

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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SUPERANNUATION LAWS AMENDMENT (SMALL ACCOUNTS AND OTHER  
MEASURES) BILL 1995

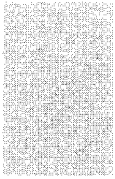
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EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
the Hon Ralph Willis, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS  
MADE BY THE HOUSE OF REPRESENTATIVES  
TO THE BILL AS INTRODUCED





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## **General outline and financial impact**

This Bill makes a number of consequential amendments to the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1936*, the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Entities (Taxation) Act 1987*, the *Superannuation Industry (Supervision) Act 1993*, the *Taxation Administration Act 1953* and the *Social Security Act 1991*. The Bill also repeals the *Superannuation (Rolled-Over Benefits) Levy Act 1993*. These changes are required to give effect to the announcement by the Treasurer dated 28 June 1994 entitled 'Superannuation Policy - Statement of Measures'.

**Date of effect:** 1 July 1995

**Proposal announced:** The system was announced in the Government's Statement of Superannuation Policy Measures, as circulated by the Treasurer on 28 June 1994.

**Financial impact:** The financial impact of this Bill is considered to be negligible.

**Compliance cost impact:** The compliance costs of this Bill are considered to be negligible.

The main measures to implement the member protection component of the Government's Statement are expected to be contained in the Superannuation Industry (Supervision) Regulations as operating standards prescribed pursuant to Part 3 of the *Superannuation Industry (Supervision) Act 1993*. These measures are expected to increase compliance costs.







## **Consequential amendments**

### **Overview**

1. This Bill makes consequential amendments to seven Acts as a result of the announcement by the Treasurer dated 28 June 1994 entitled 'Superannuation Policy - Statement of Measures'.
2. The Bill is structured in seven schedules, each dealing with amendments to a particular Act. This chapter follows the structure of the Bill.

### **Summary of the amendments**

#### **Purpose of the amendments**

3. The amendments propose to amend certain provisions of the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1936*, the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Entities (Taxation) Act 1987*, the *Superannuation Industry (Supervision) Act 1993*, the *Taxation Administration Act 1953* and the *Social Security Act 1991*. The Bill also repeals the *Superannuation (Rolled-Over Benefits) Levy Act 1993* and the *Social Security Act 1991*.

#### **Date of effect**

4. The amendments outlined in the Bill are to have effect from 1 July 1995. [*Clause 2*]

### **Background to the legislation**

5. The Government's Statement of Superannuation Policy Measures, circulated by the Treasurer on 28 June 1994, outlined a number of new initiatives to improve the effectiveness of its superannuation policies. The Australian Taxation Office superannuation accounts collection mechanism was one of those initiatives. As a consequence of the introduction of the

Small Superannuation Accounts Bill 1995 it is necessary to amend certain provisions of the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1936*, the *Superannuation Guarantee (Administration) Act 1992* and the *Taxation Administration Act 1953* in order for the Small Superannuation Accounts Bill 1995 to operate effectively.

6. The amendments made by section 4 and Schedules 4 and 5 of the Bill are made as a consequence of the "Protection of Superannuation Fund Members" part of the Treasurer's statement. These amendments repeal the *Superannuation (Rolled-Over Benefits) Levy Act 1993* and amend the *Superannuation Entities (Taxation) Act 1987* and the *Superannuation Industry (Supervision) Act 1993*.

7. Amendments to directly implement the measures contained in that part together with other related measures in the announcement (eg. reduction in disclosure requirements) are expected to be made to the Superannuation Industry (Supervision) Regulations. Most of these amendments are expected to be operating standards prescribed pursuant to Part 3 of the *Superannuation Industry (Supervision) Act 1993*.

8. Amendments made by *Schedule 7* will allow the Department of Social Security to treat the small accounts mechanism similar to the way it treats a superannuation fund for the purposes of the *Social Security Act 1991*. This will, among other things, allow that Department to exclude those amounts from its income and assets test where a person has not reached age pension age.

9. Accordingly *Schedule 7* will make consequential amendments to the *Social Security Act 1991* to ensure that the new collection mechanism is given the same treatment as that Act currently provides to superannuation funds.

10. The aim of the measures announced by the Treasurer is to protect small superannuation amounts, which contain or have contained as little as \$1 of superannuation guarantee (SG) or award monies, from erosion due to administration fees and charges. This protection will allow the small amounts to grow to a self sustaining level.

11. Small amounts are particularly prevalent in industries which employ a high number of part time or casual workers - such as the tourism (eg. hospitality staff) and agriculture industries (eg. fruit pickers). Women in particular are likely to be holders of small amounts.

12. The Government has sought in the Bill, to introduce a number of legislative changes which will strengthen the system for protecting the balances of superannuation fund members.

## Explanation of the amendments

### Repeal of the *Superannuation (Rollover Benefits) Levy Act 1993*

13. **Clause 4** of the Bill repeals the *Superannuation (Rollover Benefits) Levy Act 1993*.

14. The *Superannuation (Rollover Benefits) Levy Act 1993* permitted the prescription of a levy for the recouping of costs associated with the register of lost members from eligible rollover funds.

15. No levy has been prescribed pursuant to the *Superannuation (Rollover Benefits) Levy Act 1993* as the register has not begun to operate.

16. The *Superannuation (Rollover Benefits) Levy Act 1993* is being repealed as a result of changes expected as part of the implementation of measures to require funds to protect the amounts of lost members and report such members to the register. These changes are expected to broaden the types of funds which are specifically required to protect amounts **from** eligible rollover funds **to** all funds (subject to exclusions). An amendment in Schedule 5 of the Bill gives funds the power to protect amounts by paying them to an eligible rollover fund.

17. As a result of the broadening of the protection of lost members beyond eligible rollover funds, it was considered inappropriate to have a provision which enabled a levy associated with lost members to be imposed specifically on eligible rollover funds.

***Schedule 1 of the Bill***  
***Fringe Benefits Tax Assessment Act 1986***

***Exempt benefits***

18. The *Fringe Benefits Tax Assessment Act 1986* is amended to include a new section (section 58W) to provide that a benefit provided to an employee by virtue of the employer making a deposit under the Small Superannuation Accounts Bill 1995 is to be an exempt benefit.

***[Schedule 1]***

***Schedule 2 of the Bill***  
***Income Tax Assessment Act 1936***

***Amendment to the definition of 'eligible termination payment' (ETP)***

19. Section 27A(1) of the *Income Tax Assessment Act 1936* (ITAA). The definition of eligible termination payment is amended to include a reference to an amount paid out of the Superannuation Holding Accounts Reserve (the Reserve) as a result of:

- the individual's account balance with the Reserve being less than \$500 and where the individual has ceased employment;
- the severe financial hardship of the individual;
- the retirement of the individual due to disability;
- the individual attaining the age of 65;
- the individual not being a resident of Australia;
- the death of the individual;

The following amounts will also be ETPs

- a payment by the Insurance and Superannuation Commissioner from the Consolidated Revenue Fund;
- a payment of a SG shortfall component to the individual due to the individual's permanent incapacity or invalidity; and
- a payment of a superannuation guarantee shortfall component to the individual's legal personal representative upon the death of the individual.

***[Item 1 of Schedule 2]***

20. Subsection 27AAA(2) of the ITAA is to be amended to incorporate in Table 1 - Death Benefits, payments made after the death of an individual. **[Item 2 of Schedule 2]**

21. The payment of a superannuation guarantee shortfall component to the individual due to the individual's permanent incapacity or invalidity; and the payment of a SG shortfall component to the individual's legal personal representative upon the death of the individual are to be included in the definition of an eligible termination payment (ETP) for the purposes of consistency. As all payments under the Small Superannuation Accounts Bill 1995 are to be treated as ETPs it would be inconsistent for payments made under sections 66 or 67 of the *Superannuation Guarantee (Administration) Act 1992* to remain tax free.

22. Subsection 27AAA(2), the table of death benefits is to be amended to include the new definitions of an ETP as inserted by Item 2.

23. An ETP covered by one of these paragraphs is deemed to consist entirely of the post-June 83 component (or excessive component) from an untaxed source. **[Items 3, 4, 5 and 6 of Schedule 2]**

#### ***Employer deductions***

24. ***New section 82AAF*** is inserted into the ITAA to include a reference to deposits made under the Small Superannuation Accounts Bill 1995. This amendment will allow employer's to obtain an income tax deduction for deposits made under the Small Superannuation Accounts Bill 1995.

25. The new provision provides that employers are only entitled to an income tax deduction for deposits made in respect of a particular employee that do not exceed \$1,200 per year of income. This amendment gives effect to the policy intention contained in the Treasurer's statement to limit the use of the Reserve to contributions which do not exceed \$1,200 for each term of employment. A deduction will only be allowable where the deposit form that accompanies the deposit contains all the correct declarations that are required on the deposit form. **[Item 7 of Schedule 2]**

#### ***Claw back of deductions***

26. The ITAA is amended to insert a ***new section 82AAQA***. This section provides a 'claw back' where a taxpayer has previously received an income tax deduction for a deposit made under the Small Superannuation Account Bill 1995 and that deposit is subsequently refunded to the taxpayer. In this circumstance ***new section 82AAQA*** operates to include in the taxpayer's assessable income the amount of the refund received by the taxpayer. The amount will be included in the taxpayer's assessable income in the year of receipt. **[Item 8 of Schedule 2]**

27. Section 82AAR of the ITAA is amended to insert a new subsection (3) which provides that a deduction is not allowable under any other provision of the ITAA in respect of a deposit made under the Small Superannuation Accounts Bill 1995. **[Item 9 of Schedule 2]**

***Employer contributions***

28. Section 82AAS of the ITAA will also be amended to include new subsections (8) to (12). These provisions provide that amounts paid under the Small Superannuation Accounts Bill 1995 or amounts credited to the individual's account under paragraph 65(1)(c) of the *Superannuation Guarantee (Administration) Act 1992* are to be treated as employer contributions made to a complying superannuation fund in relation to an employee. This will ensure that amounts paid or credited under the Small Superannuation Accounts Bill 1995 will constitute employer superannuation support and will preclude the employee from obtaining a deduction for personal superannuation payments. **[Items 10 and 11 of Schedule 2]**

***Reasonable benefit limits***

29. The Reasonable Benefit Limit (RBL) provisions in the ITAA will also be amended to ensure that only ETPs paid by the Commissioner of Taxation in excess of \$5,000 need to be counted for RBL purposes. If an ETP which is greater than \$5,000 is paid by the Commissioner from the Reserve and the Commissioner does not make an RBL determination, the ETP will consist of the excessive component. **[Items 12 to 15 of Schedule 2]**

***Tax file numbers***

30. Section 202 of the ITAA is amended to expand the object of the Part VA (dealing with tax file numbers) to facilitate the administration of the Small Superannuation Accounts Bill 1995. Section 202 of the ITAA is also amended to include a reference to the new Part 24A of the *Superannuation Industry (Supervision) Act 1993*. **[Items 16 and 17 of Schedule 2]**

31. Section 274 of the ITAA is to be amended to provide a reference to a payment under clause 61 of the Small Superannuation Accounts Bill 1995 to ensure that payments from the Reserve are included as taxable contributions of a complying superannuation fund. **[Item 18 of Schedule 2]**

***Application of payments under the Superannuation Guarantee (Administration) Act 1992***

32. The inclusion of payments under sections 66 or 67 of the *Superannuation Guarantee (Administration) Act 1992* in the definition of

"eligible termination payment" is to apply from 1 July 1995. *[Item 19 of Schedule 2]*

### ***Schedule 3 of the Bill***

#### ***Superannuation Guarantee (Administration) Act 1992***

##### ***Deposit to Reserve deemed contribution***

33. Section 23 of the *Superannuation Guarantee (Administration) Act 1992* (SG(A)A) is amended to provide that contributions to the Reserve will be presumed to be a contribution to a complying superannuation fund. This amendment will ensure that contributions to the Reserve will be acceptable for SG purposes.

34. Where a person makes a deposit under the Small Superannuation Accounts Bill 1995 and that person subsequently receives a refund of all or part of that deposit the amount refunded will be taken to have never been made as a deposit. This ensures that an amount refunded will no longer be acceptable for SG purposes. *[Item 1 of Schedule 3]*

##### ***Payments of superannuation guarantee shortfall to the Reserve***

35. Section 65(2) of the SG(A)A is to be amended to allow the Commissioner to pay amounts of the superannuation shortfall components into an account kept under the Small Superannuation Accounts Bill 1995 in the name of the employee. This may be done where the employee has not elected to have the amount paid to a complying superannuation fund or a complying approved deposit fund. An amount so credited is to be transferred from the Consolidated Revenue Fund to the Superannuation Holding Accounts Reserve.

36. Employers who have a SG shortfall must pay the superannuation guarantee charge to the ATO. Under the SG(A)A, the ATO is required to pay the SG shortfall (less the administration component) to a complying superannuation fund. The administrative mechanism to do this is to issue the employee with a voucher from the ATO notifying them of their SG shortfall entitlement. The voucher can then be deposited with a complying superannuation fund.

37. Employees often experience difficulty in finding a superannuation fund willing to accept vouchers either because they are small or one off.

38. Funds which do not introduce member protection rules will not be able to accept small contributions (or vouchers).

39. Section 65 of the SG(A)A is therefore amended to allow the ATO to pay superannuation guarantee shortfall entitlements to an account kept

under the Small Superannuation Accounts Bill 1995 This amendment will improve access to an employee's superannuation entitlements and allow interest to accumulate on account balances. **[Items 2 and 3 of Schedule 3]**

***Removal of the 55 year age limit on retirement due to disability***

40. Section 66 of the SG(A)A is to be amended to remove the requirement that the employee be under 55 years of age to be entitled to a payment of the shortfall component. This amendment is required because an employee may have to retire due to illness after attaining the age of 55. Such payments will be taxed as ETPs from an untaxed source. This amendment is to apply from 1 July 1995. **[Item 4 of Schedule 3]**

41. Under section 66 of the SG(A)A, an employee under 55 who retires because of permanent incapacity or permanent invalidity is entitled to a direct payment of any SG shortfall entitlement.

42. Employees who retire because of permanent incapacity or permanent invalidity and are 55 or over are not covered by section 66 of the SG(A)A. These employees need to find a superannuation fund willing to accept vouchers.

***Payments made to employees who have retired due to invalidity or who have died to be subject to tax***

43. Section 68 of the SG(A)A is to be repealed This is because all payments under the Small Superannuation Accounts Bill 1995 are to treated as ETPs from an untaxed source. There is no reason for payments under section 67 (as a result of invalidity) or section 68 (payments to a deceased estate) to remain tax free. This amendment is to apply from 1 July 1995. **[Item 5 of Schedule 3]**

44. Section 68 of the SG(A)A provides that payments made to employees under 55 who retire because of permanent incapacity or permanent invalidity or to the legal representative of a deceased employee are exempt from income tax.

45. All direct payments to employees or their legal representatives under the Small Superannuation Accounts Bill 1995 will be treated as ETPs.

46. Since the ATO will satisfy the requirements of paying an eligible termination payment for direct payments paid to employees or their legal representatives it is considered that similar payments paid from the superannuation guarantee charge system should also be treated as eligible termination payments.



***Recovery of shortfall components***

47. The SG(A)A is amended to include a new section 69A. This section allows the Commissioner to recover the whole of the amount that has been credited to an account kept under the Small Superannuation Accounts Bill 1995 where that amount exceeds the amount that should have been credited. This operates in the same way as the existing section 69 which allows the Commissioner to recover the whole of any amounts that have been paid incorrectly. *[Items 6 and 7 of Schedule 3]*

***Application***

48. The elimination of the 55 year age limit for payments due to retirement as a consequence of invalidity is to apply to payments made on or after 1 July 1995. The removal of the tax free status of payments made under either section 66 or 67 of the *Superannuation Guarantee (Administration) Act 1992* which is affected by the repeal of section 68 of that Act is to apply to payments made on or after 1 July 1995. *[Item 8 of Schedule 3]*

***Schedule 4 of the Bill***  
***Superannuation Entities (Taxation) Act 1987***

***Consequential amendments***

49. *Schedule 4* of the Bill makes a number of amendments to the *Superannuation Entities (Taxation) Act 1993* as a consequence of the repeal of the *Superannuation (Rolled-Over Benefits) Levy Act 1993*.

***Schedule 5 of the Bill***  
***Superannuation Industries (Supervision) Act 1993***

***The recognition for the purposes of public offer requirements, that many beneficiaries transferred to eligible rollover funds will not choose the eligible rollover fund***

50. *Schedule 5* of the Bill makes amendments to the *Superannuation Industry (Supervision) Act 1993* which recognise that for the purposes of public offer requirements, many beneficiaries transferred to eligible rollover funds will be transferred as a result of the trustee of their fund making a choice as to the particular eligible rollover fund to which they are transferred (eg. where the beneficiary is lost, the trustee rather than the beneficiary will make the choice as to the fund to which the beneficiary will be transferred). The amendments also enable the prescription of regulations to deal with successor funds and other situations (see below). *[Items 5 to 16 of Schedule 5]*

51. The relevant public offer requirements affected are:

- the requirement to have each beneficiary sign an eligible application form;
- the requirement to give each beneficiary certain pre-joining information;
- the right of beneficiaries to a cooling off period.

52. The public offer requirements relating to disclosure will be directed to the trustee of the transferor fund to ensure that the trustee of the transferor fund is fully informed before joining the eligible rollover fund to transfer beneficiaries across to the fund. For this purpose, the trustee of the transferor fund only has to make an 'eligible application' on the first occasion that the trustee makes application to an eligible rollover fund. On each subsequent occasion, the trustee may merely make application to the eligible rollover fund. This application may be by written, electronic or other means. The trustee of the eligible rollover fund is not required to ensure that the 'eligible application' requirements have been met on these subsequent occasions before issuing a superannuation interest.

53. Since it is expected that regulations will permit eligible rollover funds to act like normal public offer funds (eg. accept contributions and rollovers from active members), other public offer requirements remain unaffected.

54. The amendments also make provision in the *Superannuation Industry (Supervision) Act 1993* for regulations to deal with the similar situation of successor funds and any other situations which warrant treatment as an exception to the general rule.

***The deferral of the obligation on funds to report and pay the unclaimed superannuation money of lost beneficiaries from 28 July 1995 to 28 July 1996***

55. This Schedule contains an amendment to Part 22 of the *Superannuation Industry (Supervision) Act 1993* which defers both:

- the obligation on funds to report lost beneficiaries with unclaimed superannuation money to the register of lost members; and
- the obligation to pay the money to the Consolidated Revenue Fund;

**from 28 July 1995 to 28 July 1996. [Item 18 of Schedule 5]**

56. These obligations will be deferred so that unclaimed superannuation money together with the relevant information (to be set out in an approved form) must be provided within 28 days after the end of each half year beginning on or after 1 January 1996. That is, the first period in which funds will be required to report lost beneficiaries (and pay the unclaimed money of such beneficiaries to the Consolidated Revenue Fund) will be the 28 day period after 30 June 1996 (ie. before 29 July 1996).

57. The term “half year” is defined by section 10 of the *Superannuation Industry (Supervision) Act 1993* to mean either the period 1 January to 30 June or 1 July to 31 December.

***The insertion of a provision enabling regulations to prescribe the definition of an eligible rollover fund***

58. This Schedule contains an amendment to the *Superannuation Industry (Supervision) Act 1993* which enables regulations to prescribe the definition of an eligible rollover fund. ***[Item 21 of Schedule 5]***

59. As a result of member protection measures (expected to be prescribed in regulations), eligible rollover funds will play an important role in the protection of small amounts, in addition to the current role of such funds in protecting lost members. Accordingly, due to the strong connection between the member protection measures and eligible rollover funds, it is considered appropriate that the definition of an eligible rollover fund be prescribed in regulations along with the member protection measures.

***The insertion of a provision which facilitates the payments of benefits to eligible rollover funds***

60. This Schedule contains an amendment to the *Superannuation Industry (Supervision) Act 1993* which facilitates the payment of amounts to eligible rollover funds. ***[Item 23 of Schedule 5]***

61. This amendment is intended to both:

- give the trustees of regulated superannuation funds and approved deposit funds the power to apply to the trustee of an eligible rollover fund, on behalf of a beneficiary, for the issue of a superannuation interest in the eligible rollover fund; and
- regulate the position of the beneficiary, transferor fund and eligible rollover fund in respect of the application and issue of the interest to ensure a satisfactory outcome.

62. The power given to trustees by the amendment will enable funds which cannot protect the amounts of members on a long term basis to protect the amounts by paying the amounts to an eligible rollover fund.

Eligible rollover funds are entities which are specifically required to protect amounts.

63. Provision is also made for conditions to be prescribed in relation to a trustee of a fund making application to an eligible rollover fund.

64. The amendment which inserts a new section 243 into the *Superannuation Industry (Supervision) Act 1993* does not affect an application made by a beneficiary of a fund to an eligible rollover fund. It only applies to cases where the trustee of the fund makes application.

***The continuation of tax file number provisions which govern the manner in which tax file numbers are collected and used for the purposes of Part 24 of the Superannuation Industry (Supervision) Act 1993***

65. This Schedule contains an amendment to the *Superannuation Industry (Supervision) Act 1993* which continues the tax file number provisions which govern the manner in which tax file numbers are currently collected and used for the purposes of Part 24 of the *Superannuation Industry (Supervision) Act 1993*. ***[Items 24 to 29 of Schedule 5]***

66. The provisions continue to apply to the trustees of all funds which make application to eligible rollover funds. However under new Part 24, trustees of all regulated superannuation funds and approved deposit funds may make application to an eligible rollover fund. Under existing Part 24, only trustees of standard employer sponsored funds are permitted to pay benefits to an eligible rollover fund.

***The repeal of certain substantive provisions of Part 24 of the Superannuation Industry (Supervision) Act 1993***

67. This Schedule contains an amendment which repeals certain provisions in Part 24 of the *Superannuation Industry (Supervision) Act 1993*. These provisions are sections 243, 244, 246, 247, 248, 249 and 250. ***[Items 23 and 29 of Schedule 5]***

68. Section 243 of the *Superannuation Industry (Supervision) Act 1993* (funds may be declared to be eligible rollover funds) is being repealed on the ground that a new provision is inserted by the Bill into the *Superannuation Industry (Supervision) Act 1993* which will enable regulations to prescribe the definition of an eligible rollover fund. That new provision is contained in ***item 21 of this Schedule***.

69. Section 244 of the *Superannuation Industry (Supervision) Act 1993* (the power to pay benefits to an eligible rollover fund) is being superseded by a new power to make application to an eligible rollover fund. That new power is contained in ***item 23 of this Schedule***.

70. Section 246 of the *Superannuation Industry (Supervision) Act 1993* (reports to include reports sent before the commencement of the Part) is being repealed as a consequence of the repeal of section 244. That repeal is contained in *item 23 of this Schedule*.

71. Sections 247 (requirement to give members details regarding the future payment of benefits to an eligible rollover fund) and 249 of the *Superannuation Industry (Supervision) Act 1993* (requirement to provide information regarding lost members to the register of lost members) are being repealed on the ground that the requirements are more suited to be prescribed as operating standards in the *Superannuation Industry (Supervision) Regulations*.

72. This suitability is based on both the subject matter of the requirements which is closely aligned to disclosure requirements in the *Superannuation Industry (Supervision) Regulations* and similar requirements attracting the same type of offence applicable to operating standards (100 penalty units rather than 50 penalty units).

73. Section 248 of the *Superannuation Industry (Supervision) Act 1993* (option to pay certain small amounts to the Consolidated Revenue Fund) is being repealed on the ground that eligible rollover funds are expected to be required by regulations to accept all amounts paid by a regulated superannuation fund.

74. Section 250 of the *Superannuation Industry (Supervision) Act 1993* is being repealed on the ground that a new provision is inserted by the Bill into the *Superannuation Industry (Supervision) Act 1993* which will enable regulations to empower the Insurance and Superannuation Commissioner to keep one or more registers (see below). That provision is contained in *item 35 of this Schedule*.

***The insertion of a provision enabling regulations to be prescribed for the keeping of one or more registers by the Insurance and Superannuation Commissioner***

75. This Schedule contains an amendment to section 353 of the *Superannuation Industry (Supervision) Act 1993* which will allow regulations to make provision for and in relation to the Insurance and Superannuation Commissioner keeping one or more registers (eg. a register of lost members).

76. It is intended that the regulations may make provision in regard to the whole spectrum of a register including matters relating to the establishment, operation and termination of a register.

77. The amendment expressly identifies that regulations may make provision for:

- a register to be kept in such form and manner as the Commissioner directs;
- persons to inspect a register;
- persons to obtain information contained in a register; and
- fees to be charged for such inspection or for the provision of such information.

***[Item 35 of Schedule 5]***

***Other amendments to the Superannuation Industry (Supervision) Act 1993 (including transitional and consequential amendments)***

78. There are six other types of amendments to the *Superannuation Industry (Supervision) Act 1993*:

1. The amendment made by item 1 is made as a consequence of the amendment made by item 17, which is a clarifying amendment. ***[Items 1 and 17 of Schedule 5]***
2. The amendments made by items 2, 19 and 20 are made as a consequence of the amendments made to existing Part 24 of the *Superannuation Industry (Supervision) Act 1993* which are contained in items 21-33 of Schedule 5. ***[Items 2, 19 and 20 of Schedule 5]***
3. The amendment made by item 4 is made as a consequence of the amendment made by item 23 to repeal section 243 of the *Superannuation Industry (Supervision) Act 1993* ***[Item 4 of Schedule 5]***. Despite the amendment, the amendment is taken not to have occurred in respect of decisions made before 1 July 1995 ***[Item 36 of Schedule 5]***.
4. The amendment made by item 22 is made as a consequence of the repeal of section 244. That repeal is contained in item 23 of Schedule 5. ***[Item 22 of Schedule 5]***
5. Item 23 of Schedule 5, besides inserting a new replacement power for trustees to make application to an eligible rollover fund, provides that operating standards may be prescribed relating to:  
  
requiring trustees to give the eligible rollover fund information about the beneficiary in respect of whom an

application is being made by the trustee to the trustee of the eligible rollover fund; and

- requiring trustees to keep and retain a record of the application made to the trustee of the eligible rollover fund. *[Item 23 of Schedule 5]*

***New transitional Part - "Part 24A - Transitional provisions relating to pre - 1 July 1995 Automatic Rollovers of Benefits between Funds"***

6. The amendment made by item 3 is made as a consequence of the amendment made by items 30-34 to insert a new transitional Part into the *Superannuation Industry (Supervision) Act 1993*, "Part 24A - Transitional provisions relating to pre 1 July 1995 Automatic Rollovers of Benefits between Funds". *[Items 3 and 30 to 34 of Schedule 5]*

***Section 251 of the Superannuation Industry (Supervision) Act 1993***

The new transitional Part (Part 24A) limits the effect of section 251 (beneficiaries in eligible rollover funds have rights corresponding to the rights the beneficiary had in their previous fund (subject to a death and disability exception)) of the *Superannuation Industry (Supervision) Act 1993* to benefits paid to an eligible rollover fund before 1 July 1995.

Section 251 will be superseded by new section 243. New section 243 will apply in respect of payments to an eligible rollover fund on or after 1 July 1995. The new transitional Part is necessary so as to safeguard the rights of beneficiaries in respect of benefits paid to an eligible rollover fund before 1 July 1995.

***Section 252 of the Superannuation Industry (Supervision) Act 1993***

The new transitional Part also similarly limits the effect of section 252 (claimants to benefits in eligible rollover funds may apply to the fund in the approved form for payment of the benefits) of Part 24 of the *Superannuation Industry (Supervision) Act 1993*.

A new provision with the same effect as section 252 is inserted by item 29 of Schedule 5 into new Part 24 of the *Superannuation Industry (Supervision) Act 1993*. The new provision will apply in respect of benefits derived from payments made to an eligible rollover fund on or after 1 July 1995. *[Item 29 of Schedule 5]*

Unless otherwise specified by the approved form, there is no practical difference between section 252 and the new provision.

The term "approved form" is defined in section 10 of the *Superannuation Industry (Supervision) Act 1993* to mean a form approved by the Commissioner, in writing for the purposes of the provision in which the expression appears.

## ***Schedule 6***

### ***Taxation Administration Act 1953***

#### ***Quotation and recording tax file numbers***

79. This Bill amends the sections 8WA and 8WB of the *Taxation Administration Act 1953* to authorise the quotation and recording of tax file numbers for the purposes of the Small Superannuation Accounts Bill 1995. *[Items 1 and 2 of Schedule 6]*

## ***Schedule 7***

### ***Social Security Act 1991***

80. Schedule 7 of the Bill amends the Social Security Act 1991 to give the new Superannuation Holding Accounts Reserve (the Reserve is established by clause 8 of the Small Superannuation Accounts Bill 1995) the same income and asset treatment as is currently given to superannuation funds, deferred annuities and approved deposit funds. Schedule 7 of the Bill contains 19 items explained below.

81. *Items 1 to 3* insert references to 'ATO small superannuation account', and "investor" into the index of definitions in the Act. In addition, the reference to "investment" is amended to include a reference to the new subsection 9(9A).

82. *Items 4 and 5* insert a new subparagraph 8(8)(b)(iia) to include a reference to the new ATO small superannuation account. This amendment will ensure that any return from the new account will not be included in the income test until the account holder reaches age pension age.

83. Although subparagraph 8(8)(b)(v) states that a person loses the income test exemption if the person commences to receive a pension or annuity from a fund in paragraph 8(8)(b), the subparagraph will have no application to the new ATO small superannuation account because the Small Superannuation Accounts Bill 1995 does not allow an account holder to receive either a pension or an annuity from the account.



84. **Item 6** amends note 2 to paragraph 8(8)(b) to refer the reader to the new definition of "ATO small superannuation account" in subsection 9(1).
85. **Item 7** inserts two new definitions into the investment income definitions provision in subsection 9(1) of the Act.
86. 'ATO small superannuation account' is defined as an account kept in the name of an individual under the Small Superannuation Accounts Bill 1995.
87. 'Investor' is defined in relation to an ATO small superannuation account as the person in whose name the account is kept. This definition expands the definition as used throughout the Act to include persons who have an account set up under the Small Superannuation Accounts Bill 1995.
88. **Item 8** omits the definition of 'investment' in subsection 9(1) and substitutes a new definition to include a reference to the new ATO small superannuation account. The new account is given the definition provided for in the new subsection 9(9A) of the Act (see item 13 below).
89. **Item 9** omits the definition of 'return' and substitutes a new definition to include a reference to the new ATO small superannuation account. 'Return' is defined, in relation to the new ATO small superannuation account, to include the balance of the account that is attributable to interest. This definition provides that any statutory interest paid to an account holder under the Small Superannuation Accounts Bill 1995 will be included in the definition of 'return' for the purposes of the *Social Security Act 1991*.
90. **Item 10** omits the definition of 'superannuation benefit' in subsection 9(1) and substitutes a new definition to include a reference to a payment under Part 7 of the Small Superannuation Accounts Bill 1995. Under the new definition, any payment, whether made to the account holder or not, will be regarded as a 'superannuation benefit' to the account-holder. For example, a person will still be defined as receiving a 'superannuation benefit' if the person assigns the right to receive the payment to another person.
91. **Item 11** amends subsection 9(1B) to include a new paragraph (g). This amendment will deem a new ATO small superannuation account to be a 'managed investment' for the purposes of the *Social Security Act 1991*.
92. A note will refer the reader to subsection 9(1C) of the Act which excludes the new ATO small superannuation account from the definition of 'managed investment' if the person has not yet reached age pension age.

93. **Item 12** inserts a new paragraph (ca) in subsection 9(1C) of the Act to exclude the new ATO small superannuation account from the definition of 'managed investment' if the person has not yet reached age pension age.

94. **Item 13** inserts new subsection 9(9A) to deem a person to have an 'investment' if the person has a new ATO small superannuation account that is held in the name of the person and has a balance greater than nil.

95. New paragraph 9(9A)(b) provides that the amount or value of the investment equals the balance of the account.

96. This amendment clarifies that the new statutory account set up by the ATO is included as an 'investment' for the purposes of the *Social Security Act 1991*.

97. **Item 14** amends subsection 9(10)(b) to state that a new ATO small superannuation account is 'realised' when it is withdrawn by the investor. Under the Small Superannuation Accounts Bill 1995, an account-holder can only withdraw the whole of his or her balance of the account. When the account-holder withdraws from the account, any accrued interest is paid into the account prior to the withdrawal. Accordingly, the balance of the account on withdrawal is equal to the balance plus any accrued interest.

98. **Item 15** amends section 1080 to provide for the assessment of income where a person realises a new ATO small superannuation account and does not roll the money over into a superannuation fund, an approved deposit fund, a deferred annuity or an immediate annuity.

99. **Items 16 and 17** amends section 1097 to provide for the treatment of the new ATO small superannuation account where a person has not reached pension age. In this case:

- the return on the investment is not treated as ordinary income (paragraph 1097(d));
- the return on the investment income is not treated as ordinary income under the managed investment rules (paragraph 1097(e));
- if the investment is realised, the proceeds are spread across 12 months (1097(f)).

100. **Items 18 and 19** amend paragraph 1118(1)(f) to provide that the new ATO small superannuation account will be disregarded as an asset under the Act until the person reaches age pension age.













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