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THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION GUARANTEE
(CONSEQUENTIAL AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon John Dawkins, M.P.)



General Outline and Financial Impact

The Superannuation Guarantee (Administration) Bill 1992 and the Superannuation Guarantee Charge Bill 1992 were introduced into Parliament on 2 April 1992. It is proposed that from 1 July 1992 these Bills will impose a tax (called the superannuation guarantee charge) on employers who do not provide a minimum level of superannuation support for their employees.

This Bill makes a number of consequential amendments to the *Occupational Superannuation Standards Act 1987*, the *Defence Act 1903*, the *Defence Force Retirement and Death Benefits Act 1973*, the *Military Superannuation and Benefits Act 1991*, the *Income Tax Assessment Act 1936* (and certain other Tax Acts) as a result of the introduction of the superannuation guarantee charge. In particular the various Defence Acts will be amended to ensure that superannuation benefits for members of the Defence Force are consistent with the benefits required by the superannuation guarantee scheme.

These consequential amendments will apply from 1 July 1992.

Financial Impact : Defence Acts

The additional superannuation benefits for members of the Defence Force provided as a result of amendments proposed in this Bill will be unfunded.

Members of the Defence Force Retirement and Death Benefits (DFRDB) Scheme are part way through an election period during which they have the choice of remaining with that Scheme or transferring to the Military Superannuation and Benefits Scheme (MSBS) which commenced on 1 October 1991. Costings on the additional benefits are dependent on assumptions about future behaviour and circumstances (such as the rate of transfer to MSBS).

The estimated impact over the phase-in period of the additional benefits, in December 1991 prices, is as follows:

Financial Year	\$M
1992-93	0.6
1993-94	0.4
1994-95	0.6
1995-96	0.7
1996-97	0.9
1997-98	1.1
1998-99	0.7
1999-2000	0.9
2000-01	1.0

Financial Impact : *Occupational Superannuation Standards Act 1987*

The amendments to this Act will have no significant financial impact.

Financial Impact : Tax Acts

These amendments to the Tax Acts are consequential amendments resulting from the introduction of the Superannuation Guarantee (Administration) Bill 1992 and the Superannuation Guarantee Charge Bill 1992. The amendments are not expected to have a significant impact on the Revenue.

Occupational Superannuation Standards Act 1987

Summary of proposed amendments

Section 18 of the *Occupational Superannuation Standards Act 1987* (OSS Act) contains provisions relating to secrecy. Subsection 18(2) of the OSS Act contains provisions which restrict the unauthorised communication by superannuation standards officers of any protected information acquired in the course of their duties as a superannuation standards officer. The amendment to section 18 to insert subsection 18(2A) will allow the Insurance and Superannuation Commissioner (the Commissioner) to publish a list of complying superannuation fund names and business addresses so members of the public may contact superannuation funds.

Explanation of proposed amendments

Subsection 18(2) currently prohibits unauthorised communication by superannuation standards officers of any protected information acquired in the course of their duties as a superannuation standards officer. The amendment to insert subsection 18(2A) will state that nothing in subsection 18(2) will prevent the Commissioner from publishing a list containing the names of complying superannuation funds and their business addresses so members of the public may contact such funds direct.

It is envisaged that the Commissioner will develop an Electronic Register of complying superannuation funds which may be accessed by the community at large.

This amendment will allow those employers and members of the public who wish to contribute to complying superannuation funds for purposes of the Superannuation Guarantee (Administration) Bill 1992 to have access to relevant details regarding a particular fund to enable such persons to contact the fund direct.

Commencement date

The amendments to the *Occupational Superannuation Standards Act 1987* apply from 1 July 1992.

Defence Act 1903

Summary of proposed amendments

The amendments will ensure that the superannuation guarantee requirements are met for members of the Defence Force.

This will be achieved by amendment of section 52 of the *Defence Act 1903* to enable the necessary payments to be made under the Determination that provides for the current 3% interim superannuation benefit.

Explanation of proposed amendments

Currently members of the Defence Force who serve for 12 months or more belong to either of two superannuation schemes - the Defence Force Retirement and Death Benefits (DFRDB) Scheme or the Military Superannuation and Benefits Scheme (MSBS). Some members who are serving on continuous full time service for less than 12 months have the option of joining MSBS.

The DFRDB Scheme meets the superannuation guarantee requirements where members have more than 20 years service. Generally, where members retire with less than 20 years service, the only employer contribution is the 3% interim superannuation benefit. The amendment will enable this to be topped up to be consistent with the superannuation guarantee requirements.

The MSBS meets the superannuation guarantee requirements for members who serve for seven or more years. For those who serve for less than seven years the MSBS Rules contained in the MSBS Trust Deed will be amended to ensure compliance.

Commencement date

The amendments to the *Defence Act 1903* apply from 1 July 1992.

Defence Force Retirement and Death Benefits Act 1973

Summary of proposed amendments

The amendment to section 61B applies to members in receipt of DFRDB pensions who return to render continuous full time service in the Defence Force. It removes the prohibition on MSBS membership for those who serve for less than three months.

Explanation of proposed amendments

The amendment is consequential on the amendment also proposed by this Bill to the *Military Superannuation and Benefits Act 1991* which opens up the MSBS to all Reservists rendering continuous full time service, including those who serve for less than three months.

Commencement date

The amendments to the *Defence Force Retirement and Death Benefits Act 1973* apply from 1 July 1992.

Military Superannuation and Benefits Act 1991

Summary of proposed amendments

The amendments to section 6 and section 7 extend MSBS coverage to members of the Defence Force who are serving for less than 12 months and are not currently members of the DFRDB Scheme or the MSBS.

Explanation of proposed amendments

As the MSBS will meet the superannuation guarantee requirements, the inclusion of those members who are not currently covered will ensure there is no superannuation guarantee shortfall.

Commencement date

The amendments to the *Military Superannuation and Benefits Act 1991* apply from 1 July 1992.

Income Tax Assessment Act 1936

Summary of the proposed amendments

The amendments will ensure that:

the superannuation guarantee charge is not deductible for income tax purposes;

the arrangements for obtaining tax file numbers apply to facilitate the administration of the superannuation guarantee scheme;

a contribution under clause 60 of the Superannuation Guarantee (Administration) Bill 1992 (ie. broadly the payment of the "shortfall component" of the superannuation guarantee charge to a complying superannuation fund) is a taxable contribution to a complying superannuation fund.

Explanation of proposed amendments

Losses and outgoings

The Bill proposes the addition of a new subsection (9) to section 51 of the *Income Tax Assessment Act 1936*. Section 51 is the general deductions provision that allows deductions for losses and outgoings to the extent to which they are incurred in gaining or producing assessable income or in carrying on a business for that purpose.

The effect of new subsection 51(9) will be that superannuation guarantee charge will *not* be deductible for income tax purposes.

Objects of Part VA

Section 202 of the *Income Tax Assessment Act 1936* sets out the objects of Part VA of that Act - Tax File Numbers. They are:

to increase the effectiveness and efficiency of the matching of information reports given to the Commissioner of Taxation with information disclosed in returns by taxpayers;

through that improved information matching, to prevent evasions of tax; and

to facilitate the administration of the Higher Education Contribution Scheme, the training guarantee charge and the provision of Commonwealth pensions, allowances, benefits, etc.

With the introduction of the superannuation guarantee charge it is proposed to include a further object in Part VA of the *Income Tax Assessment Act 1936*. The Bill will include new paragraph (f) in section 202 thereby ensuring that the arrangements for obtaining tax file numbers also apply to facilitate the administration of the legislation enacted by the Parliament to impose a charge based on shortfalls in the amount contributed by employers to superannuation funds for the benefit of their employees.

Taxable Contributions

Section 274 specifies those payments that are taxable contributions in the hands of an "eligible superannuation fund" or an "eligible ADF" (Approved Deposit Fund) as defined in section 267 of the *Income Tax Assessment Act*. Taxable contributions are included in the assessable income of eligible funds, whether they are complying or non-complying superannuation funds or complying or non-complying ADFs.

The proposed amendment to paragraph 274(1)(b) will ensure that in the case of a complying superannuation fund a contribution under clause 60 of the *Superannuation Guarantee (Administration) Bill 1992* qualifies as a taxable contribution in the hands of the fund.

Clause 60 of the *Superannuation Guarantee (Administration) Bill 1992* is the provision which sets out how the Commissioner of Taxation is to deal with "the shortfall component" of the superannuation guarantee charge (ie the component of the charge which must be applied for the benefit of employees in respect of whom it was paid). Under that section the Commissioner is required to deal with the shortfall component by either:

- paying the amount of the component to a complying superannuation fund nominated by the employee, in accordance with the regulations, for the benefit of the employee; or

making arrangements in accordance with the regulations so that the amount of the component may be paid to a complying superannuation fund for the benefit of the employee.

Commencement date

The amendments to the *Income Tax Assessment Act 1936* apply from 1 July 1992.

Taxation Administration Act 1953

Summary of proposed amendments

Part III of the *Taxation Administration Act 1953* contains offences and prosecution provisions which create a number of offences of general application to the various Commonwealth tax laws and makes provision for their prosecution. This Bill proposes technical amendments to extend the list of provisions of taxation laws contained in Part III of that Act to include references to the corresponding provisions in the Superannuation Guarantee (Administration) Bill 1992.

The Bill also proposes an amendment to Part IVC - Taxation Objections, Reviews and Appeals - to ensure that the existing arrangements for taxpayers to lodge appeals against, or applications for review of, objection decisions directly with the Federal Court or the Administrative Appeals Tribunal also apply to a person who has objected to an assessment under subclauses 50(3) or 50(5) of the Superannuation Guarantee (Administration) Bill 1992.

Explanation of proposed amendments

Prosecution and Offences

Broadly, Subdivision B of Division 2 of Part III of the *Taxation Administration Act 1953* makes it an offence for a person to do certain acts, for example for a person to provide false or misleading statements to a taxation officer, to keep incorrect records, or to falsify or conceal the identity of another person from the Commissioner of Taxation.

Section 8J contains the definitions that are applicable to the provisions contained in Subdivision B. Existing subsection 8J(2) of the *Taxation Administration Act* sets out what is meant by the term "a statement made to a taxation officer" for the purposes of Subdivision B of Division 2 of Part III of the *Taxation Administration Act*. Excluded from that definition are statements made in documents produced pursuant to certain provisions of other Acts.

The proposed amendment will ensure that a statement made in a document produced pursuant to paragraph 71(1)(c) of the

Superannuation Guarantee (Administration) Bill 1992 is also excluded from the definition of "a statement made to a taxation officer" for the purposes of Subdivision B. Documents which may be required to be produced under paragraph 71(1)(c) of the Superannuation Guarantee (Administration) Bill 1992 are documents in the custody or under the control of a person. The effect of the amendment is to ensure that a person cannot be prosecuted in respect of statements made in a document produced pursuant to paragraph 71(1)(c).

As a consequence of the amendments being made to the tax file number provisions in section 202 of the Income Tax Assessment Act, paragraphs 8WA(1)(b), 8WB(1)(d) and 8WB(1)(e) of the Taxation Administration Act are amended to include a reference to that new provision of section 202 (ie. new paragraph 202(f) which lists the facilitation of the administration of the superannuation guarantee charge as a further object of the tax file number legislation).

Section 8ZE provides that additional tax is not to be imposed in addition to the launching of a prosecution. The section provides that additional tax, duty or charge imposed under a "penalty tax provision" is not payable where a prosecution is instituted against the person for certain offences, such as failure to comply with a requirement of a taxation law, unless and until the prosecution action is withdrawn. A "penalty tax provision", for purposes of section 8ZE, is any one of the statutory provisions listed in subsection (3). These include section 222 (Penalty for failure to furnish return) and 223 (Penalty for false or misleading statements) of the Income Tax Assessment Act.

The definition of "penalty tax provision" in subsection 8ZE(3) will be amended to include a reference to sections 54 and 55 of the Superannuation Guarantee (Administration) Bill 1992. Broadly, sections 54 and 55 of the Superannuation Guarantee (Administration) Bill 1992 impose a liability for a penalty if the employer fails to provide, a superannuation guarantee statement by the due date or information for assessing the employer's liability to pay the charge, or if the employer makes a false or misleading statement (to a taxation officer or another person) which results in a reduced superannuation guarantee charge.

Taxation Objections, Reviews and Appeals

Clause 50 of the Superannuation Guarantee (Administration) Bill 1992 allows the Commissioner of Taxation to recover superannuation guarantee charge owing by a deceased employer where probate has not been granted. The Commissioner can effectively make a default assessment of the amount of superannuation guarantee charge up to the date of death. Where such an assessment is made the Commissioner must publish notice of the assessment in certain daily newspapers. A person who claims an interest, or subsequently has an interest in, the deceased estate of an employer may object against the assessment under subclauses 50(3) or 50(5) of the Superannuation Guarantee (Administration) Bill 1992.

The Bill will amend Part IVC (Taxation Objections, Reviews and Appeals) of the Taxation Administration Act 1953 to ensure that the definitions of "delayed administration (beneficiary) objection" and "delayed administration (trustee) objection" in section 14ZQ include a taxation objection made under subclauses 50(3) and 50(5) respectively of the Superannuation Guarantee (Administration) Bill 1992.

The effect of these amendments is that the arrangements for taxpayers to lodge appeals against, or applications for review of, objection decisions directly with the Federal Court or the Administrative Appeals Tribunal will also apply to a person who has objected to an assessment under subclauses 50(3) or 50(5) of the Superannuation Guarantee (Administration) Bill 1992.

Commencement date

The amendments to the *Taxation Administration Act 1953* apply from 1 July 1992.

Administrative Decisions (Judicial Review) Act 1977

Summary of proposed amendments

The Bill will ensure that decisions of the Commissioner of Taxation relating to liability for superannuation guarantee charge are *not* reviewable under the Administrative Decisions (Judicial Review) Act but are reviewable instead under the separate objection, review and appeal provisions contained in Part 4 of the Superannuation Guarantee (Administration) Bill.

Explanation of proposed amendments

The Administrative Decisions (Judicial Review) Act is amended to exclude from review under that Act decisions of the Commissioner of Taxation relating to liability for superannuation guarantee charge. These decisions of the Commissioner will be reviewable instead under the separate objection, review and appeal provisions contained in Part 4 of the Superannuation Guarantee (Administration) Bill 1992.

Commencement date

The amendments to the *Administrative Decisions (Judicial Review) Act 1977* apply from 1 July 1992.

Crimes (Taxation Offences) Act 1980

Summary of proposed amendments

The proposed amendments will make it a criminal offence to enter into an arrangement with a purpose of securing that a company or trustee will be unable to pay the superannuation guarantee charge.

Explanation of proposed amendments

The Crimes (Taxation Offences) Act came into operation on 4 December 1980 and provides criminal sanctions against persons who engage in stripping transactions designed to ensure that a company or trust is rendered incapable of paying income tax or sales tax. Such schemes became known as "bottom of the harbour" schemes. Since that time the Crimes (Taxation Offences) Act has been amended on a number of occasions to include other taxes, such as the petroleum resource rent tax and the training guarantee charge, within the categories of taxes subject to the Crimes (Taxation Offences) legislation.

This Bill will include the superannuation guarantee charge in the category of taxes mentioned above. Accordingly, it will then be an offence to enter into an arrangement with a purpose of securing that a company or trustee will be, or will be likely to be, unable to pay superannuation guarantee charge that is then payable or that will, or may reasonably be expected to, become payable in the future.

Commencement date

The amendments to the *Crimes (Taxation Offences) Act 1980* apply from 1 July 1992.