearing of a proceeding before the Administrative Appeals Tribunal that relates to a decision referred to in subsection (7) is to take place in private and the Tribunal may, by order:
- (a) give directions as to the persons who may be present; and
 - (b) give directions of a kind referred to in paragraph 35(2)(b) or (c) of the *Administrative Appeals Tribunal Act 1975*.

Part 5—Administration

30 General administration of Act

The Commissioner has the general administration of this Act.

31 Annual report

After the end of each financial year, the Commissioner must give the Treasurer a report on the working of this Act during the year for presentation to the Parliament.

32 Secrecy

Definitions

(1) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

person to whom this section applies means a person who is or has been:

- (a) the Commissioner, a Second Commissioner or a Deputy Commissioner; or
- (b) an officer or employee of the branch of the Australian Public Service under the direct control of the Commissioner; or
- (c) otherwise appointed or employed by, or a provider of services for, the Commonwealth.

produce includes permit access to.

protected document means a document that:

- (a) contains information about a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

protected information means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

Information may be recorded or divulged only for purposes of Act

- (2) A person to whom this section applies must not:
- (a) make a record of any protected information; or
 - (b) whether directly or indirectly, divulge or communicate to a person any protected information about another person; unless the record is made, or the information is divulged or communicated:
 - (c) under or for the purposes of this Act; or
 - (d) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 2 years.

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

Information may be divulged to persons performing duties under Acts administered by Commissioner

- (3) Subsection (2) does not prohibit the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any protected information to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties.

Divulging of information to Minister

- (4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to a Minister.

Court may not require information or documents

- (5) A person to whom this section applies is not required:
- (a) to divulge or communicate protected information to a court; or
 - (b) to produce a protected document in court;
- except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

Section 32

Information may be divulged to persons performing duties under this Act

- (6) Nothing in this or any other Act of which the Commissioner has the general administration prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

Information may be divulged to court for purposes of this Act

- (7) Nothing in this or any other Act of which the Commissioner has the general administration prohibits the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:
- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
 - (b) producing in court a document obtained or made under or for the purposes of such an Act;
- where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

Information may be divulged to Insurance and Superannuation Commissioner

- (8) Nothing in this section prohibits the Commissioner, a Second Commissioner or a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any protected information to the Insurance and Superannuation Commissioner, for the purpose of the administration of the *Superannuation Industry (Supervision) Act 1993*.

Oath or declaration of secrecy

- (9) A person to whom this section applies must, if and when required by the Commissioner, a Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form determined by the Commissioner in writing, to maintain secrecy in accordance with this section.

Part 6—Miscellaneous

33 No amount payable by Commonwealth under this Act

Nothing in this Act makes the Commonwealth liable to pay any amount.

34 Act not to operate so as to contravene Constitution

This Act does not apply in any circumstance where its application would or might result in a contravention of the Constitution.

35 Information to be given to Commissioner by superannuation provider when paying surcharge or advance instalment

When a superannuation provider makes a payment to the Commissioner of surcharge or advance instalment on a member's surchargeable contributions for a financial year, the provider must give the Commissioner a statement setting out:

- (a) the member's name, the address of the member's place of residence or place of business or employment, the date of the member's birth and, if given to the provider in connection with the operation or the possible future operation of this Act, the member's tax file number; and
- (b) in respect of a payment of surcharge—the amount of the surchargeable contributions on which the surcharge is paid; and
- (c) in respect of a payment of advance instalment—the amount of the surchargeable contributions for the previous financial year on which the instalment was calculated.

36 Authorised officers

The Commissioner may, by writing, authorise a person who is an officer or employee within the meaning of the *Public Service Act 1922* to be an authorised officer for the purposes of a provision or provisions of this Act.

37 Evidence

Assessment or determination to be evidence of correctness of calculations

- (1) The mere production of:
 - (a) an assessment or determination; or
 - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of an assessment or determination;is conclusive evidence of the due making of the assessment or determination and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment or determination are correct.

Copies of documents

- (2) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is prima facie evidence that the second-mentioned document was so issued or given.

Copies of, or extracts from, assessments or determinations

- (3) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, an assessment or determination is evidence of the matter set out in the document to the same extent as the original assessment or determination, as the case may be, would be if it were produced.

Certificates

- (4) A certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that an amount stated in the certificate was, on the day of the certificate, payable by a person as an amount of surcharge, advance instalment, interest or late payment penalty, is prima facie evidence of the matters stated in the certificate.

38 Access to premises etc.

Powers of authorised officers

- (1) For the purposes of this Act, an authorised officer:

- (a) may, at any reasonable time, enter and remain on any land or premises; and
- (b) is entitled to full and free access at any reasonable time to all documents; and
- (c) may inspect, examine, make copies of, or take extracts from, any documents.

Proof of authority to be produced

- (2) An authorised officer is not entitled to enter or remain on any land or premises if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce a written authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

Occupier to help authorised officer

- (3) The occupier of land or premises entered or proposed to be entered by an authorised officer under subsection (1) must, for the purpose of enabling the effective exercise of the officer's powers under this section, provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing.

Penalty: 10 penalty units.

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

39 Obtaining information and evidence

Power of Commissioner to obtain information or documents

- (1) The Commissioner may, for the purposes of this Act, by written notice, require a person:
 - (a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, stated in the notice, any information that the Commissioner requires; and
 - (b) to attend before the Commissioner, or an authorised officer, at a reasonable time and place stated in the notice, and answer questions; and
 - (c) to produce to the Commissioner, at a reasonable time and place stated in the notice, any documents in the custody or under the control of the person.

Section 40

Power to require information on oath or affirmation

- (2) The Commissioner may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner or an authorised officer may administer an oath or affirmation.

Nature of oath or affirmation

- (3) The oath to be taken or affirmation to be made by a person is an oath or affirmation that the information or answers the person will give will be true.

Expenses of attendance

- (4) The regulations are to prescribe scales of expenses to be allowed to persons required to attend under this section.

40 Records to be kept and retained by superannuation provider

Superannuation provider to keep records

- (1) A superannuation provider must keep records that record and explain all transactions and other acts engaged in by the provider, or required to be engaged in by the provider, under this Act.

How records to be kept

- (2) The records must be kept:
 - (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) so that the provider's liability under this Act can be readily worked out.

Period for retention of records

- (3) A superannuation provider who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after they were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later.

When records need not be kept

- (4) This section does not require a superannuation provider to retain records if:
- (a) the Commissioner has notified the provider that the retention of the records is not required; or
 - (b) the provider is a company that has gone into liquidation and been finally dissolved.

Offences

- (5) A body corporate that contravenes this section is guilty of an offence punishable on conviction by a fine of not more than 300 penalty units.

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

41 Application of the Criminal Code

Chapter 2 of the Criminal Code applies to all offences against this Act.

42 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 7—Interpretation

43 Definitions

In this Act, unless the contrary intention applies:

adjusted taxable income of a member for a financial year means the sum of:

- (a) the member's taxable income of the year of income comprising the financial year less any amounts included in the member's assessable income of that year of income:
 - (i) that were eligible termination payments for the purposes of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act (other than amounts that were such payments because of paragraph (a) of the definition of *eligible termination payment* in subsection 27A(1) of that Act);
 - (ii) that were so included under section 26AC or under subsection 26AD(2), (3) or (4) of the Income Tax Assessment Act in respect of a *bona fide* redundancy amount, an early retirement scheme amount or an invalidity amount as defined in section 159S of that Act; and
- (b) the member's surchargeable contributions for the financial year.

advance instalment has the meaning given by section 11.

approved deposit fund has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

annuity has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993* and includes a deferred annuity as defined in subsection 27A(1) of the Income Tax Assessment Act.

assessment means an assessment of surcharge.

authorised officer means an officer or employee within the meaning of the *Public Service Act 1922* who has been authorised in writing by the Commissioner for the purposes of the provision in which the expression occurs.

Commissioner means the Commissioner of Taxation.

complying approved deposit fund has the meaning given by section 47 of the *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund has the meaning given by section 45 of the *Superannuation Industry (Supervision) Act 1993*.

contributed amounts has the meaning given by paragraph 8(2)(a).

defined benefits superannuation scheme means:

- (a) a public sector superannuation scheme that:
 - (i) is a regulated superannuation fund or an exempt public sector superannuation scheme; and
 - (ii) has at least 1 defined benefit member; or
- (b) a regulated superannuation fund (other than a public sector superannuation scheme):
 - (i) that has at least 1 defined benefit member; and
 - (ii) some or all of the contributions to which are not allocated to any individual member but are paid into and accumulated in a fund in the form of an aggregate amount.

defined benefit member means a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
 - (i) the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement or an earlier date; or
 - (ii) the member's salary averaged over a period before retirement; ♡
- (b) a stated amount.

Deputy Commissioner means the Deputy Commissioner of Taxation.

determination means a determination of advance instalment.

eligible actuary means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

eligible termination payment has the same meaning as in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

Section 43

exempt public sector superannuation scheme has the same meaning as in section 10 of the *Superannuation Industry (Supervision) Act 1993*.

funded defined benefits superannuation scheme means a defined benefits superannuation scheme that is not an unfunded defined benefits superannuation scheme.

holder of surchargeable contributions of a member means:

- (a) if the member is a member of an unfunded defined benefits superannuation scheme and there are no contributed amounts paid for or by the member—the relevant superannuation provider; or
- (b) if there are any contributed amounts paid for or by the member that are held by a superannuation provider—that superannuation provider; or
- (c) if there are any contributed amounts paid for or by the member:
 - (i) that have been paid to a person other than a superannuation provider; or
 - (ii) in respect of which a pension or annuity has begun to be paid;

the person to whom the amounts were paid or the pension or annuity has begun to be paid, as the case may be.

Income Tax Assessment Act means the *Income Tax Assessment Act 1936*.

interest means interest payable under section 21 or 22.

late payment penalty means penalty payable under section 25.

life assurance company has the same meaning as in Division 8 of Part III of the *Income Tax Assessment Act*.

member means a member of a superannuation fund or of an approved deposit fund and includes:

- (a) the holder of an RSA; and
- (b) the purchaser of an annuity from a life assurance company or from a registered organisation.

notification date means:

- (a) for the 1996-97 financial year—15 December 1997; or
- (b) for a later financial year—31 October following the financial year.

notional surchargeable contributions factor, for amounts paid to a superannuation (defined benefits) provider during a financial year, means the factor applying to the member for that year as certified by an eligible actuary according to Australian actuarial practice.

public sector superannuation scheme means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of the Commonwealth, a law of a State or a law of a Territory; or
- (b) under the authority of:
 - (i) the Commonwealth or the government of a State or Territory; or
 - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth, a law of a State or a law of a Territory.

registered organisation has the same meaning as in Division 8A of Part III of the Income Tax Assessment Act.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Second Commissioner means the Second Commissioner of Taxation.

specified roll-over amount means an amount that is a specified roll-over amount for the purposes of Division 8 or 8A of Part III, or for the purposes of Part IX, of the Income Tax Assessment Act.

superannuation (accumulated benefits) provider means a superannuation provider that is not a superannuation (defined benefits) provider.

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

superannuation (defined benefits) provider means a superannuation (funded defined benefits) provider or a superannuation (unfunded defined benefits) provider.

Section 43

superannuation fund means:

- (a) a fund that:
 - (i) is an indefinitely continuing fund; and
 - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme.

superannuation (funded defined benefits) provider means a superannuation provider that is the trustee of a superannuation fund established for the purposes of a funded defined benefits superannuation scheme.

superannuation provider means:

- (a) the trustee of a superannuation fund or of an approved deposit fund; or
- (b) an RSA provider; or
- (c) a life assurance company; or
- (d) a registered organisation.

superannuation (unfunded defined benefits) provider means a superannuation provider that is the trustee of a superannuation fund established for the purposes of a superannuation scheme that is an unfunded defined benefits superannuation scheme.

surcharge (wherever occurring) means a tax.

surcharge threshold has the meaning given by section 9.

surchargeable contributions has the meaning given by section 8.

taxable income of a member for a year of income means the member's taxable income of that year of income as assessed under the Income Tax Assessment Act.

the 1996-97 financial year means the financial year starting on 1 July 1996.

the 1997-98 financial year means the financial year starting on 1 July 1997.

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

trustee, in relation to a superannuation fund, means:

- (a) if there is a trustee (within the ordinary meaning of that expression) of the fund—the trustee; or
- (b) otherwise—the person who manages the fund.

unfunded defined benefits superannuation scheme means a defined benefits superannuation scheme under which all or some of the amounts that will be required for the payment of benefits are not paid into the fund established for the purposes of the scheme until the members become entitled to receive the benefits.

year of income means a year of income for the purposes of the Income Tax Assessment Act as that Act applies to individuals.

[*Minister's second reading speech made in—
House of Representatives on 13 February 1997
Senate on 25 March 1997*]