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THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION GUARANTEE
(ADMINISTRATION) BILL 1992

SUPERANNUATION GUARANTEE
CHARGE BILL 1992

EXPLANATORY MEMORANDUM

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

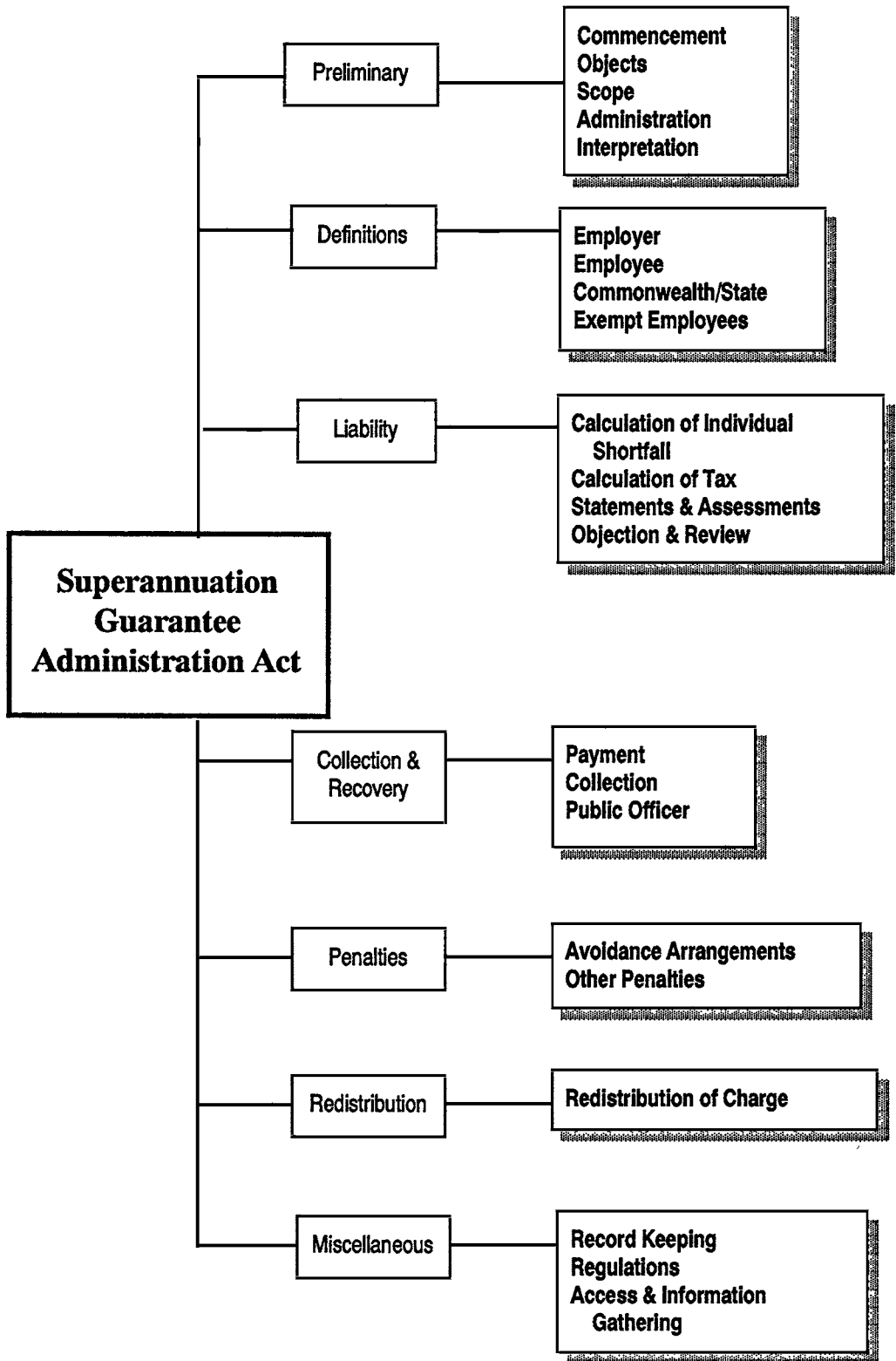


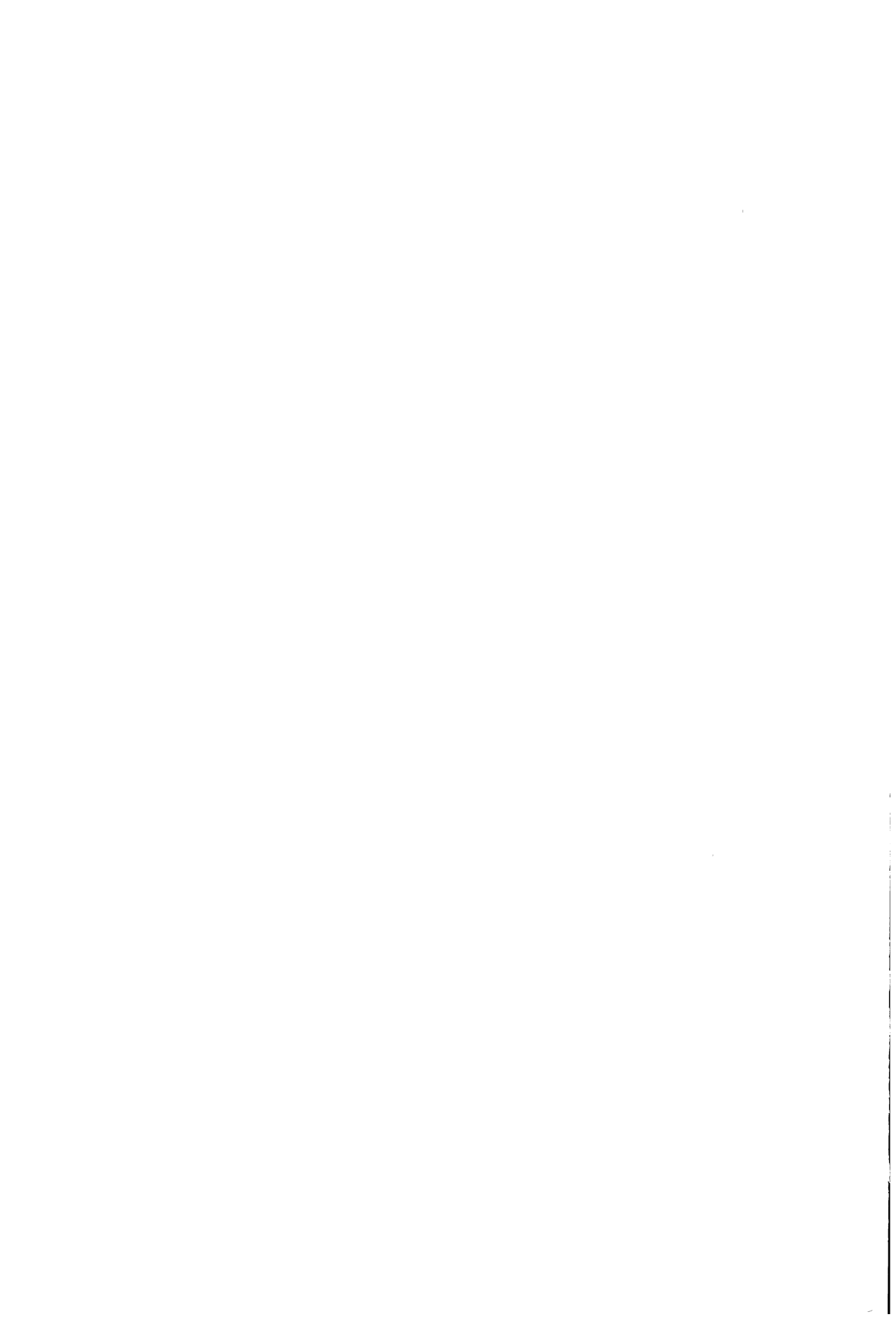
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At a Glance ..





General Outline and Financial Impact

Purpose of the Bills

The Superannuation Guarantee (Administration) Bill 1992 and the Superannuation Guarantee Charge Bill 1992 implement the Government's decision, announced in the 1991-92 Budget, to impose a tax on an employer where the employer provides superannuation support below a minimum level. The purpose of the Bills is to encourage employers to provide a minimum level of superannuation support for employees.

Administration

The Bills will be administered by the Commissioner of Taxation.

Commencement date

The Bills apply from 1 July 1992.

Level of employer superannuation support

All employers are potentially liable for the tax. However, the tax will not apply if the employer has provided the minimum level of superannuation support for each employee, or the employer is exempt in respect of a particular employee.

The minimum level of employer support will be expressed as a percentage of the employee's earnings base. The employee's earnings base is :

- (a) the earnings base on which contributions to a superannuation scheme are based (as defined in the formal documents of, or associated with, the scheme) provided that the employer was contributing to the scheme on 20 August 1991 and the earnings base used is no narrower than that used on 20 August 1991; or
- (b) the earnings base on which contributions to the scheme are based provided it is a base that the employer is required to use under an industrial award; or
- (c) a base not less than ordinary time earnings.

An employee's maximum earnings base will be \$80,000 for the 1992-93 year. The figure will be indexed annually.

The required percentages for each year are as follows:

	Employer's payroll \$500000 or less	Employer's payroll more than \$500000
1992-93	3	5
1993-94	3	5
1994-95	4	6
1995-96	5	6
1996-97	6	7
1997-98	7	7
1998-99	8	8
1999-00	8	8
2000-01 and subsequent years	9	9

Generally, an employer's payroll will be based on the payroll for the financial year ending on 30 June 1992. However, if the employer was not an employer for all of the 1991-92 year the employer's payroll will be assumed to be less than \$500,000 until such time as the employer is an employer for a full financial year. In the years following the full financial year, the employer's payroll will be based on the payroll for that full financial year.

Superannuation support must be provided through a complying superannuation fund in order to be counted towards the minimum level of superannuation support. The fund can be either a defined contribution fund or a defined benefit fund. In the case of a defined benefit fund, the employer will be required to obtain an actuarial certificate specifying the level of employer superannuation support implicit in the benefits available to employees in the fund. For all other funds, the employer's level of support will be the proportion that the actual contributions made to the fund is to the employee's earnings base.

Amendments to the Occupational Superannuation Standards
Regulations are proposed so that employer superannuation support provided in a complying superannuation fund must vest immediately from 1 July 1992 and be fully preserved from 1 July 1993 if it is to be used in determining the minimum level of employer support. The employer support must also be fully funded or Government guaranteed.

The level of superannuation support will be measured on a financial year basis for the year commencing on 1 July 1992. However, where an employer has provided insufficient superannuation support during that year, the employer will be able to make up any shortfall in contributions by 14 August 1993. For subsequent years, employer support will be measured on a monthly basis. The employer will be expected to provide the minimum level of support within 28 days of the end of the particular month.

Exemptions

An employer will be exempt in respect of the following employees, irrespective of whether the minimum level of superannuation support is provided to these employees:

- employees who earn less than \$250 in a month;
- employees under 18 years of age who are not working full time;
- employees in their capacity as members of the Defence Reserve Forces;
- employees who are aged 65 or over;
- non-resident employees who are paid solely for work undertaken outside Australia;
- resident employees who are employed by non-resident employers and are paid solely for work undertaken outside of Australia.

Calculation of the tax

If an employer does not provide the minimum level of superannuation support, a tax will be imposed on the employer. The tax will be equal to the superannuation guarantee shortfall. The superannuation guarantee shortfall will be made up of :

- the total of the individual superannuation guarantee shortfalls for all employees;
- an interest component: and
- an administration component.

An individual superannuation guarantee shortfall for an employee is the amount calculated by applying to the employee's salary and wages

the percentage difference between the minimum level of superannuation support and the actual employer superannuation support.

The interest component is a proxy for superannuation fund earnings. The rate of interest is based on the rate for underpayments and overpayments of income tax (currently 14.026% per annum). The interest will be calculated from the commencement of the financial year until the time the superannuation guarantee charge is payable.

The purpose of the administration component is to recover costs incurred in administering the tax. The component will consist of a flat amount of \$50 plus an amount of \$30 for each employee in respect of whom the employer has an individual superannuation guarantee shortfall.

Assessment and payment

Employers will self assess the liability to tax. If an employer is liable, a superannuation guarantee statement is required to be lodged by 14 August, (unless the Commissioner of Taxation grants an extension of time), and is to be accompanied by a payment for the amount outstanding. The lodgement of the statement is deemed to be an assessment.

Review of assessments

The procedures for review of assessments will be similar to procedures for other taxation laws.

Penalties

The penalty provisions of the Bill are similar to those which apply in other taxation laws. For example, penalties apply for late payment, failure to provide statements, false and misleading statements, and for avoidance of tax.

Redistribution

There is a standing appropriation from the Consolidated Revenue Fund which allows for the redistribution of any tax collected.

The amount to be redistributed in respect of an employee is equal to the amount of the superannuation guarantee charge which relates to the particular employee. The administration component as well as certain penalties paid by the employer will not be redistributed.

The redistribution will be to a complying superannuation fund chosen by the employee to whom the redistribution relates. However, if the employee is deceased or is under age 55 and has retired due to illness the redistributed monies may be paid direct to the employee or the deceased employee's representative.

Financial Impact

It is estimated that as a result of the Bill employers will remit to the Australian Taxation Office an insignificant amount in 1992-93 and \$17m in subsequent years of which about \$15m will be redistributed to employees.

Chapter 1 Introduction

Overview of the Chapter

This chapter deals with the title, commencement, scope of the proposed Act, the administration of the proposed Act and comments on interpretational matters.

Explanation

Title and Commencement of the Act

When this Bill is enacted it will be called the Superannuation Guarantee (Administration) Act 1992 *[Clause 1]*.

The Act is to commence on 1 July 1992 *[Clause 2]*. Accordingly, employers will need to measure superannuation support for their employees from that date in order to determine if the minimum level of superannuation support is being provided. This is discussed further in Chapter 3.

Scope of the Bill

The Bill binds the Crown not only in the Commonwealth, but in each of the States, the Australian Capital Territory, and the Northern Territory. The Bill also extends to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island. These Territories are treated as part of Australia for purposes of the Bill. *[Clauses 3 and 4]*
The Crown cannot be prosecuted for any offences under this Bill. *[Clause 3]*

Administration of the Act

The Commissioner of Taxation is to be responsible for the general administration of the Bill. Those responsibilities include the collection of the tax, redistribution to employees and enforcement of the provisions of the Bill. *[Clause 40]*

The Commissioner will be required to provide an annual report on the working of the Act to the Treasurer for presentation to Parliament. This is a normal requirement of Australian taxation laws. *[Clause 41]*

The Bill imposes an obligation of secrecy on persons who, in the course of their duties relating to the administration of the Bill, acquire information on the affairs of another person. These secrecy provisions are consistent with those in other Commonwealth Acts that the Commissioner administers. *[Clause 42]*

The secrecy provisions apply to a person who is or has been :

- the Commissioner, a Second Commissioner or a Deputy Commissioner; or
- an officer or employee of the Australian Taxation Office; or
- otherwise appointed or employed by, or a provider of services for, the Commonwealth. *[Subclause 42(1)]*

A person is not allowed to make a record of, or divulge or communicate protected information about another person except in the course of their duties or if it is necessary to do so for the purpose of giving effect to the provisions of the Bill. This obligation extends to divulging or communicating protected information to a Minister or a court. *[Subclauses 42(2), (4), and (5)]*

However, the Commissioner, a Second Commissioner or a Deputy Commissioner or a person authorised by them is not prevented from communicating or divulging protected information to a person to enable that person to perform duties for the purposes of an Act (including associated regulations) of which the Commissioner has the general administration. Similarly, nothing in an Act administered by the Commissioner can prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner or a person authorised by them from communicating or divulging any information to a person performing duties under this Bill, or to disclose information or documents to a court where it is for the purpose of this Bill. *[Subclauses 42(3), (5), (6) and (7)]*

A person must make a written oath or declaration to maintain secrecy in accordance with the secrecy provisions of this Bill, if it is required by the Commissioner, a Second Commissioner or a Deputy Commissioner. *[Subclause 42(8)]*

The penalty for failure to adhere to the secrecy provisions is imprisonment for two years.

Interpretation

The Bill contains a number of interpretation provisions [*Part 2*]. These provisions give meaning to terms which are used in the Bill. For convenience, the terms are explained in the Chapters dealing with the provisions in which the terms are used. Also, the Appendix to this explanatory memorandum contains a glossary of commonly used terms.

Chapter 2 Who is Covered by the Bill

Overview of the Chapter

This chapter sets out who the Bill applies to. It also describes who is an employer or employee for purposes of the Bill, as well as the employees for whom the employer is not required to provide superannuation support.

Explanation

Introduction

In general the Bill applies to all employers. However, special provisions apply to the Commonwealth and tax exempt Commonwealth authorities. Also employers will not have to provide superannuation support for certain exempt employees. These issues are discussed below.

Meaning of 'employer' and 'employee'

The Bill potentially applies to all employers in respect of their employees. An 'employer' and 'employee' have their ordinary meaning. In addition, a person will be taken to be an employer or an employee in the following circumstances:

- a person who receives payments as a member of the executive body of a body corporate (whether described as a board of directors or otherwise) is an employee of the body corporate;
- a person who works under a contract wholly or principally for labour is an employee of the other party to the contract;
- a member of a Commonwealth or State Parliament or Territory Legislative Assembly is an employee of the Commonwealth, State or Territory;
- a person who receives payments for performing, presenting, participating or providing services in connection with any music, play, dance, entertainment, sport, display, or promotional activity or any similar activity involving the exercise of creative talents is an employee of the payer;

a person who receives payments to perform or provide services in connection with the making of any film, tape or disc or of any television or radio broadcast is an employee of the payer;

- a person who holds, or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or a Territory (including members of the defence force or a police force) is an employee of the Commonwealth, State or Territory;
- a member of a local government council is an employee of the council.

[Subclauses 12(1) to (10)]

A person will not be an employee if the person is paid to do work which is wholly or principally of a domestic or private nature on a part-time basis (i.e., no more than 30 hours a week). *[Subclause 12(11)]* This means that people who pay a part-time nanny or housekeeper, for example, will not have to provide superannuation support in respect of their employee. The exclusion is for domestic or private work and therefore does not extend, for example, to employees who clean office buildings.

Application to the Commonwealth

The Commonwealth as well as tax-exempt Commonwealth authorities are employers for purposes of the Act. However, the Commonwealth cannot impose superannuation guarantee charge upon itself.

In order to overcome this, and to ensure the Commonwealth and tax-exempt Commonwealth authorities are treated in the same manner as other employers, all provisions of the Bill (other than those imposing liability for the charge, penalties or allowing appeal and review rights) are taken to apply to the Commonwealth and to tax-exempt Commonwealth authorities. This means that if the Commonwealth or a tax-exempt Commonwealth authority does not provide sufficient superannuation support for its employees, the Commonwealth will be required to make a redistribution for the affected employees. Therefore, the Commonwealth and its tax-exempt authorities will still be required to pay for any individual superannuation guarantee

shortfall in respect of an employee. In order to facilitate the redistribution if a shortfall exists, the Commonwealth or a tax-exempt Commonwealth authority will be taken to have paid the superannuation guarantee charge on 14 August in the year following the year in question.

A tax-exempt Commonwealth authority is an authority or body that is established under a law of the Commonwealth and is not liable for any tax under a law of the Commonwealth. *[Clause 5]*

Exemptions

An employer will not have to provide superannuation support in a contribution period for certain employees in the circumstances outlined below.

1. An employer will not have to provide superannuation support for an employee once the employee reaches 65 years of age.
[Paragraph 24(1)(a)]
2. Non-residents, employed by resident or non-resident employers, where the salary and wages (see explanation below) paid to the employee is for work done outside Australia.
[Paragraph 24(1)(b)]
3. Residents employed by a non-resident employer where the salary and wages paid to the employee for work done outside Australia.
[Paragraph 24(1)(c)]

A resident for purposes of (2) and (3) is a resident for income tax purposes. *[Clause 8]*

4. An employer will not have to provide superannuation support for an employee in any month where the employee receives salary and wages of less than \$250. *[Subclause 24(2)]*
5. Salary and wages earned by an employee who is under 18 years of age and is employed part-time will not be included in determining if an employer has an individual superannuation guarantee shortfall in respect of the employee. *[Clause 25]*

A part-time employee is a person who does not work more than 30 hours per week. *[Subclause 6(1)]*

6. Salary and wages paid to a person in his or her capacity as a Member of the Defence Force Reserves will not be included for purposes of determining whether superannuation support should be provided. *[Clause 26]*

Meaning of 'Salary and Wages'

Salary and wages will have its ordinary meaning. However, its meaning will be extended to include:

- commission; and
- payments to members of an executive body (whether or not it is described as a board of directors) of a body corporate (e.g. director's fees);
- remuneration of a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory;
- payments to persons who perform, present, participate in or provide services in connection with any music, play, dance, entertainment, sport, display, or promotional activity involving the exercise of creative talents;
- payments to persons who perform or provide services in connection with the making of any film, tape or disc or of any television or radio broadcast.

It will not include:

- remuneration under a contract of employment to a person who is employed part-time to do work of a domestic or private nature; and
- fringe benefits for purposes of the *Fringe Benefits Tax Assessment Act 1986*.

[Clause 11]

Chapter 3 Calculation of Individual Shortfalls

Overview of the Chapter

This chapter sets out the procedure for determining whether an employer has an individual superannuation guarantee shortfall in respect of an employee and the calculation of the amount of the shortfall.

Explanation

Introduction

In order to determine if an employer has an individual superannuation guarantee shortfall in respect of an employee, the employer will need to ascertain the following:

- the percentage level of superannuation support the employer is expected to provide for the employee;
the percentage level of superannuation support actually provided for the employee.

If the actual percentage level of superannuation support is less than the expected percentage level of support a shortfall will arise.

An employer's level of superannuation support will be measured on an annual basis for the 1992-93 year and on a monthly basis for subsequent years. The period in which support is measured is known as the 'contribution period'. [*Subclause 6(1)*]

Level of superannuation support an employer is expected to provide

The level of superannuation support an employer is expected to provide depends on the amount of the employer's 'annual national payroll' and the financial year in which the employer is an employer for a full year. An employer's 'annual national payroll' for a year is the total amount of salary and wages paid during the year by the employer in Australia and outside Australia in relation to services performed or rendered wholly in Australia [*Subclause 6(1)*]. An employer's annual national payroll will include salary and wages paid to employees for whom the employer has an exemption (see 'Exemptions' in chapter 2), where the salary and wages satisfy the meaning of 'annual national payroll'. (This does not include amounts paid to a person as a member of a Defence Force Reserve.)

If the employer was an employer for the whole of the 1991-92 year the expected percentage level of superannuation support (known as the 'charge percentage') will be based on the employer's annual national payroll for the financial year ending on 30 June 1992. The charge percentage will be determined as follows:

	Employer's payroll \$500000 or less	Employer's payroll more than \$500000
1992-93	3	5
1993-94	3	5
1994-95	4	6
1995-96	5	6
1996-97	6	7
1997-98	7	7
1998-99	8	8
1999-00	8	8
2000-01 and subsequent years	9	9

An employer will use whatever column applies in the 1992-93 year for all subsequent years irrespective of changes to the employer's annual payroll. For example, if an employer's annual national payroll was \$430,000 for the year ended 30 June 1992 and \$560,000 for the year ended 30 June 1993, the employer's charge percentages for the 1992-93 and 1993-94 years will be 3%.

[Clause 20]

If an employer was not an employer for the whole of the 1991-92 year, the employer will use the charge percentage in the first column in the above table until such time as the employer is an employer for a full financial year. If, in that first full financial year, the employer's annual national payroll exceeds \$500,000, the employer will use the second column in the above table for the year following the full financial year and all subsequent years. Otherwise, the employer will continue to use the first column in the table for all years.

[Clause 21]

For example, assume an employer commenced as an employer on 1 January 1992 and has annual national payrolls of \$300,000, \$600,000 and \$700,000 for the 1991-92, 1992-93 and 1993-94 years respectively. The employer's charge percentage will be 3% for the 1992-93 year, but 5% for the 1993-94 year because the employer's

annual national payroll for the employer's first full financial year (i.e. the 1992-93 year) exceeds \$500,000.

Actual level of superannuation support an employer is providing

An employer will need to measure the actual level of superannuation support the employer is providing in respect of each employee. The method of measuring that support will depend on whether the support is provided in a defined benefit superannuation scheme or another type of superannuation fund.

No matter which type of fund or scheme the employer is contributing to, the fund must be a 'complying superannuation fund or scheme'. A 'complying superannuation fund or scheme' is a fund or scheme which is a complying superannuation fund for income tax purposes.

[Clause 7]

Measuring employer support in a defined benefit superannuation scheme

A 'defined benefit superannuation scheme' is a superannuation scheme in which one or more members of the scheme are entitled upon retirement to be paid a benefit which is based on either or both of the following:

the amount of the member's annual salary at the date of retirement, at a date before retirement or averaged over a period of employment before retirement;

a specified amount.

In addition, if the scheme is not a public sector scheme, some or all of the contributions to the scheme must not relate to any particular member, but be paid into and accumulated in the form of an aggregate amount. A 'public sector scheme' is a superannuation scheme established under a law of the Commonwealth, State or Territory or under their authority. It also includes a superannuation scheme established under the authority of a municipal corporation, local governing body or a public authority. *[Subclause 6(1)]*

If an employer is providing superannuation support through a defined benefit superannuation scheme which is also a complying

superannuation scheme, the employer will need to obtain a benefit certificate. The benefit certificate will state the percentage level of superannuation support being provided by the employer for each class of employees in that defined benefit superannuation scheme. The figure shown on the benefit certificate (known as the 'notional employer contribution rate') will be able to be used to reduce the employer's charge percentage in respect of an employee within the class and thereby reduce the amount of any individual superannuation guarantee shortfall for that employee. If the employee is only a member of the defined benefit superannuation scheme during part of his or her employment in the contribution period, the notional employer contribution rate is reduced by the fraction calculated as follows:

$$\frac{\text{period during which the employee is a member of the fund}}{\text{period of employment in the contribution period}}$$

[Clause 22]

Example 2

Assume an employee was employed by the employer for all of the 1992-93 year and became a member of the defined benefit superannuation scheme on 1 October 1992 (i.e., the employee was a member of the scheme for 273 days during the 1992-93 year). The employer has a benefit certificate specifying a notional employer contribution rate of 6%. The employer's percentage level of superannuation support provided in that fund for the 1992-93 year for the employee will be:

$$6\% \times \frac{273}{365} = 4.49\%$$

Benefit Certificate

A benefit certificate is a certificate prepared by an actuary. The certificate will relate to a specific defined benefit superannuation scheme or schemes, and will specify the percentage that is in the actuary's opinion the notional employer contribution rate for a class of employees in the scheme or schemes to which the employer is providing support. The notional employer contribution rate is the rate of contribution that an employer would have had to contribute to a comparable defined contribution superannuation fund to provide a benefit approximately equivalent to the minimum employer funded benefit accruing from 1 July 1992 to an employee in the class under the defined benefit superannuation scheme or schemes.

The regulations to this Bill will set out the method of determining the notional employer contribution rate as well as what is a comparable defined contribution superannuation fund. The procedures for issuing benefit certificates as well as their form is also to be dealt with by regulation.

A benefit certificate will have effect from the time it is issued until either:

the superannuation scheme to which the benefit certificate relates is amended in such a way that the level or method of calculation of benefits for the relevant class of employees is affected; or

another benefit certificate is issued in relation to the same class of employees and the same scheme; or

5 years expires;

whichever occurs first. *[Clause 10]*

Measuring employer support in a fund other than a defined benefit superannuation scheme

If an employer is providing superannuation support in a complying superannuation fund that is not a defined benefit superannuation scheme, the percentage level of the employer's support will be the proportion of the employer's contributions to the fund for the employee over the employee's 'notional earnings base' (see explanation below) in respect of that fund.

An employer will take the following steps in determining the percentage level of support for an employee:

1. If the employer is contributing to a complying superannuation fund in accordance with an 'industrial award' (see explanation below) for the employee and the award specifies a percentage of notional earnings base as the basis for the superannuation contributions, the employer's percentage level of support for the employee is calculated as $A \times B$ where:

A = $\frac{\text{total contributions to the fund during the contribution period}}{\text{notional earnings base for the employee}}$

B = 1; or

if the employee is only covered by the award superannuation arrangements for part of the period during which the employee was employed:

$\frac{\text{period of employment covered by the award}}{\text{period of employment in the contribution period}}$

[Subclause 23(2)]

NOTE: the notional earnings base is the base for the period the employer is providing support in the fund.

2. If the employer is contributing to a complying superannuation fund under an occupational superannuation arrangement (see explanation below) for an employee and the arrangement specifies a percentage of notional earnings base as the basis for the superannuation contributions, the employer's percentage level of support for the employee is calculated as $A \times B$ where:

A = $\frac{\text{total contributions to the fund during the contribution period}}{\text{notional earnings base for the employee}}$

B = 1; or

if the employee is covered by the arrangement for part of the period during which the employee was employed:

$\frac{\text{period of employment under the arrangement}}{\text{period of employment in the contribution period}}$

[Subclause 23(3)]

NOTE: the notional earnings base is the base for the period the employer is providing support in the fund.

3. If (1) or (2) do not apply and the employer is contributing to a complying superannuation fund under an applicable superannuation scheme (see explanation below) for the employee and that scheme specifies a percentage of notional earnings base as the basis for the superannuation contributions, the employer's percentage level of support for the employee is calculated as $A \times B$ where:

A = $\frac{\text{total contributions to the fund during the contribution period}}{\text{notional earnings base for the employee}}$

B = 1; or

if the employee is only receiving employer support for part of the period during which the employee was employed:

$\frac{\text{period during which the employer contributes to the fund}}{\text{period of employment in the contribution period}}$

[Subclause 23(4)]

NOTE: the notional earnings base is the base for the period the employer is providing support in the fund.

4. If (1), (2) or (3) do not apply, and the employer is contributing to a complying superannuation fund, the employer's percentage level of superannuation support is calculated as $A \times B$ where:

A = $\frac{\text{total contributions to the fund during the contribution period}}{\text{ordinary time earnings for the employee}}$

B = 1; or

if the employee is only receiving employer support for part of the period during which the employee was employed:

$\frac{\text{period during which the employer contributes to the fund}}{\text{period of employment in the contribution period}}$

[Subclause 23(5)]

NOTE: Ordinary time earnings is the earnings for the period the employer is providing support in the fund.

In determining the actual level of superannuation support, contributions made on behalf of an employer will be treated as contributions of the employer. **[Subclause 6(2)]**

An employer is able to treat contributions made between 1 July 1993 and 14 August 1993 (inclusive) as relating to the 1992-93 year. Similarly for the 1993-94 year and subsequent years, contributions made within 28 days of the end of a month may be treated as relating to the original month. If contributions made after a contribution

period are treated as relating to a prior period, they cannot be treated as contributions for the period in which they are paid. This ensures double counting of contributions does not arise. [Subclauses 23(6), (7) and (8)]

Examples

Example 1

Assume:

- the employer has one employee during the 1992-93 year;
- the employee is employed for the full year and has a notional earnings base of \$28,000 under an award superannuation arrangement which applied to the employee for the full year;
- the award requires the employer to contribute 3% of the notional earnings base;
- the employer actually contributes \$900 to a complying superannuation fund for the employee.

The employer's percentage level of superannuation support is:

$$\frac{\$ 900}{\$28,000} \times 1 = 3.21\%$$

Example 2

- as per example 1 except the employee was only covered by the award superannuation arrangement from 1 October 1992 (i.e., 273 days for the 1992-93 year), the employee's notional earnings base from that date was \$17,000 and contributions of \$600 were made.

The employer's percentage level of superannuation support is:

$$\frac{\$600}{\$17,000} \times \frac{273}{365} = 2.64\%$$

Example 3

as per example 2 except the employer contributed \$300 during the period from 1 July 1992 to 30 September 1992 to a complying superannuation fund which did not have a notional earnings base and the employee's ordinary time earnings for that period was \$12,000.

The employer's percentage level of superannuation support is:

1 July 1992 to 30 September 1992

$$\frac{\$300}{\$12,000} \times \frac{92}{365} = 0.63\%$$

1 October 1992 to 30 June 1993

$$\frac{\$600}{\$17,000} \times \frac{273}{365} = 2.64\%$$

Total Support **3.27%**

Example 4

as per example 1, plus the employer has an agreement with the employee to contribute, in addition to the employee's award superannuation, 1% of gross salary and wages to another complying superannuation fund. The employee's gross salary and wages for the year are \$30,000 and a contribution of \$300 is made under that agreement.

The employer's percentage level of superannuation support is:

under award arrangement

$$\frac{\$900}{\$28,000} \times 1 = 3.21\%$$

under occupational superannuation arrangement

$$\frac{\$300}{\$30,000} \times 1 = 1\%$$

Total Support **4.21%**

Meaning of 'Industrial Award', 'Occupational Superannuation Arrangement' and 'Superannuation Scheme'

An 'occupational superannuation arrangement' is defined in subclause 6(1) to mean an agreement which imposes an obligation on the employer to provide superannuation support for the employee. An example of such an agreement would be a documented private agreement between an employer and the employer's employees.

An 'industrial award' is an industrial award or determination made under a law of the Commonwealth, State or Territory or an industrial agreement approved or registered under such a law.

[Subclause 6(1)]

A 'superannuation scheme' is a scheme embodied in the governing rules of a superannuation fund or a defined benefit superannuation scheme.

[Subclause 6(1)]

Determining an employee's notional earnings base

As outlined above, an employer's actual percentage level of superannuation support is based on the employee's notional earnings base. The notional earnings base to be used will depend on whether the employer was contributing to a superannuation fund immediately before 21 August 1991.

If the employer

- was contributing to a superannuation fund under an industrial award, occupational superannuation arrangement or superannuation scheme immediately before 21 August 1991;
- was contributing at that time either for the employee or another employee;
- is contributing under that award, arrangement or scheme for the employee;

the notional earnings base for the employee is the earnings of the employee that constitute the earnings on which the employer's superannuation contributions for the employee are based under the award, arrangement or scheme. The notional earnings base will be the base determined at the beginning of the contribution period, or the first day of the employee's employment, whichever is the later.

[Subclauses 13(1) and (2)]

Although an amount will be determined from the notional earnings base, it is derived from a concept. For example, assume an employer on 20 August 1991 had an agreement with employees to contribute 2% of base salary to a complying superannuation fund. If the employer is still contributing for employees in accordance with that arrangement, the notional earnings base for contributions under that arrangement will be base salary. If employer contributions in the 1992-93 year are based on base salary as at 1 July 1992, the amount of an employee's notional earnings base for 1992-93 will be that employee's base salary as at 1 July 1992. If, for example, employer contributions in 1992-93 are based on ordinary time earnings in 1992-93, the amount of an employee's notional earnings base for 1992-93 will be that employee's ordinary time earnings in 1992-93.

If an arrangement or scheme is amended after 20 August 1991 in such a way that the employee's notional earnings base is reduced, the employer will no longer be able to use that notional earnings base. In such cases, the employer will be forced to determine the notional earnings base as though no support was provided prior to 21 August 1991. This ensures employers cannot reduce the notional earnings bases for their employees. *[Subclause 13(4)]*

If an employer was not contributing under an award, occupational superannuation arrangement or superannuation scheme immediately before 21 August 1991, or was doing so but the notional earnings base was reduced, the earnings base will be as outlined below.

If the employer is contributing to a superannuation fund under an award, arrangement or scheme, the earnings base will be:

if the earnings base is equal to or greater than ordinary time earnings (see explanation below) - the earnings of the employee that constitute the earnings on which the employer's superannuation contributions for the employee are based at either the beginning of the contribution period, the first day of the employee's employment or the day on which the employer begins to contribute to the fund, whichever is the later;

- if the earnings base is less than ordinary time earnings but is under an industrial award - the earnings base in the award on which the contributions are based;
- in any other case - ordinary time earnings.
[Subclause 14(1),(2) & (3)]

For example, assume an employer commenced as an employer after 20 August 1991 and was not covered by an award superannuation arrangement but was contributing under an occupational superannuation arrangement which had a notional earnings base of base salary. If base salary for an employee is less than ordinary time earnings, the employee's notional earnings base will be ordinary time earnings.

'Ordinary time earnings' means:

- earnings for ordinary hours of work; and
- earnings consisting of over-award payments, shift-loading or commission. *[Subclause 6(1)]*

Despite the above rules for determining a notional earnings base, an award, arrangement or scheme which specifies that superannuation contributions are to be based on a specified amount of money which does not change in line with changes in the employee's earnings is not a notional earnings base.

For example, an arrangement which specifies that contributions are 3% of \$20,000 does not have a notional earnings base. *[Subclause 23(9)]*

If an employee does not have a notional earnings base, any superannuation contributions will be measured against ordinary time earnings (see (4) in the earlier section on 'Measuring employer support in a fund other than a defined benefit superannuation scheme').

Diagram 3.1 sets out the steps in determining the notional earnings base.

Maximum Contribution Base

In order to ensure an employer is not expected to provide excessive superannuation support, a maximum notional earnings base (known as the 'maximum contribution base') will apply. *[Subclauses 13(3) and 14(4)]*

The maximum contribution base will be \$80,000 for the 1992-93 year. Because support will be measured on a monthly basis for the 1993-94 year and subsequent years the maximum contribution base will be a monthly figure for those years. It will be the amount determined by indexing the \$80,000 and dividing it by 12. For the years after the 1993-94 year, the maximum contribution base will be the monthly base for the prior year increased by an indexation factor. In making these calculations the maximum contribution base is to be a multiple of \$10, rounding \$5 upwards. *[Clause 15]*

For example, if the amount is calculated as \$6,826 it is to be taken as \$6,830.

The indexation factor used in the calculation of the maximum contribution base is the greater of one, or the number calculated by dividing the amount of the estimated full-time adult average weekly ordinary time earnings in the middle month of the March quarter in the preceding year by the similar figure for the year before that year. The estimate of the full-time adult average weekly ordinary time earnings is the estimate published by the Australian Statistician. *[Clause 9]*

Calculating the Individual Superannuation Guarantee Shortfall

Once an employer has determined the expected percentage level of superannuation support for an employee and the actual percentage level of superannuation support for the employee, the employer is able to ascertain the shortfall (if any) arising. The employer's individual superannuation guarantee shortfall in respect of an employee will be the amount calculated by multiplying the employee's salary and wages for the contribution period by the charge percentage remaining after deducting any reductions for actual superannuation support provided.

For the 1992-93 year the shortfall will be determined on an annual basis. From 1993-94 the shortfall will be determined on a monthly

basis, with the shortfall for the year being the sum of the monthly shortfalls. [Clauses 18 and 19]

The steps to be taken in calculating the individual superannuation guarantee shortfall are set out in Diagram 3.2.

Examples

Example 1

Assume the employer has one employee who has a notional earnings base of \$30,000 in the 1992-93 year. The employee's gross salary and wages are \$32,000 in the year. The employer makes superannuation contributions of \$600 during the year for the employee. The employer's charge percentage is 3%. The employer's actual percentage level of support is

$$\frac{\$600}{\$30,000} = 2\%$$

The employer's individual superannuation guarantee shortfall in respect of that employee is:

$$\$32,000 \times \frac{(3-2)}{100} = \$320$$

Example 2

Assume the employee in example 1 has, in 1993-94, a notional earnings base of \$2,600 per month and receives gross salary and wages of \$2,700 per month. The employer makes superannuation contributions of \$52 per month for the first 6 months of the year and \$80 per month for the second 6 months.

The employer's actual percentage level of support is:

$$\text{for first 6 months } \frac{\$52}{\$2,600} = 2\% \text{ per month}$$

$$\text{for second 6 months } \frac{\$80}{\$2,600} = 3.08\% \text{ per month}$$

The employer's individual superannuation guarantee shortfall for each of the first 6 months is:

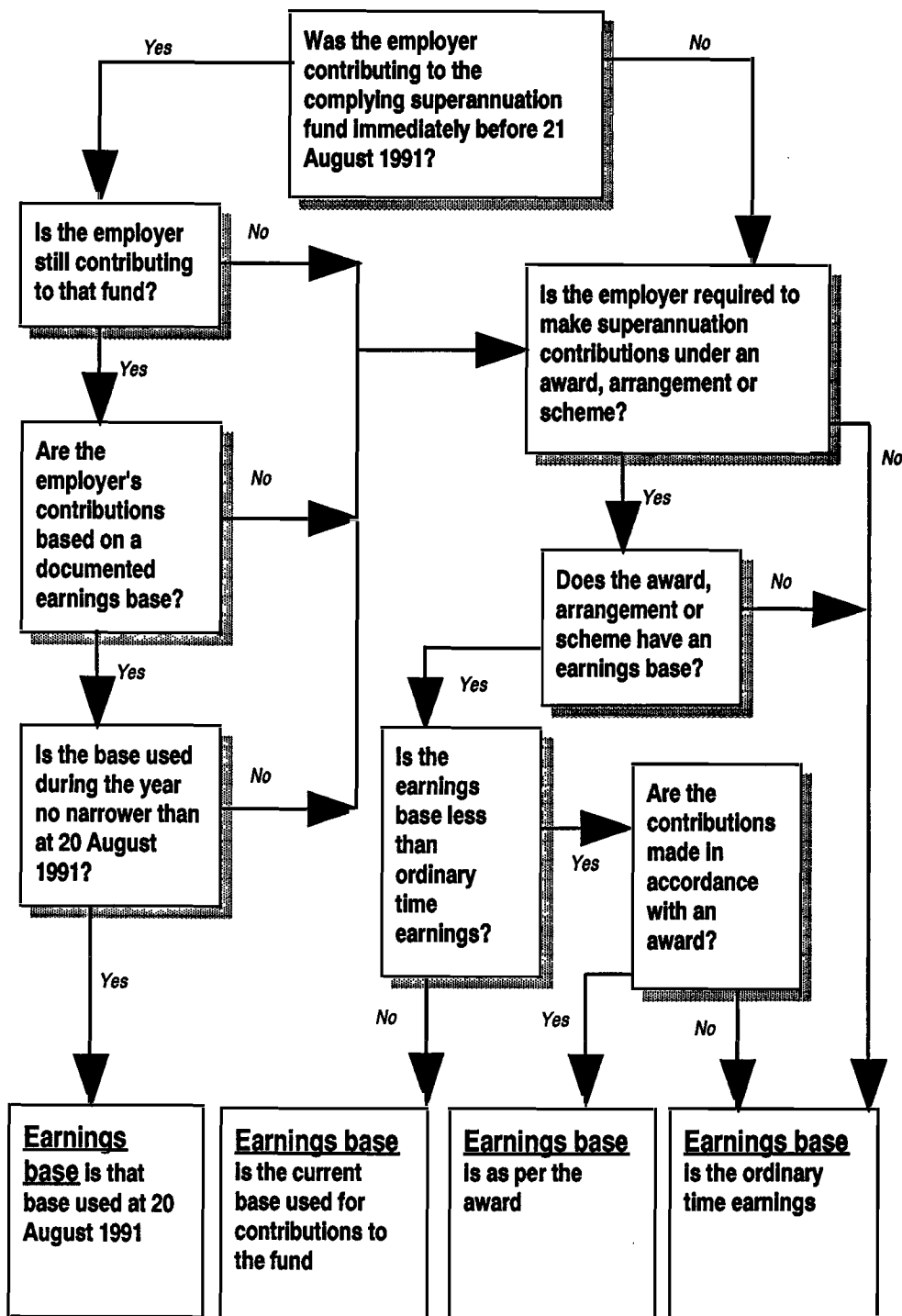
$$\$2700 \times \frac{(3-2)}{100} = \$27 \text{ per month}$$

No shortfall exists in respect of the second 6 months.

The employer's individual superannuation guarantee shortfall for the year is the sum of the shortfalls for the year, that is:

$$\$27 \times 6 = \$162$$

Determination of earnings base



Calculation of individual superannuation guarantee shortfall for one employee

Steps involved in the calculations for the 1992-93 year:

1. Determine minimum % as follows:

- if annual national payroll > \$500,000 - 5%
- if annual national payroll < \$500,001 - 3%

2. Determine level of support provided for the employee in each fund:

- if contributing to a defined benefit superannuation scheme, support is:

$$\% \text{ rate shown in benefit certificate } \times \frac{\text{period benefit certificate applies to the employee}}{\text{employee's period of employment during the year}}$$

- if contributing to any other complying superannuation fund, support is:

$$\frac{\text{contribution for the employee to the fund}}{\text{notional earnings base}} \quad (\text{expressed as a \% and reduced for part year support})$$

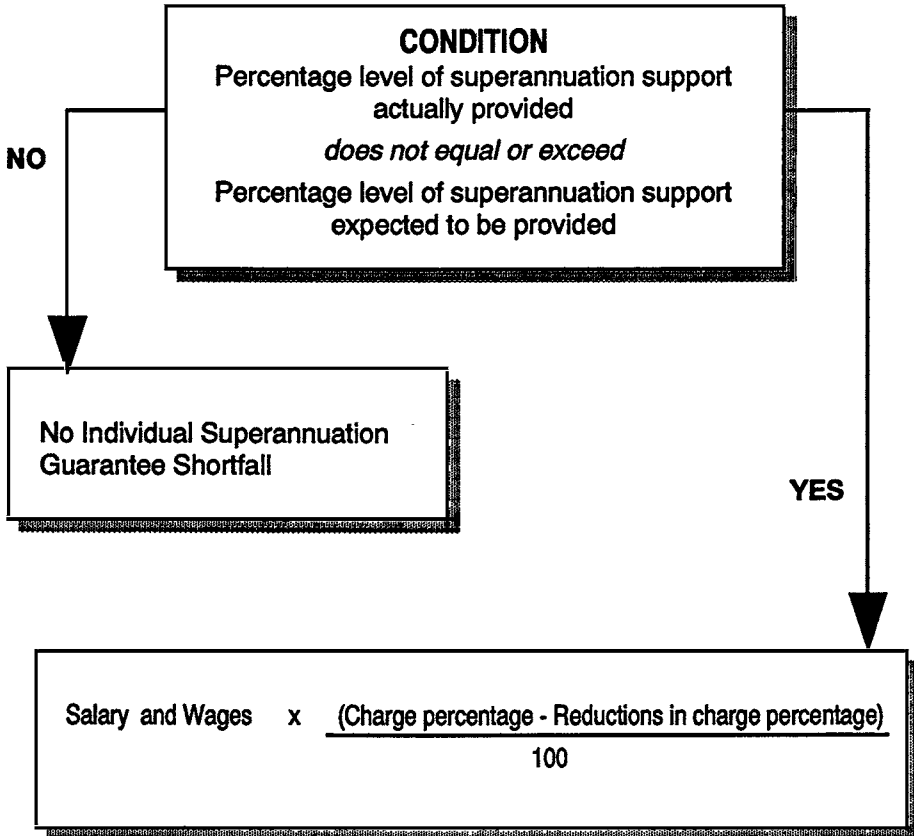
3. Sum the % support provided in all funds as determined in (2).

4. If (3) \geq (1) - there is no shortfall

5. If (3) < (1) the individual superannuation guarantee shortfall is:

$$(1) - (3) \times \text{gross salary and wages for the employee for the year}$$

Individual Superannuation Guarantee Shortfall



Salary and Wages: *Defined in Clause 11*

Charge Percentage: *Specified in Clauses 20 and 21*

Reductions in Charge

Percentage: *Complying defined benefit superannuation schemes [Clause 22]*

OR

Other complying superannuation funds [Clause 23]

NOTE:

In 1992-93 an individual superannuation guarantee shortfall is calculated for the year.

In 1993-94 and subsequent years an individual superannuation guarantee shortfall is calculated each month.

Chapter 4 Calculation of the Charge

Overview of the Chapter

This chapter sets out the procedure for calculating the amount of superannuation guarantee charge payable once liability for the charge has been determined.

Explanation

Liability for the superannuation guarantee charge

An employer is liable to pay the superannuation guarantee charge which is imposed on the employer's superannuation guarantee shortfall in a year. The charge will be imposed by the Superannuation Guarantee Charge Bill 1992. The amount of the superannuation guarantee charge payable is equal to the amount of the employer's superannuation guarantee shortfall in the year. *[Clause 16 of the Superannuation Guarantee (Administration) Bill 1992 and Clauses 5 and 6 of the Superannuation Guarantee Charge Bill 1992]*

Calculation of the superannuation guarantee shortfall

An employer's superannuation guarantee shortfall is the sum of:

Total of the employer's individual superannuation guarantee shortfalls for the year

plus

Employer's nominal interest component for the year

plus

Employer's administration component for the year.

[Clause 17]

Total of the employer's individual superannuation guarantee shortfalls

The total of the employer's individual superannuation guarantee shortfalls for the year is the sum of all such individual shortfalls. The calculation of these individual shortfalls is set out in Chapter 3.

Employer's nominal interest component

The employer's nominal interest component is a proxy for investment earnings the employee would have received had the employer provided adequate superannuation support for the employee during the year. The interest is calculated by applying the rate of interest on underpayments and overpayments of income tax to the total of the employer's individual superannuation guarantee shortfalls for the year. The interest is calculated from 1 July of the year in question to the date the charge is payable (i.e., 14 August in the following year, or the date of lodgement of the employer's statement, whichever is the later). The rate of interest is set out in the *Taxation (Interest on Overpayments) Act 1983*. The rate at present is 14.026% per annum.

Although for the 1993-94 year and subsequent years an employer will determine if they have an individual superannuation guarantee shortfall on a monthly basis, the nominal interest component will still be calculated from 1 July in the year in question to the date the charge is payable. [Clause 28]

Example

Assume the employer has total employer individual superannuation guarantee shortfalls of \$5000 and lodges a superannuation guarantee statement on 14 August 1993.

The employer's nominal interest component is as follows:

$$\text{\$}5000 \times \frac{14.026}{100} \times \frac{410}{365} = \text{\$}787.76$$

If the employer did not lodge until 1 September 1993 the employer's nominal interest component will be as follows:

$$\text{\$}5000 \times \frac{14.026}{100} \times \frac{428}{365} = \text{\$}822.35$$

Employer's administration component

The purpose of the employer's administration component is to assist in recovering costs the Australian Taxation Office incurs in administering the Bill. The amount of the employer's administration

component has initially been set at \$50 plus \$30 for each employee for whom the employer has an individual superannuation guarantee shortfall. [*Clause 29*]

Example

Assume an employer has individual superannuation guarantee shortfalls in respect of seven employees. The employer's administration component will be calculated as follows:

$$\$50 + (7 \times \$30) = \$260$$

Diagram 4.1 sets out the steps in calculating an employer's superannuation guarantee charge.

Example of Calculations in Chapters 3 and 4

Facts:

- In the 1992-93 year the employer had two employees
- the annual national payroll for the 1991-92 year is less than \$500,000
- Employee A
 - ▀ received gross salary and wages of \$30,000
 - ▀ employed under an industrial award where the earnings base for contribution purposes is ordinary time earnings
 - ▀ ordinary time earnings for the year were \$25,000
- Employee B
 - ▀ received gross salary and wages of \$28,000
 - ▀ employed under an industrial award where the earnings base for contribution purposes is ordinary time earnings
 - ▀ ordinary time earnings for the year were \$25,000
- Under the award the employer should be contributing 3% of ordinary time earnings. However, the employer contributes \$10 a week (i.e., \$520 per year) for each employee to a complying superannuation fund - the benefits are fully vested and preserved.

Calculation of superannuation guarantee shortfall

1. Expected Level of Support

As the employer has an annual national payroll of less than \$500,000 the charge percentage for the 1992-93 year is 3%.

2. Level of support being provided

$$\text{Employee A} \quad \frac{\$520}{\$25000} = 2.08\%$$

$$\text{Employee B} \quad \frac{\$520}{\$25000} = 2.08\%$$

3. Individual superannuation guarantee shortfalls

$$\text{Employee A} \quad \frac{(3 - 2.08)}{100} \times \$30000 = \$276$$

$$\text{Employee B} \quad \frac{(3 - 2.08)}{100} \times \$28000 = \$258$$

4. Total individual superannuation guarantee shortfalls

Employee A	\$276
Employee B	258
Total	<u>\$534</u>

5. Nominal interest component

$$(\$534 \times 14.026\%) \times \frac{410}{365} = \$84$$

(410 days from 1 July 1992 to 14 August 1993 - based on an assumption that the employer lodges by the due date)

6. Administration component

$$\$50 + (\$30 \times 2) = \$110$$

7. Total charge payable

Total individual superannuation guarantee shortfalls	\$534
Nominal interest component	84
Administration component	<u>110</u>
TOTAL CHARGE PAYABLE	<u>\$728</u>

Calculation of superannuation guarantee charge for an employer

Steps :

1. Sum individual superannuation guarantee shortfalls for all employees

2. Determine nominal interest component as follows :

$$\text{Amount in (1)} \times 14.026\% \times \frac{\text{period from 1 July in year in question to the date the charge is payable}}{365}$$

3. Determine administration charge as follows:

$$\$50 + (\$30 \times \text{number of individual superannuation guarantee shortfalls})$$

4. Superannuation guarantee charge equals the sum of (1), (2) and (3).

(Assumption that no penalties are payable)

Chapter 5 Statements and Assessments

Overview of the Chapter

This chapter discusses the lodgment of superannuation guarantee statements and the assessment process.

Explanation

Superannuation guarantee statements

An employer is required to lodge a superannuation guarantee statement if the employer has a superannuation guarantee shortfall and therefore is liable to pay the superannuation guarantee charge. The statement is due by 14 August in the following year or by a later date allowed by the Commissioner. *[Subclause 30(1)]*

Generally, an employer will not have to lodge a statement if the employer does not have a shortfall. However, the Commissioner may require any employer to lodge a statement within a period of not less than 14 days, stating whether the employer has a superannuation guarantee shortfall. *[Clause 31]*

A superannuation guarantee statement must:

- specify:
 - the employer's name and postal address;
 - the name, postal address and tax file number (if that number is available to the employer) of each employee for whom the employer had an individual superannuation guarantee shortfall;
 - the amount of each such shortfall;
 - the total of the employer's individual superannuation guarantee shortfalls for the year;
 - the amount of the nominal interest component for the year;
 - the amount of the administration component for the year;
 - the employer's annual national payroll for the base year if \$500,000 or less;

- the amount of the employer's superannuation guarantee charge for the year;
 - be in a form approved by the Commissioner;
 - be lodged in accordance with the procedures to be set out in the regulations relating to this Bill;
 - be signed by or on behalf of the employer making the statement.
- [Subclauses 30(2) and (3)]*

Assessments

The assessment arrangements for the superannuation guarantee charge will be similar to those applying for company income tax. That is, if an annual superannuation guarantee statement is lodged by an employer (and no previous statement for that year has been lodged and no assessment raised) the Commissioner will be taken to have made an assessment of the employer's superannuation guarantee shortfall and the superannuation guarantee charge payable as specified in the statement. The date of the assessment will be either:

- 14 August if the employer lodges the statement on or before that date; or
- the day the statement is lodged, if the employer lodges the statement after 14 August.

For example, if an employer lodges a superannuation guarantee statement on 31 July the assessment will be taken to be made on 14 August. However, if the employer lodges the statement on 20 September, the assessment is taken to be made on that date.

The superannuation guarantee statement which has been lodged will be taken to be a notice of the assessment signed by the Commissioner and given to the employer on the day that the assessment is made.

[Clause 32]

Default Assessments

If a superannuation guarantee statement for a year has not been lodged, the Commissioner will be able to make an assessment of the employer's superannuation guarantee shortfall and of the

superannuation guarantee charge payable on the shortfall, if in the Commissioner's opinion, the employer is liable for that year. The Commissioner can make such a default assessment either during or after the year to which the assessment relates. *[Subclause 33(1)]*

In these circumstances, the Commissioner may not have sufficient information to make an assessment of the superannuation guarantee shortfall of an employer in the year. Therefore, the shortfall for the purposes of making an assessment will be the amount that, in the opinion of the Commissioner, might reasonably be expected to be the shortfall. *[Subclause 33(2)]*

Amendment of Assessments

The Bill gives the Commissioner authority to amend an assessment.

The Commissioner will be able to amend an assessment at any time, by making such alterations or additions as the Commissioner considers necessary. The Commissioner may amend an assessment irrespective of the fact that superannuation guarantee charge has been paid.

[Subclause 34(1)]

However, the exercise of this general power is subject to certain time constraints.

The time limits for amending an employer's assessment are as follows:

if the amendment increases the liability to tax and is due to avoidance of the superannuation guarantee charge, and:

- if, in the Commissioner's opinion, the avoidance is due to fraud and evasion - at any time;
- in any other case - 4 years from the date of assessment;

[Subclause 34(2)]

if the amendment reduces the employer's liability - 4 years from the date of assessment; *[Subclause 34(3)]*

- if the amendment reduces the liability of a previously amended assessment - 4 years from the date the charge was payable under the amended assessment; *[Subclause 34(4)]*

- if the employer applies for an amendment within 4 years and supplies the Commissioner with sufficient information within that period to enable the application to be processed - at any time; *[Subclause 34(5)]*
- if the amendment is to give effect to a decision of the Administrative Appeals Tribunal (AAT) or a Court - at any time; *[Subclause 34(6)]*
- if the amendment reduces the employer's liability as a consequence of consideration of an objection against the assessment or pending a decision of the AAT or Court - at any time. *[Subclause 34(6)]*

An amended assessment is taken to be an assessment unless a provision of this Bill expressly provides otherwise. This ensures that the provisions of this Bill relating to original assessments also apply to amended assessments. *[Clause 36]*

Refund of overpaid amounts

The Bill gives the Commissioner authority to refund any overpayment of superannuation guarantee charge which arises as a consequence of an amendment of an assessment to reduce an employer's liability. This includes additional superannuation guarantee charge imposed either by late payment penalties or other penalties (see chapter 9). If additional superannuation guarantee charge for late payment has been imposed, the amount of the additional charge is to be recalculated as though the amount by which the charge has been reduced on amendment was never payable.

The overpaid amount will be either:

- refunded; or
- if the employer has a liability to the Commonwealth (that is, an amount due for liabilities under another Act administered by the Commissioner) - applied to meet that liability either in whole or in part. *[Clause 35]*

Other Assessment Matters

The Commissioner will be required to give written notice of an assessment to the person liable to pay the superannuation guarantee charge as soon as practicable after making the assessment. This does

not apply to a deemed notice of assessment taken to have been given to an employer (see earlier note on 'Assessments'). *[Clause 37]*

The Bill also treats an assessment as valid despite non-compliance with a provision of the Bill. This ensures that in any objection or dispute relating to an assessment, the objector may challenge the correctness of the assessment but not any act or omission of the Commissioner in making the assessment. *[Clause 38]*

Chapter 6 Review of Assessments

Overview of the Chapter

This chapter deals with the procedures for review of assessments for the superannuation guarantee charge.

Explanation

Procedure for review

If an employer is dissatisfied with the assessment of the superannuation guarantee charge, the employer can object against the assessment. The procedure for objection is set out in Part IVC of the *Taxation Administration Act 1953*. [Clause 39]

Summary of objection and appeal procedures in Part IVC of the Taxation Administration Act 1953

(The section references below are from the Taxation Administration Act)

In general a taxpayer has 60 days from receiving a notice of assessment to object against the assessment. An objection may be lodged after the 60 day period but must be accompanied by a request for an extension of time (section 14ZW). The Commissioner must then decide whether to consider the objection as lodged on time. A decision not to extend the lodgement time is reviewable by the Administrative Appeals Tribunal (AAT) (section 14ZX).

The objection must be in writing, and must fully and in detail state the grounds that the taxpayer is relying upon (section 14ZU). If an amendment is made to an assessment the taxpayer can only object to the alterations (section 14ZV).

If an objection is lodged within time, the Commissioner must decide whether to allow in full, allow in part, or disallow the objection (section 14ZY). A person who has lodged an objection may give the Commissioner a notice requiring the Commissioner to make a decision, where the Commissioner has failed to make a decision on the objection by the later of:

60 days after the objection was lodged with the Commissioner;

- 60 days after the day on which the Commissioner decides to agree to accept an objection lodged out of time; or
- if the Commissioner has requested further information relating to the objection - 60 days after receipt of that information.

If the Commissioner does not make a decision within 60 days of receiving the notice, the Commissioner is deemed to have disallowed the objection and is required to serve a notice of the objection decision on the person. (section 14ZYA)

If the objection is not allowed in full the taxpayer has the option to apply to either the AAT or the Federal Court depending upon the circumstances of the case (section 14ZZ).

An application to the AAT or Federal Court must be made within 60 days of receiving the notice of the Commissioner's decision. Once again the application must be in writing and set out the grounds for the application (sections 14ZZC and 14ZZN). The applicant is then limited to these grounds of objection, unless the court orders otherwise. The applicant also has the burden of proof (sections 14ZZK and 14ZZO).

Despite appeal and review proceedings pending, any superannuation guarantee charge owing is still payable as if there was no review or appeal being undertaken (sections 14ZZM and 14ZZR).

Chapter 7 Collection and Recovery of the charge

Overview of the Chapter

This chapter sets out the process for collection and recovery of the superannuation guarantee charge. It deals with the due date for payments and the powers the Commissioner has to recover unpaid superannuation guarantee charge.

Explanation

When the superannuation guarantee charge becomes payable

The due date for payment of the superannuation guarantee charge is the same as the date of assessment (see Chapter 5). That is, either:

14 August if the employer lodges the superannuation guarantee statement on or before that date; or

the day the statement is lodged, if the employer lodges the statement after 14 August.

Therefore, if an employer lodges a superannuation guarantee statement on or before 14 August in the following year, the superannuation guarantee charge becomes payable on 14 August. However, if the employer lodges the superannuation guarantee statement for a year after 14 August in the following year, the superannuation guarantee charge becomes payable on the day on which the statement is lodged. *[Clause 43]*

The due date for payment of superannuation guarantee charge arising from a default assessment is 14 August in the year following the year to which the assessment relates. *[Subclause 33(3)]* The due date for payment of an amended assessment is the same as the date for payment of the original assessment. *[Subclause 34(7)]*

If an employer fails to pay by the due date, the employer will be subject to a late payment penalty. Also, the employer may be liable for additional superannuation guarantee charge for failure to provide a superannuation guarantee statement by 14 August, even though the due date for payment is not until the statement is lodged (see chapter 9).

When additional superannuation guarantee charge becomes payable

The due date for additional superannuation guarantee charge (other than for late payment) is the date specified in the notice of assessment of the additional superannuation guarantee charge. *[Clause 44]*

The due date for late payment penalties is the date that the outstanding superannuation guarantee charge is paid. The determination of additional superannuation charge is discussed in Chapter 9.

Extension of time

The Commissioner may extend the time for payment of an amount of superannuation guarantee charge beyond the date of lodgement of the employer's superannuation guarantee statement. However, late payment penalty will be imposed.

Similarly, the Commissioner may extend the time for payment of additional superannuation guarantee charge. *[Clause 45]*

Recovery of the superannuation guarantee charge

The superannuation guarantee charge (including any penalties) payable by an employer will be a debt due to the Commonwealth and must be paid to the Commissioner. The Commissioner or Deputy Commissioner will have authority to sue for recovery of the superannuation guarantee charge in a court of competent jurisdiction. *[Clause 47]*

Substituted Service

When taking recovery action, if the Commissioner is satisfied that the employer is absent from Australia and has no attorney or agent in Australia, or the employer cannot be found, the Commissioner is still able to serve a document on the employer. Service may be effected by posting the document or a sealed copy of it to the employer's last known private or business address in Australia. *[Clause 48]*

Recovery of charge from the trustee of a deceased employer

If an employer has died, and no superannuation guarantee charge has been assessed or paid, the trustee of a deceased employer's estate will be required to lodge any statements and information which the Commissioner may require in order to determine the deceased employer's outstanding superannuation guarantee charge (including additional superannuation guarantee charge).

The Commissioner has the same powers and remedies for assessment and recovery of superannuation guarantee charge after the date of an employer's death as existed before it. Therefore, the Commissioner may issue a default assessment and may impose penalties on the trustee.

The superannuation guarantee charge payable by the trustee is a charge on the employer's estate in the trustee's hands in priority to all other debts (other than a charge in relation to a debt payable to the Commissioner). *[Clause 49]*

Recovery of charge from unadministered deceased estates

The Commissioner will be able 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 twice in a daily newspaper circulating in the State or Territory in which the deceased employer resided. A person who claims an interest, or subsequently has an interest, in the deceased employer's estate, has the same objection, appeal and review rights as the deceased employer. *[Clause 50]*

Collection of the superannuation guarantee charge from a person owing money to an employer liable for the charge

The Bill contains garnishee provisions similar to those contained in other taxation laws - for example, section 218 of the *Income Tax Assessment Act 1936*.

The Commissioner will be authorised to collect the superannuation guarantee charge and other specified debts owing by an employer

from any person who, broadly, owes money to the employer or has authority to pay money to the employer without having regard to recovery proceedings through a court. The debts which may be collected in this way include:

- the superannuation guarantee charge;
- additional superannuation guarantee charge (see Chapter 9);
- a judgment debt or costs in relation to the superannuation guarantee charge or additional charge;
- any fine or costs imposed by a court for an offence against the Bill;
- any amount ordered by a court to be paid by a person to the Commissioner, for an offence against the Bill. *[Subclause 51(12)]*

To facilitate the collection of these debts, the Commissioner is authorised to give a written notice to a 'debtor' to pay the 'garnisheed amount' to the Commissioner at or before the 'payment time'.

A 'debtor' is a person :

- who owes, or may subsequently owe money to an employer; or
- who holds, or may subsequently hold, money for or on behalf of an employer, or for or on account of another person for payment to an employer; or
- who has, or may subsequently have, authority from another person to pay money to an employer.

The 'garnisheed amount' is an amount equal to :

- the whole of the money, or so much of it as is sufficient to pay the superannuation guarantee charge owed by the employer, whichever is the lesser; or
- the amount specified in the notice to be paid by instalments out of each payment to be made to the employer, until the amount of the superannuation guarantee charge is paid.

The 'payment time' specified in the notice cannot be retrospective. *[Subclause 51(1)]*

the money (e.g., the production of a passbook) has not been fulfilled. *[Subclause 51(10)]*

The Commissioner may revoke or vary a notice for collection of a debt by giving a further notice in writing. *[Subclause 51(2)]*

The Commissioner is required to give any notices to the debtor together with copies to the employer. *[Subclause 51(3)]*

Any person making a payment pursuant to a notice is deemed to have been acting under the authority of the employer and is indemnified in respect of the payment. *[Subclause 51(6)]*

If an employer makes any payment for the outstanding superannuation guarantee charge before payment is made by a person who has been given a garnishee notice, the Commissioner must revoke or vary the original notice by giving a further notice. *[Subclause 51(7)]*

The garnisheed amount is treated as a debt due to the Commonwealth and as such is recoverable in a court of competent jurisdiction. *[Subclause 51(8)]*

Where money is on deposit in a building society account the deposit may technically constitute part of the share capital of the society. In such a case, a withdrawal would constitute the redemption, cancellation or withdrawal of that share capital. In order to treat building society accounts on the same footing as investments in other financial institutions, the money on deposit will be taken to be money that is due or that may become due by the building society to the depositor. It follows that the money is available to satisfy any outstanding superannuation guarantee charge. *[Subclause 51(9)]*

If a garnishee notice is to be given to the Commonwealth, a State or Territory, the notice may be given to a person who under a law of the Commonwealth, a State or Territory has a duty of disbursing public money. *[Subclause 51(11)]*

It is an offence for a person to fail to comply with a notice under the garnishee provisions. The maximum penalty is a fine of \$1000. If a person is convicted of such an offence the court may, in addition to imposing a penalty, order the convicted person to pay to the Commissioner the amount in default. *[Subclauses 51(4) and 51(5)]*

Public officer of a company or trust estate

For the purposes of the *Income Tax Assessment Act 1936*, every company carrying on business or deriving property income in Australia must, unless specifically exempted, have a public officer. Similarly, a trust estate must have a public officer where the trustee is not a resident of Australia.

A public officer under the *Income Tax Assessment Act* (see sections 252 and 252A of that Act) will be a public officer for the purposes of this Bill. The address for service of the public officer under that Act is also the address for service under this Bill. *[Subclauses 52(1) and 53(1)]*

The public officer is answerable for all things required to be done by the company or trust estate under the Bill, and in the case of default, is liable for the same penalties. *[Subclauses 52(3) and 53(3)]*

Likewise, everything required to be done by a public officer in that capacity will be taken to have been done by the company or trust estate. *[Subclauses 52(4) and 53(4)]*

The company or trustee is deemed to be liable jointly with the public officer for any penalty imposed on the public officer as a result of any proceedings taken under this Bill. *[Subclauses 52(6) and 53(6)]*

The service of any notice or other document at the address for service of the public officer, or on the public officer, is sufficient service on the company or trust estate. If there is not a public officer at any time, service on any person acting or appearing to act in the company's or trust's business is sufficient. *[Subclause 52(2) and 53(2)]*

If at any time there is no public officer, the Bill applies in relation to the company or trust estate as if there were no requirement to appoint a public officer. This ensures that the company or trustee are not excused from complying with the Bill merely because they have failed to appoint a public officer. *[Subclauses 52(5) and 53(5)]*

Despite the above, if the Commissioner thinks fit, any notice, process or proceeding under this Bill may, instead of being served on or brought against the public officer, be served on or brought against any

director, secretary or other officer of the company, or attorney or agent of the company or trust. In such a case, that person has the same liability in relation to the notice, process or proceedings as the company, trust estate or public officer would have had if it had been given or brought against the company, trust estate or public officer.
[Subclauses 52(7) and 53(7)]

Chapter 8 - Redistribution of the Charge

Overview of the Chapter

This chapter discusses the redistribution of the charge paid to the Commissioner.

Explanation

Amount of charge which can be redistributed

The Commissioner will be required to deal with the shortfall component of a payment of superannuation guarantee charge.

[Clause 58]

The shortfall component of a payment of superannuation guarantee charge for a particular employee is determined as follows:

if the payment of the charge is only for one employee, the shortfall component is equal to the amount of the payment less the administration component and any penalties (other than late payment penalty that relates to the individual superannuation guarantee shortfall);

if the payment of the charge is for more than one employee, the shortfall component for all employees is equal to the amount of the payment less the administration component and any penalties (other than late payment penalty that relates to the individual superannuation guarantee shortfall). The shortfall component for a particular employee is calculated as follows:

$$\begin{array}{rcl} \text{shortfall component} & & \text{individual superannuation guarantee} \\ \text{for all employees} & \times & \text{shortfall for the employee} \\ & & \hline & & \text{total of the employer's individual} \\ & & \text{superannuation guarantee shortfalls} \\ & & \text{for all employees} \end{array}$$

[Clause 59]

Example

If the example at the end of chapter 4 is used, the employer's shortfall component for all employees is \$618 (i.e. \$728-\$110). The individual employees shortfall components are calculated as follows:

Employee A	\$618 x $\frac{\$276}{\$534}$	=	\$319
Employee B	\$618 x $\frac{\$258}{\$534}$	=	\$299

Method of redistribution of the shortfall component

Once the shortfall component is determined, the Commissioner is required to deal with that 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.

[Clause 60]

There are two exceptions to the above rules. If an employee is under 55 years of age and retires from the workforce due to illness the Commissioner must pay the shortfall component to the employee. Also, if the employee has died, the shortfall component must be paid to the legal personal representative of the employee. *[Clauses 61 and 62]*

Appropriation of redistribution monies

Amounts of shortfall components which the Commissioner is required to pay, are appropriations out of the Consolidated Revenue Fund.

[Clause 65]

Recovery of overpayments

If an amount of any shortfall component is overpaid, whoever receives the money is liable to repay to the Commonwealth the amount overpaid. This will usually be the superannuation fund except in the limited circumstances where the money is paid direct to the employee or a deceased employee's representative. The amount overpaid will be a debt due to the Commonwealth. *[Clause 63 and 64]*

Chapter 9 Penalties

Overview of the Chapter

This chapter discusses the penalties associated with:

- the late payment of the superannuation guarantee charge;
- failure to provide statements and information;
- false and misleading statements; and
- avoidance of the superannuation guarantee charge.

Explanation

Late payment penalties

If an employer pays the superannuation guarantee charge after the date the charge is due, the employer is liable for a late payment penalty. The rate of the late payment penalty is the rate set out in the *Taxation (Interest on Overpayments) Act 1983*. The rate is currently 14.026% per annum. The penalty is calculated from the date when the payment was due until the date the payment is made. The penalty is applied to the amount unpaid less the employer's administration component and nominal interest component. If an employer is given an extension of time to pay the charge, late payment penalty still applies from the date the charge was originally payable.

Example

Assume an employer lodges a superannuation guarantee statement on 14 August 1993. The employer's superannuation guarantee shortfall is made up as follows:

Total employer individual superannuation guarantee shortfalls	\$5000.00
Employer's nominal interest component	787.76
Employer's administration component	200.00
Total	\$5987.76

The Commissioner gives the employer an extension of time until 30 September 1993 to pay the charge outstanding. The employer's late payment penalty is :

$$\frac{\$5,000 \times 14.026}{100} \times \frac{47}{365} = \$90.30$$

If an employer is late in paying additional superannuation guarantee charge in respect of penalties imposed on the employer a late payment penalty will be imposed on the additional charge. *[Clause 46]*

Failure to provide statements or information

If an employer fails to provide, as required by the Bill, a superannuation guarantee statement or information for assessing the employer's liability to pay superannuation guarantee charge, the employer will be liable for a penalty. This penalty covers failure to lodge superannuation guarantee statements by the due date (see chapter 5). The maximum amount of the penalty is 200% of the amount of superannuation guarantee payable by the employer in the year. *[Subclause 54(1)]*

A similar rate of penalty applies where an employer fails to keep details or fails to produce evidence, of the basis of calculation of certain amounts shown in the superannuation guarantee statement, namely:

- the employer's annual national payroll for the employer's base year;
- the amount of each individual superannuation guarantee shortfall;
- the amount of the nominal interest component for the year;
- the amount of the administration component for the year.

[Subclause 54(2)]

A minimum penalty of \$20 applies in the above circumstances. *[Subclause 54(3)]*

Penalties for false and misleading statements

Employers that make a false and misleading statement which results in a reduced superannuation guarantee charge are liable for a maximum penalty of 200% of the charge avoided. The minimum penalty is \$20. A false or misleading statement may be made to a taxation officer or to another person for the purposes of the Bill. A statement may be made orally, in writing, in a data processing device or in any other form. *[Clause 55]*

Arrangements to avoid superannuation guarantee charge

If an employer enters into an arrangement to reduce the liability for superannuation guarantee charge, and the Commissioner considers that the arrangement was solely or principally to avoid the charge, the employer will be liable to pay the amount avoided. An employer will not be taken to be avoiding the charge where the employer makes acceptable superannuation contributions for the benefit of employees.

[Clause 27]

If the Commissioner considers the employer has entered into an arrangement to avoid the charge, a penalty of up to 200% of the amount of charge avoided can be applied. *[Clause 56]*

Additional superannuation guarantee charge

The liabilities arising from the penalties are known as 'additional superannuation guarantee charge'. The Commissioner must make an assessment of additional superannuation guarantee charge (other than late payment penalty), and as soon as practicable, give a written notice of assessment to the employer. The notice may be incorporated in any other notice of assessment given to the employer. *[Subclauses 57(1) and (2)]*

Remission of penalty

The Commissioner may at any time remit all or part of the additional superannuation guarantee charge (other than late payment penalty).

[Subclause 57(3)]

Chapter 10 - Miscellaneous Provisions

Overview of the Chapter

This Chapter deals with a number of miscellaneous matters including:

- treatment of partnerships and unincorporated associations;
judicial notice of signature;
- evidence;
access to premises and other information gathering powers;
- right of contribution;
- record keeping requirements; and
regulations.

Explanation

Treatment of partnerships and unincorporated associations

Partnerships and unincorporated associations are not persons at law, but are deemed to be both persons and employers for purposes of the Bill. Certain requirements are imposed relating to the obligations of partners in partnerships, and members and controlling officers of unincorporated associations.

An obligation incurred by the partnership or association is imposed on each partner or, in the case of unincorporated associations, its officers. The partners and the members of the association are jointly and severally liable for amounts payable. Similarly, action may be taken against individual partners or officers for offences committed by the partnership or association. It is a defence of a partner or officer against such a prosecution if the person was not involved in any way with the offences. *[Clauses 66 and 67]*

Judicial notice of signature

The Bill requires notice to be taken, by a Court, Tribunal or anyone acting judicially, of the signature of a person who holds or has held the office of Commissioner, Second Commissioner or Deputy Commissioner. This ensures that the signatures of these officers are acceptable even though they are not personally present. *[Clause 68]*

Evidence

The Bill specifies the evidentiary value of certain documents and copies of documents. This is necessary to ensure that the only avenue for appeal is to dispute the amount of the employer's liability for the superannuation guarantee charge.

The documents covered include those issued or given, or purporting to be issued or given, under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner. The rules applying to such documents are as follows:

- the production of a notice of assessment or document purporting to be a copy of such a notice is conclusive evidence of the due making of the assessment and that the amounts and all particulars of the assessment are correct except in proceedings before a Tribunal or court concerning an assessment; *[Subclause 69(1)]*
- the production of a document purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or Deputy Commissioner is *prima facie* evidence of the original document being issued or given; *[Subclause 69(2)]*
- the production of a document purporting to be a copy of, or extract from, a superannuation guarantee statement or notice of assessment is evidence of the matters in the document to the same extent as the original document had it been produced; *[Subclause 69(3)]*
- the production of a signed certificate certifying that a specified sum was payable at the date of the certificate as superannuation guarantee charge or penalty is *prima facie* evidence of the matter stated in the certificate. *[Subclause 69(4)]*

Also, a superannuation guarantee statement purporting to be made or signed by or on behalf of an employer is *prima facie* evidence that the statement was made by or on the authority of the employer. *[Subclause 69(5)]*

Access to premises and obtaining information and evidence

The Bill contains provisions dealing with access to premises and information gathering powers. Similar provisions are found in other

Taxation Acts - for example, sections 263 and 264 of the *Income Tax Assessment Act 1936*. The provisions are necessary for the Commissioner to ensure compliance with the Bill.

The access and information gathering powers may be used, for example, to ensure that an employer has provided superannuation support to the extent to which the employer claims. In such a case, it may be necessary for the Commissioner to inspect documents which may not otherwise be available for inspection if access and information gathering powers were not included in the Bill.

Under these powers, an authorised officer must be given entry at any reasonable time, to land or premises. The officer must also be given full and free access to all books, records and other documents held by any person, and the right to inspect, examine or make copies therefrom. *[Subclause 70(1)]* An 'authorised officer' is an officer or employee within the meaning of the (Commonwealth) *Public Service Act 1922* who has been authorised in writing by the Commissioner of Taxation to carry out certain duties. *[Subclause 6(1)]*

The officer is not entitled to remain on the land or premises unless a written authority signed by the Commissioner is produced at the request of the occupier. *[Subclause 70(2)]*

The occupier of land or premises entered or proposed to be entered by an authorised officer is required to provide the officer with all reasonable facilities and assistance to carry out official duties. For example, an authorised officer will be entitled to reasonable use of photocopying, telephone, fax and light and power facilities and of work space and facilities to extract relevant information stored on computer. In addition, the officer will be entitled to reasonable assistance in the form of, for example, advice as to where relevant documents are located and access to areas where such documents are located. *[Subclause 70(3)]*

The maximum penalty on conviction for failure to comply with the access to premises provisions is a fine of \$1000.

The Commissioner will also be able to require, by notice in writing, any person to:

- furnish information on oath or otherwise;
- attend before the Commissioner and answer questions on oath or otherwise; or
- produce any documents in the custody or under the control of that person. *[Subclauses 71(1),(2) and (3)]*

The regulations must prescribe scales of expenses to be allowed to persons required to attend before the Commissioner. *[Subclause 71(4)]*

Right of Contribution

If two or more persons are jointly and severally liable to pay an amount of superannuation guarantee charge or additional superannuation guarantee charge, and one of those persons has either fully or partially paid the charge, that person will be able to recover from any other liable person an amount considered just and equitable by a court of competent jurisdiction. This ensures that if one person pays more than their proportionate share, the person can recover it from the other person or persons. *[Clause 72]*

Record keeping requirements

The Bill imposes certain record keeping requirements on employers. There is a specific requirement on employers who are liable to pay superannuation guarantee charge to keep details of the basis of the calculation of amounts shown in the superannuation guarantee statement. These amounts are:

- the employer's annual national payroll for the employer's base year;
- the amount of each individual superannuation guarantee shortfall;
- the amount of the nominal interest component for the year;
- the amount of the administration component for the year.

The penalty for failure to keep these records is set out in Chapter 9. *[Subclause 54(2)]*

There is also a general requirement on all employers to keep records that record and explain all transactions and other acts engaged in by the employer under the Bill. This general requirement applies irrespective of whether the employer is liable to pay superannuation guarantee charge. *[Subclause 73(1)]*

The type of records which are to be kept include (but not exhaustively) documents relevant to ascertaining:

the employer's annual national payroll for the employer's base year;
each individual superannuation guarantee shortfall.

[Subclause 73(2)]

The records must be kept:

in writing in the English language or, if not in written form (e.g., in an electronic medium such as magnetic tape or computer disc), in a form which is readily accessible and convertible into writing in English;

so as to enable the employer's liability under the Bill to be readily ascertainable. *[Subclause 73(3)]*

The records must be retained for 5 years. The 5 year period runs from the day on which the records were prepared or obtained, or from when the transactions or acts to which those records relate were completed, whichever is the later. *[Subclause 73(4)]*

An employer need not retain records where:

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

in the case of a company, the company has gone into liquidation and been finally dissolved. *[Subclause 73(5)]*

The maximum penalty on conviction for failure to comply with the record keeping requirements without reasonable excuse is a fine of \$3000. *[Subclause 73(6)]*

Regulations

The Governor-General is authorised to make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for administering the Bill.

The Bill also provides for regulations to prescribe penalties not exceeding \$500 for offences against the regulations. *[Clause 74]*

Glossary of Commonly Used Terms

Set out below are brief descriptions of commonly used terms in the Bill. Some of these terms are explained in detail in the chapters of this document. In such cases the terms will not be explained in this glossary, but a reference will be given to the chapter where the term is explained.

Actuary: a Fellow or Accredited Member of The Institute of Actuaries of Australia.

Administration component: explained in chapter 4.

Annual national payroll: the total amount of salary and wages paid during the year by the employer in Australia and outside Australia for services performed or rendered wholly in Australia.

Base year: in relation to an employer means:

- if the employer was an employer for the whole of the 1991-92 year, it is the 1991-92 year
- in any other case, it is the first year commencing on or after 1 July 1992 in which the employer was an employer for the whole of the year.

Complying superannuation fund and complying superannuation

scheme: explained in chapter 3 in the section "Actual level of superannuation support an employer is providing"

Contribution period: for the 1992-93 year, that year. For the 1993-94 year and subsequent years, a calendar month commencing on or after 1 July 1993. This term is used for determining when an employer's level of superannuation support must be measured. For the 1992-93 year it is on an annual basis, while for the 1993-94 year and subsequent years it is on a monthly basis.

Defined benefit superannuation

scheme: explained in chapter 3 in the section "Measuring employer support in a defined benefit superannuation scheme".

Employee and employer: explained in chapter 2.

Individual superannuation

guarantee shortfall: explained in chapter 3.

Industrial award: explained in chapter 3.

Month: begins on the first day of any of the 12 months of the year.

Nominal interest

component: explained in chapter 4.

Occupational superannuation

arrangement: explained in chapter 3.

Ordinary time

earnings: the total of the employee's earnings for ordinary hours of work and also earnings for over-ward payments, shift loading or commission.

Part-time

employee: a person who is employed by the employer for 30 hours or less during a week.

Public sector

scheme: explained in chapter 3 in the section "Measuring employer support in a defined benefit superannuation scheme".

Resident of

Australia: explained in chapter 2 in the section "Exemptions".

Salary or wages: explained in chapter 2.

Superannuation

fund: a superannuation fund for purposes of subsection 3(1) of the *Occupational Superannuation Standards Act 1987*.

Superannuation

guarantee charge: the charge imposed on an employer's superannuation guarantee shortfall by the *Superannuation Guarantee Charge Act 1992*.

Superannuation

scheme: explained in chapter 3.

Year: a financial year. That is, a year commencing on 1 July.

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