

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OCCUPATIONAL SUPERANNUATION (REASONABLE BENEFIT LIMITS)

AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)



OCCUPATIONAL SUPERANNUATION (REASONABLE BENEFIT LIMITS)
AMENDMENT BILL 1990

OUTLINE

This Bill will amend the Occupational Superannuation Standards Act 1987 and the Income Tax Assessment Act 1936. The amendments to the Occupational Superannuation Standards Act 1987 will introduce new arrangements for the administration of the reasonable benefit limits. The new arrangements will generally come into effect on 1 July 1990. The main provisions of the Bill are:

- . to provide that regulations can be prescribed under the Occupational Superannuation Standards Act 1987 in relation to the method for determining the reasonable benefit limits and the method by which the Insurance and Superannuation Commissioner will determine whether a benefit received by a person is within or in excess of those limits.

This will in effect transfer the power for determining the reasonable benefit limits from the Insurance and Superannuation Commissioner to the Government of the day. The Government's proposals in this regard were announced in the Second Reading Speech of the Minister Assisting the Treasurer when introducing Taxation Laws Amendment Bill (No 4) 1987; and

- . to establish arrangements whereby the Insurance and Superannuation Commissioner can administer those limits. These arrangements are as follows:
 - to require superannuation funds, employers, life assurance companies and registered organisations to provide the Insurance and Superannuation Commissioner with information relating to eligible termination payments, superannuation pensions and annuities provided by them to members, depositors and employees;
 - to require approved deposit funds, life assurance companies and registered organisations to provide the Commissioner with information on balances held in the approved deposit fund, or any deferred annuity fund conducted by the company or organisation as at 15 February 1990;
 - to require the Insurance and Superannuation Commissioner to make a determination, or an interim determination where insufficient information has been provided, of the amount of the payment that is within or in excess of the reasonable benefit limits;

- to require the Insurance and Superannuation Commissioner to give a copy of the determination to the person receiving the payment and where requested, to the Commissioner of Taxation;
- to enable a payer to request a person to provide details of previous determinations made by the Commissioner in relation to the payment of an eligible termination payment and commencement of payment of a superannuation pension or annuity;
- to provide for a person to seek a review of a determination issued by the Insurance and Superannuation Commissioner;
- to provide the Insurance and Superannuation Commissioner with a discretion to treat the whole or a part of a benefit which is in excess of the reasonable benefit limits as if it were within the reasonable benefit limits where he is satisfied that special circumstances exist;
- to require a person who receives a payment of an eligible termination payment, superannuation pension or annuity to provide, on an optional basis, his or her tax file number to the Insurance and Superannuation Commissioner and to provide for the Commissioner to be subject to the requirements of the Privacy Act 1988 and guidelines issued by the Privacy Commissioner in relation to the receipt, storage and use of those tax file numbers. Where a person does not provide his or her tax file number to the Commissioner, the Bill prohibits the Commissioner from determining whether the benefit is within the reasonable benefit limits and requires the Commissioner to treat the whole of the benefit as in excess of the reasonable benefit limits;
- to require a person to advise the Insurance and Superannuation Commissioner when they have elected to roll over an eligible termination payment to an approved deposit fund, superannuation fund or deferred annuity after the provision of the payment to the person has been notified to the Commissioner;
- to provide the Insurance and Superannuation Commissioner with the power to require a superannuation fund, life assurance company or registered organisation which provides a pension or annuity to commute the excess part of the pension or annuity to an eligible termination payment; and

- to enable the Insurance and Superannuation Commissioner to publish statistical information concerning superannuation payments made to a person without identifying the person.

The Bill will also amend the Income Tax Assessment Act 1936:

- . to provide that eligible termination payments received in excess of the reasonable benefit limits are taxed at marginal rates (proposal announced in the Economic Statement of 25 May 1988 and the 1989-90 Budget);
- . to modify the existing taxation treatment of amounts transferred between superannuation funds and for amounts repaid to employers from superannuation funds (proposal announced on 15 August 1989); and
- . to deny tax deductions for contributions made to more than two superannuation funds in respect of the one employee by the same or an associated employer (proposal announced on 15 August 1989).

FINANCIAL IMPACT STATEMENT

The nature of the proposals effecting amendments to the Occupational Superannuation Standards Act 1987 and the Income Tax Assessment Act 1936 do not permit a reliable estimate of the potential revenue effect.

NOTES OF CLAUSES

PART 1 PRELIMINARY

Clause 1: Short title

This clause provides for the amending Act to be cited as the Occupational Superannuation (Reasonable Benefit Limits) Amendment Act 1990.

Clause 2: Commencement

This clause provides for three separate commencement dates as follows:

- . sections 1 and 2 commence on the day on which the Bill receives the Royal Assent;
- section 7 is taken to have come into effect on 30 June 1989;
- . sections 22, 23 and 24 commence on 1 July 1995;
- . the other provisions come into effect on 1 July 1990.

PART 2 - AMENDMENTS OF THE OCCUPATIONAL SUPERANNUATION STANDARDS ACT 1987

Clause 3: Principal Act

This clause provides that the Occupational Superannuation Standards Act 1987 may be referred to in this Part as the "Principal Act".

Clause 4: Interpretation

Section 3 of the Principal Act outlines the definitions of the terms used throughout the Act. Section 3 defines a superannuation fund as a fund which is indefinitely continuing and which provides benefits solely on retirement or death.

Paragraph (a) of clause 4 will amend the definition of "reviewable decision" in section 3 of the Principal Act to include a determination made by the Insurance and Superannuation Commissioner under the proposed sections 15K, 15L, 15N or 15R. This will ensure that a person who is effected by a determination or interim determination of the Insurance and Superannuation Commissioner can seek a review of that determination.

Paragraphs (b) and (c) of clause 4 amend the definition of superannuation fund in section 3 of the Principal Act to provide that for a fund to be treated as a superannuation fund, the fund must be maintained solely for the purposes of paying benefits:

- . on a person's retirement from a business, trade, profession, vocation, calling, occupation or employment;
- . at an age prescribed in the Occupational Superannuation Standards Regulations without the member having retired from the business, trade, profession, vocation, occupation or employment in which the member is engaged; or
- . to the dependants of a member of the fund in the event of the death of a member no later than on the occasion of the events listed above, whichever happens first.

This will allow a superannuation fund to pay out benefits to a person at a prescribed age even if that person is still engaged in a business, trade, profession, vocation, calling, occupation or employment.

Paragraph (d) sets out the meaning of new terms used in Part 2. Notes on the terms used follow:

"life assurance company" is defined as it is used in the definition of "payer" as an entity required to provide information about payments. Life assurance companies may pay eligible termination payments and annuities which are purchased with monies which have at some time received concessional taxation treatment.

"registered organisation" is defined as it is used in the definition of "payer" as an entity required to provide information about payments. Registered organisations may pay eligible termination payments and annuities which are purchased with monies which have, at some time, received concessional taxation treatment.

Paragraph (e) includes as an approved purpose of an approved deposit fund the payment of an amount deposited in the fund to a life assurance company or registered organisation for the purchase of an annuity on behalf of the depositor.

Clause 5: Operating standards for superannuation funds

Section 7 of the Principal Act sets out the matters that can be prescribed in the Occupational Superannuation Standards Regulations as operating standards with which superannuation funds must comply if they are to be treated as complying funds. This clause will insert new paragraphs (ba), (bb) and (bc) in section 7.

Paragraph (ba) will allow for the Occupational Superannuation Standards Regulations to prescribe as a standard the amount of contributions that a superannuation fund may accept.

Paragraph (bb) will allow for the Occupational Superannuation Standards Regulations to prescribe operating standards in relation to the circumstances in which contributions can be accepted by superannuation funds.

Paragraph (bc) will allow for the regulations to prescribe operating standards in relation to actuarial standards that would be required to be met by superannuation funds which provide pensions from their own financial resources or by way of purchase of an annuity from a registered organisation. These standards will ensure that superannuation funds have adequate actuarial reserves to meet the cost of providing pensions.

Clause 6: Operating standards for approved deposit funds

Section 8 of the Principal Act sets out the matters that can be prescribed in the Occupational Superannuation Standards Regulations as operating standards with which approved deposit funds must comply if they are to be treated as complying funds.

This clause will allow for the Occupational Superannuation Standards Regulations to prescribe operating standards in relation to the form in which approved deposit funds may pay benefits.

Clause 7: Pre-1 July 88 funding credits and debits

Section 15D of the Principal Act allows superannuation funds to apply to the Insurance and Superannuation Commissioner for approval of a pre-1 July 88 funding credit. A pre-1 July 88 funding credit is the difference between the amount of contributions made to a superannuation fund and contributions which should have been made to fund benefits in respect of service prior to 1 July 1988 under the rules of the fund in force at any time before 1 July 1988.

This clause amends section 15D to provide that a superannuation fund, where used in that section, includes a superannuation scheme for the payment of benefits upon retirement or death that is constituted by or under a law of the Commonwealth or of a State or Territory.

The amendment will ensure that public sector superannuation schemes are able to apply for a pre-1 July 88 funding credit.

Clause 8

Clause 8 inserts a new Part IIIA after Part III of the Principal Act. The new Part inserts a number of new sections into the Principal Act - sections 15E, 15F, 15G, 15H, 15J, 15K, 15L, 15M, 15N, 15P, 15Q, 15R, 15S, 15T, 15U, and 15V. These new sections provide for the Commissioner:

- . to be provided with information concerning eligible termination payments made or superannuation pensions and annuities provided by superannuation funds, approved deposit funds, life assurance companies, registered organisations and employers;
- . to be provided with information concerning the amount held in approved deposit funds, and deferred annuity funds conducted by life assurance offices and registered organisations at 15 February 1990 in respect of individual members;
- . to make a determination of the amount of a payment that is within the reasonable benefit limits and in excess of those limits;
- . to make an interim determination where insufficient information on the eligible termination payment, superannuation pension or annuity is provided;
- . to give a copy of the relevant determination to the person who received the payment;
- . to amend an interim determination where additional information is obtained;
- . to have a discretion where special circumstances exist to treat a payment as being within the reasonable benefit limits; and
- . to collect, record and retain tax file numbers.

Section 15E: Interpretation

New subsection 15E(1) sets out the meanings of terms used in Part IIIA. Notes on the terms used follow:

"annuity" for the purposes of Part IIIA "annuity" will only mean an annuity that is purchased in whole or in part with rolled-over amounts. This will ensure that those annuities purchased wholly with non-superannuation monies (that is, monies which have not received concessional superannuation taxation treatment) are not subject to the reasonable benefit limits.

"concessional component", "continuously non-complying ADF", "eligible termination payment", "rolled-over amount", "roll-over period", "superannuation fund", and "undeducted contributions" are defined as having the same meaning as in section 27A of the Income Tax Assessment Act 1936.

"Information Privacy Principle" is defined as having the same meaning as in the Privacy Act 1988.

"payer" refers to the entities that make or provide eligible termination payments, superannuation pensions or annuities and will be required to provide information to the Insurance and Superannuation Commissioner about those eligible termination payments, superannuation pensions or annuities.

"private company" has the same meaning as in subsection 6(1) of the Income Tax Assessment Act 1936.

"reasonable benefit limits" is defined as the limit, calculated in accordance with the Occupational Superannuation Standards Regulations, which will apply to an eligible termination payment, superannuation pension or annuity made by a payer to a person.

"relative" is defined as having the same meaning as subsection 6(1) of the Income Tax Assessment Act 1936.

"superannuation pension" is defined as a pension payable from a superannuation fund or benefit payable from a superannuation fund that the Commissioner has determined in writing to be a superannuation pension.

"tax file number" is defined as having the same meaning as in Part VA of the Income Tax Assessment Act 1936.

"year of income" is defined as having the same meaning as in subsection 6(1) of the Income Tax Assessment Act 1936.

"residual capital value" is defined as the capital amount payable on the termination of an annuity or superannuation pension.

New subsection 15E(2) sets out the circumstances in which an employee is an associate of an employer for the purposes of Part IIIA.

New subsection 15E(3) provides that a payer is to be taken as not having made an eligible termination payment to a person to the extent that the payment is rolled over or is used to purchase a deferred annuity.

Section 15F: Approved deposit funds, life assurance companies and registered organisations to provide certain information

New subsection 15F(1) will require approved deposit funds (other than approved deposit funds (ADFs) which have never been complying ADFs), life assurance companies and registered organisations to provide to the Insurance and Superannuation Commissioner information in relation to rolled over amounts held in the fund, or by the company or organisation, by individual members at 15 February 1990.

The approved deposit fund, life assurance company or registered organisation will be required to provide the information within a prescribed period after 1 July 1990.

This will ensure that the reasonable benefit limit of a person who had a rollover amount on 15 February 1990 can be determined accurately.

New subsections (2) and (3) provide that where an approved deposit fund, life assurance company or registered organisation fails to provide the information required under subsection (1):

- . where the payer is a life assurance company or registered organisation, it will be guilty of an offence which may attract a penalty of \$15,000; and
- . where the payer is a complying approved deposit fund, it will be treated as if it had not satisfied the fund conditions in the year in which it fails to meet the requirement, unless the Commissioner, on application by the fund, determines otherwise.

New subsection (4) provides that this information must be provided irrespective of whether the amount held on 15 February 1990 is held on 1 July 1990.

New subsection (5) will ensure that the document required to be provided under subsection (1) is a protected document and that the information contained on the document or transmitted under subsection (1) is protected information. Under section 18 of the Principal Act "protected information" may only be communicated or recorded by a superannuation officer for the purposes of the Act. In other words, the information cannot be used for any purpose not authorised by the Principal Act.

New subsection (6) provides that the Crimes Act 1914 does not apply to an offence against new subsection (2).

Section 15G: Payers to provide certain information

New subsection (1) provides that a payer is required to provide the Insurance and Superannuation Commissioner with information on payments made to a person in the following circumstances:

- . when the payer makes an eligible termination payment;
- . when the payer commences to make payments of a superannuation pension; or
- . when the payer commences to make payments of an annuity,

to the person.

The payer will be required to provide the information to the Insurance and Superannuation Commissioner by notice within the lodgement period after any payment of an eligible termination payment, or the commencement of a superannuation pension or annuity.

New subsection (2) provides that where the payer does not provide the information to the Insurance and Superannuation Commissioner and the payer is a life assurance company, registered organisation or employer, it will be guilty of an offence which may attract a penalty of \$3,000. However, under the Crimes Act 1914, where a Court is of the view that such action is warranted, and the payer is not a natural person, the Court may impose a penalty of five times the penalty that would apply to a natural person.

New subsection (3) requires the payer to provide to the person to whom the payment has been made a notice giving details of the payment within a prescribed period.

The Insurance and Superannuation Commissioner will approve, in writing, the form in which the information may be provided to him and to the person to whom the payment has been made. The details of the payment which will be required to be provided to the Insurance and Superannuation Commissioner and to the person to whom the payment has been made will be set out in the Occupational Superannuation Standards Regulations.

New subsection (4) exempts employers and superannuation funds from providing information to the Insurance and Superannuation Commissioner under subsection (1) where the payment is a eligible termination payment which is under an amount that is prescribed by the Regulations. This will ease the administrative burden on superannuation funds and employers by ensuring that very small payments do not have to be advised to the Insurance and Superannuation Commissioner.

New subsection (5) exempts payers from providing information to the Commissioner under subsection (1) where:

- . the payment was made as consequence of the death of a person to a spouse or child of the other person; and
- . the payment was made within 6 months of the death of the other person or within 3 months of the granting of probate of a will or the granting of letters of administration of the estate, whichever occurs later.

This will ensure that the Insurance and Superannuation Commissioner is not advised of the payment of a death benefit to a spouse or child of a person as death benefits made to a spouse or child following the death of the primary beneficiary are not counted against the reasonable benefit limit of the dependant concerned. However, it will ensure that the Insurance and Superannuation Commissioner is advised where a payment is made to a person other than a spouse or child of the person or where the payment is made to a spouse or child of the person after 6 months after the death of a person or three months after the granting of probate of a will or letters of administration of the estate, whichever occurs later.

New subsection (6) provides that a payer is exempted from providing information to the Insurance and Superannuation Commissioner where the eligible termination payment is as a result of the commutation of a superannuation pension or annuity which the Insurance and Superannuation Commissioner has notified to the payer as being in excess of the reasonable benefit limits, where the dollar amount of the commutation does not exceed the amount notified by the Insurance and Superannuation Commissioner as being excessive.

The excessive part of the superannuation pension or annuity is counted towards the person's reasonable benefit limit at the time that the Insurance and Superannuation Commissioner makes a determination in relation to the pension or annuity. This provision will ensure that the eligible termination payment arising from the commutation is not counted twice against the person's reasonable benefit limit.

New subsection (7) provides that where a person would have met the definition of payer in new section 15E of the Principal Act if it were in force at 16 February 1990, and the payer would, if new subsection 15G(1) had been in force as at 16 February 1990, have been required to advise the Insurance and Superannuation Commissioner of the details of an eligible termination payment, superannuation pension or annuity, then the person must provide details of such payments made between 16 February 1990 and 30 June 1990 to the Insurance and Superannuation Commissioner within the lodgement period.

These benefits will count as benefits previously received when the Insurance and Superannuation Commissioner is determining whether a benefit received after 1 July 1990 is within the reasonable benefit limits.

New subsection (8) provides that the requirement to provide information in relation to payments made between 16 February 1990 and 30 June 1990 does not apply to payments made directly by an employer to an employee who was not an associate of the employer. Such payments made directly by employers to employees who were not associated with the employer are not to be counted as benefits previously received when the Commissioner is determining whether a benefit received on or after 1 July 1990 is within the reasonable benefit limits.

New subsection (9) provides that where information which is required to be provided under subsection (7) is not provided by a life assurance company, registered organisation or employer, the payer will be guilty of an offence which may attract a penalty of \$3,000.

New subsections (10) and (11) provide that where a superannuation fund or approved deposit fund fails to provide information required under subsections (1) or (7), it may be treated as if it had not satisfied the superannuation fund or approved deposit fund conditions in the year in which it failed to meet the requirement.

New subsection (12) will ensure that documents required to be provided under subsection (1) or subsection (7) are protected documents and that the information contained on the documents or transmitted under subsection (1) or subsection (7) is protected information. Under section 18 of the Principal Act "protected information" may only be communicated or recorded by a superannuation officer for the purposes of the Act. In other words, the information cannot be used for any purpose not authorised by the Principal Act.

New subsection (13) provides that the lodgement period for providing information under subsection (1) is the period prescribed in the Occupational Superannuation Standards Regulations and, in the case of information under subsection (7), is the period prescribed in the Occupational Superannuation Standards Regulations that is within a reasonable period after 1 July 1990, except where the payer has applied to the Insurance and Superannuation Commissioner for an extension of time to provide the information and the Insurance and Superannuation Commissioner has determined that special circumstances exist for the period to be extended. In this case the extended period is the lodgement period. The application for the extension of time has to be made before the expiry of the period prescribed under the relevant subsection (1) or subsection (7).

Section 15H: Quotation of tax file numbers

New subsection (1) provides that a person may quote his or her tax file number to an approved deposit fund, life assurance company or registered organisation where the approved deposit fund, life assurance company or registered organisation is required to give the Insurance and Superannuation Commissioner information in relation to rolled over amounts held in the fund, or by the life insurance company or registered organisation, at 15 February 1990 by the person.

New subsection (2) provides that where a payer makes a payment of an eligible termination payment, superannuation pension or annuity after 1 July 1990, the person may quote his or her tax file number to the payer.

New subsection (3) provides that where a payer made a payment of an eligible termination payment, superannuation pension or annuity between the period 16 February 1990 and 30 June 1990, the person may quote his or her tax file number to the payer.

New subsection (4) provides that the person may quote his or her tax file number to the payer or other body in a manner approved by the Insurance and Superannuation Commissioner.

New subsection (5) allows the tax file number to be provided to the payer or other body either by the person to whom the eligible termination payment, superannuation pension or annuity is made or by another person acting for the person to whom the payment has been made.

Section 15J: Notification of roll-over etc

New subsection (1) provides that where a person has received an eligible termination payment and decides within the period allowed under the Income Tax Assessment Act 1936 to roll over the whole or a part of that eligible termination payment to:

- . an approved deposit fund;
- . a superannuation fund;
- . purchase a deferred annuity from a life assurance company or a registered organisation; or
- . one or more of those roll over vehicles,

the person must inform the Insurance and Superannuation Commissioner, within a time prescribed in the Occupational Superannuation Standards Regulations after the rollover takes place, of the details of the rollover. The details which the person will be required to advise to the Insurance and Superannuation Commissioner will also be prescribed in the Occupational Superannuation Standards Regulations.

On withdrawal from the rollover vehicle this amount will be counted against the person's reasonable benefit limit. By requiring a person to notify the Insurance and Superannuation Commissioner when an eligible termination payment is rolled over, new section 15K will ensure that eligible termination payments which are subsequently rolled over will not be double counted for reasonable benefit limits purposes.

New subsection (2) provides that where a person becomes entitled to receive an eligible termination payment arising out of the commutation of a superannuation pension or annuity or the residual capital value of a superannuation pension or annuity, and the person does not take the payment in hand but directly rolls over the whole or part of the payment to:

- . an approved deposit fund;
- . a superannuation fund;
- . purchase a deferred annuity from a life assurance company or registered organisation; or
- . one or more of those rollover vehicles,

the payer is required to advise the Insurance and Superannuation Commissioner of the details of the rollover within a reasonable period of rollover taking place. The details of the rollover which will be required to be provided to the Insurance and Superannuation Commissioner will be set out in the Occupational Superannuation Standards Regulations.

The eligible termination payment will have been included in the value of the superannuation pension or annuity when that pension or annuity was first received. This subsection will ensure that the eligible termination payment is not double counted for reasonable benefit limit purposes.

Section 15K: Determination of reasonable benefits

New subsection (1) provides that where the Insurance and Superannuation Commissioner has received details of the payment of an eligible termination payment, superannuation pension or annuity, the Insurance and Superannuation Commissioner is required to make a determination of the amount of the eligible termination payment, superannuation pension or annuity that is within the reasonable benefit limits and the amount (if any) that is in excess of those limits. The Insurance and Superannuation Commissioner's determination will be made in accordance with guidelines prescribed in the Occupational Superannuation Standards Regulations. The Commissioner will be required to make his determination within a prescribed time after receiving the information under the new section 15G.

New subsection (2) provides that where the payer does not provide the person's tax file number, the Insurance and Superannuation Commissioner must not make a determination of the amount of the payment that is within the reasonable benefit limits and the amount (if any) that is in excess of the reasonable benefit limits. This is because in these circumstances the Insurance and Superannuation Commissioner cannot be certain of the identity of the person for the purpose of matching information on the benefit received with information on any benefits previously received by the person and accordingly could not be certain of the accuracy of any determination on whether or not the whole of the benefit was within the reasonable benefit limit.

Provision of the tax file number is also necessary to ensure that where the Commissioner of Taxation decides to audit a return, he is able to match the benefit determination with the person's income tax return so that correct tax liability can be determined. The Commissioner of Taxation would not be able to match the person's benefit determination with his or her income tax return if the person's tax file number is not included on the benefit determination.

New subsection (3) provides that the Insurance and Superannuation Commissioner must not make a determination where a person has informed the Insurance and Superannuation Commissioner that the whole of the eligible termination payment has been rolled over to a superannuation fund, approved deposit fund or used to purchase a deferred annuity from a life assurance company or registered organisation.

New subsection (4) provides that where a person has advised the Insurance and Superannuation Commissioner that he or she has rolled over part of the eligible termination payment to a superannuation fund or approved deposit fund or used part of the eligible termination payment to purchase a deferred annuity from a life assurance company or registered organisation before the Insurance and Superannuation Commissioner has made a determination under subsection 15K(1), the Commissioner will only be required to make a determination in respect of the amount of the eligible termination payment not rolled over or used.

New subsection (5) provides that where the Insurance and Superannuation Commissioner has made a determination under subsection (1) and is subsequently advised that the person has rolled over the whole of the eligible termination payment to a superannuation fund or approved deposit fund, or used the whole of the payment to purchase a deferred annuity, the Commissioner is required to revoke his original determination in respect of that benefit. This will ensure that the eligible termination payment will not be double counted when it is ultimately paid from an approved deposit fund, superannuation fund or deferred annuity fund.

New subsection (6) provides that where a person advises the Insurance and Superannuation Commissioner after the Commissioner has made a determination under subsection (1) that he or she has rolled over part of the eligible termination payment to a superannuation fund, approved deposit fund or used part of the eligible termination payment to purchase a deferred annuity, the Commissioner will be required to revise the original determination in relation to that eligible termination payment made under subsection (1) so that it only relates to the amount of the eligible termination payment that has not been rolled over or used.

New subsection (7) provides that where the Insurance and Superannuation Commissioner has made a determination under subsection (1) as a result of a superannuation pension or annuity commencing to be payable and the person elects to commute the superannuation pension or annuity within the period to be prescribed in the Occupational Superannuation Standards Regulations, of the commencement of the pension or annuity, the Commissioner will be required under subsection (7) to issue an amended determination which takes the eligible termination payment arising from the commutation into account. The Commissioner will be required to amend the determination as it is possible that by commuting the pension or annuity to an eligible termination payment the payment would be subject to a different reasonable benefit limit.

New subsection (8) provides that where the Insurance and Superannuation Commissioner has made a determination under subsection (1) in relation to the amount of an eligible termination payment that is within the reasonable benefit limits and the amount (if any) that is in excess of those limits and becomes aware that the Commissioner of Taxation has reduced the amount of the eligible termination payment under subsections 27A(4) or (4A) of the Income Tax Assessment Act 1936, the Commissioner must, on application by the person, within a period prescribed in the Occupational Superannuation Standards Regulations revise his original determination taking into account the reduction in the eligible termination payment.

New subsection (9) provides that the Insurance and Superannuation Commissioner may revise his determination made under subsection (1) in order to correct any error he has made in making the determination or as a result of additional information being provided to him that was not available to him at the time the determination was made under subsection (1).

New subsection (10) provides that where the Insurance and Superannuation Commissioner revises a determination under subsections (6), (7), (8) or (9) the revised determination has effect as though it were a determination under subsection (1). However, the revised determination must not be a determination that the Commissioner was not empowered to make under subsection (1).

Section 15L: Interim Determinations

New subsection 15L(1) provides that where the Insurance and Superannuation Commissioner receives information under subsection 15G(1) from a payer concerning the payment of an eligible termination payment, a superannuation pension or annuity, but that information is incomplete, the Commissioner must make an interim determination of the amount that is within the reasonable benefit limits and the amount that is in excess of those limits. The Commissioner will be required to make the interim determination within a time period prescribed in the Occupational Superannuation Standards Regulations in accordance with the detailed guidelines prescribed in the Regulations.

New subsection (2) provides that if the tax file number of the person is not provided to the Insurance and Superannuation Commissioner under subsection 15G(1) by a payer, the Commissioner is taken not to have sufficient information to make a final determination under subsection 15K(1) and is required to make an interim determination under subsection 15L(1).

New subsection (3) provides that, in this circumstance, the interim determination must be that the whole of the payment, less those amounts which do not count for reasonable benefit limit purposes, is excessive.

Section 15M: Notification etc. of determinations

New section 15M provides that the Insurance and Superannuation Commissioner will be required to provide the person to whom a payment of an eligible termination payment, superannuation pension or annuity was made with:

- . a copy of the determination and a statement of the basis on which the determination was made;
- . where the determination is an interim determination, the basis on which the interim determination was made, the additional information required for the Insurance and Superannuation Commissioner to make a determination under subsection 15K(1) and advice that the person may apply to the Insurance and Superannuation Commissioner to amend the interim determination within a period that will be prescribed in the Occupational Superannuation Standards Regulations.

Where the additional information required to be provided to the Insurance and Superannuation Commissioner is the person's tax file number the Commissioner is also required to advise the person that, because his or her tax file number was not provided, the whole of the payment that is counted towards the reasonable benefit limits has been determined to be in excess of the reasonable benefit limits and of the manner in which the person can provide his or tax file number to the Commissioner so that the determination can be amended.

New subsection 15M(1) also provides that the Insurance and Superannuation Commissioner may provide a copy of his determinations to the Commissioner of Taxation where the Commissioner of Taxation so requests.

New subsection 15M(2) provides that the request by the Commissioner of Taxation may relate to a particular determination or a class of determinations.

Section 15N: Amendment of interim determinations

New subsection (1) provides that where the person has applied to the Insurance and Superannuation Commissioner for an amendment to an interim determination and the Commissioner is provided with any additional information which will enable him to make a determination under new subsection 15K(1), the Commissioner may amend the interim determination.

New subsection (2) provides that, where the Insurance and Superannuation Commissioner has made an interim determination and the person has not applied to the Commissioner for an amendment to the interim determination within the period prescribed in the Occupational Superannuation Standards Regulations or has not provided the additional required information as notified to the person or agreed to by the Commissioner, the interim determination will have effect as if it were a determination made under new subsection 15K(1). This will ensure that the Commissioner of Taxation is able to make an assessment of the taxation liability attributable to the payment.

New subsection (3) provides that the Insurance and Superannuation Commissioner must not agree to waive the requirement for additional information where that information is the tax file number of the person.

New subsection (4) provides that where the Insurance and Superannuation Commissioner has made an interim determination and the person applies for an amendment of the interim determination in the special circumstances set out in the Occupational Superannuation Standards Regulations, the Commissioner may amend the determination if necessary.

New subsection (5) provides that where the Insurance and Superannuation Commissioner amends an interim determination, the Commissioner will be required to provide a copy of the amended determination to the person who made the application together with a statement setting out the basis on which the amendment to the determination has been made. The Commissioner may also, on the request of the Commissioner of Taxation, give a copy of the amended determination to the Commissioner of Taxation. Where the amended determination results in the person's tax liability changing, this will allow the Commissioner of Taxation to make an amended assessment in respect of the payment.

New subsection (6) provides that a request by the Commissioner of Taxation may relate to a particular determination or a class of determinations.

New subsection (7) provides that the amended determination must not be an interim determination that the Insurance and Superannuation Commissioner was not empowered to make under subsection 15L(1).

Section 15P: Payers may request information on previous benefits etc.

New subsection 15P(1) provides that, where a payer makes an eligible termination payment to a person or commences to make payments of a superannuation pension or annuity to a person, the payer may request the person to provide information in relation to any previous eligible termination payments and superannuation pension or annuity payments made to the person by the requesting payer or any other payer. This will assist the payer in calculating the correct amount of tax to be deducted for PAYE purposes from the payment.

The information that a payer is able to request will be prescribed in the Occupational Superannuation Standards Regulations.

New subsection (2) provides that the request by the payer under subsection (1) is not to be taken to be a request that the person quote his or her tax file number to the payer.

Section 15Q: Persons may request copy of previous determination

New section 15Q provides that where a person requests a copy of a final or interim determination, the Insurance and Superannuation Commissioner must provide the person with a copy of that determination and any information that is required to be provided under the Occupational Superannuation Standards Regulations.

Section 15R: Discretion to treat payment etc. as within reasonable benefit limits

Under section 13 of the Principal Act the Insurance and Superannuation Commissioner has a wide discretion to treat a superannuation fund which has not met the superannuation fund conditions, including the current requirement that benefits paid by the fund not be excessive, as if it had met the superannuation fund conditions.

New section 15R provides the Insurance and Superannuation Commissioner with a general discretion to make a determination under subsection 15K(1) or section 15L that the whole or a part of an amount of an eligible termination payment, pension or annuity is within the reasonable benefit limits even though the amount of the payment exceeds the reasonable benefit limits. This discretion may only be exercised where special circumstances exist and only where the application of the prescribed Regulations in relation to the calculation would result in the amount of the payment exceeding the particular person's reasonable benefit limit.

Section 15S: Deemed commutation of annuities and pensions

New section 15S will ensure that excessive benefits can only be paid as eligible termination payments which will be taxed at the person's marginal rate. Clause 17 will insert a new subsection 27B(3) into the Income Tax Assessment Act 1936 which provides that the excessive component of an eligible termination payment is to be included in the assessable income of a person. This will ensure that the taxation concessions granted to the excessive component of the pension can be recovered.

New subsection 15S(1) provides that where a person has used his or her eligible termination payment to purchase an annuity from a life assurance company or a registered organisation, and the Insurance and Superannuation Commissioner determines that the annuity exceeds the reasonable benefit limits, the Commissioner must advise the life assurance company or registered organisation which provided the excessive annuity that they must within one month after receipt of the advice, treat the excessive amount of the annuity as if the person had commuted the excessive amount and advise the Commissioner that the annuity has been so treated. The notice must also advise of the penalty for non-compliance with the notice. The amount of the eligible termination payment arising from the commutation must not exceed the dollar amount notified by the Commissioner as being excessive.

New subsection (2) provides that the life assurance company or registered organisation must comply with the Commissioner's advice within one month of receiving that advice. Where a life assurance company or registered organisation does not comply with the Commissioner's advice, it will be guilty of an offence which may attract a penalty of \$15,000.

New subsection (3) provides that subsection (2) does not apply unless the life assurance company or registered organisation is:

- . a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or

- . a trading corporation or financial corporation formed within Australia; or
- . is incorporated in a Territory other than the Northern Territory.

New subsection (4) provides that where a person commences to receive payments of a superannuation pension from a superannuation fund and the Insurance and Superannuation Commissioner determines that the pension exceeds the reasonable benefit limits, where the superannuation fund does not comply with the request from the Commissioner to commute the excess amount within one month, the superannuation fund is to be treated as if it had not satisfied the superannuation fund conditions in the year in which the day after the expiry of the one month period occurs and for each year that the pension which is in excess of the reasonable benefit limits continues to be paid.

New subsection (5) provides that subsection 4B(3) of the Crimes Act 1914 does not apply in relation to an offence against subsection (2).

Section 15T: This part to be taxation law

New section 15T will provide that Part III of the Act is taxation law for the purposes of section 69 of the Privacy Act 1988 and any guidelines in force under section 17 of that Act. This will ensure that the Insurance and Superannuation Commissioner has authority to collect, store and retain tax file numbers.

Section 15U: Recording of tax file numbers

Section 8WB of the Taxation Administration Act 1953 provides that a person is prohibited from recording, communicating or using a tax file number for the purpose of identifying an individual, unless the person is required to do so under a taxation law. Section 15U provides that, notwithstanding the provisions of section 8WB of the Taxation Administration Act, the Insurance and Superannuation Commissioner can record tax file numbers.

New section 15U is paramount over section 8WB and ensures that the Commissioner has power to record tax file numbers for the purpose of issuing a determination so that the Commissioner of Taxation can establish the correct taxation liability in respect of the eligible termination payment, superannuation pension or annuity.

Section 15V: Commissioner to observe Information Privacy Principles

New section 15V provides that the Insurance and Superannuation Commissioner must comply with the requirements contained in the Privacy Act 1988 in relation to the collection, storage and use of tax file numbers. The Commissioner will also be required to comply with the Information Privacy Principles which protect personal information in relation to an individual.

Clause 9: Review of certain decisions

Section 16 of the Principal Act provides for the review of certain decisions of the Insurance and Superannuation Commissioner in relation to a fund's compliance or non-compliance with the superannuation fund, approved deposit fund or pooled superannuation trust conditions. The review procedures allow a fund to apply, within 21 days, for the Commissioner to review a decision and that if the trustee is not satisfied with the outcome of the Commissioner's review of the decision, the trustee may appeal to the Administrative Appeals Tribunal.

Clause 9 will amend subsections (1), (5) and (5A) of section 16 of the Principal Act to provide that decisions made by the Insurance and Superannuation Commissioner in relation to whether an eligible termination payment, superannuation pension or annuity received by a person is within the reasonable benefit limits are also reviewable decisions.

Paragraphs (a) and (b) of clause 9 will amend subsection (1) of section 16 of the Principal Act to provide that a person may request the Commissioner to reconsider a decision made under proposed sections 15K, 15L, 15N and 15P. Consistent with the existing provisions of subsection 16(1), the time period for making the request is to be 21 days after the person has received the Commissioner's determination.

Paragraphs (c) and (d) of clause 9 will amend subsection (5) of section 16 of the Principal Act to ensure that the Commissioner will be required to provide a person who requests a reconsideration of a determination with the result of that reconsideration and the reasons for either confirming, varying or revoking the original determination.

Paragraphs (e) and (f) of clause 9 will amend subsection 5A of section 16 to require the Insurance and Superannuation Commissioner to provide the Commissioner of Taxation with details of his reconsideration where it has resulted in the original decision being varied or revoked.

Clause 10: Statements to accompany notification of decisions

Clause 10 will amend section 17 of the Principal Act to provide that when advising a person of his determination or interim determination under new sections 15K, 15L, 15N or 15P the Commissioner is required to provide a statement to the person indicating that if the person is dissatisfied with the decision, he or she may seek a reconsideration of the decision in accordance with subsection 16(1), and if, after the Commissioner's reconsideration of the original decision, is still dissatisfied with the decision, may appeal to the Administrative Appeals Tribunal.

Clause 11: Commissioner may publish statistical information

Section 19 of the Principal Act allows the Commissioner to publish statistical information relating to superannuation funds, approved deposit funds and pooled superannuation trusts.

Clause 11 will amend section 19 to allow the Commissioner to publish statistical information in relation to payments made to persons. Consistent with the current provision relating to superannuation funds, approved deposit funds and pooled superannuation trusts, the statistical information is to be published in a form which will not identify any person.

Clause 12: Regulations

Section 22 of the Principal Act allows the Governor-General to make regulations prescribing certain details necessary for the administration of the Act.

New paragraph 22(d) will ensure that regulations can be made in relation to the method for determining the reasonable benefit limits and the method by which the Insurance and Superannuation Commissioner will administer those limits.

New paragraph 22(d) will in effect transfer the power for determining the reasonable benefit limits from the Insurance and Superannuation Commissioner to the Government of the day.

PART 3 - AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936

Clauses 13 to 24: Reasonable benefit limits and associated measures

Introductory Note

Clauses 13 to 24 of this Part of the Bill propose to amend the Income Tax Assessment Act 1936 (the Principal Act in this Part) to give effect to proposals associated with the introduction and administration of the new reasonable benefit limits (RBL).

Excessive benefits

Under the existing law, eligible termination payments (ETPs) can have five possible components. For example, the "pre-July 83 component" is referable to eligible service that occurred before 1 July 1983. The amendments proposed will establish a sixth component - the "excessive component" - when benefits in excess of the RBL are received. The excessive component will be included in the taxpayer's assessable income and taxed at the taxpayer's marginal rate.

Under the administrative arrangements proposed, the Insurance and Superannuation Commissioner will keep a record of benefits received and determine which part of an ETP is excessive and is to be taxed at marginal rates. The taxation treatment of the part of an ETP that is not excessive will not change.

Part 3 of the Bill also proposes to amend the Principal Act to enable other measures associated with the administration of RBL to be implemented. These measures, which are designed to ensure there is no misuse of concessional taxed superannuation funds, are referred to in the paragraphs that follow. With one exception, all the changes apply from 1 July 1990. The exception is the change to the deductions allowed to superannuation funds for amounts repaid to an employer - this will apply from 1 July 1995.

Benefits transferred to a non-complying fund

Under the new arrangements, superannuation funds may need to transfer amounts to other funds in order to maintain or achieve complying status (and hence be subject to a lower rate of tax). Transfers could arise, for example, where an employer wishes to contribute on a regular basis to a complying superannuation fund that is at its funding limit and is not able to accept additional contributions without losing its complying status.

The Bill includes amendments which facilitate these transfers and, consistent with the treatment of the excess benefits to members, proposes to tax the amount transferred as a taxable contribution to the non-complying fund.

Eligible Termination Payments

Under the proposed arrangements, ETPs will not be allowed to be rolled over to any non-complying approved deposit fund (ADF) or superannuation fund. This measure is intended to encourage superannuation funds and ADFs to remain complying.

Deductions for amounts repaid by superannuation funds to employers

At present, amounts repaid to an employer by a superannuation fund are deductible to the fund where the amount is included in the assessable income of the employer.

Amendments proposed will remove this deduction for superannuation funds (except those that have never been taxed in a concessional environment) to ensure consistency with the treatment proposed when excess benefits are provided to members. This will recoup the tax concession given to the superannuation fund.

Fund splitting

As part of the new administrative arrangements for the reasonable benefit limits, benefits accruing in other superannuation funds or rollover funds on behalf of members of a superannuation fund will not be required to be taken into account when calculating the maximum deductible contributions that the fund can accept.

The Bill proposes amendments to prevent splitting of a fund's assets through a number of funds so that additional contributions can be made to the first fund, thereby allowing employers to contribute excess amounts in order to obtain deductions and reduce their immediate taxation liability. This is to be achieved by allowing deductible contributions to no more than two funds on behalf of a member by the same or an associated employer. This accommodates arrangements where employers top up benefits provided to certain employees through a second fund or provide for benefits through industry schemes alongside company schemes.

Clause 13: Principal Act

This clause facilitates references to the Income Tax Assessment Act 1936, in this Part referred to as the "Principal Act".

Clause 14: Interpretation

Section 27A of the Principal Act contains definitions for the purposes of Subdivision AA of Division 2 of Part III of the Act which deals with the assessment of superannuation, termination of employment and kindred payments.

Paragraph (a) of clause 14 inserts three new definitions in subsection 27A(1) -

"continuously non-complying ADF" is defined for the purpose of determining whether a payment from an ADF is to be an eligible termination payment (ETP). Paragraphs (c) and (ca) of the definition of ETP in subsection 27A(1) include payments made by the trustee of an approved deposit fund. As continuously non-complying ADFs have failed to meet the requirements for being taxed in a concessional environment, it is proposed that lump sum payments from them will not be subject to tax as ETPs. This reflects the current position for ETPs paid from comparable superannuation funds.

Paragraph (a) of the new definition refers to ADFs which came into existence before 1 July 1988 and paragraph (b) covers ADFs which came into existence on or after 1 July 1988. For ADFs that came into existence before 1 July 1988, subparagraph (a)(i) requires that the ADF must have been an "ineligible approved deposit fund" for the period prior to 1 July 1988 during which

the fund was in existence. An ineligible approved deposit fund is, broadly, an ADF that was not eligible for an exemption from tax on its income. The term was defined in section 121B of the Principal Act as in force prior to 1 July 1988. In relation to the year of income commencing on 1 July 1988 and each succeeding year of income, subparagraph (a)(ii) requires that the ADF must be a non-complying ADF (as defined in Part IX of the Principal Act).

For an ADF established on or after 1 July 1988 to be a continuously non-complying ADF, paragraph (b) provides that the ADF must be a non-complying ADF in relation to each year of income since it came into existence.

"excessive component" is defined in relation to an ETP as being the sum of -

- . the amount of the ETP that the Insurance and Superannuation Commissioner has determined to be in excess of the reasonable benefit limits (paragraph (a)); and
- . the amount of the ETP representing the commutation of part of an annuity or pension in excess of the reasonable benefit limits and advised to that effect by the Commissioner under new section 15S (paragraph (b)).

"non-complying ADF" is given the same meaning as in Part IX - Taxation of superannuation business and related business - of the Principal Act.

Paragraphs (b) and (c) of clause 14 propose to exclude certain transfers between superannuation funds from the ETP definition in subsection 27A(1) of the Principal Act by inserting new paragraph (p).

Transfers made in relation to a taxpayer are currently treated as ETPs which have been rolled-over. Without the change proposed by the insertion of paragraph (p) it would not be possible, once the amendment being proposed by paragraph (e) of clause 14 came into effect, for there to be a roll-over of an ETP to a non-complying superannuation fund. Although it has been decided generally that ETPs should not be able to be rolled-over to non-complying superannuation funds, there may be circumstances where the trustee(s) of a superannuation fund wishes to transfer amounts from the fund. This could arise, for example, where an employer wishes to contribute on a regular basis to a complying superannuation fund that is at its funding limit and is not able to accept additional contributions without losing its complying status.

The transfers affected by new paragraph (p) are those described in proposed new subsection 274(10) (see notes on clause 21) and cover transfers to a non-complying superannuation fund from a superannuation fund other than a continuously non-complying superannuation fund. The definition of a continuously non-complying superannuation fund is being inserted by clause 20 and is broadly, a superannuation fund that has failed to meet the requirements for being taxed in a concessional environment.

To be excluded from the ETP definition the transfers must not be made at the request of a fund member (subparagraph (p)(i)) and, as a result of the transfer, the fund must either remain complying (where the transferor fund is already complying) or become complying (where the transferor fund is non-complying) (subparagraph (p)(ii)).

Paragraph (d) of clause 14 will insert new subsection 27A(3A). That subsection will ensure that the reference to "approved deposit fund" in paragraphs (c) and (ca) of the definition of ETP does not extend to a continuously non-complying ADF (see notes on paragraph (a) of this clause). As such funds have failed to meet the requirements for being taxed in a concessional environment, it is proposed that lump sum payments from them will not be subject to tax as ETPs. Excluding them from the ETP definition will achieve this result.

Paragraphs (e) and (f) of clause 14 will amend paragraphs (a) and (b) of subsection 27A(12) of the Principal Act. Subsection 27A(12), in conjunction with section 27D, sets out the legislative conditions that have to be met before a component of an eligible termination payment will be deemed to have been rolled-over or applied in accordance with section 27D. If rolled-over, a taxpayer is not subject to tax on the ETP at that time.

Subsection 27A(12) currently sets out the kinds of applications of a payment that, if made within a 90 day roll-over period, will make the payment a "qualifying eligible termination payment" and therefore one in respect of which an election must be made under section 27D as to the manner in which the taxpayer wishes to have the components of the payment treated as having been rolled over. The applications include roll-over payments to superannuation funds and approved deposit funds. The amendments will exclude from the roll-over provisions, payments to superannuation funds (paragraph 27A(12)(a)) and ADFs (paragraph 27A(12)(b)) which are not complying funds.

Clause 15: Components of an ETP

Subsection 27AA(1) of the Principal Act identifies the five possible components of an ETP. The five components as listed in paragraphs 1(a) to (e) of the subsection are -

- . the concessional component, being so much of an ETP as consists of an invalidity payment, a bona fide redundancy payment or an approved early retirement scheme payment;
- . the undeducted contributions which represent the non-deductible superannuation contributions made after 30 June 1983 by a fund member;
- . the non-qualifying component of an immediate annuity ETP, i.e., broadly the income component of an ETP that is made on commutation of, or is the residual capital value of, an immediate annuity not purchased with a rolled-over ETP;
- . the pre-July 83 component, which is the lesser of the amount determined under the formulas in subparagraphs 27AA(1)(d)(i) and (ii); and
- . the post-June 83 component, which is the amount of the ETP reduced by the other components.

Paragraph (a) of clause 15 inserts new paragraph (ca) in subsection 27AA(1) to provide for the sixth possible component (the "excessive component") of an ETP. By proposed new subsection 27B(3) (see notes on clause 17), the excessive component of an ETP is included in assessable income and taxed at the taxpayer's marginal rate of tax.

Paragraphs (b) and (c) of clause 15 amend paragraph 1(d) of subsection 27AA(1) so that the excessive component of an ETP is excluded from the ETP prior to the calculation of the pre-July 83 component of the ETP.

Paragraph (d) of clause 15 inserts new subsections 27AA(3), 27AA(4), 27AA(5), and 27AA(6) into the Principal Act. Proposed new subsection 27AA(3) covers an ETP in respect of which a determination as to whether the payment is in excess of the reasonable benefit limits should have been made by the Insurance and Superannuation Commissioner and has not been made otherwise than because of the application of the proposed new subsection 15K(3) of the Occupational Superannuation Standards Act 1987, (paragraphs 3(a), 3(b) and 3(c)). The operation of subsection 15K(3) is explained in notes on clause 8. In these circumstances, subsection 27AA(1) will apply assuming there is no pre-July 83 component or post-June 83 component in respect of the ETP. The ETP will be treated as consisting of only a concessional component, undeducted contributions, a non-qualifying component with the component remaining being an "excessive component".

Proposed new subsections 27AA(4) and (5) cover situations where an ETP includes both an excessive component and a non-qualifying component. The situations addressed are where the excessive component exceeds the non-qualifying component (subsection (4)) and where the excessive component is less than or equal to the non-qualifying component (subsection (5)). These amendments are necessary because in these situations the excessive component and the non-qualifying component cover the same part of the ETP.

The non-qualifying component is currently included in assessable income under subsection 27B(2) and is taxed on the same basis as that proposed for the excessive component of an ETP. The amendments proposed by subsections 27AA(4) and 27AA(5) will provide that where there is both an excessive component and a non-qualifying component in relation to an ETP, the excessive component is reduced (to nil, if necessary) by the amount of the non-qualifying component. However, subsections 27AA(4) and 27AA(5) will not apply where new subsection 27AA(3) applies. This is because the application of subsection 27AA(3) means that the non-qualifying component and the excessive component calculated under that subsection cannot be in respect of the same part of the ETP.

Proposed new subsection 27AA(6) provides that, for the purposes of new subsection 27AA(3), a determination has been made by the Insurance and Superannuation Commissioner even though the determination is subsequently revoked under new subsection 15K(5).

Clause 16: Taxed and untaxed elements of post-June 83 component

Section 27AB of the Principal Act identifies the extent to which the post-June 83 component of an ETP is eligible for the new reduced maximum rates of tax applying to certain ETPs paid after 30 June 1988. In broad terms a post-June 83 component qualifies for one of the new maximum rates to the extent that it is attributable to a taxed source, i.e., a taxed superannuation fund, a taxed ADF or a roll-over annuity contract. The part of a post-June 83 component not attributable to a taxed source, known as an untaxed element, remains taxable at the rates that applied up to 30 June 1988.

Section 27AB provides the foundation for the operation of Subdivision AAA of Division 17 of Part III of the Principal Act which provides a rebate, where needed, to ensure that the tax payable on the post-June 83 component of an ETP does not exceed the relevant maximum rate or rates of tax applicable. Because different maximum rates of tax apply to taxed and untaxed elements, the first step in calculating a rebate under Subdivision AAA is to identify the extent to which a post-June 83 component included in a person's assessable income consists of a taxed element or an untaxed element. Clause 16 proposes to amend section 27AB in relation to those ETPs which consist of both a taxed and an untaxed element and also an excessive component.

Paragraphs (a) and (b) of clause 16 propose to amend subsection 27AB(3). Subsection 27AB(3) deals with one class of ETPs paid from a taxed superannuation fund that may nevertheless have an untaxed element. The relevant ETPs are those covered by items 3, 4, 6 and 8 of the Table of Taxed Elements in subsection 27AB(1), i.e., payments made directly as the result of the death of a superannuation fund member or in lieu of a pension or annuity entitlement that arose because of the death of a fund member (death benefits). The reason for treating such an ETP as having a potential untaxed element is linked to the fact that a deduction is available to taxed superannuation funds under sections 279 and 279B in respect of the cost of insuring against the need to pay such death benefits. The deductions are designed, broadly, to offset the effect of contributions tax on death benefits, and thus to allow a fund to pay a gross benefit similar to the amount that would have been paid before the new arrangements that apply from 1 July 1988 operated.

Although the deductions are principally aimed at allowing funds to pay tax-exempt death benefits at pre-1 July 1988 levels, because there would not be a corresponding reduction in tax on such benefits to compensate for contributions tax levied on the fund, they will also allow taxable benefits to be kept at levels higher than would otherwise have been possible. For that reason, the insured part of the post-June 83 component of a death benefit ETP is to be taxed at the same rates as applied up to 30 June 1988, i.e., it is to be treated as an untaxed element.

Paragraph 27AB(3)(b) deals with those cases where a deduction has been allowed to the fund in respect of the death benefit. Subparagraph 27AB(3)(b)(i) deals with any ETPs that are net of unused undeducted purchase price, i.e., those covered by items 6 and 8 of the Table of Taxed Elements in subsection 27AB(1). Subparagraph 27AB(3)(b)(ii) covers the remaining types of taxable death benefits, i.e. those covered by items 3 and 4 in the Table of Taxed Elements.

Paragraphs (a) and (b) of clause 16 will amend subparagraphs 3(b)(i) and (ii) of section 27AB by reducing the ETP in the formulas by the excessive component, if any, of the ETP. These amendments will mean the taxed and untaxed elements of the post-June 83 component of an ETP are the same as that which would be obtained if the ETP did not include an excessive component.

Paragraph (c) of clause 16 inserts new subsection 27AB(7) to complement existing subsection 27AB(6) in situations when ETPs to which that subsection applies include an excessive component.

Subsection 27AB(6) currently provides a basis for calculating the taxed element of certain ETPs to which subsection 27A(17) applies. Subsection 27A(17) applies to ETPs that, to some extent, are funded from an eligible superannuation fund but are not paid from such a fund. To the extent that the ETP is funded from an eligible superannuation fund it is to be treated as if it was paid from that fund. If the relevant fund is a taxed superannuation fund, the post-June 83 component of the ETP may have a taxed element.

Subsection 27AB(6) covers ETPs that, because of subsection 27A(17), are to be taken to have been partly paid from a taxed superannuation fund and partly from an untaxed fund. In such cases the taxed element is calculated under paragraph 27AB(6)(c) by treating the amount so identified as comprising separate ETPs, calculating the separate taxed elements of those notional ETPs and adding together the taxed elements.

In calculating the taxed elements of the notional ETPs some assumptions are necessary about the makeup of those amounts. It is assumed that:

- . any undeducted contributions in the actual ETP are contained in the part of the ETP deemed to be paid from an eligible superannuation fund;
- . if the actual ETP is net of unused undeducted purchase price, the unused undeducted purchase price reduced by the amount of the notional ETP deemed to have been paid from an eligible superannuation fund;
- . any concessional component of the notional ETPs are to be calculated as if each notional ETP was an actual ETP.

Proposed new subsection 27AB(7) provides a method of attributing the excessive component to the notional ETPs referred to above. The preconditions for its operation are that subsection 27AB(6) applies to an ETP (paragraph (a)) and an excessive component exists (paragraph (b)). The new subsection apportions the excessive component to each 'Part ETP' referred to in paragraphs 27AB(6)(a) and (b) in the same ratio as each 'Part ETP' bears to the ETP. For example -

- . An ETP of \$210,000 including an "excessive component" of \$20,000 is received -

\$60,000 has a taxed source
(paragraph 27AB(6)(a)); and

\$150,000 has an untaxed source
(paragraph 27AB(6)(b));

- New subsection 27AB(7) will apportion the excessive component of \$20,000 between the taxed and untaxed sourced ETPs in the same ratio as each ETP is to the total ETP. The portions will be -

\$5,714 or $(20,000 \times 60,000/210,000)$ to the \$60,000 ETP; and

\$14,286 or $(20,000 \times 150,000/210,000)$ to the \$150,000 ETP.

Clause 17: Assessable income to include certain superannuation and kindred payments

Section 27B of the Principal Act includes in assessable income so much of the post-June 1983 component of each of the taxed element (paragraph (1)(a)) and the untaxed element (paragraph (1)(b)) of an ETP as is not rolled over together with the amount of any non-qualifying component of an immediate annuity ETP (subsection 27B(2)).

Clause 17 will insert new subsection 27B(3) to provide that where an ETP includes an excessive component, that component will also be included in assessable income.

The ETP elements referred to above in paragraphs 27B(1)(a) and (b) are eligible for the rebate provided under subdivision AAA of Part III of the Principal Act. The rebates result in the tax rate on those elements of assessable income not exceeding the maximum rates applicable. The non-qualifying component (subsection 27B(2)) and the excessive component (new subsection 27B(3)) are not eligible for rebates with the result that they are taxed at the appropriate marginal tax rate.

Clause 18: Amendment of assessments

Section 27J of the Principal Act provides that an assessment can be amended at any time if the amendment is to give effect to section 27D (roll-over of ETPs) and effects a reduction in liability of a taxpayer.

This clause will insert new subsection 27J(2) which will provide that, notwithstanding the provisions relating to amendment of assessments in section 170 of the Principal Act, an assessment can be amended to give effect to a variation in the determination of the excessive component of an ETP.

Clause 19: Deduction for contributions to eligible superannuation fund for employees

Section 82AAC of the Principal Act allows a deduction for contributions made to an "eligible superannuation fund" (within the meaning in Part IX of the Principal Act) in a year of income. The contributions must be for the purpose of making provision for superannuation benefits for, or for dependants of, an eligible employee as defined in subsection 82AAA(1).

The new administrative reasonable benefit limits arrangements will not require a superannuation fund to have regard to benefits accruing in other funds when determining the maximum deductible contributions it can accept. Accordingly it is proposed to limit the number of funds to which an employer can contribute deductible amounts. A limit of two funds is proposed to accommodate any existing arrangements whereby employers top up benefits provided to certain employees through a second fund or provide for benefits through industry schemes alongside company schemes.

Proposed new subsection (2) will not allow a taxpayer, or an associate of the taxpayer, a deduction for contributions made in a year of income to more than two funds in respect of the one employee. New subsection 82AAC(3) gives associate the same wide meaning as in section 26AAB of the Principal Act.

Clause 20: Interpretation

Section 267 of the Principal Act sets out the meanings of terms used in Part IX - Taxation of superannuation business and related business.

Clause 20 proposes to insert the definition of a "continuously non-complying superannuation fund". The definition is required because under proposed arrangements (see notes on paragraph (b) of clause 14, clause 21 and clause 24), there is a need to distinguish a fund that, at all times when it existed, failed to meet the requirements for being taxed in a concessional environment. A "continuously non-complying superannuation fund" will describe this fund and extends to funds which existed before 1 July 1988. To that extent, proposed new subparagraphs (a)(i) and (a)(ii) of the definition are necessary for funds which came into existence either before 1 July 1964 or on or after 1 July 1964 and before 1 July 1988. New subparagraph (a)(iii) adds a further condition for those funds, namely, that from 1 July 1988, they have been non-complying funds in relation to each year of income. This last condition is restated in paragraph (b) of the definition as required for a continuously non-complying superannuation fund which came into existence on or after 1 July 1988.

Clause 21: Taxable contributions

Section 274 of the Principal Act contains provisions relating to the assessability of contributions made to superannuation funds and ADFs. This clause will insert new subsection 274(10).

Proposed new subsection 274(10) includes as taxable contributions -

- . a transfer from a complying superannuation fund to a non-complying superannuation fund (including a continuously non-complying superannuation fund) (paragraph (a)); and

- . a transfer to a non-complying fund from a non-complying superannuation fund (other than a continuously non-complying superannuation fund) (paragraph (b)).

As the amendments proposed by paragraph (e) of clause 14 prevent the roll-over of an ETP to a non-complying superannuation fund, these transfers can only occur in circumstances where new paragraph (p) of the definition of eligible termination payment in subsection 27A(1) (to be inserted by paragraph (c) of clause 14) applies. New paragraph (p) provides that these transfers are not ETPs.

Such transfers may be necessary when a complying fund is unable to accept additional contributions without losing its complying status. Including the transfers as taxable contributions is consistent with the treatment proposed when excess benefits are paid.

Clause 22: Repeal of section 279C

Section 279C of the Principal Act allows a complying superannuation fund a deduction in respect of payments, including the value of benefits provided but not paid in cash, by the fund to an employer that are included in the employer's assessable income under section 82AAQ of the Principal Act.

This clause proposes to repeal section 279C. By subclause 2(3), this repeal will apply from 1 July 1995.

Under the new arrangements for reasonable benefit limits, complying superannuation funds will be able to pay benefits in excess of the reasonable benefit limits to members of the fund, with the excessive benefit being included in the member's assessable income and subject to tax at the relevant marginal rate. Section 279C is being repealed so that payments to employers are not treated more advantageously than payments to members. The deduction is not being removed until 1 July 1995 to allow remittance to employers of any surpluses currently held by funds.

Clause 23: No deduction in respect of benefits

Section 280 of the Principal Act ensures that no deduction is allowable to a complying superannuation fund for benefits paid other than the deduction to a complying superannuation fund under section 279C for a payment to an employer.

This clause removes the reference to section 279C as a consequence of the repeal of that section by clause 22. By subclause 2(3) this amendment will have effect from 1 July 1995.

Clause 24: Deduction for section 82AAQ assessable amounts

Section 286A of the Principal Act is comparable to section 279C (see notes on clause 22) and provides a trustee of a non-complying superannuation fund with a deduction for payments by the fund to an employer that are included in the employer's assessable income under section 82AAQ.

Clause 24 proposes to amend section 286A so that a deduction is not allowed for payments made by a non-complying superannuation fund that is not a continuously non-complying superannuation fund. (Clause 20 proposes to insert a definition of a "continuously non-complying superannuation fund" which is, broadly, a superannuation fund that has never been taxed in a concessional environment.)

The exclusion of these non-complying superannuation funds from section 286A will ensure that payments to employers are not treated more advantageously than the treatment proposed for the excessive component of ETPs when paid to members of superannuation funds.

By subclause 2(3), the amendment will apply from 1 July 1995.

PART 4 - AMENDMENTS OF THE TAXATION ADMINISTRATION ACT 1953**Clause 25: Principal Act**

This clause facilitates references to the Taxation Administration Act 1953 in this part referred to as the "Principal Act".

Clause 26: Application of Part to the Occupational Superannuation Standards Act 1987

Paragraph (a) of section 8AA of the Principal Act currently operates so that the Occupational Superannuation Standards Act 1987 is a taxation law for the purposes of Part III of the Principal Act.

This clause replaces the existing paragraph (a) so that the Occupational Superannuation Standards Act 1987 and regulations under that Act are taxation laws for the purposes of Part III of the Principal Act.

