

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

*(As read a first time)*

**SUPERANNUATION GUARANTEE (ADMINISTRATION) BILL  
1992**

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 2 April 1992

(*Treasurer*)

**A BILL**

FOR

**An Act relating to the establishment and administration of  
the Superannuation Guarantee Scheme, and for related  
purposes**

The Parliament of Australia enacts:

**PART 1—PRELIMINARY**

**Short title**

- 5 1. This Act may be cited as the *Superannuation Guarantee  
(Administration) Act 1992*.

**Commencement**

2. This Act commences on 1 July 1992.

TMR

**Act binds Crown etc.**

3.(1) This Act binds the Crown in right of the Commonwealth, each State, the Australian Capital Territory and the Northern Territory.

(2) Nothing in this Act permits the Crown to be prosecuted for an offence. 5

**Extension to Territories**

4. This Act:

(a) extends to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island; and

(b) has effect as if those Territories were part of Australia. 10

**Application of Act to Commonwealth**

5.(1) Neither the Commonwealth nor a tax-exempt Commonwealth authority is liable to pay superannuation guarantee charge.

(2) This Act applies in all other respects as if the Commonwealth and tax-exempt Commonwealth authorities were liable to pay superannuation guarantee charge. 15

(3) Part 8 has effect as if any superannuation guarantee charge in respect of a superannuation guarantee shortfall of the Commonwealth or a tax-exempt Commonwealth authority had been paid on 14 August in the year following the year to which the charge relates. 20

(4) Subsection 14ZX(4), section 14ZZ and Divisions 4 and 5 of Part IVC of the *Taxation Administration Act 1953* do not apply to:

(a) the Commonwealth; or

(b) a tax-exempt Commonwealth authority.

(5) A tax-exempt Commonwealth authority is an authority or body that: 25

(a) is established by or under a law of the Commonwealth; and

(b) is not liable to any taxation under a law of the Commonwealth.

**PART 2—EXPLANATION OF TERMS USED IN THE ACT**

**Interpretation: general** 30

6.(1) In this Act, unless the contrary intention appears:

“actuary” means a Fellow or Accredited Member of The Institute of Actuaries of Australia;

“administration component”, in relation to an employer and a year, means the amount worked out according to section 29; 35

“annual national payroll”, in relation to an employer and a year, means the aggregate of the salary or wages paid by the employer during the year:

(a) in Australia; and

(b) outside Australia in relation to services performed or rendered wholly in Australia;

**“arrangement”**, for the purposes of section 27, means:

- 5 (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) any scheme, plan, proposal, action, course of action or course of conduct;

10 **“assessment”** means:

- (a) the ascertainment of an employer’s superannuation guarantee shortfall in a year and of the superannuation guarantee charge payable on the shortfall; or
- 15 (b) the ascertainment of additional superannuation guarantee charge payable under Part 7;

**“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 appears;

20 **“base year”**, in relation to an employer, has the meaning given by subsections 20(2) and 21(2);

**“Commissioner”** means the Commissioner of Taxation;

**“complying superannuation fund”** has the meaning given by section 7;

25 **“complying superannuation scheme”** has the meaning given by section 7;

**“contribution period”** means:

- (a) the 1992-93 year; or
- (b) a month commencing on or after 1 July 1993;

30 **“data processing device”** means any article or material from which information is capable of being reproduced with or without the aid of any other article or device;

**“defined benefit superannuation scheme”** means a superannuation scheme under which:

- 35 (a) in all cases—one or more members of the scheme are entitled, on retirement, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:
- (i) the amount of the member’s annual salary:
- (A) at the date of the member’s retirement; or
- (B) at a date before retirement; or
- 40 (C) averaged over a period of employment before retirement;
- (ii) a specified amount; and
- (b) if the scheme is not a public sector scheme—some or all of the contributions under the scheme (out of which, together with

earnings on those contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount;

**“Deputy Commissioner”** means a Deputy Commissioner of Taxation; 5

**“government body”** means:

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

(b) a Commonwealth, State or Territory authority;

**“indexation factor”**, in relation to a year, has the meaning given by section 9; 10

**“individual superannuation guarantee shortfall”**, has the meaning given by sections 18 and 19;

**“industrial award”** means:

(a) an industrial award or determination made under a law of the Commonwealth, a State or a Territory; or 15

(b) an industrial agreement approved or registered under such a law;

**“liability to the Commonwealth”** means a liability to the Commonwealth arising under an Act of which the Commissioner has the general administration; 20

**“lodge”** means lodge with the Commissioner;

**“month”** means the period of a calendar month beginning on the first day of any of the 12 months of the year;

**“nominal interest component”**, in relation to an employer and a year, has the meaning given by section 28; 25

**“occupational superannuation arrangement”**, in relation to the employment of a person, means an agreement that imposes an obligation on the person’s employer to contribute to a superannuation fund for the benefit of the person;

**“offence against this Act”** includes an offence relating to this Act against: 30

(a) the *Crimes Act 1914*; or

(b) the *Taxation Administration Act 1953*;

**“ordinary time earnings”**, in relation to an employee, means the total of: 35

(a) earnings in respect of ordinary hours of work; and

(b) earnings consisting of over-award payments, shift-loading or commission;

**“part-time employee”** means a person who is employed to work not more than 30 hours per week; 40

**“proceeding under this Act”** includes:

(a) a proceeding for an offence against this Act; or

(b) a proceeding under the *Taxation Administration Act 1953* relating to this Act;



**“public sector scheme”** means a superannuation scheme established:

(a) by or under a law of the Commonwealth or of a State or Territory; or

(b) under the authority of:

5 (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 or of a State or Territory;

10 **“resident of Australia”** has the meaning given by section 8;

**“Second Commissioner”** means a Second Commissioner of Taxation;

**“superannuation fund”** means a superannuation fund within the meaning of subsection 3(1) of the *Occupational Superannuation Standards Act 1987*;

15 **“superannuation guarantee charge”** means charge imposed by the *Superannuation Guarantee Charge Act 1992*;

**“superannuation guarantee shortfall”** has the meaning given by section 17;

20 **“superannuation guarantee statement”** means a superannuation guarantee statement under section 30;

**“superannuation scheme”** means:

(a) the scheme embodied in the governing rules of a superannuation fund; or

(b) a defined benefit superannuation scheme;

25 **“taxation officer”** means a person exercising powers, or performing functions, under this Act;

**“trustee”**, in relation to a superannuation scheme, means:

(a) if:

30 (i) the scheme is embodied in the governing rules of a fund; and

(ii) there is a trustee of the fund; the trustee of the fund; or

(b) in any other case—the person who manages the scheme;

35 **“trustee”**, except in relation to a superannuation fund or superannuation scheme, includes:

(a) a person appointed or constituted trustee by:

(i) act of parties; or

(ii) order or declaration of a court; or

(iii) operation of law; and

40 (b) an executor, administrator or other personal representative of a deceased person; and

(c) a guardian or committee; and

(d) a receiver or receiver and manager; and

- (e) an official manager or liquidator of a company; and
- (f) a person:

- (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust; or
- (ii) acting in any fiduciary capacity; or
- (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability;

5

“year” means financial year.

10

(2) For the purposes of this Act, a reference to a contribution made by an employer for the benefit of an employee includes a reference to a contribution made on behalf of the employer.

**Interpretation: complying superannuation fund or scheme**

7. A superannuation fund or scheme is a complying superannuation fund or scheme (as the case may be) in relation to a period for the purposes of this Act if it is a complying superannuation fund in relation to that period for the purposes of Part IX of the *Income Tax Assessment Act 1936*.

15

**Interpretation: resident of Australia**

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8. A person is a resident of Australia for the purposes of this Act at any time when the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Interpretation: indexation factor**

9.(1) The indexation factor for a year is whichever is the greater of the following:

25

- (a) 1;
- (b) the number calculated (to 3 decimal places) by dividing the AWOTE amount for the March quarter in the preceding year by the AWOTE amount for the March quarter in the year preceding that year.

30

(2) The AWOTE amount for a quarter is the estimate of the full-time adult average weekly ordinary time earnings for persons in Australia for the middle month of the quarter published by the Australian Statistician in relation to the month.

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(3) If the Australian Statistician publishes an estimate of full-time adult average weekly ordinary time earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.

40

(4) If the number calculated for the purposes of paragraph (1)(b) in relation to a year would, if calculated to 4 decimal places, end with a

numeral higher than 4, the number is to be taken to be the number calculated to 3 decimal places and increased by 0.001.

**Interpretation: benefit certificate**

5 **10.(1)** A benefit certificate is a certificate by an actuary relating to one or more specified defined benefit superannuation schemes and specifying the rate, expressed as a percentage, that is, in the opinion of the actuary, the notional employer contribution rate, in relation to a specified class of employees (being members of the scheme or schemes, as the case may be), of an employer who is a contributor under the  
10 scheme or schemes (as the case may be) for the benefit of an employee in that class.

(2) The notional employer contribution rate, in relation to a class of employees, is the rate of contribution that would be required in the case of a comparable defined contribution superannuation fund to produce a benefit approximately equivalent to the minimum employer-funded benefit accruing from 1 July 1992 to an employee in the class under the defined benefit superannuation scheme or schemes (as the case may be).  
15

(3) The regulations may make provision regarding:  
20 (a) the issue and form of benefit certificates; and  
(b) the way in which the notional employer contribution rate of an employer is to be calculated under subsection (2), including provision as to what constitutes a comparable defined contribution superannuation fund in relation to a defined benefit superannuation scheme or schemes.  
25

(4) A benefit certificate has effect from when it is issued until:  
30 (a) a superannuation scheme to which it relates is amended in a way that affects, or may affect, the level or method of calculation of benefits provided under the scheme for the class of employees specified in the certificate; or  
(b) another benefit certificate is issued in relation to the same class of employees and the same scheme or schemes; or  
(c) a period of 5 years expires;  
whichever occurs first.

35 **Interpretation: salary or wages**

**11.(1)** In this Act, "salary or wages" includes:  
40 (a) commission; and  
(b) payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate; and  
(c) remuneration of a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory; and

(d) payments to a person for work referred to in subsection 12(8);  
and

(e) payments to a person referred to in subsection 12(9) or (10).

(2) Remuneration under a contract for the employment of a person, for not more than 30 hours per week, in work that is wholly or principally of a domestic or private nature is not to be taken into account as salary or wages for the purposes of this Act. 5

(3) Fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986* are not salary or wages for the purposes of this Act. 10

**Interpretation: employee, employer**

12.(1) Subject to this section, in this Act, "employee" and "employer" have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (10):

(a) expand the meaning of those terms; and 15

(b) make particular provision to avoid doubt as to the status of certain persons.

(2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate. 20

(3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.

(4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth. 25

(5) A member of the Parliament of a State is an employee of the State.

(6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory. 30

(7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.

(8) The following are employees for the purposes of this Act:

(a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment; 35

(b) a person who is paid to provide services in connection with an 40

activity referred to in paragraph (a) is an employee of the person liable to make the payment;

5 (c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.

(9) Subject to subsection (10), a person who:

10 (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or

(b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);

15 is an employee of the Commonwealth, the State or the Territory, as the case requires.

(10) A person who holds office as a member of a local government council is an employee of the council.

20 (11) A person who is paid to do work wholly or principally of a domestic or private nature for not more than 30 hours per week is not regarded as an employee in relation to that work.

**Interpretation: notional earnings base where employer contributing to superannuation fund for benefit of employee immediately before 21 August 1991**

25 13.(1) This section deals with the meaning of the expression "notional earnings base" in relation to an employee who is a member of a superannuation fund to which an employer is contributing, for the benefit of the employee, in the following situations:

30 (a) where the employer is contributing to the fund in accordance with an industrial award or an occupational superannuation arrangement for the benefit of the employee in relation to a contribution period and:

(i) was so contributing immediately before 21 August 1991; or

35 (ii) was contributing to the fund in accordance with that award or arrangement (as the case may be) for the benefit of another employee immediately before 21 August 1991;

(b) where the employer is otherwise contributing to the fund under the applicable superannuation scheme for the benefit of the employee in relation to a contribution period and:

40 (i) was so contributing immediately before 21 August 1991; or

(ii) was contributing to the fund under the applicable superannuation scheme for the benefit of another employee immediately before 21 August 1991.

(2) Subject to subsections (3) and (4), the expression “**notional earnings base**” means the earnings of the employee that, under the award, arrangement or scheme as in force on:

- (a) the first day of a contribution period; or
- (b) the first day of employment;

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whichever is the later, constitute the employee’s earnings by reference to which the requisite employer contribution is to be calculated.

(3) If an employee’s notional earnings base ascertained in accordance with subsection (2) would be an amount greater than the maximum contribution base, the employee’s notional earnings base is the maximum contribution base.

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(4) If the award, arrangement or scheme that would, but for this subsection, determine an employee’s notional earnings base under this section is at any time on or after 21 August 1991 amended in a way that has the effect of reducing an employee’s notional earnings base, the employee’s notional earnings base is to be determined as if the employee were an employee in relation to whom section 14 applies.

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**Interpretation: notional earnings base where employer not contributing to superannuation fund for benefit of employee immediately before 21 August 1991**

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14.(1) This section deals with the meaning of the expression “notional earnings base” in relation to an employee who is a member of a superannuation fund to which an employer is contributing, for the benefit of the employee, in the following situations:

- (a) where the employer is contributing to the fund in accordance with an industrial award or an occupational superannuation arrangement for the benefit of the employee in relation to a contribution period but was not so contributing immediately before 21 August 1991 for the benefit of any employee;
- (b) where the employer is otherwise contributing to the fund under the applicable superannuation scheme for the benefit of the employee in relation to a contribution period but was not so contributing immediately before 21 August 1991 for the benefit of any employee.

25

30

(2) Subject to subsections (3) and (4), the expression “**notional earnings base**” means the earnings of the employee that, under the award, arrangement or scheme as in force on:

35

- (a) the first day of a contribution period; or
- (b) the first day of employment; or

(c) the day on which the employer begins to contribute to the fund; whichever is the later, constitute the employee’s earnings by reference to which the requisite employer contribution is to be calculated.

40

(3) If, in a case where the employer is contributing to the fund in accordance with an occupational superannuation arrangement or the applicable superannuation scheme, the employee's notional earnings base calculated in accordance with subsection (2) would, in relation to a contribution period, be less than the employee's ordinary time earnings for the contribution period, the employee's notional earnings base is the employee's ordinary time earnings.

(4) If an employee's notional earnings base ascertained in accordance with subsections (2) and (3) would be an amount greater than the maximum contribution base, the employee's notional earnings base is the maximum contribution base.

**Interpretation: maximum contribution base**

15. (1) The maximum contribution base for the contribution period commencing on 1 July 1992 is \$80,000.

(2) The maximum contribution base for a contribution period in the 1993-94 year is the amount worked out using the formula:

$$\frac{\$80,000 \times \text{Indexation factor for the 1992-93 year}}{12.}$$

12.

(3) The maximum contribution base for a contribution period in any later year is the amount worked out using the formula:

$$\frac{\text{Maximum contribution base for a contribution period in the immediately preceding year}}{\text{Indexation factor for the year.}}$$

(4) Amounts calculated under subsection (2) or (3) must be rounded to the nearest 10 dollar multiple (rounding 5 dollars upwards).

**PART 3—LIABILITY OF EMPLOYERS OTHER THAN THE COMMONWEALTH AND TAX-EXEMPT COMMONWEALTH AUTHORITIES TO PAY SUPERANNUATION GUARANTEE CHARGE**

**Charge payable by employer**

16. Superannuation guarantee charge imposed on an employer's superannuation guarantee shortfall for a year is payable by the employer.

**Superannuation guarantee shortfall**

17. If an employer has one or more individual superannuation guarantee shortfalls for a year, the employer has a superannuation guarantee shortfall for the year worked out by adding together:

(a) the total of the employer's individual superannuation guarantee shortfalls for the year; and

- (b) the employer's nominal interest component for the year; and
- (c) the employer's administration component for the year.

**Individual superannuation guarantee shortfall for 1992-93**

18. An employer's individual superannuation guarantee shortfall in respect of an employee for the 1992-93 year is the amount worked out using the formula: 5

$$\begin{array}{r} \text{Total salary or wages paid by} \\ \text{the employer to the employee} \\ \text{for the year} \end{array} \times \frac{\text{Charge percentage for the} \\ \text{employer for the year}}{100}$$

where:

"Charge percentage for the employer for the year" means the number ascertained in relation to that employer and that year according to section 20 or 21 or that number as reduced, in respect of that employee, by section 22 or 23, as the case may be. 10

**Individual superannuation guarantee shortfall for 1993-94 and subsequent years**

19.(1) An employer's individual superannuation guarantee shortfall in respect of an employee for a year (other than the 1992-93 year) is the sum of the employer's monthly shortfalls in respect of that employee for that year. 15

(2) An employer's monthly shortfall in respect of an employee for a month is the amount worked out using the formula: 20

$$\begin{array}{r} \text{Total salary or wages paid by} \\ \text{the employer to the employee} \\ \text{for the month} \end{array} \times \frac{\text{Charge percentage for the} \\ \text{employer for the month}}{100}$$

where:

"Charge percentage for the employer for the month" means the number ascertained in relation to that employer and that month according to section 20 or 21 or that number as reduced, in respect of that employee, by section 22 or 23, as the case may be. 25

**Charge percentage for a person who was an employer for the whole of the 1991-92 year**

20.(1) This section applies to a person who was an employer for the whole of the 1991-92 year. 30

(2) In this section, "base year" means the 1991-92 year.

(3) Subject to sections 22 and 23, if an employer's annual national payroll for the base year exceeded \$500,000, the employer's charge percentage for a year specified in the following table, and for any contribution period included in such a year, is the number specified in that table: 35



Year	Percentage
1992-93	5
1993-94	5
1994-95	6
1995-96	6
1996-97	7
1997-98	7
1998-99	8
1999-2000	8
2000-01 and subsequent years	9

5 (4) Subject to sections 22 and 23, if an employer's annual national payroll for the base year did not exceed \$500,000, the employer's charge percentage for a year specified in the following table, and for any contribution period included in such a year, is the number specified in that table:

Year	Percentage
1992-93	3
1993-94	3
1994-95	4
1995-96	5
1996-97	6
1997-98	7
1998-99	8
1999-2000	8
2000-01 and subsequent years	9

**Charge percentage for a person who was not an employer for the whole of the 1991-92 year**

10 21.(1) This section applies to a person who was not an employer for the whole of the 1991-92 year.

(2) The base year for a person to whom this section applies is the first year commencing on or after 1 July 1992 in which the person is an employer for the whole of the year.

15 (3) The employer's charge percentage for a year in the period up to and including the base year is the number specified in the following table in relation to that year:

Year	Percentage
1992-93	3
1993-94	3
1994-95	4
1995-96	5
1996-97	6

TABLE—continued

1997-98	7
1998-99	8
1999-2000	8
2000-01 and subsequent years	9

(4) If the employer's annual national payroll for the base year exceeds \$500,000, the employer's charge percentage for a subsequent year specified in the following table is the number specified in that table in relation to that year:

5

Year	Percentage
1992-93	5
1993-94	5
1994-95	6
1995-96	6
1996-97	7
1997-98	7
1998-99	8
1999-2000	8
2000-01 and subsequent years	9

(5) If the employer's annual national payroll for the base year does not exceed \$500,000, the employer's charge percentage for a subsequent year specified in the table in subsection (3) is the number specified in that table in relation to that year.

10

(6) An employer's charge percentage for a year commencing on or after 1 July 1993 is also the employer's charge percentage for each month in the year.

(7) This section has effect subject to sections 22 and 23.

**Reduction of charge percentage where contribution made to defined benefit superannuation scheme**

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22.(1) This section applies only in relation to defined benefit superannuation schemes.

(2) If:

(a) a benefit certificate in relation to one or more complying superannuation schemes is in force immediately before the end of a contribution period; and

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(b) the certificate specifies a figure as the notional employer contribution rate in relation to a class of employee as members of the scheme or schemes (as the case may be);

25

the charge percentage for the employer, as calculated under section 20 or 21, in respect of an employee in the class for the contribution period

is reduced, in addition to any other such reduction made under this section or section 23, by the amount worked out using the formula:

$$A \times B$$

where:

5 "A" is the figure referred to in paragraph (b);

"B" is:

(A) 1; or

10 (B) if, in relation to the contribution period, the period for which the employee is employed by the employer is greater than the period for which the employee is a member of the superannuation scheme referred to in paragraph (a)—the fraction that represents the period for which the employee is a member of the fund as a proportion of the period of employment in the contribution period.

15 (3) The charge percentage for an employer for a contribution period cannot be reduced below 0.

**Reduction of charge percentage where contribution made to fund other than defined benefit superannuation scheme**

20 23.(1) This section applies only in relation to superannuation funds other than defined benefit superannuation schemes.

**[Reduction of charge percentage where contribution made under industrial award]**

(2) Subject to subsections (6) and (7), if, in a contribution period:

25 (a) an employer is required by an industrial award to contribute for the benefit of an employee to a superannuation fund; and

(b) the requisite contribution is a specified percentage of the employee's notional earnings base or a percentage of that base calculated in accordance with the award; and

30 (c) the employer contributes to a complying superannuation fund for the benefit of the employee in accordance with the award;

the charge percentage for the employer, as calculated under section 20 or 21, in respect of the employee for the contribution period is reduced, in addition to any other such reduction made under this section or section 22, by the amount worked out using the formula:

35 
$$A \times B$$

where:

"A" is the amount of the percentage figure that expresses the contribution to the fund referred to in paragraph (c) as a proportion of the total amount of the employee's notional earnings base:

40 (A) if the employee is employed under the industrial award for the whole of the contribution period—for the whole of that period; or

(B) if the employee is employed under the award for a part of the period—for that part of the period;

“B” is:

(A) 1; or

(B) if, in relation to the contribution period, the period for which the employee is employed by the employer is greater than the period of employment under the industrial award referred to in paragraph (a)—the fraction that represents the period of employment under the award as a proportion of the period of employment in the contribution period. 5 10

**[Reduction of charge percentage where contribution made under occupational superannuation arrangement]**

(3) Subject to subsections (6) and (7), if, in a contribution period:

(a) an employer is required by an occupational superannuation arrangement to contribute for the benefit of an employee to a superannuation fund; and 15

(b) the requisite contribution is a specified percentage of the employee’s notional earnings base or a percentage of that base calculated in accordance with the arrangement; and

(c) the employer contributes to a complying superannuation fund for the benefit of the employee in accordance with the arrangement; 20

the charge percentage for the employer, as calculated under section 20 or 21, in respect of the employee for the contribution period is reduced, in addition to any other such reduction made under this section or section 22, by the amount worked out using the formula: 25

$$A \times B$$

where:

“A” is the amount of the percentage figure that expresses the contribution to the fund referred to in paragraph (c) as a proportion of the total amount of the employee’s notional earnings base: 30

(A) if the employee is employed under the occupational superannuation arrangement for the whole of the contribution period—for the whole of that period; or

(B) if the employee is employed under the arrangement for a part of the period—for that part of the period; 35

“B” is:

(A) 1; or

(B) if, in relation to the contribution period, the period for which the employee is employed by the employer is greater than the period of employment under the occupational superannuation arrangement referred to in paragraph (a)—the fraction that represents the period of employment under the arrangement as 40

a proportion of the period of employment in the contribution period.

**[Reduction of charge percentage where contribution made under scheme that specifies notional earnings base]**

- 5 (4) Subject to subsections (6) and (7), if, in a contribution period:
- (a) an employer contributes for the benefit of an employee to a complying superannuation fund; and
  - (b) the applicable superannuation scheme specifies a requisite total contribution as a percentage of the employee's notional earnings base; and
  - 10 (c) the employer's contribution is not taken into account for the purpose of reducing the employer's charge percentage in respect of the employee for the contribution period under subsection (2) or (3);
- 15 the charge percentage for the employer, as calculated under section 20 or 21, in respect of the employee for the contribution period is reduced, in addition to any other such reduction made under this section or section 22, by the amount worked out using the formula:

$$A \times B$$

20 where:

"A" is the amount of the percentage figure that expresses the contribution to the fund referred to in paragraph (a) as a proportion of the total amount of the employee's notional earnings base:

- 25 (A) if the employer contributes for the benefit of the employee to the complying superannuation fund for the whole of the contribution period—for the whole of that period; or
- (B) if the employer contributes for the benefit of the employee to the fund for a part of the period—for that part of the period;

"B" is:

- 30 (A) 1; or
  - (B) if, in relation to the contribution period, the period for which the employee is employed by the employer is greater than the period for which the employer contributes for the benefit of the employee to the fund referred to in paragraph (a)—the fraction that represents the period for which the employer contributes to the fund as a proportion of the period of employment in the contribution period.
- 35

**[Reduction of charge percentage where contribution made under scheme that does not specify notional earnings base]**

- 40 (5) Subject to subsections (6) and (7), if, in a contribution period:
- (a) an employer contributes for the benefit of an employee to a complying superannuation fund; and
  - (b) the contribution is not taken into account for the purpose of

reducing the employer's charge percentage in respect of the employee for the contribution period under subsection (2), (3) or (4);

the charge percentage for the employer, as calculated under section 20 or 21, in respect of the employee for the contribution period is reduced, in addition to any other such reduction made under this section or section 22, by the amount worked out using the formula: 5

$$A \times B$$

where:

"A" is the amount of the percentage figure that expresses the contribution to the fund referred to in paragraph (a) as a proportion of the total amount of the employee's ordinary time earnings: 10

(A) if the employer contributes for the benefit of the employee to the complying superannuation fund for the whole of the contribution period—for the whole of that period; or 15

(B) if the employer contributes for the benefit of the employee to the fund for a part of the period—for that part of the period;

"B" is:

(A) 1; or

(B) if, in relation to the contribution period, the period for which the employee is employed by the employer is greater than the period for which the employer contributes for the benefit of the employee to the fund referred to in paragraph (a)—the fraction that represents the period for which the employer contributes to the fund as a proportion of the period of employment in the contribution period. 20 25

**[Contribution made after end of period may be taken into account for previous period]**

(6) Subject to subsection (8), a contribution to a superannuation fund made by an employer for the benefit of an employee: 30

(a) after 30 June 1993; but

(b) on or before 14 August 1993;

may be taken into account under this section as if it had been made during the 1992-93 year.

(7) Subject to subsection (8), a contribution to a complying superannuation fund made by an employer for the benefit of an employee not more than 28 days after the end of any contribution period commencing after 30 June 1993 may be taken into account under this section as if it had been made during the contribution period. 35 40

(8) A contribution to a superannuation fund made by an employer for the benefit of an employee after the end of a contribution period and taken into account under this section in relation to that contribution

period is not to be taken into account under this section in relation to any other contribution period.

**[Certain awards, arrangements and schemes taken not to specify requisite contribution as percentage of notional earnings base]**

5 (9) An industrial award, an occupational superannuation arrangement or a superannuation scheme is to be taken not to specify the requisite employer contribution as a percentage of an employee's notional earnings base if the award, arrangement or scheme:

- 10 (a) determines the earnings of the employee by reference to which the requisite employer contribution is to be calculated by specifying an amount of money; and
- (b) makes no provision for adjustment of that amount by reference to changes in the earnings of the employee.

**[Charge percentage not to be less than 0]**

15 (10) The charge percentage for an employer for a contribution period cannot be reduced below 0.

**Salary or wages: general exclusions**

20 24.(1) The following salary or wages are not to be taken into account for the purpose of making a calculation under section 18 or 19:

- (a) salary or wages paid to an employee who is 65 or over;
- (b) salary or wages paid to an employee who is not a resident of Australia for work done outside Australia;
- 25 (c) salary or wages paid by an employer who is not a resident of Australia to an employee who is a resident of Australia for work done outside Australia.

(2) If an employee receives less than \$250 by way of salary or wages in respect of a month, the salary or wages so received in respect of that month are not to be taken into account for the purpose of making a calculation under section 18 or 19.

30

**Salary or wages: excluded earnings of young persons**

25. Salary or wages paid to a part-time employee who is under 18 are not to be taken into account for the purpose of making a calculation under section 18 or 19.

35 **Salary or wages: excluded earnings of members of Reserve Forces**

26. If an employee receives income that is exempt from income tax under paragraph 23(s) of the *Income Tax Assessment Act 1936*, that income is not to be taken into account for the purposes of this Act.

**Arrangements to avoid payment of superannuation guarantee charge**

27. If:

- (a) an employer makes an arrangement; and
- (b) as a result of the arrangement the employer's superannuation guarantee shortfall in a year is reduced; and 5
- (c) in the Commissioner's opinion the arrangement was made solely or principally for the purpose of avoiding payment of superannuation guarantee charge otherwise than in accordance with this Act;

the employer is liable to pay for the year an amount of superannuation guarantee charge equal to the amount that, in the Commissioner's opinion, the employer would have been liable to pay if the arrangement had not been made. 10

**Nominal interest component**

28.(1) The nominal interest component in relation to an employer for a year is the amount that would accrue by way of interest on the total of the employer's individual superannuation guarantee shortfalls for the year if interest were calculated at the rate applicable under regulations made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983* from the beginning of the year in question until the date on which superannuation guarantee charge in relation to the total would be payable under section 43. 15 20

(2) Until regulations made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983* commence, the rate of interest applicable for the purposes of subsection (1) is 14.026% per annum. 25

**Administration component**

29. An employer's administration component for a year is the amount worked out using the formula:

$$\text{Base amount} + [N \times \text{Per capita amount}] \quad 30$$

where:

"Base amount" is \$50 or such other amount as is from time to time prescribed;

"N" is the number of employees in respect of whom the employer has an individual superannuation guarantee shortfall for the year; 35

"Per capita amount" is \$30 or such other amount as is from time to time prescribed.

**PART 4—SUPERANNUATION GUARANTEE STATEMENTS AND ASSESSMENTS**

**Annual superannuation guarantee statements** 40

30.(1) An employer who has a superannuation guarantee shortfall for a year must lodge a superannuation guarantee statement for the year on or before:



- (a) 14 August in the following year; or
- (b) any later day allowed by the Commissioner.

(2) The statement must set out:

- (a) the name and postal address of the employer; and
- (b) the name, postal address and tax file number (so far as is known to the employer) of each employee in relation to whom the employer had an individual superannuation guarantee shortfall for the year; and
- (c) the amount of each such shortfall; and
- (d) the employer's nominal interest component for the year; and
- (e) the employer's administration component for the year; and
- (f) if the employer's annual national payroll for the employer's base year is \$500,000 or less, the amount of that payroll; and
- (g) the total of the employer's individual superannuation guarantee shortfalls for the year; and
- (h) the amount of the employer's superannuation guarantee charge for the year.

(3) The statement must:

- (a) be in a form approved by the Commissioner; and
- (b) be lodged with the Commissioner in accordance with the regulations; and
- (c) be signed by or on behalf of the employer making the statement.

(4) Subsection (1) does not apply to the employer if the employer has previously given the Commissioner a statement for the year under section 31.

**Power to require information where no superannuation guarantee statement**

31. The Commissioner, by written notice, may require a person who was at any time during a year an employer and who has not lodged a superannuation guarantee statement for that year to give the Commissioner, within a specified period of not less than 14 days, a written statement for the year stating whether the person has a superannuation guarantee shortfall for the year and if so, setting out the matters referred to in subsection 30(2).

**First superannuation guarantee statement for year taken to be assessment**

32.(1) If:

- (a) an employer lodges a superannuation guarantee statement for a year; and
- (b) a superannuation guarantee statement has not previously been lodged, and an assessment has not previously been made, for the year in relation to the employer;

then:

- (c) the statement has effect as an assessment of the employer's superannuation guarantee shortfall for the year and of the superannuation guarantee charge payable on the shortfall; and
- (d) the assessment is taken to have been made on 14 August in the following year or the day on which the statement was lodged, whichever is the later; and
- (e) the sum of:
  - (i) the total of the employer's individual superannuation guarantee shortfalls; and
  - (ii) the employer's nominal interest component; and
  - (iii) the employer's administration component;specified in the statement is to be taken to be the amount of superannuation guarantee charge payable by the employer for the year; and
- (f) the statement has effect as if it were a notice of assessment signed by the Commissioner and given to the employer on the day on which the assessment is taken to have been made.

(2) In subsection (1), "**superannuation guarantee statement**" includes a statement under section 31 that indicates that an employer has a superannuation guarantee shortfall for a year.

**Default assessments**

33.(1) If:

- (a) an employer has not lodged a superannuation guarantee statement for a year; and
- (b) the Commissioner is of the opinion that the employer is liable to pay superannuation guarantee charge for the year;

the Commissioner may make an assessment of the employer's superannuation guarantee shortfall for the year and of the superannuation guarantee charge payable on the shortfall.

(2) For the purposes of making an assessment under subsection (1), the superannuation guarantee shortfall is taken to be the amount that in the Commissioner's opinion might reasonably be expected to be the shortfall.

(3) Superannuation guarantee charge in relation to an assessment for a year made under this section is taken to have become payable on 14 August in the following year.

**Amendment of assessments**

34.(1) The Commissioner may, subject to this section, at any time amend any assessment by making any alterations or additions that the Commissioner thinks necessary, whether or not superannuation guarantee charge has been paid in relation to the assessment.

(2) Subject to this section, if there has been an avoidance of superannuation guarantee charge, the Commissioner may:

(a) if the Commissioner is of the opinion that the avoidance of the charge is due to fraud or evasion—at any time; or

5 (b) in any other case—within 4 years from the day on which the assessment is made;

amend the assessment by making any alterations or additions that the Commissioner thinks necessary to correct the assessment.

10 (3) An amendment effecting a reduction in an employer's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.

15 (4) If an assessment has, under this section, been amended in any particular, the Commissioner may, within 4 years from the day on which superannuation guarantee charge became payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Commissioner's opinion, is necessary to effect such reduction in the employer's liability under the assessment as is just.

(5) If:

20 (a) an employer applies for an amendment of the employer's assessment within 4 years from the day that superannuation guarantee charge became payable under the assessment; and

(b) within that period, the employer lodges all information the Commissioner needs to decide the application;

25 the Commissioner may amend the assessment when considering the application, even if that period has elapsed.

(6) Nothing in this section prevents the amendment of an assessment to give effect to:

(a) the decision on any review or appeal; or

30 (b) its amendment by reduction of any particular following the employer's objection or pending any review or appeal.

(7) Superannuation guarantee charge under an amended assessment is taken to have become payable on the day on which charge under the original assessment became payable.

### 35 **Refund of overpaid amounts**

35.1) If, because an assessment is amended, a person's liability to superannuation guarantee charge is reduced:

(a) the amount by which the charge is reduced is taken, for the purposes of section 46, never to have been payable; and

40 (b) the Commissioner must:

(i) refund any overpaid amount; or

(ii) apply any overpaid amount against the person's liability

(if any) to the Commonwealth and refund any part of the amount that is not so applied.

(2) In subsection (1):

“overpaid amount” includes any overpaid amount of additional superannuation guarantee charge under section 46 or Part 7.

5

**Amended assessment to be an assessment**

36. Except as otherwise expressly provided by this Act, an amended assessment is taken to be an assessment for all the purposes of this Act.

**Notice of assessment or amendment**

10

37. As soon as practicable after an assessment is made under section 33 or is amended under section 34, the Commissioner must give written notice of the assessment or amendment (as the case may be) to the person liable to pay the superannuation guarantee charge.

**Validity of assessment**

15

38. The validity of an assessment is not affected because any provision of this Act has not been complied with.

**Objections against assessment**

39. An employer who is dissatisfied with an assessment may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

20

**PART 5—ADMINISTRATION**

**General administration of Act**

40. The Commissioner has the general administration of this Act.

**Annual report**

25

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

**Secrecy**

42.(1) In this section:

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“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

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(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:

- 5 (a) contains information that concerns 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:

- 10 (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.

15 (2) Subject to subsection (3), 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 concerning another person; unless the record is made, or the information divulged or communicated:  
20 (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.

25 (3) Subsection (2) does not prevent 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  
30 administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties.

(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 any Minister.

35 (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.

40 (6) Nothing in this or any other Act of which the Commissioner has the general administration is taken to prohibit the Commissioner, a Second Commissioner, 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.

5

(7) Nothing in an Act of which the Commissioner has the general administration is taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:

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- (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.

15

(8) 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 specified by the Commissioner in writing, to maintain secrecy in accordance with this section.

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## **PART 6—COLLECTION AND RECOVERY OF CHARGE**

### **When superannuation guarantee charge becomes payable**

43. Superannuation guarantee charge for a year is payable:

- (a) if, on or before 14 August in the following year, the employer lodges a superannuation guarantee statement or a statement under section 31 indicating a superannuation guarantee shortfall for that year—on that day; or
- (b) if, after that day, the employer lodges a superannuation guarantee statement or a statement under section 31 indicating a superannuation guarantee shortfall for that year—on the day on which the statement is lodged.

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30

### **When additional superannuation guarantee charge becomes payable**

44. Additional superannuation guarantee charge under Part 7 becomes payable on the day specified for the purpose in the notice of assessment of the additional charge.

35

### **Extension of time for payment**

45.(1) The Commissioner may, in such circumstances as the Commissioner thinks fit, extend the time for payment of an amount of superannuation guarantee charge for such period as the Commissioner

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determines, and, if the Commissioner does so, the charge is payable accordingly.

(2) In this section:

5 “superannuation guarantee charge” includes additional superannuation guarantee charge payable under section 46 or Part 7.

**Penalty for unpaid superannuation guarantee charge**

10 46.(1) Subject to this section, if any superannuation guarantee charge remains unpaid after the time when it became payable, or would but for section 45 have become payable, additional superannuation guarantee charge is payable, by way of penalty, by the employer liable to pay the superannuation guarantee charge.

15 (2) Additional superannuation guarantee charge payable under subsection (1) is payable at the rate applicable under regulations made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983* on the amount unpaid less those amounts in respect of:

- (a) the employer’s administration component for the year; and
  - (b) the employer’s nominal interest component for the year;
- 20 calculated from the day the superannuation guarantee charge originally became payable.

(3) Until regulations are made for the purposes of paragraph 10(1)(b) of the *Taxation (Interest on Overpayments) Act 1983*, the rate of interest applicable for the purposes of subsection (2) is 14.026% per annum.

(4) In this section:

25 “superannuation guarantee charge” includes additional superannuation guarantee charge under Part 7.

**Recovery of superannuation guarantee charge**

47.(1) Superannuation guarantee charge that is payable:

- (a) is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed; and
  - (b) may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.
- 30

(2) In subsection (1):

35 “superannuation guarantee charge” includes additional superannuation guarantee charge under section 46 or Part 7.

**Substituted service**

48. If:

- (a) a document is required to be served on an employer for the purposes of proceedings against the employer for the recovery of superannuation guarantee charge; and
- 40

(b) the Commissioner is satisfied, after reasonable enquiry, that the employer:

- (i) is absent from Australia and has no attorney or agent in Australia on whom service of process can be effected; or
- (ii) cannot be found;

5

service of the document on the employer may be effected, without leave of the court, by posting the document or a sealed copy of it in a letter addressed to the employer at his or her last known place of business or residence in Australia.

**Recovery of superannuation guarantee charge from trustee of deceased employer**

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**49.(1)** This section applies, if at the time of an employer's death:

- (a) superannuation guarantee charge that was payable by the employer immediately before the employer's death has not been assessed or has not been paid in full; or
- (b) additional superannuation guarantee charge under Part 7 for which, immediately before the employer's death, the employer was liable has not been assessed or paid.

15

(2) The Commissioner has the same powers and remedies for the assessment and recovery of superannuation guarantee charge from a trustee of the estate of the employer as the Commissioner would have had against the employer if the employer were still living.

20

(3) The trustee must:

- (a) lodge any statements or information that the employer was, or would but for the employer's death have been, liable to lodge; and
- (b) lodge any other statements or information that the Commissioner requires.

25

(4) If the trustee fails to lodge a statement in relation to a year, the Commissioner may assess:

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- (a) the employer's superannuation guarantee shortfall for the year; and
- (b) the amount of superannuation guarantee charge payable on the shortfall.

(5) The trustee is subject to additional superannuation guarantee charge under section 46 or Part 7 to the same extent as the employer would be if the employer were still living.

35

(6) The amount of any superannuation guarantee charge payable by the trustee is a charge on all of the employer's estate in the trustee's hands in priority to any other encumbrance (except a charge in relation to a debt payable to the Commissioner).

40



(7) A trustee who is dissatisfied with an assessment made under this section may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

5 (8) Superannuation guarantee charge in relation to an assessment for a year made under this section is taken to have become payable on 14 August in the following year.

(9) In this section:

“superannuation guarantee charge” includes additional superannuation guarantee charge under section 46 or Part 7.

10 **Recovery of charge from unadministered deceased estates**

50.(1) If, within 6 months after the death of an employer, neither probate of the employer’s will nor letters of administration of the employer’s estate have been granted, the Commissioner may assess:

15 (a) the superannuation guarantee shortfall (if any) of the employer for the year in which the employer died or for any previous year; and

(b) the amount of superannuation guarantee charge payable on the shortfall.

20 (2) If the employer resided in a State or Territory immediately before his or her death, the Commissioner must publish notice of the assessment twice in a daily newspaper circulating in the State or Territory.

25 (3) A person who claims an interest in the deceased employer’s estate and who is dissatisfied with the assessment may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(4) Subject to any amendment, the assessment is conclusive evidence of the liability of the deceased employer.

30 (5) In spite of subsection (4), if probate of the will, or letters of administration of the estate, of the deceased employer is or are granted to a person and the person is dissatisfied with the assessment, the person may object in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

35 (6) Part IVC of the *Taxation Administration Act 1953* applies in relation to an objection made by a person under subsection (3) or (5) as if the person were the deceased employer.

(7) In this section:

“superannuation guarantee charge” includes additional superannuation guarantee charge payable under section 46 or Part 7.

**Commissioner may collect superannuation guarantee charge from person owing money to person liable to superannuation guarantee charge**

**51.(1)** The Commissioner may, by written notice, require a person (in this section called the “debtor”):

- (a) who owes, or may subsequently owe, money to an employer; or 5
- (b) who holds, or may subsequently hold, money for or on account of an employer, or for or on account of another person for payment to an employer; or
- (c) who has, or may subsequently have, authority from another person to pay money to an employer; 10

to pay to the Commissioner, at or before a time (in this section called the “payment time”) specified in the notice (not being a time before the notice is served on the debtor, or before the money becomes due or is held, or the debtor has the authority, as the case may be) an amount (in this section called the “garnisheed amount”) equal to: 15

- (d) the whole of the money, or so much of it as is sufficient to pay the amount of superannuation guarantee charge by the employer, whichever is less; or
- (e) the amount specified in the notice out of each payment that the debtor makes or becomes liable to make to the employer, until the amount of superannuation guarantee charge is paid. 20

**(2)** The Commissioner may, by further written notice, revoke or vary a notice under subsection (1).

**(3)** The Commissioner must arrange for a notice under subsection (1) or (2) to be given to the debtor and a copy of the notice to be given to the employer. 25

**(4)** A person who, without reasonable excuse, contravenes a notice under this section is guilty of an offence.

Penalty: \$1,000.

**(5)** If a person (in this subsection called the “convicted person”) is convicted of an offence against subsection (4) in relation to the contravention of the notice by the convicted person or another person, the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount or the sum of the amounts, as the case requires, that the convicted person or the other person, as the case may be, refused or failed to pay to the Commissioner in accordance with the notice. 30 35

**(6)** A person making a payment under this section is taken to be acting with the authority of the employer and of all other persons concerned and is indemnified in relation to the payment. 40

**(7)** If any payment in relation to the amount due by the employer is made before payment is made by a person under a notice under this

section, the Commissioner must immediately give notice to the person under subsection (2).

5 (8) The garnisheed amount is, from the payment time, a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.

(9) If:

(a) money has been paid by a person to a building society in respect of the issue of withdrawable shares in the capital of the society; and

10 (b) the money has not been repaid;

the money is taken:

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

15 (d) in any other case—to be money that may become due by the building society to the person.

(10) If, but for this subsection, a debt is not due, or repayable on demand, to a person unless a condition is fulfilled, the debt is taken, for the purposes of this section, to be due, or repayable on demand, as the case may be, to the person despite the fact that the condition has not been fulfilled.

(11) A notice may be given to the Commonwealth, a State or Territory by giving it to a person employed by the Commonwealth, State or Territory, respectively, being a person who, under a law of the Commonwealth, State or Territory, has a duty of disbursing public money, and a notice so given is taken, for the purposes of this section, to have been given to the Commonwealth, the State or the Territory, as the case may be.

(12) In this section:

30 “building society” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory;

“superannuation guarantee charge” includes:

(a) additional superannuation guarantee charge under section 46 or Part 7; and

35 (b) a judgment debt or costs in relation to:

(i) superannuation guarantee charge; or

(ii) additional superannuation guarantee charge under section 46 or Part 7; and

40 (c) a fine or costs imposed by a court in relation to an offence against this Act; and

(d) an amount ordered by a court, on the conviction of a person for an offence against this Act, to be paid by the person to the Commissioner.

**Public officer of company**

52.(1) The person who is, from time to time, the public officer of a company for the purposes of section 252 of the *Income Tax Assessment Act 1936* is the public officer of the company for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act. 5

(2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the company for the purposes of this Act, but, if at any time there is no public officer of the company, service on a person acting or appearing to act in the business of the company is sufficient. 10

(3) The public officer is answerable for doing all acts required to be done by the company under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company. 15

(5) If, at any time, there is no public officer of the company, this Act applies in relation to the company as if there were no requirement to appoint a public officer of the company. 20

(6) A proceeding under this Act brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.

(7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the company or public officer may, if the Commissioner thinks fit, be given to, served on or brought against any director, secretary or other officer of the company or any attorney or agent of the company, and the director, secretary, officer, attorney or agent has the same liability in relation to the notice, process or proceeding as the company or public officer would have had if it had been given to, served on or brought against the company or public officer. 25  
30

**Public officer of trust estate** 35

53.(1) The person who is, from time to time, the public officer of a trust estate for the purposes of section 252A of the *Income Tax Assessment Act 1936* is the public officer of the trust estate for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act. 40

(2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the trustee of the trust estate for the purposes of this Act, but, if at any

time there is no public officer of the trust estate, service on a person acting or appearing to act in the business of the trust estate is sufficient.

5 (3) The public officer is answerable for doing all acts required to be done by the trustee of the trust estate under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the trustee of the trust estate.

10 (5) If, at any time, there is no public officer of the trust estate, this Act applies in relation to the trustee of the trust estate as if there were no requirement to appoint a public officer of the trust estate.

15 (6) A proceeding under this Act brought against the public officer is taken to have been brought against the trustee of the trust estate, and the trustee is liable jointly with the public officer for any penalty imposed on the public officer.

20 (7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the trustee or public officer of the trust estate may, if the Commissioner thinks fit, be given to, served on or brought against any agent or attorney of the trustee, and the agent or attorney has the same liability in relation to the notice, process or proceeding as the trustee or public officer would have had if it had been given to, served on or brought against the trustee or public officer.

25 **PART 7—PENALTY CHARGE**

**Failure to provide statements or information**

30 **54.(1)** If an employer other than a government body refuses or fails to provide, when and as required under this Act, a superannuation guarantee statement or information relevant to assessing the employer's liability to pay superannuation guarantee charge for a year, the employer is liable to pay, by way of penalty, additional superannuation guarantee charge equal to double the amount of superannuation guarantee charge payable by the employer for the year.

35 (2) If an employer liable to pay superannuation guarantee charge in relation to a year:

(a) fails to keep a record in relation to the year containing details of the basis of calculation of the following amounts:

(i) the employer's annual national payroll for the employer's base year;

40 (ii) the individual superannuation guarantee shortfalls of the employer for the year;

(iii) the employer's nominal interest component for the year;  
(iv) the employer's administration component for the year;  
that were specified in a superannuation guarantee statement under section 30 or a statement under section 31; or

- (b) refuses or fails to produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2)(a) that were specified in a superannuation guarantee statement under section 30 or a statement under section 31; 5  
10

the employer is liable to pay, by way of penalty, additional superannuation guarantee charge equal to double the amount of superannuation guarantee charge payable by the employer for the year.

- (3) If the amount of additional superannuation guarantee charge that would, but for this subsection, be payable under subsection (1) or (2) is less than \$20, the additional superannuation guarantee charge payable is \$20. 15

**False or misleading statements**

**55.(1) If:**

- (a) an employer other than a government body: 20  
(i) makes a statement that is false or misleading in a material particular to:  
(A) a taxation officer; or  
(B) a person other than a taxation officer for a purpose connected with this Act; or 25  
(ii) omits from a statement made to:  
(A) a taxation officer; or  
(B) a person other than a taxation officer for a purpose connected with this Act;  
anything without which the statement is misleading in a material particular; and 30

- (b) the superannuation guarantee charge properly payable by the employer exceeds the superannuation guarantee charge that would have been payable by the employer if it were assessed on the basis that the statement were not false or misleading; 35  
the employer is liable to pay, by way of penalty, additional superannuation guarantee charge equal to double the amount of the excess referred to in paragraph (b).

- (2) If the amount of additional superannuation guarantee charge that would, but for this subsection, be payable under subsection (1) is less than \$20, the additional superannuation guarantee charge payable is \$20. 40

(3) A reference in this section to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form and, for example, includes a statement:

- 5 (a) made in an objection, statement or other document lodged, given or prepared, or purporting to be lodged, given or prepared under this Act; and
- (b) made in answer to a question asked of a person under this Act; and
- 10 (c) made in any information provided, or purporting to be provided, under this Act; and
- (d) made in a document provided to a taxation officer otherwise than under this Act.

(4) A reference in this section to a statement made to a person  
15 other than a taxation officer for a purpose connected with this Act is a reference to a statement made orally, in writing, in a data processing device or in any other form and, for example, includes a statement:

- (a) made in an objection, statement or other document lodged  
with, given to or prepared for the person; and
- 20 (b) made in answer to a question asked by the person; and
- (c) made in any information provided to the person.

**Penalty superannuation guarantee charge where arrangement to avoid superannuation guarantee charge**

56. If, under section 27, an employer is liable to pay an amount of  
25 superannuation guarantee charge (in this section called the “**amount payable**”) that is greater than the amount that would have been payable if section 27 had not applied to the employer (in this section called the “**notional amount**”), the employer is also liable to pay, by way of penalty, additional superannuation guarantee charge worked out using  
30 the formula:

$$2 \times [\text{Amount payable} - \text{Notional amount}].$$

**Assessment of additional superannuation guarantee charge**

57.(1) The Commissioner must make an assessment of the additional  
35 superannuation guarantee charge payable by an employer under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the employer.

(2) Nothing in this Act is taken to prevent a notice from being incorporated in a notice of any other assessment made in relation to the employer under this Act.

40 (3) The Commissioner may remit all or part of the additional superannuation guarantee charge payable by an employer under this Part, but, for the purposes of applying subsection 33(1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this

subsection, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the additional superannuation guarantee charge.

## **PART 8—DISTRIBUTION OF SHORTFALL COMPONENT OF CHARGE**

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### **Application of Part**

58. This Part is concerned with the way in which the Commissioner is to deal with the shortfall component of a payment of superannuation guarantee charge in relation to a particular employee.

### **What is the “shortfall component”?**

10

59.(1) If a payment of superannuation guarantee charge relates only to one employee, the shortfall component of the payment is the amount of the payment less:

- (a) any amount in respect of the administration component for the year to which the payment relates; and
- (b) any amount of penalty charge (other than penalty charge under section 46 that does not relate to additional superannuation guarantee charge under Part 7) included in the payment.

15

(2) If a payment of superannuation guarantee charge relates to 2 or more employees, the shortfall component of the payment is worked out in the following manner:

20

- (a) the following amounts are deducted:
  - (i) any amount in respect of the administration component for the year to which the payment relates;
  - (ii) any amount of penalty charge (other than penalty charge under section 46 that does not relate to additional superannuation guarantee charge under Part 7) included in the payment;
- (b) the amount remaining after the amounts referred to in paragraph (a) have been deducted represents the total of the shortfall components for all of the employees concerned;
- (c) the shortfall component in relation to a particular employee is the amount worked out using the formula:

25

30

$$\frac{A \times B}{C}$$

35

where:

“A” is the total amount referred to in paragraph (b);

“B” is the employer’s individual superannuation guarantee shortfall in relation to the particular employee for the year concerned;

40

“C” is the total of the employer’s individual superannuation



guarantee shortfalls in relation to all employees to whom the payment or payments related for the year concerned.

**Payment of shortfall component**

5 **60.** Except in a case covered by section 61 or 62, the Commissioner is required to deal with the shortfall component in one of the following ways:

- 10 (a) pay the amount of the component, for the benefit of the employee, to a complying superannuation fund nominated in accordance with the regulations by the employee; or
- 10 (b) in accordance with the regulations, make arrangements to enable the amount of the component to be paid to such a fund for the benefit of the employee.

**Payment to employee retired due to illness**

15 **61.** If the employee is under 55 but has retired because of illness the Commissioner must pay the amount of the shortfall component to the employee.

**Payment where employee deceased**

20 **62.** If the employee has died, the Commissioner must pay the amount of the shortfall component to the legal personal representative of the employee.

**Repayment of overpayments in relation to a shortfall component**

25 **63.** If an amount paid by the Commissioner under this Part exceeds the amount properly payable by the Commissioner under this Part, the party to whom the payment has been made is liable to repay to the Commonwealth the amount of the excess.

**Recovery of overpayments**

30 **64.** The amount of any excess payment referred to in section 63 may be recovered by the Commonwealth as a debt due to the Commonwealth.

**Appropriation**

**65.** Amounts that the Commissioner is required to pay under this Part are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

**PART 9—MISCELLANEOUS**

35 **Treatment of partnerships**

**66.(1)** Subject to this section, this Act applies as if a partnership were a legal person.

40 **(2)** An obligation that, apart from this subsection, would be imposed by this Act on a partnership is instead imposed on each partner, but may be discharged by any of the partners.

(3) If, apart from this subsection, a liability to pay money would be imposed on a partnership by this Act, the liability is instead imposed on the partners jointly and severally.

(4) If, because of subsection (1), a partnership would be taken to have committed an offence, the offence is instead taken to have been committed by each of the partners. 5

(5) In a prosecution for an offence taken to have been committed by a person because of subsection (4), it is a defence that the person:

(a) did not aid, abet, counsel or procure the act or omission constituting the offence; and 10

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence.

(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act. 15

#### **Treatment of unincorporated associations**

67.(1) In this section, "association" means an unincorporated association or body of persons (other than a partnership).

(2) Subject to this section, this Act applies as if an association were a legal person. 20

(3) An obligation that, apart from this subsection, would be imposed on an association is instead imposed on the officers of the association.

(4) If, apart from this subsection, a liability to pay money would be imposed on an association by this Act, the liability is instead imposed on the members of the association jointly and severally. 25

(5) If, because of subsection (2), an association would be taken to have committed an offence, the offence is instead taken to have been committed by each of the officers of the association.

(6) In a prosecution for an offence taken to have been committed by a person by virtue of subsection (5), it is a defence that the person: 30

(a) did not aid, abet, counsel or procure the act or omission constituting the offence; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence. 35

(7) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

**Judicial notice of signature**

5 68. All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, are to take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner or Deputy Commissioner.

**Evidence**

69.(1) The mere production of:

- 10 (a) a notice of assessment; or  
(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment;

15 is conclusive evidence of the due making of the assessment 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 are correct.

20 (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.

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

30 (4) A certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, on the day of the certificate, payable by a person in relation to an amount of superannuation guarantee charge or by way of penalty under section 46 or Part 7, is *prima facie* evidence of the matters stated in the certificate.

35 (5) A superannuation guarantee statement purporting to be made or signed by or on behalf of an employer is *prima facie* evidence that the statement was made by the employer or with the employer's authority.

**Access to premises etc.**

- 40 70.(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.

(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. 5

(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. 10

Penalty for contravention of this subsection: \$1,000.

**Obtaining information and evidence**

71.(1) The Commissioner may, for the purposes of this Act, by written notice, require a person: 15

(a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, specified 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 specified in the notice, and then and there to answer questions; and 20

(c) to produce to the Commissioner, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person. 25

(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.

(3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true. 30

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

**Right of contribution** 35

72.(1) If:

(a) 2 or more persons are jointly and severally liable to pay an amount of superannuation guarantee charge; and

(b) one of them has paid the amount or part of it;

the person who paid may, in a court of competent jurisdiction, recover by way of contribution, and as a debt, from any of the other persons 40

an amount equal to as much of the amount paid as the court considers just and equitable.

(2) In subsection (1):

5 “superannuation guarantee charge” includes additional superannuation guarantee charge under section 46 or Part 7.

### **Records to be kept and retained by employers**

73.(1) An employer must keep records that record and explain all transactions and other acts engaged in by the employer, or required to be engaged in by the employer, under this Act.

10 (2) The records must include any documents relevant to ascertaining:

(a) the employer’s annual national payroll for the employer’s base year; and

(b) the individual superannuation guarantee shortfalls of the employer for a year.

15 (3) 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

20 (b) so that the employer’s liability under this Act can be readily ascertained.

(4) An employer 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 those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is later.

25 (5) Nothing in this section requires an employer to retain records if:

(a) the Commissioner has notified the employer that the retention of the records is not required; or

30 (b) the employer is a company that has gone into liquidation and been finally dissolved.

(6) An employer who, without reasonable excuse, contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding \$3,000.

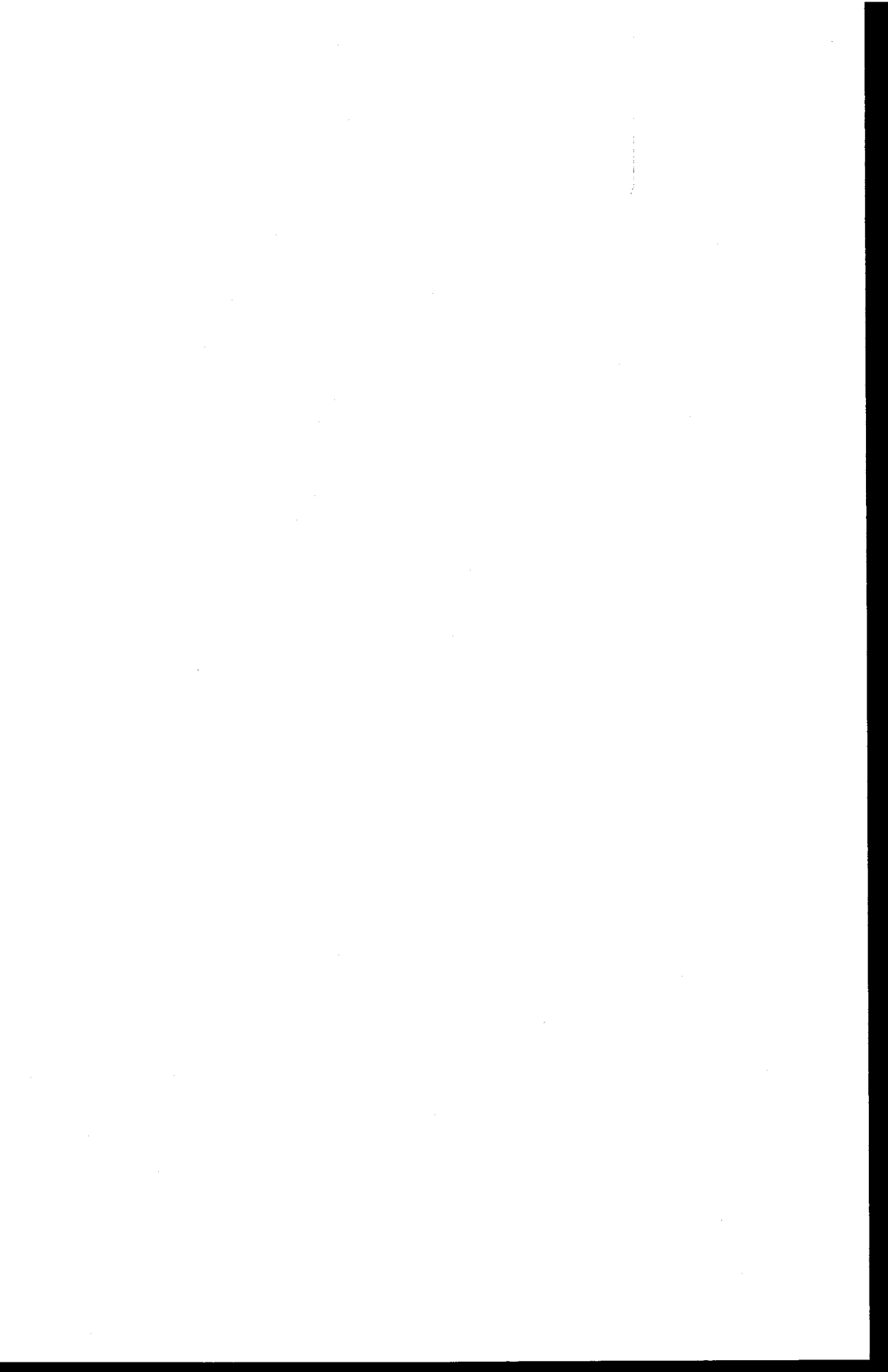
### 35 **Regulations**

74. The Governor-General may make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations.





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