



Superannuation Guarantee (Administration) Act 1992

Act No. 111 of 1992 as amended

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taking into account amendments up to Act No. 99 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
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An Act relating to the establishment and administration of the Superannuation Guarantee Scheme, and for related purposes

Part 1—Preliminary

1 Short title *[see Note 1]*

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

2 Commencement

This Act commences on 1 July 1992.

3 Act binds Crown etc.

- (1) This Act binds the Crown in right of the Commonwealth, each State, the Australian Capital Territory and the Northern Territory.
- (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

4 Extension to Territories

This Act:

- (a) extends to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island; and
- (b) has effect as if those Territories were part of Australia.

4A Extension to Joint Petroleum Development Area

This Act:

- (a) extends to the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*); and
- (b) has effect as if that Area were part of Australia.

5 Application of Act to Commonwealth

- (1) The Commonwealth, Commonwealth Departments and untaxable Commonwealth authorities are not liable to pay superannuation guarantee charge.
- (2) However, subject to this Act and to such modifications as are prescribed, this Act applies in all other respects, in respect of any matter or thing in respect of the employment of a Commonwealth employee, as if:
 - (a) the employee were employed by the responsible Department and not by the Commonwealth; and
 - (b) the responsible Department were a company and each other Department, and each authority of the Commonwealth, were a company related to the responsible Department; and
 - (c) the responsible Department were a government body.
- (2A) In addition, subject to such modifications as are prescribed, this Act applies in relation to an untaxable Commonwealth authority in the same way as it applies in relation to a Commonwealth Department.
- (2B) The Finance Minister may give such directions in writing as are necessary or convenient to be given for carrying out or giving effect to this section and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth or a Commonwealth entity.
- (2C) Directions under subsection (2B) have effect, and must be complied with, notwithstanding any other law of the Commonwealth.
- (3) Part 8 has effect as if any superannuation guarantee charge for a quarter in respect of a superannuation guarantee shortfall of the Commonwealth had been paid on:
 - (a) for a quarter beginning on 1 January—28 May in the next quarter; and
 - (b) for a quarter beginning on 1 April—28 August in the next quarter; and
 - (c) for a quarter beginning on 1 July—28 November in the next quarter; and

- (d) for a quarter beginning on 1 October—28 February in the next quarter.
- (4) Subsection 14ZX(4), section 14ZZ and Divisions 4 and 5 of Part IVC of the *Taxation Administration Act 1953* do not apply to the Commonwealth, Commonwealth Departments or untaxable Commonwealth authorities.
- (5) In this section:

Commonwealth Department means:

- (a) a Department of State; or
- (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or
- (c) a branch or part of the Australian Public Service in relation to which a person has, under an Act, the powers of, or exercisable by, the Secretary of a Department of the Australian Public Service.

Commonwealth entity means:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); or
 - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);
- that cannot be made liable to taxation by a Commonwealth law.

Finance Department means the Department administered by the Finance Minister.

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

responsible Department, in relation to the employment of a Commonwealth employee, means:

- (a) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an annual Appropriation Act—the Commonwealth Department in respect of which the money was appropriated; and
- (b) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an Act other than an annual Appropriation Act:

Section 5A

- (i) if the employee performs or performed the duties of that employment in, or in respect of, a Commonwealth Department—that Commonwealth Department; or
- (ii) in any other case—the Department of State administered by the Minister who administers the Act under which that money was appropriated, insofar as the Act appropriated that money; and
- (c) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated by the Constitution—the Finance Department.

untaxable Commonwealth authority means an authority of the Commonwealth that cannot, by a law of the Commonwealth, be made liable to taxation by the Commonwealth.

5A Application of Act to Commonwealth authorities

- (1) In this section:

Commonwealth authority means an authority or body that is established by or under a law of the Commonwealth.

- (2) If:

- (a) a law, or a provision of a law, passed before the commencement of this section purports to exempt a Commonwealth authority from liability to pay:
 - (i) taxes under the laws of the Commonwealth; or
 - (ii) certain taxes under the laws of the Commonwealth; and
- (b) apart from this subsection, the exemption would apply to superannuation guarantee charge;

that law or provision is taken not to have exempted, or not to exempt, that authority from liability to pay the charge.

- (3) If:

- (a) a law, or a provision of a law, passed after the commencement of this section purports to exempt a Commonwealth authority from liability to pay:
 - (i) taxes under the laws of the Commonwealth; or
 - (ii) certain taxes under the laws of the Commonwealth; and

(b) apart from this subsection, the exemption would apply to superannuation guarantee charge; the law or provision is not taken to have exempted, or to exempt, the authority from liability to pay the charge unless the law or provision expressly exempts the authority from liability to pay the charge.

5B Jurisdiction etc. of Fair Work Australia not affected

- (1) To avoid doubt, but subject to subsection (2), nothing in this Act or in the *Superannuation Guarantee Charge Act 1992* affects:
- (a) the jurisdiction, functions or powers of Fair Work Australia; or
 - (b) the operation of the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* in any other way.
- (2) Subsection (1) does not apply to any express reference in the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to this Act or to the *Superannuation Guarantee Charge Act 1992*.

5C Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—Explanation of terms used in the Act

6 Interpretation—general

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

actuary means a Fellow or Accredited Member of The Institute of Actuaries of Australia.

administration component, in relation to an employer and a quarter, means the amount worked out according to section 32.

approved clearing house has the meaning given by subsection 79A(3).

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

arrangement, for the purposes of section 30, means:

- (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct.

assessment means:

- (a) the ascertainment of an employer's superannuation guarantee shortfall for a quarter and of the superannuation guarantee charge payable on the shortfall; or
- (b) the ascertainment of additional superannuation guarantee charge payable under Part 7.

authorised officer means a person appointed or engaged under the *Public Service Act 1999* who has been authorised in writing by the Commissioner for the purposes of the provision in which the expression appears.

Commissioner means the Commissioner of Taxation.

Commonwealth employee means an employee of the Commonwealth.

Commonwealth industrial award means:

- (a) an industrial award or determination made under a law of the Commonwealth; or
- (b) an industrial agreement approved or registered under such a law; or
- (c) a notional agreement preserving State awards; or
- (d) a preserved State agreement.

complying approved deposit fund has the meaning given by section 7A.

complying superannuation fund has the meaning given by section 7.

complying superannuation scheme has the meaning given by section 7.

CSS means the scheme known as the Commonwealth Superannuation Scheme.

data processing device means any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

defined benefit member means a member entitled on retirement to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of the member's salary:
 - (i) at the date of the member's retirement or an earlier date; or
 - (ii) averaged over a period before retirement;
- (b) a specified amount.

defined benefit superannuation scheme has the meaning given by section 6A.

Deputy Commissioner means a Deputy Commissioner of Taxation.

Section 6

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

government body means:

- (a) the Commonwealth or a State or Territory; or
- (b) a Commonwealth, State or Territory authority.

indexation factor, in relation to a year, has the meaning given by section 9.

individual superannuation guarantee shortfall, has the meaning given by section 19.

industrial award means a Commonwealth industrial award, a State industrial award or a Territory industrial award.

liability to the Commonwealth means a liability to the Commonwealth arising under an Act of which the Commissioner has the general administration.

lodge means lodge with the Commissioner.

nominal interest component, in relation to an employer and a quarter, has the meaning given by section 31.

occupational superannuation arrangement, in relation to the employment of a person, means an agreement that imposes an obligation on the person's employer to contribute to a superannuation fund for the benefit of the person.

offence against this Act includes an offence relating to this Act against:

- (a) the *Crimes Act 1914*; or
- (b) the *Taxation Administration Act 1953*.

ordinary time earnings, in relation to an employee, means:

- (a) the total of:
 - (i) earnings in respect of ordinary hours of work other than earnings consisting of a lump sum payment of any of the following kinds made to the employee on the termination of his or her employment:
 - (A) a payment in lieu of unused sick leave;

- (B) an unused annual leave payment, or unused long service leave payment, within the meaning of the *Income Tax Assessment Act 1997*; and
- (ii) earnings consisting of over-award payments, shift-loading or commission; or
- (b) if the total ascertained in accordance with paragraph (a) would be greater than the maximum contribution base for the quarter—the maximum contribution base.

part-time employee means a person who is employed to work not more than 30 hours per week.

penalty charge, in respect of superannuation guarantee charge and a quarter, means:

- (a) general interest charge in respect of non-payment of the superannuation guarantee charge; or
- (b) additional superannuation guarantee charge that is payable under section 59 and calculated by reference to the superannuation guarantee charge.

proceeding under this Act includes:

- (a) a proceeding for an offence against this Act; or
- (b) a proceeding under the *Taxation Administration Act 1953* relating to this Act.

PSS means the Public Sector Superannuation Scheme within the meaning of the *Superannuation Act 1990*.

PSSAP means the Public Sector Superannuation Accumulation Plan within the meaning of the *Superannuation Act 2005*.

public sector scheme means a scheme of superannuation established:

- (a) by or under a law of the Commonwealth or of a State or Territory; or
- (b) under the authority of:
 - (i) the Commonwealth or the government of a State or Territory; or
 - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory.

Section 6

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

resident of Australia has the meaning given by section 8.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Second Commissioner means a Second Commissioner of Taxation.

State industrial award means:

- (a) an industrial award or determination made under a law of a State; or
- (b) an industrial agreement approved or registered under such a law.

superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

superannuation guarantee charge means charge imposed by the *Superannuation Guarantee Charge Act 1992*.

superannuation guarantee shortfall has the meaning given by section 17.

superannuation guarantee statement means a superannuation guarantee statement under section 33.

superannuation scheme means:

- (a) a defined benefit superannuation scheme whether or not embodied in the governing rules of a superannuation fund; or
- (b) any other scheme embodied in the governing rules of a superannuation fund.

Territory industrial award means:

- (a) an industrial award or determination made under a law of a Territory; or
- (b) an industrial agreement approved or registered under such a law.

trustee, in relation to a superannuation scheme, means:

- (a) if:
 - (i) the scheme is embodied in the governing rules of a fund; and
 - (ii) there is a trustee of the fund;
the trustee of the fund; or
- (b) in any other case—the person who manages the scheme.

trustee, except in relation to a superannuation fund or superannuation scheme, includes:

- (a) a person appointed or constituted trustee by:
 - (i) act of parties; or
 - (ii) order or declaration of a court; or
 - (iii) operation of law; and
- (b) an executor, administrator or other personal representative of a deceased person; and
- (c) a guardian or committee; and
- (d) a receiver or receiver and manager; and
- (e) a liquidator of a company; and
- (f) a person:
 - (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust; or
 - (ii) acting in any fiduciary capacity; or
 - (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability.

unfunded public sector scheme means a public sector scheme that is a defined benefit superannuation scheme:

- (a) in respect of which no fund is established for the purposes of the scheme; or
- (b) under which all or some of the amounts that will be required for the payment of benefits are not paid into the fund established for the purposes of the scheme or are not paid until the members become entitled to receive the benefits.

year means financial year.

Section 6A

- (2) For the purposes of this Act, a reference to a contribution made by an employer for the benefit of an employee includes a reference to a contribution made on behalf of the employer.
- (3) For the purposes of this Act, a reference to salary or wages paid by an employer to an employee includes a reference to a payment made on behalf of the employer.

6A Interpretation: defined benefit superannuation scheme

- (1) Subject to subsection (2), a defined benefit superannuation scheme is a scheme under which:
 - (a) one or more members of the scheme are entitled, on retirement, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:
 - (i) the amount of the member's annual salary:
 - (A) at the date of the member's retirement; or
 - (B) at a date before retirement; or
 - (C) averaged over a period of employment before retirement;
 - (ii) a specified amount; and
 - (b) if the scheme is not a public sector scheme—some or all of the contributions under the scheme (out of which, together with earnings on those contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount.
- (2) A scheme embodied in the governing rules of a superannuation fund (other than a scheme of the kind referred to in subsection (1)) is a defined benefit superannuation scheme if a conversion notice has effect in relation to the fund or scheme.
- (3) If the conversion notice is expressed to take effect on a day before the day on which the notice is given, the scheme in question is taken to have been a defined benefit superannuation scheme from the day on which the notice is expressed to take effect.
- (4) Subsection (3) has effect regardless of the making of any assessment, or the payment of any superannuation guarantee charge, in respect of a quarter that ended after the conversion notice took effect.

6B Interpretation: conversion notice

- (1) A conversion notice is a written notice by the trustee of a superannuation fund given to the Commissioner stating that the fund, or a particular superannuation scheme embodied in the governing rules of the fund, is to be treated as a defined benefit superannuation scheme for the purposes of this Act.
- (2) Subject to subsection (4), a conversion notice takes effect in relation to the fund or scheme on the day specified in the notice. Subject to subsection (4), the trustee may, by written notice (*revocation notice*) given to the Commissioner, revoke the conversion notice.
- (3) A conversion notice may be expressed to take effect on a day that is not earlier than:
 - (a) if the notice is given before 15 May in a quarter starting on 1 April—1 January in the previous quarter; or
 - (b) if the notice is given before 15 August in a quarter starting on 1 July—1 April in the previous quarter; or
 - (c) if the notice is given before 15 November in a quarter starting on 1 October—1 July in the previous quarter; or
 - (d) if the notice is given before 15 February in a quarter starting on 1 January—1 October in the previous quarter; or
 - (e) in any other case—the first day of the quarter in which the notice is given.
- (4) A conversion notice or a revocation notice will not be effective unless, before it is given, the trustee gives each employer contributing to the fund or scheme for the benefit of employees written notice of:
 - (a) the trustee's intention to give the notice; and
 - (b) the proposed date of effect of the notice.
- (5) If an employer begins contributing to a superannuation fund or a superannuation scheme for the benefit of employees at a time when a conversion notice has effect in relation to the fund or scheme, the trustee must give the employer written notice of:
 - (a) the giving of the conversion notice; and
 - (b) the date of effect of the notice;within 30 days of the receipt by the trustee of the employer's first contribution.

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- (6) A notice under this section may be given by post.

7 Interpretation: complying superannuation fund or scheme

A superannuation fund or scheme is a complying superannuation fund or scheme (as the case may be) in relation to a period for the purposes of this Act if it is a complying superannuation fund in relation to that period for the purposes of the *Income Tax Assessment Act 1997*.

7A Interpretation: complying approved deposit fund

An approved deposit fund is a complying approved deposit fund at a particular time for the purposes of this Act if it is a complying approved deposit fund in relation to the year of income in which that time occurred for the purposes of the *Income Tax Assessment Act 1997*.

8 Interpretation: resident of Australia

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

9 Interpretation: indexation factor

- (1) The indexation factor for a year is whichever is the greater of the following:
- (a) 1;
 - (b) the number calculated (to 3 decimal places) by dividing the AWOTE amount for the March quarter in the preceding year by the AWOTE amount for the March quarter in the year preceding that year.

Note: The March quarter is a quarter beginning on 1 January.

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

- (3) If the Australian Statistician publishes an estimate of full-time adult average weekly ordinary time earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.
- (4) If the number calculated for the purposes of paragraph (1)(b) in relation to a year would, if calculated to 4 decimal places, end with a numeral higher than 4, the number is to be taken to be the number calculated to 3 decimal places and increased by 0.001.

10 Interpretation: benefit certificate

- (1) A benefit certificate is a certificate by an actuary relating to one or more specified defined benefit superannuation schemes and specifying the rate, expressed as a percentage, that is, in the opinion of the actuary, the notional employer contribution rate, in relation to a specified class of employees (being members of the scheme or schemes, as the case may be), of an employer who is a contributor under the scheme or schemes (as the case may be) for the benefit of an employee in that class.
- (2) The notional employer contribution rate, in relation to a class of employees specified in a benefit certificate relating to one or more defined benefit superannuation schemes, is the contribution rate required to meet the expected long-term cost, to an employer who contributes to the scheme or schemes for the benefit of employees in the class, of the minimum benefits accruing in respect of all employees in the class from the date of effect of the benefit certificate onwards.
- (3) A benefit certificate has effect from the date specified in the certificate until:
 - (a) a superannuation scheme to which it relates is amended in a way that affects, or may affect, the level or method of calculation of benefits provided under the scheme for the class of employees specified in the certificate; or
 - (b) another benefit certificate is issued in relation to the same class of employees and the same scheme or schemes; or
 - (c) a period of 5 years from the date of issue expires; or

Section 10

- (d) in the case of a certificate that relates to a scheme that is a defined benefit superannuation scheme because of the operation of subsection 6A(2)—the conversion notice under section 6B is revoked;
whichever occurs first.
- (4) A benefit certificate may be expressed to have effect from:
 - (a) a day that is no earlier than:
 - (i) if the certificate is issued before 15 May in a quarter starting on 1 April, or before a later day in that quarter allowed by the Commissioner—1 January in the previous quarter; or
 - (ii) if the certificate is issued before 15 August in a quarter starting on 1 July, or before a later day in that quarter allowed by the Commissioner—1 April in the previous quarter; or
 - (iii) if the certificate is issued before 15 November in a quarter starting on 1 October, or before a later day in that quarter allowed by the Commissioner—1 July in the previous quarter; or
 - (iv) if the certificate is issued before 15 February in a quarter starting on 1 January, or before a later day in that quarter allowed by the Commissioner—1 October in the previous quarter; or
 - (v) in any other case—the first day of the quarter in which the certificate is issued; and
 - (b) a day that is no later than the day on which the certificate is issued.
- (6) The regulations may make provision regarding:
 - (a) the issue and form of benefit certificates; and
 - (b) the way in which the expected long-term cost to an employer of benefits accruing to all employees is to be calculated under subsection (2); and
 - (c) the manner in which the contribution rate is to be expressed under subsection (2); and
 - (d) the way in which minimum benefits accruing to all employees are to be calculated under subsection (2).

11 Interpretation—salary or wages

- (1) In this Act, *salary or wages* includes:
 - (a) commission; and
 - (b) payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate; and
 - (ba) payments under a contract referred to in subsection 12(3) that are made in respect of the labour of the person working under the contract; and
 - (c) remuneration of a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory; and
 - (d) payments to a person for work referred to in subsection 12(8); and
 - (e) remuneration of a person referred to in subsection 12(9) or (10).
- (2) Remuneration under a contract for the employment of a person, for not more than 30 hours per week, in work that is wholly or principally of a domestic or private nature is not to be taken into account as salary or wages for the purposes of this Act.
- (3) Fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986* are not salary or wages for the purposes of this Act.

12 Interpretation: employee, employer

- (1) Subject to this section, in this Act, *employee* and *employer* have their ordinary meaning. However, for the purposes of this Act, subsections (2) to (11):
 - (a) expand the meaning of those terms; and
 - (b) make particular provision to avoid doubt as to the status of certain persons.
- (2) A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.

Section 12

- (3) If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.
- (4) A member of the Parliament of the Commonwealth is an employee of the Commonwealth.
- (5) A member of the Parliament of a State is an employee of the State.
- (6) A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.
- (7) A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.
- (8) The following are employees for the purposes of this Act:
 - (a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;
 - (b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment;
 - (c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.
- (9) A person who:
 - (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or
 - (b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);is an employee of the Commonwealth, the State or the Territory, as the case requires. However, this rule does not apply to a person in the capacity of the holder of an office as a member of a local government council.

- (9A) Subject to subsection (10), a person who holds office as a member of a local government council is not an employee of the council.
- (10) A person covered by paragraph 12-45(1)(e) in Schedule 1 to the *Taxation Administration Act 1953* (about members of local governing bodies subject to PAYG withholding) is an employee of the body mentioned in that paragraph.
- (11) A person who is paid to do work wholly or principally of a domestic or private nature for not more than 30 hours per week is not regarded as an employee in relation to that work.

12A Interpretation: references to industrial instruments

- (1) In this Act, the following expressions have the same meanings as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*:
- (a) *AWA*;
 - (b) *collective agreement*;
 - (c) *ITEA*;
 - (d) *notional agreement preserving State awards*;
 - (e) *old IR agreement*;
 - (f) *pre-reform AWA*;
 - (g) *pre-reform certified agreement*;
 - (h) *preserved State agreement*;
 - (i) *Division 2B State instrument*.

Note: For an instrument referred to in this subsection, see item 4 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

- (2) In this Act, *enterprise agreement* has the same meaning as in the *Fair Work Act 2009*.
- (3) In this Act, *workplace determination* means a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

15 Interpretation: maximum contribution base

- (1) The maximum contribution base for a quarter in the 2001-02 year is \$27,510.

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

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

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

Part 3—Liability of employers other than the Commonwealth and tax-exempt Commonwealth authorities to pay superannuation guarantee charge

15B Application of Part to former employees

This Part applies to salary or wages paid to, and contributions for the benefit of, a former employee as if the former employee were an employee of the person who was the former employee's employer.

15C Certificates of coverage for international social security agreements

- (1) This section applies if a scheduled international social security agreement (within the meaning of section 5 of the *Social Security (International Agreements) Act 1999*) prevents double coverage of the compulsory retirement savings arrangements under the laws of the parties to the agreement.
- (2) An entity mentioned in subsection (3) may apply in writing to the Commissioner for a certificate under subsection (4) covering the employment of a particular employee.
- (3) For the purposes of subsection (2), the entity must be:
 - (a) if the employee's employer is not a resident of Australia—a related entity (within the meaning of the agreement) of the employer; or
 - (b) otherwise—the employee's employer.
- (4) The Commissioner may give the entity that made the application a certificate under this subsection if the Commissioner is satisfied that doing so is in accordance with the agreement mentioned in subsection (1).

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- (5) The certificate must:
 - (a) state the name of the employer and the employee; and
 - (b) state the time at which, or the circumstances in which, the certificate stops covering the employment; and
 - (c) contain any other information that the Commissioner considers relevant.
- (6) The Commissioner may revoke or vary a certificate under subsection (4), if doing so would be in accordance with the administrative arrangements to the agreement mentioned in subsection (1) that are agreed between the parties to the agreement.
- (7) A person who is dissatisfied with a decision of the Commissioner under subsection (4) or (6) may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) If the entity that made the application is not the employee's employer, this Part (apart from this section) applies to salary or wages relating to employment covered by the certificate that are paid to the employee as if the entity that made the application were the employee's employer.

16 Charge payable by employer

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

17 Superannuation guarantee shortfall

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

- (a) the total of the employer's individual superannuation guarantee shortfalls for the quarter; and
- (b) the employer's nominal interest component for the quarter; and
- (c) the employer's administration component for the quarter.

19 Individual superannuation guarantee shortfalls

- (1) An employer's *individual superannuation guarantee shortfall* for an employee for a quarter is the amount worked out using the formula:

$$\text{Total salary or wages paid by the employer to the employee for the quarter} \times \frac{\text{Charge percentage for the employer for the quarter}}{100}$$

where:

charge percentage, for an employer for a quarter, means:

- (a) the number specified in subsection (2) (unless paragraph (b) applies); or
 - (b) if the number specified in subsection (2) is reduced in respect of the employee by either or both sections 22 and 23—the number as reduced.
- (2) The charge percentage is 9.

Note: This might be reduced under section 22 or 23.

- (2A) If an employer makes one or more contributions (the *no choice contributions*) to an RSA or a complying superannuation fund other than a defined benefit superannuation scheme, for the benefit of an employee during a quarter and the contributions are not made in compliance with the choice of fund requirements, the employer's *individual superannuation guarantee shortfall* for the employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)} \right]$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if the no choice contributions had not been made.

Note 1: See also subsection (2E) and section 19A.

Part 3 Liability of employers other than the Commonwealth and tax-exempt Commonwealth authorities to pay superannuation guarantee charge

Section 19

Note 2: Part 3A sets out the choice of fund requirements.

(2B) If:

- (a) a reduction of the charge percentage for an employee for a quarter is made under subsection 22(2) in respect of a defined benefit superannuation scheme; and
- (b) there is at least one relevant day in the quarter where, if contributions (the *notional contributions*) had been made to the scheme by the employer for the benefit of the employee on the day, the notional contributions would have been made not in compliance with the choice of fund requirements; and
- (c) section 20 (which deals with certain cases where no contributions are required) does not apply to the employer in respect of the employee in respect of the scheme for the quarter;

the employer's *individual superannuation guarantee shortfall* for the employee for the quarter is increased by the amount worked out in accordance with the formula:

$$25\% \times \left[\text{Notional quarterly shortfall} - \text{Amount worked out under subsection (1)} \right] \times \frac{\text{Number of breach of condition days}}{\text{Relevant days in quarter}}$$

where:

notional quarterly shortfall is the amount that would have been worked out under subsection (1) if no reduction were made under subsection 22(2) in respect of the scheme.

number of breach of condition days is the number of relevant days in the quarter on which, if a contribution had been made to the scheme by the employer for the benefit of the employee, those contributions would have been made not in compliance with the choice of fund requirements.

Note 1: See also subsection (2E) and section 19A.

Note 2: Part 3A sets out the choice of fund requirements.

(2C) The following days in a quarter are *relevant days* for the purposes of subsection (2B):

- (a) if the value of **B** in the formula in subsection 22(2) for the quarter is 1—every day in the quarter; or

Section 19A

- (b) in any other case—every day in the quarter that is in the shorter of the scheme membership period or the certificate period referred to in subsection 22(2).
- (2D) A reference in subsections (2A) and (2B) to an employer's individual superannuation guarantee shortfall being increased includes a reference to the shortfall being increased from nil.
- (2E) The Commissioner may, after taking account, wherever appropriate, of the operation of section 19A, reduce (including to nil) the amount of an increase in an employer's individual superannuation guarantee shortfall for an employee for a quarter under subsection (2A) or (2B).
- Note: The Commissioner must have regard to written guidelines when deciding whether or not to make a decision under this subsection: see section 21.
- (3) If the total salary or wages paid by an employer to an employee in a quarter exceeds the maximum contribution base for the quarter, the total salary or wages to be taken into account for the purposes of the application of subsection (1) in relation to the quarter is the amount equal to the maximum contribution base.

19A Limit on shortfall increases arising from failure to comply with choice of fund requirements

- (1) Subject to subsections (2) and (3), if the total of the amounts worked out for an employee for a quarter under subsections 19(2A) and (2B) exceeds \$500, the total is taken to be \$500.
- (2) If:
- (a) the total (the *previous amount*) of the amounts worked out for an employee under subsections 19(2A) and (2B) for previous quarters within an employer's notice period for an employee does not exceed \$500; and
 - (b) the current quarter is within the same employer's notice period for the employee; and
 - (c) the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter and the previous quarters within the employer's notice period for the employee exceeds \$500;

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then, the total of the amounts worked out under subsections 19(2A) and (2B) for the employee for the current quarter is taken to be the amount by which \$500 exceeds the previous amount.

- (3) If a quarter (the *later quarter*) in an employer's notice period for an employee follows a quarter within that notice period:
- (a) to which subsection (1) applied; or
 - (b) to which paragraph (2)(c) applied;
- in respect of the employee, the total of the amounts worked out for the employee under subsections 19(2A) and (2B) for the later quarter is taken to be nil.
- (4) An *employer's notice period* for an employee:
- (a) begins on:
 - (i) in the case of the first employer's notice period for the employee—the later of 1 July 2005 and the day on which the employee is first employed by the employer; or
 - (ii) in any other case—when the immediately preceding employer's notice period for the employee ends; and
 - (b) ends on the day the Commissioner gives the employer written notice that the employer's notice period for the employee has ended.

20 Scheme in surplus or member has accrued maximum benefit

- (1) This section applies to an employer in respect of an employee in respect of a defined benefit superannuation scheme for a quarter if the employee is a defined benefit member of the scheme and either subsection (2) or (3) is satisfied.

Scheme in surplus

- (2) This subsection is satisfied if:
- (a) the employee was a defined benefit member of the fund immediately before 1 July 2005 and has not ceased to be such a member since that time and before the start of the quarter; and

- (b) an actuary has provided a certificate in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* stating that the employer is not required to make contributions for the quarter and there has been such a certificate covering all times since 1 July 2005; and
- (c) an actuary has provided a certificate stating that, in the actuary's opinion, at all times from 1 July 2005 until the end of the quarter, there is a high probability that the assets of the scheme are, and will be, equal to or greater than 110% of the greater of the scheme's liabilities in respect of vested benefits and the scheme's accrued actuarial liabilities.

The certificate under paragraph (c) must have been provided no earlier than 15 months before the end of the quarter.

Member has accrued maximum benefit

- (3) This subsection is satisfied if, after the start of the quarter, the defined benefit that has accrued to the employee will not increase other than:
 - (a) as a result of increases in the employee's salary or remuneration; or
 - (b) by reference to accruals of investment earnings; or
 - (c) by reference to indexation based on, or calculated by reference to, a relevant price index or wages index; or
 - (d) in any other way prescribed for the purposes of this paragraph.

Meaning of scheme's accrued actuarial liabilities and scheme's liabilities in respect of vested benefits

- (4) In this section:

scheme's accrued actuarial liabilities, at a particular time, means the total value, as certified by an actuary, of the future benefit entitlements of members of the scheme in respect of membership up to that time based on assumptions about future economic conditions and the future of matters affecting membership of the scheme, being assumptions made in accordance with applicable professional actuarial standards (if any).

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scheme's liabilities in respect of vested benefits, at a particular time, means the total value of the benefits payable from the scheme to which the members of the scheme would be entitled if they all voluntarily terminated their service with their employers at that time.

21 Guidelines for reducing an increase in an individual superannuation guarantee shortfall

- (1) The Commissioner must develop written guidelines that he or she must have regard to when deciding whether or not to make a decision under subsection 19(2E).

Note: Subsection 19(2E) allows the Commissioner to reduce (including to nil) the amount of an increase in an individual superannuation guarantee shortfall under subsection 19(2A) or (2B).

- (2) The guidelines are to be made available for inspection on the internet.

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

- (1) This section applies only in relation to defined benefit superannuation schemes.
- (2) If:
 - (a) a benefit certificate in relation to one or more complying superannuation schemes has effect for the whole or part of a quarter; and
 - (b) a scheme in relation to which the certificate has effect is operating for the benefit of a person as an employee of an employer; and
 - (c) the certificate specifies a figure as the notional employer contribution rate in relation to a class of employees (being a class that includes the employee referred to in paragraph (b)) as members of the scheme or schemes (as the case may be);the charge percentage for the employer, as specified in subsection 19(2), in respect of an employee in the class for the quarter, is reduced, in addition to any other such reduction made under this section or section 23, by the amount worked out using the formula:

$A \times B$

where:

A is the figure referred to in paragraph (c).

B is:

- (A) 1; or
- (B) if, in relation to the quarter, the employment period is greater than the scheme membership period or the certificate period—either the fraction that represents the scheme membership period as a proportion of the employment period or the fraction that represents the certificate period as a proportion of the employment period or, if one fraction is smaller than the other, the smaller fraction.

(3) For the purposes of subsection (2):

the employment period means the period, or the aggregate of the periods, in the quarter for which the employee is employed by the employer.

the scheme membership period means the period, or the aggregate of the periods, in the quarter for which the employee is a member of the superannuation scheme.

the certificate period means the period, or the aggregate of the periods, in the quarter for which the benefit certificate has effect in relation to the scheme.

(4) The charge percentage for an employer for a quarter cannot be reduced below 0.

(5) For the purposes of a calculation under this section in relation to an employer and an employee:

- (a) a period of leave of absence without pay granted by the employer to the employee is not to be taken into account as a period for which the employee is employed by the employer; and
- (b) a benefit certificate is taken not to have effect in relation to the employee in respect of such a period.

Section 23

23 Reduction of charge percentage if contribution made to RSA or to fund other than defined benefit superannuation scheme

- (1) This section applies only in relation to RSAs and to superannuation funds other than defined benefit superannuation schemes.

Reduction of charge percentage where contributions are made by employer

- (2) If, in a quarter, an employer contributes for the benefit of an employee to a complying superannuation fund or an RSA, then the charge percentage for the employer (as specified in subsection 19(2)) for the employee for the quarter is reduced by the number worked out using the formula:

$$\frac{\text{Contribution}}{\text{Ordinary time earnings}} \times 100$$

where:

contribution is the number of dollars in the amount of the contribution.

ordinary time earnings is the number of dollars in the ordinary time earnings of the employee for the quarter in respect of the employer.

Example: If the contribution is \$60 and the ordinary time earnings are \$1,000 then the charge percentage is reduced by 6. If there are no other contributions, and no reduction under section 22, then the charge percentage will be 3 (instead of 9).

- (3) A reduction under subsection (2) in respect of a contribution is in addition to:
- (a) any other reduction under that subsection in respect of any other contribution; and
 - (b) any reduction under section 22.

Some contributions made after a quarter ends may be taken into account in the quarter

- (6) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee may be taken into account under this section as having been made in a quarter if

it is in fact made within the period of 28 days after the end of the quarter.

Certain contributions made before a quarter may be taken into account in the quarter

- (7) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee may be taken into account under this section as if it had been made during a particular quarter if the contribution is made not more than 12 months before the beginning of the quarter.

Contributions taken into account for a quarter not to be taken into account for any other quarter

- (8) A contribution to a superannuation fund or an RSA made by an employer for the benefit of an employee that is taken into account under this section in relation to a quarter is not to be taken into account under this section in relation to any other quarter.

[Contribution made when conversion notice has effect not to be taken into account under this section]

- (8A) A contribution to a superannuation fund or superannuation scheme made by an employer for the benefit of an employee at a time when a conversion notice has effect in relation to the fund or scheme is not at any time to be taken into account under this section.

[Contributions to estate of deceased employee]

- (9A) If:
- (a) an employee has died; and
 - (b) the employer would, if the employee had not died, have made a contribution to a complying superannuation fund or RSA for the benefit of the employee; and
 - (c) the employer pays to the legal personal representative of the employee an amount equal to the amount of the contribution that would have been paid;
- the amount paid is taken for the purposes of this section to have been a contribution made by the employer to a complying superannuation fund or RSA for the benefit of the employee.

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[Charge percentage not to be less than 0]

- (10) The charge percentage for an employer for a quarter cannot be reduced below 0.

[Reduction of notional earnings base if amount excluded from employee's salary or wages]

- (11) If an employee's notional earnings base includes an amount of the employee's salary or wages that, because of section 27 or 28, is not taken into account for the purpose of making a calculation under section 19, the employee's notional earnings base for the purposes of this section is taken to be reduced by that amount.

[Reduction of ordinary time earnings if amount excluded from employee's salary or wages]

- (12) If, because of section 27 or 28, an amount of an employee's salary or wages is not taken into account for the purpose of making a calculation under section 19, the employee's ordinary time earnings for the purposes of this section are taken to be reduced by that amount.

- (13) Subject to subsection (15), if:

- (a) an employer makes a deposit under the *Small Superannuation Accounts Act 1995* in respect of an employee before 1 July 2006; and
- (b) the deposit form that accompanied the deposit, in so far as the form relates to the deposit, did not contain a declaration that is false or misleading;

this section has effect as if the deposit were a contribution made by the employer for the benefit of the employee to a complying superannuation fund.

- (14) Subsection (13) has effect despite section 9 of the *Small Superannuation Accounts Act 1995*.

- (15) If:

- (a) an employer makes a deposit under the *Small Superannuation Accounts Act 1995* in respect of an employee; and

(b) the employer receives a payment under Part 8 of that Act by way of a refund of the deposit;
this section has effect as if the deposit had never been made.

(16) In subsections (13) and (15):

deposit has the same meaning as in the *Small Superannuation Accounts Act 1995*.

deposit form has the same meaning as in the *Small Superannuation Accounts Act 1995*.

23A Offsetting late payments against charge

- (1) A contribution to a complying superannuation fund or an RSA made by an employer for the benefit of an employee is offset under subsection (3) if:
- (a) the contribution is made:
 - (i) after the end of the period of 28 days after the end of a quarter; and
 - (ii) before the employer's original assessment for that quarter is made; and
 - (b) the employer elects, in the approved form, that the contribution be offset.
- (2) The election must be made:
- (a) in a statement having effect under section 35 as the employer's assessment for the quarter; or
 - (b) within 4 years after the employer's original assessment for the quarter is made.
- The election cannot be revoked.
- (3) The contribution is offset, at the time the employer's original assessment for the quarter is made, against the employer's liability to pay superannuation guarantee charge to the extent that the liability relates to:
- (a) that part of the employer's nominal interest component for the quarter that relates to the employee; or
 - (b) the employer's individual superannuation guarantee shortfall for the employee for the quarter.

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- (4) The contribution is offset against that part of the employer's nominal interest component for the quarter that relates to the employee before any remainder is offset against the employer's individual superannuation guarantee shortfall for the employee for the quarter.
- (4A) If the election happens after the employer's assessment for the quarter is made, then, for the offset to take effect, the assessment must be amended accordingly under section 37.
- (5) A contribution to a superannuation fund or an RSA made by an employer for the benefit of an employee that is taken into account under this section in relation to a quarter is not to be taken into account:
 - (a) under this section in relation to any other quarter; or
 - (b) under section 22 or 23.

23B Contributions through an approved clearing house

For the purposes of sections 23 and 23A:

- (a) treat an employer that, at a particular time, pays an amount to an approved clearing house for the benefit of an employee as having made a contribution of the same amount to a complying superannuation fund or an RSA for the benefit of the employee at that time, if the approved clearing house accepts the payment; and
- (b) disregard any contribution that the approved clearing house makes to a complying superannuation fund or an RSA as a result of the payment.

24 Certain benefit certificates presumed to be certificates in relation to complying superannuation scheme

- (1) Subject to subsection (4), a benefit certificate that has effect in relation to a superannuation scheme (being a scheme to which an employer has contributed for the benefit of an employee) for the whole or a part of a quarter is, for the purposes of section 22, conclusively presumed, in relation to the employer, to be a certificate that has effect in relation to a complying superannuation scheme for the whole, or that part, as the case may be, of the quarter if:

- (a) within 30 days of the starting day in relation to that certificate, the employer obtains a written statement, provided by or on behalf of the trustee of the scheme, that the scheme:
 - (i) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
 - (ii) is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*; and
 - (iii) has not been subject to such a direction at any time since the beginning of the day on which the benefit certificate is expressed to take effect; or
 - (b) in an earlier quarter, the employer has obtained a statement of the kind referred to in paragraph (a).
- (2) Subject to subsection (4), a benefit certificate that has effect in relation to a superannuation scheme (being a scheme to which an employer has contributed for the benefit of an employee) for the whole or a part of a quarter is, if the employer obtains a statement of the kind referred to in paragraph (1)(a):
- (a) within the quarter; but
 - (b) later than 30 days after the starting day in relation to that certificate;
- for the purposes of section 22, conclusively presumed, in relation to the employer, to be a certificate that has effect in relation to a complying superannuation scheme for the period commencing on the day on which the employer obtains the statement and ending on the last day of the quarter.
- (4) A presumption relating to a benefit certificate under subsection (1) or (2) is not, in relation to an employer and a superannuation scheme, effective in respect of any period for which the scheme is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act if, in that period:
- (a) the employer:
 - (i) is the trustee or manager of the scheme; or
 - (ii) has an association, within the meaning of section 318 of the *Income Tax Assessment Act 1936*, with the trustee or the manager of the scheme; and

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- (b) the employer has reasonable grounds for believing that the scheme is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act.
- (4A) Section 39 of the *Superannuation Industry (Supervision) Act 1993* applies for the purposes of subsection (4) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 5 of that Act.
- (5) In this section:
- starting day* means:
- (a) in relation to a benefit certificate that has effect in relation to a superannuation scheme for the whole of a quarter—the first day of the quarter; or
 - (b) in relation to a benefit certificate that has effect in relation to a superannuation scheme for a part of a quarter—the first day in the quarter for which the benefit certificate has effect.

25 Certain contributions presumed to be contributions to complying superannuation fund

- (1) Subject to subsection (2), a contribution by an employer for the benefit of an employee to a superannuation fund is conclusively presumed to be a contribution to a complying superannuation fund for the purposes of section 23 if, at or before the time the contribution is made, the employer has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund:
 - (a) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
 - (b) is not subject to a direction under section 63 of that Act.
- (2) Subsection (1) does not apply to a contribution to a superannuation fund if, at the time the contribution is made:
 - (a) the employer:
 - (i) is the trustee or the manager of the fund; or

- (ii) has an association, within the meaning of section 318 of the *Income Tax Assessment Act 1936*, with the trustee or the manager of the fund; and
- (b) the employer has reasonable grounds for believing that the fund is not a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or is operating in contravention of a regulatory provision, as defined in section 38A of that Act.
- (3) Section 39 of the *Superannuation Industry (Supervision) Act 1993* applies for the purposes of subsection (2) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 5 of that Act.

26 Certain periods not to count as periods of employment

- (1) Any period in respect of which excluded salary or wages are paid by an employer to an employee is not, for the purposes of section 22 or 23, to be taken into account as a period for which the employee is employed by the employer.
- (2) For the purposes of subsection (1), excluded salary or wages are salary or wages that, under section 27 or 28, are not to be taken into account for the purpose of making a calculation under section 19.

27 Salary or wages: general exclusions

- (1) The following salary or wages are not to be taken into account for the purpose of making a calculation under section 19:
 - (a) salary or wages paid to an employee who is 70 or over;
 - (b) salary or wages paid to an employee who is not a resident of Australia for work done outside Australia (except to the extent that the salary or wages relate to employment covered by a certificate under section 15C);
 - (c) salary or wages paid by an employer who is not a resident of Australia to an employee who is a resident of Australia for work done outside Australia;
 - (ca) salary or wages paid by an employer to an employee who is not a resident of Australia for work done in the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*);

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- (d) salary or wages paid to an employee who is a prescribed employee for the purposes of this paragraph;
 - (e) salary or wages prescribed for the purposes of this paragraph.
- (2) If an employer pays an employee less than \$450 by way of salary or wages in a calendar month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under section 19.

28 Salary or wages: excluded earnings of young persons

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

29 Salary or wages: excluded earnings of members of Reserves

If an employee receives income that is exempt from income tax under item 1.4 of the table in section 51-5 of the *Income Tax Assessment Act 1997*, that income is not to be taken into account for the purposes of this Act.

30 Arrangements to avoid payment of superannuation guarantee charge

If:

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

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

31 Nominal interest component

The nominal interest component in relation to an employer for a quarter is the amount that would accrue by way of interest on the total of the employer's individual superannuation guarantee shortfalls for the quarter if interest were calculated at the rate applicable under the regulations for the purposes of this subsection from the beginning of the quarter in question until the date on which superannuation guarantee charge in relation to the total would be payable under this Act.

32 Administration component

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

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

where:

base amount is the amount (if any) prescribed in the regulations.

N is the number of employees in respect of whom the employer has an individual superannuation guarantee shortfall for the quarter.

Per capita amount is \$20 or such other amount as is from time to time prescribed.

Part 3A—Choice of fund requirements

Division 1—Overview of Part

32A Purpose of Part

This Part sets out the circumstances in which contributions are made in compliance with the choice of fund requirements. This is important because an employer's individual superannuation guarantee shortfall for an employee for a quarter may be increased where contributions do not comply.

32B Structure of Part

The structure of this Part is as follows:

Structure of Part	
Division	Topic
Division 1	Overview of Part
Division 2	Which contributions satisfy the choice of fund requirements?
Division 3	Eligible choice funds
Division 4	Choosing a fund
Division 6	Standard choice forms
Division 8	Miscellaneous

Division 2—Which contributions satisfy the choice of fund requirements?

32C Contributions that satisfy the choice of fund requirements

Contributions to certain funds

- (1) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if the contribution is made to a fund that, at the time that the contribution is made, is:
 - (a) a chosen fund for the employee (see Division 4); or
 - (b) if the employee is not a Commonwealth employee who is a member of the CSS or the PSS—an unfunded public sector scheme.

Contributions to other funds

- (2) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if, at the time the contribution is made:
 - (a) there is no chosen fund for the employee; and
 - (b) the fund is an eligible choice fund for the employer; and
 - (ba) the fund either:
 - (i) is specified under section 32P in the standard choice form provided as the fund to which the employer will contribute for the benefit of the employee if the employee does not make a choice or will be so specified within the time specified in section 32N for the provision of a standard choice form to the employee; or
 - (ii) if the employer has not contributed, and cannot contribute, to a fund (the ***first employer fund***) that was so specified or that was purportedly so specified—will be so specified within 28 days of the employer becoming aware that the employer cannot contribute to the first employer fund; and
 - (c) the fund complies with the requirements (if any) set out in the regulations in relation to offering insurance in respect of death.

Part 3A Choice of fund requirements

Division 2 Which contributions satisfy the choice of fund requirements?

Section 32C

- (2A) Subsection (2) does not apply if the employer is required under section 32N to give the employee a standard choice form and the employer does not do this by the time specified in the subsection concerned. However, this subsection ceases to apply from the time that the employer gives the standard choice form to the employee.

Contributions through an approved clearing house

- (2B) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if:
- (a) section 79A (which is about a contribution through an approved clearing house) applies to the contribution; and
 - (b) the employee gives the employer written notice to the effect that the employee wants a fund to be a chosen fund for the employee in accordance with Division 4 of Part 3A (Choosing a fund); and

Note: Under section 32G (Limit on funds that may be chosen), the fund chosen by the employee must be an eligible choice fund and must be a fund to which the employer can make contributions.

- (c) the employer passes onto the approved clearing house mentioned in section 79A the information that the employee included in the written notice, and any other prescribed information:
 - (i) within 21 days after the employee gives the notice to the employer; and
 - (ii) before or at the time the contribution is made; and
- (d) the approved clearing house accepts the information.

Contributions to the CSS

- (3) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the CSS. However, this subsection does not apply if the law of the Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions to the PSS

- (4) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to the PSS. However, this subsection does not apply if the law of the Commonwealth under which the contribution is made has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions to PSSAP

- (4A) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made to PSSAP. This subsection ceases to have effect on 1 July 2006.

Contributions under the Superannuation (Productivity Benefit) Act 1988

- (5) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under the *Superannuation (Productivity Benefit) Act 1988*. However, this subsection does not apply if that Act has been prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions under certain agreements and workplace determinations

- (6) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with:
- (a) a pre-reform certified agreement; or
 - (b) an AWA; or
 - (c) a pre-reform AWA; or
 - (d) a collective agreement; or
 - (e) an old IR agreement; or
 - (f) an ITEA; or
 - (g) a workplace determination; or

Part 3A Choice of fund requirements

Division 2 Which contributions satisfy the choice of fund requirements?

Section 32C

(h) an enterprise agreement.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

Contributions under notional agreements preserving State awards

(6A) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made:

(a) under, or in accordance with, a notional agreement preserving State awards; and

(b) in respect of salary or wages paid before 1 July 2006.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

Contributions under preserved State agreements

(6B) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a preserved State agreement.

Note: A number of the expressions used in this subsection are defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or the *Fair Work Act 2009*.

Contributions under Division 2B State instruments

(7) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a Division 2B State instrument.

Note: The expression *Division 2B State instrument* is defined in section 12A by reference to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Contributions under State awards

(8) A contribution to a fund by an employer for the benefit of an employee is also made in compliance with the choice of fund requirements if the contribution, or a part of the contribution, is made under, or in accordance with, a State industrial award.

Contributions under prescribed legislation

- (9) A contribution to a fund by an employer for the benefit of an employee at a particular time is also made in compliance with the choice of fund requirements if the contribution is made under a law of the Commonwealth, of a State or of a Territory and the law is prescribed in relation to that time under regulations made for the purpose of this subsection.

Contributions made after employees cease employment

- (10) If:
- (a) an employee ceases to be employed by an employer; and
 - (b) after the employment ceases, the employer makes a contribution to a fund for the benefit of the employee and in respect of the employment;

then, for the purposes of this section, the contribution is taken to have been made immediately before the employment ceases.

Note: This section is used in determining if an individual superannuation guarantee shortfall is increased under subsection 19(2A) or (2B). Where subsection 19(2B) is relevant, the contributions referred to in this section are the notional contributions referred to in paragraph 19(2B)(b).

32CA Certain contributions taken not to satisfy the choice of fund requirements

Despite section 32C, a contribution to a fund by an employer for the benefit of an employee is taken not to comply with the choice of fund requirements if the employer imposes a direct cost or charge on the employee as a consequence of having to contribute to that fund.

Division 3—Eligible choice funds

32D What funds are eligible choice funds?

A fund is an eligible choice fund for an employer at a particular time if:

- (a) it is a complying superannuation fund at that time; or
- (b) it is a complying superannuation scheme at that time; or
- (c) it is an RSA; or
- (ca) if the time is a time before 1 July 2006—it is the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account; or
- (d) at that time, a benefit certificate in relation to the fund is conclusively presumed under section 24, in relation to the employer, to be a certificate in relation to a complying superannuation scheme; or
- (e) contributions made by the employer to the fund at that time are conclusively presumed under section 25 to be contributions to a complying superannuation fund.

32E Meaning of *funds*—includes RSAs and schemes

- (1) In this Part:

fund means:

- (a) a superannuation fund; and
- (b) a superannuation scheme; and
- (c) an RSA;

and, until immediately before 1 July 2006, includes the account that is continued in existence under section 8 of the *Small Superannuation Accounts Act 1995* as the Superannuation Holding Accounts Special Account.

- (2) For the purposes of this Part, the holder of an RSA is taken to be a member.

Division 4—Choosing a fund

32F What is a chosen fund

- (1) If an employee wants a fund to be a chosen fund for the employee, the employee must give the employer written notice to that effect.

Note: A fund can only be a chosen fund if the employer is able to make contributions to the fund for the benefit of the employee (see subsection 32G(2)).

(1A) If:

- (a) an employer has offered an employee a choice of fund before 1 July 2005; and
- (b) the employee has chosen a fund in accordance with the choice of funds that is offered; and
- (c) the limitations on that choice are consistent with section 32G or, if the choice was made before the commencement of that section, would have been consistent with section 32G if the section had been in force at the time the choice was made;

then, for the purposes of this Part, any fund chosen by the employee is taken to be the chosen fund for the employee with effect from:

- (d) 1 July 2005; or
- (e) a date that is 2 months after the fund is so chosen (unless the employer determines an earlier time after 1 July 2005 but within that 2 months);

whichever last occurs.

- (2) The fund becomes a chosen fund for the employee 2 months after the employee gives the notice to the employer or at such earlier time after the notice is given as the employer determines.
- (3) A fund (the *selected fund*) cannot become a chosen fund for an employee under this section if:
- (a) immediately before the employee gave the notice to the employer, the employee was a defined benefit member of a defined benefit superannuation scheme; and

Part 3A Choice of fund requirements

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- (b) even if the selected fund were to become a chosen fund for the employee, the employee would be entitled, on the employee's retirement, resignation or retrenchment, to the same amount of benefit from the defined benefit superannuation scheme as the employee would be entitled if the selected fund were not a chosen fund for the employee.

32FA Employer may refuse to accept certain chosen funds

- (1) An employer may refuse to accept the fund chosen by an employee under section 32F if the employee does not provide, together with the notice under that section:
 - (a) a written statement setting out:
 - (i) contact details for the fund; and
 - (ii) any other prescribed information; and
 - (b) written evidence that the fund will accept contributions made by the employer for the benefit of the employee.
- (2) An employer may refuse to accept the fund chosen by an employee under section 32F if the employee has chosen another fund within the previous 12 months.

32G Limit on funds that may be chosen

- (1) The fund chosen by the employee must be an eligible choice fund for the employer at the time that the choice is made.
- (2) The fund chosen by the employee must be a fund to which the employer can make contributions for the benefit of the employee at the time that the choice is made.

32H When fund ceases to be a chosen fund

- (1) A fund (the *old fund*) ceases to be a chosen fund for an employee if:
 - (a) there is another fund that is a chosen fund for the employee; and
 - (b) the employee has not given the employer a written notice stating that the old fund continues to be a chosen fund for the employee.

- (2) A fund also ceases to be a chosen fund if the employee requests the employer, under subsection 32N(3), to give him or her a standard choice form and the employer does not do this by the time specified in that subsection.
- (3) A fund also ceases to be a chosen fund if it is impossible for the employer to contribute on behalf of the employee to the chosen fund. This may occur immediately after the fund becomes a chosen fund for the employee.
Example: The chosen fund is closed to new members or ceases to accept further contributions.
- (4) A fund also ceases to be a chosen fund if the fund ceases to be an eligible choice fund for the employer. This may occur immediately after the fund becomes a chosen fund for the employee.

Division 6—Standard choice forms

32N When a standard choice form must be provided

- (1) An employer must give a standard choice form before 29 July 2005 to each employee employed by the employer on 1 July 2005.

Note: An employer does not have to provide a standard choice form to an existing employee except in the specific circumstances outlined in this section. See also the further exceptions in section 32NA.

- (2) An employer must give a standard choice form to an employee within 28 days of the employee first commencing employment with the employer.
- (3) An employer must also give a standard choice form to an employee within 28 days of the employee giving the employer a written request to do so. However, a request is taken never to have been made if the employee has been given a standard choice form within the previous 12 months.
- (4) An employer must also give a standard choice form to an employee within 28 days of the employer becoming aware that there ceased to be any chosen fund for the employee because of:
 - (a) subsection 32H(3) (employer unable to contribute to fund);
 - or
 - (b) subsection 32H(4) (fund ceasing to be eligible choice fund).
- (5) An employer must also give a standard choice form to an employee if:
 - (a) the employer is making contributions, in accordance with subsection 32C(2), to a fund for the benefit of the employee; and
 - (b) the employer changes the fund to which the employer makes contributions, in accordance with that subsection, for the benefit of the employee.

The standard choice form must be given within 28 days after the change.

(5A) An employer must also give a standard choice form (the *updated standard choice form*) to an employee if:

- (a) the employer has specified a fund (the *employer fund*) in a standard choice form as the fund to which the employer will contribute under subsection 32C(2) in the event of the employee failing to make a choice of fund; and
- (b) the employer discovers, after giving an employee the standard choice form, that the employer cannot contribute to the employer fund for the benefit of the employee.

The updated standard choice form must be given within 28 days after the employer first becomes aware that the employer cannot contribute to the employer fund for the benefit of the employee.

(6) An employer may also give a standard choice form at any time.

32NA When a standard choice form does not have to be provided

- (1) An employer is not required under section 32N to give an employee a standard choice form if the employee has chosen a fund under section 32F by the time specified in subsection 32N(1), (2), (3) or (4).
- (2) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employer is making contributions of a kind mentioned in subsections 32C(3) to (9) for the benefit of the employee; and
 - (b) the contributions are made in compliance with the choice of fund requirements.
- (3) Subject to subsections 32N(3) and (4), an employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employee has chosen a fund before 1 July 2005; and
 - (b) the fund so chosen is to be taken, in accordance with subsection 32F(1A), to be the chosen fund for that employee.
- (4) An employer is not required under section 32N to give an employee a standard choice form if the employee:
 - (a) is a member of an unfunded public sector scheme; and
 - (b) is not a Commonwealth employee who is a member of the CSS or the PSS.

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- (5) An employer is not required under section 32N to give an employee a standard choice form if the employee ceases to be an employee before the end of the period for giving a standard choice form to the employee.
- (6) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) it is a condition of the employment of that employee that the employee choose a fund from funds that include all funds that are eligible choice funds for the employer at the time the choice is made; and
 - (b) the employer does not have an arrangement to pay contributions to a fund for the benefit of an employee in the event that the employee failed or refused to choose a fund.
- (7) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) subsection 20(2) is satisfied in relation to that scheme and that quarter.
- (8) An employer is not required under section 32N to give an employee a standard choice form during a quarter if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) subsection 20(3) is satisfied in relation to the defined benefit that has accrued to that member.
- (9) An employer is not required under section 32N to give an employee a standard choice form if:
 - (a) the employee is a defined benefit member of a defined benefit superannuation scheme; and
 - (b) the employee would be entitled, on the employee's retirement, resignation or retrenchment, to the same amount of benefit from the defined benefit superannuation scheme, whether or not the employee had contributions made by the employer for his or her benefit to a fund other than the defined benefit superannuation scheme.

- (10) An employer is not required under section 32N to give an employee a standard choice form if:
- (a) the employee is covered by a notional agreement preserving State awards or a preserved State agreement; and
 - (b) before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*, the employer was required, under a State law, to give the employee a notification that the employee can choose a superannuation fund; and
 - (c) the employer has given the notification mentioned in paragraph (b) to the employee.

32P Standard choice form

- (1) For the purposes of this Part, a *standard choice form* is a form that is in writing and that contains the following information:
- (a) a statement that the employee may choose any eligible choice fund for the employer as a chosen fund for the employee;
 - (c) the name of the fund that the employer will contribute to if the employee does not make a choice;
 - (e) other information that is required, under the regulations, to be included in the form;
 - (g) if the employee is a member of a defined benefits scheme—information in relation to that scheme that is required, under the regulations, to be included.
- (2) The regulations may require additional information in relation to funds to be made available to employees and may prescribe where and when such information is to be made available.

Division 8—Miscellaneous

32X Application of Part to different employers of an employee

This Part applies separately to each employer of an employee. For example, a fund that is a chosen fund of an employee as a result of a standard choice form being given by an employer is only a chosen fund in relation to the operation of these provisions to that employer.

32Y Notional earnings base to continue to be used

- (1) This section applies if:
 - (a) an employer is contributing to a fund (the *choice fund*) that is a chosen fund of an employee; and
 - (b) it is reasonable to assume that, if the choice of fund requirements did not apply, the employer would instead have contributed to a different fund (the *other fund*) for the benefit of that employee; and
 - (c) contributions to the other fund would not have been covered by subsection 23(5).
- (2) This section also applies if:
 - (a) an employer is contributing to a fund (the *choice fund*) that is a chosen fund of an employee; and
 - (b) it is reasonable to assume that, if the choice of fund requirements did not apply, that a reduction in the charge percentage for the employer would have been made under subsection 22(2) as a result of a scheme (the *other fund*) for the benefit of that employee.
- (3) In working out the reduction in the charge percentage under subsection 23(2), (3), (4), (4A) or (4D) as a result of a contribution to the choice fund, the employee's notional earnings base is taken to be equal to the lesser of that notional earnings base and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).

- (4) In working out the reduction in the charge percentage under subsection 23(5) as a result of a contribution to the choice fund, the employee's ordinary time earnings are taken to be equal to the lesser of those ordinary time earnings and the amount that would have been the employee's notional earnings base if the contribution had been made to the other fund, or the reduction had been made under subsection 22(2) as a result of the other fund (as the case requires).

32Z Contributions satisfy Commonwealth or Territory industrial award requirements

A requirement in a Commonwealth industrial award or a Territory industrial award that an employer make contributions to a superannuation fund on behalf of an employee is not enforceable to the extent that the employer instead makes the contributions on behalf of the employee, in compliance with this Part, to another superannuation fund that is a chosen fund.

32ZAA Contributions satisfy State or Territory law requirements

- (1) This section applies to an employer that is a corporation to which paragraph 51(xx) of the Constitution applies.
- (2) A requirement in a law of a State or Territory that the employer make contributions to a superannuation fund on behalf of an employee is not enforceable to the extent that the employer instead makes the contributions on behalf of the employee, in compliance with this Part, to another superannuation fund that is a chosen fund.

32ZA Employers not liable for damages

An employer is not liable to compensate any person for loss or damage arising from anything done by the employer in complying with this Part.

Part 4—Superannuation guarantee statements and assessments

33 Superannuation guarantee statements

- (1) An employer who has a superannuation guarantee shortfall for a quarter must lodge a superannuation guarantee statement for the quarter on or before:
 - (a) for a quarter beginning on 1 January—28 May in the next quarter; and
 - (b) for a quarter beginning on 1 April—28 August in the next quarter; and
 - (c) for a quarter beginning on 1 July—28 November in the next quarter; and
 - (d) for a quarter beginning on 1 October—28 February in the next quarter.
- (1A) However, the Commissioner may allow an employer to lodge a superannuation guarantee statement on a later day.
- (2) The statement must set out:
 - (a) the name and postal address of the employer; and
 - (b) the name, postal address and tax file number (so far as is known to the employer) of each employee in relation to whom the employer had an individual superannuation guarantee shortfall for the quarter; and
 - (c) the amount of each such shortfall; and
 - (d) the employer's nominal interest component for the quarter; and
 - (e) the employer's administration component for the quarter; and
 - (g) the total of the employer's individual superannuation guarantee shortfalls for the quarter; and
 - (h) the amount of the employer's superannuation guarantee charge for the quarter.
- (3) The statement must:
 - (a) be in a form approved by the Commissioner; and

- (b) be lodged with the Commissioner in accordance with the regulations; and
 - (c) be signed by or on behalf of the employer making the statement.
- (4) Subsection (1) does not apply to the employer if the employer has previously given the Commissioner a statement for the quarter under section 34.

34 Power to require information where no superannuation guarantee statement

The Commissioner, by written notice, may require a person who was at any time during a quarter an employer and who has not lodged a superannuation guarantee statement for that quarter to give the Commissioner, within a specified period of not less than 14 days, a written statement for the quarter stating whether the person has a superannuation guarantee shortfall for the quarter and if so, setting out the matters referred to in subsection 33(2).

35 First superannuation guarantee statement for a quarter taken to be assessment

- (1) If:
- (a) an employer lodges a superannuation guarantee statement for a quarter; and
 - (b) a superannuation guarantee statement has not previously been lodged, and an assessment has not previously been made, for the quarter in relation to the employer;
- then:
- (c) the statement has effect as an assessment of the employer's superannuation guarantee shortfall for the quarter and of the superannuation guarantee charge payable on the shortfall; and
 - (d) the assessment is taken to have been made on the later of the day on which the statement was lodged and the following day:
 - (i) for a quarter beginning on 1 January—28 May in the next quarter; and
 - (ii) for a quarter beginning on 1 April—28 August in the next quarter; and

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- (iii) for a quarter beginning on 1 July—28 November in the next quarter; and
 - (iv) for a quarter beginning on 1 October—28 February in the next quarter; and
 - (e) the sum of:
 - (i) the total of the employer's individual superannuation guarantee shortfalls; and
 - (ii) the employer's nominal interest component; and
 - (iii) the employer's administration component;specified in the statement is to be taken to be the amount of superannuation guarantee charge payable by the employer for the quarter; and
 - (f) the statement has effect as if it were a notice of assessment signed by the Commissioner and given to the employer on the day on which the assessment is taken to have been made.
- (2) In subsection (1), *superannuation guarantee statement* includes a statement under section 34 that indicates that an employer has a superannuation guarantee shortfall for a quarter.

36 Default assessments

- (1) If:
 - (a) an employer has not lodged a superannuation guarantee statement for a quarter; and
 - (b) the Commissioner is of the opinion that the employer is liable to pay superannuation guarantee charge for the quarter;the Commissioner may make an assessment of the employer's superannuation guarantee shortfall for the quarter and of the superannuation guarantee charge payable on the shortfall.
- (2) For the purposes of making an assessment under subsection (1), the superannuation guarantee shortfall is taken to be the amount that in the Commissioner's opinion might reasonably be expected to be the shortfall.
- (3) Superannuation guarantee charge in relation to an assessment made under subsection (1) is payable on the day on which the assessment is made.

37 Amendment of assessments

- (1) The Commissioner may, subject to this section, at any time amend any assessment by making any alterations or additions that the Commissioner thinks necessary, whether or not superannuation guarantee charge has been paid in relation to the assessment.
- (2) Subject to this section, if there has been an avoidance of superannuation guarantee charge, the Commissioner may:
 - (a) if the Commissioner is of the opinion that the avoidance of the charge is due to fraud or evasion—at any time; or
 - (b) in any other case—within 4 years from the day on which the assessment is made;amend the assessment by making any alterations or additions that the Commissioner thinks necessary to correct the assessment.
- (3) An amendment effecting a reduction in an employer's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.
- (4) If an assessment has, under this section, been amended in any particular, the Commissioner may, within 4 years from the day on which superannuation guarantee charge became payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Commissioner's opinion, is necessary to effect such reduction in the employer's liability under the assessment as is just.
- (5) If:
 - (a) an employer applies for an amendment of the employer's assessment within 4 years from the day that superannuation guarantee charge became payable under the assessment; and
 - (b) within that period, the employer lodges all information the Commissioner needs to decide the application;the Commissioner may amend the assessment when considering the application, even if that period has elapsed.
- (6) Nothing in this section prevents the amendment of an assessment to give effect to:
 - (a) the decision on any review or appeal; or
 - (b) its amendment by reduction of any particular following the employer's objection or pending any review or appeal.

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

38 Refund of overpaid amounts

- (1) If, because an assessment is amended, a person's liability to superannuation guarantee charge is reduced:
- (a) the amount by which the charge is reduced is taken, for the purposes of section 49, never to have been payable; and
 - (b) the Commissioner must:
 - (i) refund any overpaid amount; or
 - (ii) apply any overpaid amount against the person's liability (if any) to the Commonwealth and refund any part of the amount that is not so applied.
- (2) In subsection (1):

overpaid amount includes any overpaid amount of additional superannuation guarantee charge under section 49 or Part 7 of this Act or administrative penalty under Part 4-25 in Schedule 1 to the *Taxation Administration Act 1953*.

39 Amended assessment to be an assessment

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

40 Notice of assessment or amendment

As soon as practicable after an assessment is made under section 36 or is amended under section 37, the Commissioner must give written notice of the assessment or amendment (as the case may be) to the person liable to pay the superannuation guarantee charge.

41 Validity of assessment

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

42 Objections against assessment

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

Part 5—Administration

43 General administration of Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

44 Annual report

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

Part 6—Collection and recovery of charge

46 When superannuation guarantee charge becomes payable

- (1) Superannuation guarantee charge for a quarter is payable:
- (a) if, on or before the lodgment day for the quarter, the employer lodges a superannuation guarantee statement or a statement under section 34 indicating a superannuation guarantee shortfall for that quarter—on the lodgment day; or
 - (b) if, after the lodgment day, the employer lodges a superannuation guarantee statement or a statement under section 34 indicating a superannuation guarantee shortfall for that quarter—on the day on which the statement is lodged.

Note 1: If a default assessment is made for a quarter then the superannuation guarantee charge is payable on the day on which the assessment is made: see section 36.

Note 2: For provisions about collection and recovery of superannuation guarantee charge, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) In this section:

lodgment day for a quarter means:

- (a) for a quarter beginning on 1 January—28 May in the next quarter; and
- (b) for a quarter beginning on 1 April—28 August in the next quarter; and
- (c) for a quarter beginning on 1 July—28 November in the next quarter; and
- (d) for a quarter beginning on 1 October—28 February in the next quarter.

47 When additional superannuation guarantee charge becomes payable

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

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Note: For provisions about collection and recovery of additional superannuation guarantee charge, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

49 Unpaid superannuation guarantee charge

- (1) If any of the superannuation guarantee charge which an employer is liable to pay remains unpaid after the time by which it is due to be paid, the employer is liable to pay the general interest charge on the unpaid amount (the **original unpaid amount**).

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Note 2: Subsections (2) and (3A) deal with reducing the original unpaid amount.

- (2) However, the original unpaid amount must be reduced by those amounts in respect of:
- (a) the employer's administration component for the quarter; and
 - (b) the employer's nominal interest component for the quarter.
- (3) The employer is liable to pay the general interest charge for each day in the period that:
- (a) started at the beginning of the day by which the superannuation guarantee charge was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the superannuation guarantee charge;
 - (ii) general interest charge on any of the superannuation guarantee charge.
- (3A) To avoid doubt, for the purposes of this section and subsection 8AAC(3) of the *Taxation Administration Act 1953*, an election under section 23A in relation to the superannuation guarantee has effect from the time the employer's original assessment for the quarter is made.
- (4) The amount of the general interest charge is taken to be **additional superannuation guarantee charge** payable under this section.
- (5) In this section:
- superannuation guarantee charge** includes additional superannuation guarantee charge under Part 7.

50 Order of payments

The Commissioner must apply payments of superannuation guarantee charge, or related penalty charge, for a quarter that are made by or on behalf an employer, so that the employer's liability to pay the nominal interest component for the quarter is discharged before all other amounts.

57 Public officer of company

- (1) The person who is, from time to time, the public officer of a company for the purposes of section 252 of the *Income Tax Assessment Act 1936* is the public officer of the company for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act.
- (2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the company for the purposes of this Act, but, if at any time there is no public officer of the company, service on a person acting or appearing to act in the business of the company is sufficient.
- (3) The public officer is answerable for doing all acts required to be done by the company under this Act, and in case of default is liable to the same penalties.
- (4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.
- (5) If, at any time, there is no public officer of the company, this Act applies in relation to the company as if there were no requirement to appoint a public officer of the company.
- (6) A proceeding under this Act brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.
- (7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the company or public officer may, if the

Section 58

Commissioner thinks fit, be given to, served on or brought against any director, secretary or other officer of the company or any attorney or agent of the company, and the director, secretary, officer, attorney or agent has the same liability in relation to the notice, process or proceeding as the company or public officer would have had if it had been given to, served on or brought against the company or public officer.

58 Public officer of trust estate

- (1) The person who is, from time to time, the public officer of a trust estate for the purposes of section 252A of the *Income Tax Assessment Act 1936* is the public officer of the trust estate for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act.
- (2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the trustee of the trust estate for the purposes of this Act, but, if at any time there is no public officer of the trust estate, service on a person acting or appearing to act in the business of the trust estate is sufficient.
- (3) The public officer is answerable for doing all acts required to be done by the trustee of the trust estate under this Act, and in case of default is liable to the same penalties.
- (4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the trustee of the trust estate.
- (5) If, at any time, there is no public officer of the trust estate, this Act applies in relation to the trustee of the trust estate as if there were no requirement to appoint a public officer of the trust estate.
- (6) A proceeding under this Act brought against the public officer is taken to have been brought against the trustee of the trust estate, and the trustee is liable jointly with the public officer for any penalty imposed on the public officer.

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

Part 7—Additional superannuation guarantee charge

59 Failure to provide statements or information

- (1) If an employer other than a government body refuses or fails to provide, when and as required under this Act, a superannuation guarantee statement or information relevant to assessing the employer's liability to pay superannuation guarantee charge for a quarter, the employer is liable to pay, by way of penalty, additional superannuation guarantee charge equal to double the amount of superannuation guarantee charge payable by the employer for the quarter.
- (2) An employer liable to pay superannuation guarantee charge for a quarter must:
 - (a) keep a record in relation to the quarter containing details of the basis of calculation of the following amounts:
 - (ii) the individual superannuation guarantee shortfalls of the employer for the quarter;
 - (iii) the employer's nominal interest component for the quarter;
 - (iv) the employer's administration component for the quarter;that were specified in a superannuation guarantee statement under section 33 or a statement under section 34; or
 - (b) produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2)(a) that were specified in a superannuation guarantee statement under section 33 or a statement under section 34.
- (3) If the amount of additional superannuation guarantee charge that would, but for this subsection, be payable under subsection (1) or (2) is less than \$20, the additional superannuation guarantee charge payable is \$20.

62 Assessment of additional superannuation guarantee charge

- (1) The Commissioner must make an assessment of the additional superannuation guarantee charge payable by an employer under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the employer.
- (2) Nothing in this Act is taken to prevent a notice from being incorporated in a notice of any other assessment made in relation to the employer under this Act.
- (3) The Commissioner may remit all or part of the additional superannuation guarantee charge payable by an employer under this Part, but, for the purposes of applying subsection 33(1) of the Acts Interpretation Act 1901 to the power of remission conferred by this subsection, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the additional superannuation guarantee charge.

62A Offsets to be disregarded

In working out the amount of superannuation guarantee charge payable by an employer for a quarter for the purposes of this Part, disregard the amount of any offset under section 23A (about offsetting late payments against charge).

Part 8—Payments of amounts of shortfall components for the benefit of employees

63A Payments to which this Part applies

- (1) This Part applies to a charge payment in respect of one or more employees (the *benefiting employee* or *benefiting employees*) that is made by or on behalf of an employer.
- (1A) This Part applies to a former employee as if the former employee were an employee of the person who was the former employee's employer.

- (2) In this section:

charge payment means a payment of superannuation guarantee charge, or related penalty charge, for a quarter.

Estimates under the Taxation Administration Act 1953

- (3) For the purposes of this Part, an amount paid to the Commonwealth is treated as being a payment of superannuation guarantee charge:
 - (a) in respect of an employee or employees; and
 - (b) made by or on behalf of an employer;to the extent that, as a result of the amount being paid to the Commonwealth, a liability of the employer to pay superannuation guarantee charge in respect of that employee or those employees is discharged under subsection 268-20(3), or section 269-40, in Schedule 1 to the *Taxation Administration Act 1953*.
- Note: Under Division 268 in that Schedule, the Commissioner may make an estimate of the unpaid and overdue amount of an employer's superannuation guarantee charge for a quarter.
- (4) However, subsection (3) does not apply to the amount until the Commissioner knows which employee or employees the liability to pay the superannuation guarantee charge was in respect of.

63B Overview of this Part

- (1) If a payment to which this Part applies is made, the Commissioner is required to pay (or otherwise deal with) an amount, which is called the shortfall component, for the benefit of a benefiting employee under sections 65 to 67.
- (2) If there is only one benefiting employee, the shortfall component for the payment is worked out under section 64A.
- (3) If there is more than one benefiting employee, there will be separate shortfall components for each of the employees for the payment, worked out under section 64B.

64A The *shortfall component* for one benefiting employee

- (1) This section applies if there is only one benefiting employee.
- (2) The *shortfall component* for the payment is the lesser of the following amounts:
 - (a) the amount of the payment;
 - (b) the amount of the employee entitlement, calculated at the time when the payment is made (see subsection (3)).
- (3) The *employee entitlement*, calculated at a particular time, is the sum of the following amounts:
 - (a) the individual superannuation guarantee shortfall for the employee for the quarter;
 - (b) any general interest charge, in respect of non-payment of superannuation guarantee charge payable on that shortfall, that has been paid by, or is payable at, the particular time;
 - (c) any nominal interest component for the quarter that has been paid by, or is payable at, the particular time;
 reduced (but not below zero) by the amounts of any previous payments to which this Part applies that relate to the same quarter, employer and employee.

64B The *shortfall component* for more than one benefiting employee

- (1) This section applies if there is more than one benefiting employee. In this situation, separate shortfall components are worked out for each of the benefiting employees.

Section 64B

- (2) The **shortfall component** for a payment, in respect of a particular employee, is the employee's proportion of the lesser of the following amounts:
- (a) the amount of the payment;
 - (b) the amount of the total employee entitlement, calculated at the time when the payment is made.
- (3) Subject to subsection (3A), an **employee's proportion** of an amount is the following proportion:

$$\frac{\text{Employer's individual superannuation guarantee shortfall for the employee for the quarter}}{\text{Total of the employer's individual superannuation guarantee shortfalls for the quarter}}$$

- (3A) The Commissioner may vary an employee's proportion of an amount if the amount of the charge payment has been affected by:
- (a) the application of the monetary limit imposed by subsection 556(1A) of the *Corporations Act 2001* in respect of the employee; or
 - (b) the application of the monetary limit imposed by paragraph 109(1)(e) of the *Bankruptcy Act 1966* in respect of the employee.
- (4) The **total employee entitlement**, calculated at a particular time, is the sum of the following amounts:
- (a) the employer's individual superannuation guarantee shortfalls for the quarter;
 - (b) any general interest charge, in respect of non-payment of superannuation guarantee charge payable on those shortfalls, that has been paid by, or is payable at, the particular time;
 - (c) any nominal interest component for the quarter that has been paid by, or is payable at, the particular time;
- reduced (but not below zero) by the amounts of any previous payments to which this Part applies that relate to the same quarter, employer and employees.

65 Payment of shortfall component

- (1) Except in a case covered by section 65AA, 65A, 66 or 67, the Commissioner is required to deal with the amount of the shortfall component in one of the following ways:
 - (a) in any case—pay the amount of the component, for the benefit of the employee, to:
 - (i) an RSA; or
 - (ii) an account with a complying superannuation fund; or
 - (iii) an account with a complying approved deposit fund; that is held in the name of the employee and that is determined by the Commissioner to belong to the employee;
 - (b) if the employee has nominated an RSA, a complying superannuation fund or a complying approved deposit fund in accordance with the regulations:
 - (i) pay the amount of the component to the RSA or fund for the benefit of the employee; or
 - (ii) make arrangements in accordance with the regulations to enable the amount of the component to be paid to the RSA or fund for the benefit of the employee;
 - (c) if the employee has not made a nomination under paragraph (b)—credit the amount of the component to an account kept under the *Small Superannuation Accounts Act 1995* in the name of the employee.
- (2) A payment of the amount of a shortfall component made or arranged by the Commissioner for the benefit of an employee to a superannuation fund is conclusively presumed to be a payment to a complying superannuation fund for the purposes of subsection (1) if, at the time the payment is made, the Commissioner has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund:
 - (a) is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
 - (b) is not subject to a direction under section 63 of that Act.
- (3) A payment of the amount of a shortfall component made or arranged by the Commissioner for the benefit of an employee to an approved deposit fund is conclusively presumed to be a payment to

Section 65AA

a complying approved deposit fund for the purposes of subsection (1) if subsection (4) applies.

- (4) This subsection applies if, at the time the payment is made, the Commissioner has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund is operated in accordance with the *Superannuation Industry (Supervision) Act 1993* and regulations under that Act.
- (5) If an amount is to be credited under paragraph (1)(c), an amount equal to the credited amount is to be credited to the Superannuation Holding Accounts Special Account.
- (6) A payment under paragraph (1)(a) to a particular account is taken to be a payment to the complying superannuation fund or the complying approved deposit fund with which the account is held, for the purposes of this section and any other laws of the Commonwealth that refer to payments under this section.

65AA Shortfall component and former temporary resident

- (1) This section applies if the employee is a former temporary resident (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*).
- (2) The Commissioner must treat the amount of the shortfall component as if it had been paid to the Commissioner by a superannuation provider in respect of the employee under section 20F of that Act.

65A Payment to employee who is over 65

Except in a case covered by section 65AA, the Commissioner must pay the amount of the shortfall component directly to the employee (whether or not he or she is still an employee) if:

- (a) the employee is 65 years or more; and
- (b) the employee has requested the Commissioner in the approved form to pay the amount to him or her.

66 Payment to employee retired due to permanent incapacity or invalidity

Except in a case covered by section 65AA, if:

- (a) the employee has retired because of permanent incapacity or permanent invalidity; and
- (b) the former employee has lodged with the Commissioner:
 - (i) written notice of the retirement; and
 - (ii) a copy of a certificate signed by 2 registered medical practitioners certifying that the former employee is unlikely to be able to work again in a capacity for which he or she is reasonably qualified by education, training or experience;

the Commissioner must pay the amount of the shortfall component to the former employee.

67 Payment where employee deceased

Except in a case covered by section 65AA, if the employee has died, the Commissioner must pay the amount of the shortfall component to the legal personal representative of the employee.

69 Repayment of overpayments in relation to a shortfall component

If an amount paid by the Commissioner under a provision of this Part (other than paragraph 65(1)(c)) exceeds the amount properly payable by the Commissioner under that provision, the party to whom the payment has been made is liable to repay to the Commonwealth the amount of the excess.

69A Recovery of shortfall component incorrectly credited to an account kept under the *Small Superannuation Accounts Act 1995*

- (1) This section applies if:
 - (a) an amount credited by the Commissioner under paragraph 65(1)(c) of this Act to an account kept under the *Small Superannuation Accounts Act 1995* exceeds the amount that should have been credited to the account; and
 - (b) the balance of the account is attributable, in whole or in part, to the credit.

Section 70

- (2) The account is to be debited by the amount of the excess.
- (3) An amount equal to the excess is to be debited from the Superannuation Holding Accounts Special Account.

70 Recovery of overpayments

The amount of any excess payment referred to in section 69 may be recovered by the Commonwealth as a debt due to the Commonwealth.

71 Appropriation

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

Part 9—Miscellaneous

72 Treatment of partnerships

- (1) Subject to this section, this Act applies as if a partnership were a legal person.
- (2) An obligation that, apart from this subsection, would be imposed by this Act on a partnership is instead imposed on each partner, but may be discharged by any of the partners.
- (3) If, apart from this subsection, a liability to pay money would be imposed on a partnership by this Act, the liability is instead imposed on the partners jointly and severally.
- (4) If, because of subsection (1), a partnership would be taken to have committed an offence, the offence is instead taken to have been committed by each of the partners.
- (5) In a prosecution for an offence taken to have been committed by a person because of subsection (4), it is a defence that the person:
 - (a) did not aid, abet, counsel or procure the act or omission constituting the offence; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence.
- (6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

73 Treatment of unincorporated associations

- (1) In this section, *association* means an unincorporated association or body of persons (other than a partnership).
- (2) Subject to this section, this Act applies as if an association were a legal person.

Section 74

- (3) An obligation that, apart from this subsection, would be imposed on an association is instead imposed on the officers of the association.
- (4) If, apart from this subsection, a liability to pay money would be imposed on an association by this Act, the liability is instead imposed on the members of the association jointly and severally.
- (5) If, because of subsection (2), an association would be taken to have committed an offence, the offence is instead taken to have been committed by each of the officers of the association.
- (6) In a prosecution for an offence taken to have been committed by a person by virtue of subsection (5), it is a defence that the person:
 - (a) did not aid, abet, counsel or procure the act or omission constituting the offence; and
 - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission constituting the offence.
- (7) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

74 Judicial notice of signature

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

75 Evidence

- (1) The mere production of:
 - (a) a notice of assessment; or
 - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment;is conclusive evidence of the due making of the assessment and, except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the

assessment, that the amounts and all of the particulars of the assessment are correct.

- (2) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.
- (3) A document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a superannuation guarantee statement or a notice of assessment is evidence of the matter set out in the document to the same extent as the original statement or notice, as the case may be, would be if it were produced.
- (4) A certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, on the day of the certificate, payable by a person in relation to an amount of superannuation guarantee charge or by way of penalty under section 49 or Part 7, is *prima facie* evidence of the matters stated in the certificate.
- (5) A superannuation guarantee statement purporting to be made or signed by or on behalf of an employer is *prima facie* evidence that the statement was made by the employer or with the employer's authority.

76 Access to premises etc.

- (1) For the purposes of this Act, an authorised officer:
 - (a) may, at any reasonable time, enter and remain on any land or premises; and
 - (b) is entitled to full and free access at any reasonable time to all documents; and
 - (c) may inspect, examine, make copies of, or take extracts from, any documents.
- (2) An authorised officer is not entitled to enter or remain on any land or premises if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce a written authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

Section 77

- (3) The occupier of land or premises entered or proposed to be entered by an authorised officer under subsection (1) must, for the purpose of enabling the effective exercise of the officer's powers under this section, provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing.

Penalty for contravention of this subsection: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

77 Obtaining information and evidence

- (1) The Commissioner may, for the purposes of this Act, by written notice, require a person:
- (a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, specified in the notice, any information that the Commissioner requires; and
 - (b) to attend before the Commissioner, or an authorised officer, at a reasonable time and place specified in the notice, and then and there to answer questions; and
 - (c) to produce to the Commissioner, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.
- (2) The Commissioner may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner or an authorised officer may administer an oath or affirmation.
- (3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.
- (4) The regulations must prescribe scales of expenses to be allowed to persons required to attend under this section.

79 Records to be kept and retained by employers

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

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) The records must include any documents relevant to ascertaining the individual superannuation guarantee shortfalls of the employer for a quarter.
- (3) The records must be kept:
 - (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
 - (b) so that the employer's liability under this Act can be readily ascertained.
- (4) An employer who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is later.
- (5) Nothing in this section requires an employer to retain records if:
 - (a) the Commissioner has notified the employer that the retention of the records is not required; or
 - (b) the employer is a company that has gone into liquidation and been finally dissolved.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (6) An employer who contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (6A) Subsection (6) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6A), see subsection 13.3(3) of the *Criminal Code*.

- (7) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Section 79A

79A Approved clearing house

- (1) This section applies if:
 - (a) an employer pays an amount to an approved clearing house for the benefit of an employee; and
 - (b) as a result, the approved clearing house makes a contribution to an RSA, a superannuation fund or a superannuation scheme for the benefit of the employee.
- (2) To avoid doubt, the approved clearing house makes the contribution to the RSA, superannuation fund or superannuation scheme on behalf of the employer, as the employer's agent.
- (3) *Approved clearing house* means a body specified in the regulations for the purposes of this subsection.

80 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of 5 penalty units for offences against the regulations.

Table of Acts**Notes to the *Superannuation Guarantee (Administration) Act 1992*****Note 1**

The *Superannuation Guarantee (Administration) Act 1992* as shown in this compilation comprises Act No. 111, 1992 amended as indicated in the Tables below.

The *Superannuation Guarantee (Administration) Act 1992* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 18 December 1996 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation Guarantee (Administration) Act 1992</i>	111, 1992	21 Aug 1992	1 July 1992	
<i>Taxation Laws Amendment (Superannuation) Act 1992</i>	208, 1992	22 Dec 1992	Part 4 (ss. 77–89): Royal Assent (a)	Ss. 82 and 89
<i>Taxation Laws Amendment (Superannuation) Act 1993</i>	7, 1993	27 May 1993	Part 5 (ss. 56–61): Royal Assent (b)	S. 61
<i>Superannuation Industry (Supervision) Consequential Amendments Act 1993</i>	82, 1993	30 Nov 1993	Part 11 (ss. 54–59): 1 Dec 1993 (c)	S. 59
<i>Taxation Laws Amendment Act (No. 3) 1993</i>	118, 1993	24 Dec 1993	Ss. 147–152: Royal Assent (d) Ss. 153–155: 25 Dec 1993 (d)	Ss. 148, 152 and 155

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act 1994</i>	56, 1994	7 Apr 1994	Ss. 88–109: Royal Assent (e)	Ss. 89, 90(2), 92, 93(2), 94, 97, 98, 99(2), 100, 101(2), 102, 103(2), 104, 105(2), 106, 107(2), 108 and 109(2)
<i>Taxation Laws Amendment Act (No. 4) 1994</i>	181, 1994	19 Dec 1994	Schedule 1 (items 22–85): 13 Oct 1994 Remainder: Royal Assent	Sch. 3 (items 118, 125) and Sch. 5 (items 46(11), (12), 47)
<i>Superannuation Laws Amendment (Small Accounts and Other Measures) Act 1995</i>	53, 1995	23 June 1995	1 July 1995	Sch. 3 (item 8)
<i>Taxation Laws Amendment Act (No. 1) 1995</i>	120, 1995	25 Oct 1995	Schedule 1 (Part 8): 23 Nov 1994 Schedule 2 (Part 2): 1 July 1994 Remainder: Royal Assent	—
<i>Taxation Laws Amendment Act (No. 2) 1995</i>	169, 1995	16 Dec 1995	Schedule 4 (Part 1): (f) Schedule 4 (Parts 2, 3): Royal Assent (f)	Sch. 4 (items 5, 10)
<i>Taxation Laws Amendment Act (No. 3) 1995</i>	170, 1995	16 Dec 1995	Schedule 3 (items 1–14): Royal Assent (g)	Sch. 3 (items 10, 14)
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (item 109): (h)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (item 50): Royal Assent (i)	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
as amended by				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (j)	—
<i>Taxation Laws Amendment Act (No. 2) 1996</i>	76, 1996	18 Dec 1996	Schedule 3: Royal Assent (k)	Sch. 3 (item 9) [see Table A]
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Schedule 3 (item 75): 1 July 1997 (l)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 3) 1997</i>	147, 1997	14 Oct 1997	Schedule 9 (item 1): Royal Assent (<i>m</i>)	Sch. 9 (item 2) [see Table A]
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 1 (items 344, 345): 1 July 1999 (<i>n</i>)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (items 224–226): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (<i>o</i>)	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
as amended by <i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 898–900): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (<i>p</i>)	—
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 2 (items 76–85, 130–134, 136): (<i>q</i>)	Sch. 2 (items 130–134, 136) [see Table A]
<i>A New Tax System (Tax Administration) Act (No. 2) 2000</i>	91, 2000	30 June 2000	Schedule 2 (items 61–67): (<i>r</i>)	—
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 85, 94, 95): 19 Apr 2001 (<i>s</i>)	Sch. 2 (items 94, 95) [see Table A]
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 497): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (<i>t</i>)	Ss. 4–14 [see Note 1]
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 280, 281): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (<i>u</i>)	—
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	S. 4 and Schedule 4 (items 123–128): 15 Dec 2001 (<i>v</i>)	S. 4 [see Table A]
<i>Taxation Laws Amendment (Superannuation) Act (No. 2) 2002</i>	51, 2002	29 June 2002	S. 4 and Schedule 1 (items 193–201): Royal Assent Schedule 1 (items 1–168): 1 July 2003 Schedule 6 (item 9): (<i>w</i>)	Sch. 1 (items 193–201) S. 4 (am. by 75, 2010, Sch. 6 [item 108]) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Tax Laws Amendment (2010 Measures No. 2) Act 2010</i>	75, 2010	28 June 2010	Schedule 6 (item 108): 29 June 2010	—
<i>Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003</i>	10, 2003	2 Apr 2003	Schedule 1 (items 1–52, 54–75, 78–82): 20 May 2002 Remainder: Royal Assent	Sch. 1 (item 83) [see Table A]
<i>Superannuation Laws Amendment (2004 Measures No. 2) Act 2004</i>	93, 2004	29 June 2004	S. 4(3): Royal Assent Schedule 1 (items 5–7): 1 July 2008	S. 4(3) [see Table A]
<i>Taxation Laws Amendment Act (No. 1) 2004</i>	101, 2004	30 June 2004	Schedule 11 (items 96–100, 128, 129): (x)	Sch. 11 (items 100, 129) [see Table A]
<i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i>	102, 2004	30 June 2004	Schedule 1: 1 July 2005 Remainder: Royal Assent	—
<i>Tax Laws Amendment (Superannuation Reporting) Act 2004</i>	142, 2004	14 Dec 2004	14 Dec 2004	Sch. 1 (item 2) [see Table A]
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 417, 418, 496): Royal Assent	S. 4 and Sch. 1 (item 496) [see Table A]
<i>Tax Laws Amendment (2004 Measures No. 7) Act 2005</i>	41, 2005	1 Apr 2005	Schedule 10 (item 232): Royal Assent	—
<i>Superannuation (Consequential Amendments) Act 2005</i>	81, 2005	29 June 2005	Schedule 2: (y)	—
<i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005</i>	82, 2005	29 June 2005	Schedule 1 (items 2, 3, 5–11): (z) Schedule 1 (item 4): 1 July 2005	—
<i>Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005</i>	147, 2005	14 Dec 2005	Schedule 6 (items 3–10) and Schedule 7 (items 17–20): Royal Assent	Sch. 6 (item 10) and Sch. 7 (items 19, 20) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i>	58, 2006	22 June 2006	Schedule 6 (items 1, 2) and Schedule 7 (items 129, 130): Royal Assent	Sch. 6 (item 2) [see Table A]
<i>Tax Laws Amendment (2006 Measures No. 3) Act 2006</i>	80, 2006	30 June 2006	Schedule 7 (items 1–3): Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (items 925–928, 1017, 1055, 1056) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11) [see Table A]
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 4 (item 27): Royal Assent	—
<i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i>	9, 2007	15 Mar 2007	Schedule 4 (items 6–8, 16): Royal Assent	Sch. 4 (item 16) [see Table A]
<i>Superannuation Legislation Amendment (Simplification) Act 2007</i>	15, 2007	15 Mar 2007	Schedule 1 (items 346–350, 406(1)–(3)): (za) Schedule 3 (items 52, 53): Royal Assent	Sch. 1 (item 406(1)–(3)) [see Table A]
<i>Tax Laws Amendment (2007 Measures No. 1) Act 2007</i>	56, 2007	12 Apr 2007	12 Apr 2007	Sch. 2 (item 2) [see Table A]
<i>Corporations Amendment (Insolvency) Act 2007</i>	132, 2007	20 Aug 2007	Schedule 1 (items 11–15): 31 Dec 2007 (see F2007L03798)	Sch. 1 (items 14, 15) [see Table A]
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	8, 2008	20 Mar 2008	Schedules 1–7: 28 Mar 2008 (see F2008L00959) Remainder: Royal Assent	—
<i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i>	38, 2008	24 June 2008	Schedule 2: Royal Assent	Sch. 2 (item 7A) (ad. by 56, 2010, Sch. 6 [item 106]) Sch. 2 (items 8, 9) (am. by 56, 2010, Sch. 6 [item 107]) [see Table A]
as amended by				
<i>Tax Laws Amendment (2010 Measures No. 1) Act 2010</i>	56, 2010	3 June 2010	Schedule 6 (items 106, 107): (see 56, 2010 below)	—
<i>Tax Laws Amendment (2008 Measures No. 4) Act 2008</i>	97, 2008	3 Oct 2008	Schedule 3 (item 176): Royal Assent	—
<i>Tax Laws Amendment (2008 Measures No. 6) Act 2009</i>	14, 2009	26 Mar 2009	Schedule 3: Royal Assent	Sch. 3 (item 5) [see Table A]
<i>Tax Laws Amendment (2009 Measures No. 1) Act 2009</i>	27, 2009	26 Mar 2009	Schedule 2 (items 60–63): 27 Mar 2009	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	S. 4: Royal Assent Schedule 18 (items 13–22, 32): (zb)	S. 4 and Sch. 18 (item 32) [see Table A]
<i>Fair Work Amendment (State Referrals and Other Measures) Act 2009</i>	124, 2009	9 Dec 2009	Schedule 2 (items 135, 136): 1 Jan 2010	—
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (zc)	—
<i>Tax Laws Amendment (2010 Measures No. 1) Act 2010</i>	56, 2010	3 June 2010	Schedule 1 (items 2–5, 9): 1 July 2010 Schedule 6 (items 106, 107): (zd)	Sch. 1 (item 9) [see Table A]
<i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i>	145, 2010	16 Dec 2010	Schedule 2 (items 80–82): 17 Dec 2010	—
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 6 (item 135): 19 Apr 2011	—
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (items 1088–1090) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11) [see Table A]
<i>Superannuation Guarantee (Administration) Amendment Act 2012</i>	22, 2012	29 Mar 2012	Schedule 1: [see Note 2 and Table A] Remainder: Royal Assent	Sch. 1 (item 5) [see Table A]
<i>Tax Laws Amendment (2012 Measures No. 2) Act 2012</i>	99, 2012	29 June 2012	Schedule 1 (item 35): 30 June 2012 Schedule 1 (item 48): (ze)	—

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- (a) The *Superannuation Guarantee (Administration) Act 1992* was amended by Part 4 (sections 77–89) only of the *Taxation Laws Amendment (Superannuation) Act 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Superannuation Guarantee (Administration) Act 1992* was amended by Part 5 (sections 56–61) only of the *Taxation Laws Amendment (Superannuation) Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Superannuation Guarantee (Administration) Act 1992* was amended by Part 11 (sections 54–59) only of the *Superannuation Industry (Supervision) Consequential Amendments Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on 1 December 1993.
- (d) The *Superannuation Guarantee (Administration) Act 1992* was amended by sections 147–155 only of the *Taxation Laws Amendment Act (No. 3) 1993*, subsections 2(1) and (4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (4) Division 3 of Part 10 and Part 11 commence on whichever is the later of the following days:
 - (a) the date of commencement of Part 3 of the *Superannuation Industry (Supervision) Act 1993*;
 - (b) the day after the date of commencement of this section.
- (e) The *Superannuation Guarantee (Administration) Act 1992* was amended by sections 88–109 only of the *Taxation Laws Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 4 (Parts 1–3) only of the *Taxation Laws Amendment Act (No. 2) 1995*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (3) Part 1 of Schedule 4 is taken to have commenced immediately after the commencement of the *Superannuation Guarantee (Administration) Act 1992*.
- The *Superannuation Guarantee (Administration) Act 1992* commenced on 1 July 1992.
- (g) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 3 (items 1–14) only of the *Taxation Laws Amendment Act (No. 3) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (h) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 2 (item 109) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Item 109 is taken to have commenced immediately after the *Superannuation Guarantee (Administration) Act 1992*.
- The *Superannuation Guarantee (Administration) Act 1992* came into operation on 1 July 1992.
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Act Notes

- (i) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 19 (item 50) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (j) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (k) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 3 only of the *Taxation Laws Amendment Act (No. 2) 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (l) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 3 (item 75) only of the *Tax Law Improvement Act 1997*, subsections 2(2) and (3) of which provide as follows:
- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
 - (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (m) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 9 (items 1 and 2) only of the *Taxation Laws Amendment Act (No. 3) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (n) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 1 (items 344 and 345) only of the *Taxation Laws Amendment Act (No. 3) 1999*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) and (5), Schedule 1 commences on 1 July 1999.
- (o) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 7 (items 224–226) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:
- (2) The following provisions commence on the transfer date:
 - (e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
 - (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.
- (p) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 1 (items 898–900) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.

Act Notes

- (q) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 2 (items 76–85) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Pay As You Go) Act 1999*.
- Section 1 commenced on 22 December 1999.
- (r) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 2 (items 61–67) only of the *A New Tax System (Tax Administration) Act (No. 2) 2000*, subsection 3(1) of which provides as follows:
- (1) Subject to this section, this Act commences, or is taken to have commenced, immediately after the commencement of section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.
- Section 1-1 of the *A New Tax System (Goods and Services Tax) Act 1999* commenced on 1 July 2000.
- (s) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 2 (item 85) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provide as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (t) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 3 (item 497) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (u) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 1 (items 280 and 281) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
- FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (v) The *Superannuation Guarantee (Administration) Act 1992* was amended by Schedule 4 (items 123–128) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (w) Subsection 2(1) (item 12) of the *Taxation Laws Amendment (Superannuation) Act (No. 2) 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 6, item 9	The later of: (b) immediately after the commencement of item 77 of Schedule 1 to the <i>Bankruptcy Legislation Amendment Act 2002</i>	5 May 2003 (see <i>Gazette</i> 2003, No. S138)

Act Notes

(x) Subsection 2(1) (item 14) of the *Taxation Laws Amendment Act (No. 1) 2004* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
14. Schedule 11, Part 4	Immediately after the start of 1 July 2000	1 July 2000

(y) Subsection 2(1) (item 5) of the *Superannuation (Consequential Amendments) Act 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
5. Schedule 2	The later of: (a) immediately after the commencement of Part 3A of the <i>Superannuation Guarantee (Administration) Act 1992</i> ; and (b) the commencement of Part 2 of the <i>Superannuation Act 2005</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2005 (paragraph (a) applies)

(z) Subsection 2(1) (items 3 and 5) of the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 1, items 2 and 3	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i> .	1 July 2005
5. Schedule 1, items 5 to 14	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004</i> .	1 July 2005

Act Notes

(za) Subsection 2(1) (item 2) of the *Superannuation Legislation Amendment (Simplification) Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .	15 March 2007

(zb) Subsection 2(1) (item 41) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
41. Schedule 18	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009

(zc) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(zd) Subsection 2(1) (item 18) of the *Tax Laws Amendment (2010 Measures No. 1) Act 2010* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
18. Schedule 6, Part 7	Immediately after the commencement of Schedule 2 to the <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i> .	24 June 2008

Act Notes

(ze) Subsection 2(1) (items 3 and 5) of the *Tax Laws Amendment (2012 Measures No. 2) Act 2012* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 1, Part 2	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day the <i>Pay As You Go Withholding Non-compliance Tax Act 2012</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	30 June 2012 (paragraph (a) applies)
5. Schedule 1, Part 3, Division 2	Immediately after the commencement of the provision(s) covered by table item 3.	30 June 2012

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 4A	ad. No. 10, 2003
S. 5	rs. No. 56, 1994 am. No. 51, 2002; No. 102, 2004; No. 147, 2005; Nos. 5 and 46, 2011
S. 5A	ad. No. 56, 1994 am. No. 51, 2002
Heading to s. 5B.....	am. No. 54, 2009
S. 5B	ad. No. 169, 1995 am. No. 60, 1996; SLI 2006 No. 50; No. 54, 2009
S. 5C.....	ad. No. 146, 2001
Part 2	
S. 6	am. Nos. 7, 82 and 118, 1993; No. 56, 1994; No. 62, 1997; Nos. 11 and 146, 1999; No. 51, 2002; No. 102, 2004; Nos. 81 and 147, 2005; SLI 2006 No. 50; Nos. 80 and 101, 2006; Nos. 8, 9 and 15, 2007; Nos. 56 and 145, 2010; No. 46, 2011
Ss. 6A, 6B.....	ad. No. 7, 1993 am. No. 51, 2002
S. 7	am. No. 15, 2007
S. 7A.....	ad. No. 118, 1993 am. No. 15, 2007
Note to s. 9(1)	ad. No. 51, 2002
S. 10	am. No. 7, 1993; No. 51, 2002
S. 11	am. No. 56, 1994
S. 12	am. No. 169, 1995; No. 101, 2006
S. 12A.....	ad. SLI 2006 No. 50 am. No. 8, 2008 rs. No. 54, 2009 am. No. 124, 2009
Heading to s. 13.....	rs. No. 170, 1995 rep. No. 93, 2004
S. 13	am. No. 208, 1992; No. 56, 1994; No. 170, 1995; No. 76, 1996; No. 51, 2002 rep. No. 93, 2004
S. 13A.....	ad. No. 56, 1994 am. No. 51, 2002 rep. No. 93, 2004
S. 13B.....	ad. No. 76, 1996 am. No. 51, 2002 rep. No. 93, 2004
Heading to s. 14.....	rs. No. 170, 1995 rep. No. 93, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 14	am. No. 208, 1992; No. 170, 1995; No. 76, 1996; No. 62, 1997; No. 51, 2002 rep. No. 93, 2004
S. 15	am. No. 208, 1992; No. 51, 2002
Heading to s. 15A.....	am. No. 101, 2004 rep. No. 15, 2007
Subhead. to s. 15A(3).....	am. No. 101, 2004 rep. No. 15, 2007
S. 15A	ad. No. 170, 1995 am. No. 62, 1997 rep. No. 15, 2007
Part 3	
S. 15B	ad. No. 147, 2005
S. 15C.....	ad. No. 15, 2007
Ss. 16, 17	am. No. 51, 2002
S. 18	am. No. 208, 1992 rep. No. 51, 2002
Heading to s. 19.....	rs. No. 51, 2002
S. 19	am. No. 208, 1992; No. 170, 1995; No. 51, 2002; No. 102, 2004; Nos. 41 and 82, 2005; No. 15, 2007
S. 19A	ad. No. 102, 2004
S. 20	rep. No. 51, 2002 ad. No. 102, 2004 am. No. 82, 2005
S. 21	rep. No. 51, 2002 ad. No. 102, 2004 am. No. 8, 2010
S. 22	am. No. 208, 1992; No. 51, 2002
Heading to s. 23.....	am. No. 62, 1997
Subhead. to s. 23(7).....	ad. No. 120, 1995 rs. No. 51, 2002
Subhead. to s. 23(8).....	ad. No. 51, 2002
S. 23	am. No. 208, 1992; No. 7, 1993; No. 56, 1994; Nos. 53, 120 and 169, 1995; No. 76, 1996; No. 62, 1997; No. 51, 2002; No. 93, 2004; No. 82, 2005
Note to s. 23(2)	ad. No. 102, 2004 rep. No. 93, 2004
Note to s. 23(3)	ad. No. 102, 2004 rep. No. 93, 2004
Note to s. 23(4)	ad. No. 102, 2004 rep. No. 93, 2004
Note to s. 23(4A)	ad. No. 102, 2004 rep. No. 93, 2004
Note to s. 23(4D).....	ad. No. 102, 2004 rep. No. 93, 2004
Note to s. 23(5)	ad. No. 102, 2004 rep. No. 93, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 23A	ad. No. 51, 2002 rep. No. 142, 2004 ad. No. 147, 2005 am. No. 38, 2008; No. 14, 2009
S. 23B	ad. No. 56, 2010
S. 24	am. No. 208, 1992; No. 82, 1993; No. 181, 1994; No. 123, 2001; No. 51, 2002; No. 101, 2006
S. 25	am. No. 82, 1993; No. 181, 1994; No. 123, 2001; No. 101, 2006
S. 25A	ad. No. 208, 1992; No. 56, 1994 rep. No. 169, 1995
S. 26	am. No. 51, 2002
S. 27	am. No. 208, 1992; No. 147, 1997; No. 51, 2002; No. 10, 2003; No. 15, 2007; No. 46, 2011
S. 28	am. No. 51, 2002
Heading to s. 29	am. No. 10, 2001
S. 29	am. No. 121, 1997; No. 101, 2006
S. 30	am. No. 51, 2002
S. 31	am. No. 181, 1994; No. 51, 2002; No. 58, 2006
S. 32	am. No. 51, 2002
Part 3A	
Part 3A	ad. No. 102, 2004
Division 1	
Ss. 32A, 32B	ad. No. 102, 2004
Division 2	
Subhead. to s. 32C(6)	am. No. 54, 2009
S. 32C	ad. No. 102, 2004 am. Nos. 81 and 82, 2005; SLI 2006 No. 50; No. 8, 2008; Nos. 54 and 124, 2009; No. 56, 2010
Note to s. 32C(6)	am. No. 54, 2009
Note to s. 32C(6A)	am. No. 54, 2009
Note to s. 32C(6B)	am. No. 54, 2009
S. 32CA	ad. No. 82, 2005
Division 3	
Ss. 32D, 32E	ad. No. 102, 2004 am. No. 82, 2005
Division 4	
S. 32F	ad. No. 102, 2004 am. No. 82, 2005
S. 32FA	ad. No. 102, 2004
Ss. 32G, 32H	ad. No. 102, 2004
Division 6	
S. 32N	ad. No. 102, 2004 am. No. 82, 2005
Note to s. 32N(1)	ad. SLI 2006 No. 50

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 32NA.....	ad. No. 102, 2004 am. No. 82, 2005; SLI 2006 No. 50
S. 32P	ad. No. 102, 2004
Division 8	
Ss. 32X–32Z	ad. No. 102, 2004
S. 32ZAA.....	ad. No. 58, 2006
S. 32ZA	ad. No. 102, 2004
Part 4	
Heading to s. 33	rs. No. 51, 2002
S. 33	am. No. 51, 2002; No. 147, 2005
S. 34	am. No. 51, 2002
Heading to s. 35	am. No. 51, 2002
S. 35	am. No. 51, 2002; No. 147, 2005; No. 97, 2008
S. 36	am. No. 51, 2002
S. 38	am. No. 91, 2000
Part 5	
Note to s. 43.....	ad. No. 145, 2010
S. 45	am. No. 146, 1999; No. 146, 2001 rep. No. 145, 2010
S. 45A	ad. No. 56, 2007 rep. No. 145, 2010
Part 6	
S. 46	rs. No. 51, 2002 am. No. 147, 2005
Note to s. 46(1)	ad. No. 179, 1999
Note to s. 47.....	ad. No. 179, 1999
S. 48	rep. No. 179, 1999
S. 49	am. No. 181, 1994 rs. No. 11, 1999 am. No. 51, 2002; No. 38, 2008; No. 14, 2009
Note to s. 49(1)	am. No. 101, 2006 rep. No. 38, 2008
Notes 1, 2 to s. 49(1).....	ad. No. 38, 2008
S. 50	rep. No. 179, 1999 ad. No. 51, 2002
S. 51	rep. No. 179, 1999
S. 52	am. No. 55, 2001 rep. No. 132, 2007
Note to s. 52	ad. No. 51, 2002 rep. No. 132, 2007
Ss. 53–55.....	rep. No. 179, 1999
S. 56	am. No. 43, 1996; No. 44, 1999 rep. No. 179, 1999

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 7	
Heading to Part 7	rs. No. 51, 2002
S. 59	am. No. 91, 2000; No. 51, 2002
Ss. 60, 61	rep. No. 91, 2000
S. 62A	ad. No. 147, 2005
Part 8	
Heading to Part 8	rs. No. 51, 2002
S. 63	rep. No. 51, 2002
S. 63A	ad. No. 51, 2002 am. No. 147, 2005; No. 99, 2012
S. 63B	ad. No. 51, 2002
S. 64	rep. No. 51, 2002
S. 64A	ad. No. 51, 2002
S. 64B	ad. No. 51, 2002 am. No. 132, 2007
S. 65	am. Nos. 82 and 118, 1993; No. 181, 1994; No. 53, 1995; No. 62, 1997; No. 51, 2002; No. 8, 2005; No. 27, 2009
S. 65AA	ad. No. 27, 2009
S. 65A	ad. No. 51, 2002 am. No. 27, 2009
S. 66	rs. No. 56, 1994 am. No. 53, 1995; No. 27, 2009
S. 67	am. No. 27, 2009
S. 68	rep. No. 53, 1995
S. 69	am. No. 53, 1995
S. 69A	ad. No. 53, 1995 am. No. 8, 2005
Part 9	
S. 76	am. No. 91, 2000
Note to s. 76(3)	ad. No. 91, 2000
S. 78	rep. No. 179, 1999 ad. No. 80, 2006 rep. No. 9, 2007
S. 78A	ad. No. 80, 2006 rep. No. 9, 2007
S. 79	am. No. 91, 2000; No. 146, 2001; No. 51, 2002
Note to s. 79(1)	ad. No. 91, 2000
Note to s. 79(5)	ad. No. 146, 2001
Note to s. 79(6)	ad. No. 91, 2000
S. 79A	ad. No. 56, 2010
S. 80	am. No. 51, 2002

Note 2

Note 2

Superannuation Guarantee (Administration) Amendment Act 2012
(No. 22, 2012)

The following amendments commence on 1 July 2013:

Schedule 1

1 Subsection 19(1) (paragraphs (a) and (b) of the definition of *charge percentage*)

After “subsection (2)”, insert “for the quarter”.

2 Subsection 19(2)

Repeal the subsection, substitute:

- (2) The charge percentage for a quarter in a year described in column 1 of an item of the table is the number specified in column 2 of the item.

Charge percentage (unless reduced under section 22 or 23)		
Item	Column 1 Year	Column 2 Charge percentage
1	Year starting on 1 July 2013	9.25
2	Year starting on 1 July 2014	9.5
3	Year starting on 1 July 2015	10
4	Year starting on 1 July 2016	10.5
5	Year starting on 1 July 2017	11
6	Year starting on 1 July 2018	11.5
7	Year starting on or after 1 July 2019	12

3 Subsection 23(2) (example)

Omit “If there are no other contributions, and no reduction under section 22, then the charge percentage will be 3 (instead of 9).”.

4 Paragraph 27(1)(a)

Repeal the paragraph.

As at 1 August 2012 the amendments are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Taxation Laws Amendment Act (No. 2) 1996 (No. 76, 1996)

Schedule 3

9 Application

- (1) The amendments made by items 1, 2, 3, 7 and 8 apply in relation to assessments of superannuation guarantee shortfall for the year beginning on 1 July 1995 and for all earlier years.
- (2) The amendments made by items 4, 5, and 6 apply in relation to assessments of superannuation guarantee shortfall for the year beginning on 1 July 1994 and for all later years

Taxation Laws Amendment Act (No. 3) 1997 (No. 147, 1997)

Schedule 9

2 Application

The amendment made by this Part applies in relation to the 1997-98 year and all later years.

A New Tax System (Tax Administration) Act 1999 (No. 179, 1999)

Schedule 2

130 Recovery of a tax-related liability that is due and payable

Despite its repeal, a provision listed in the table continues to have effect in relation to an amount that became due and payable before 1 July 2000.

Table A

Tax-related liability that became due and payable before 1 July 2000		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 94
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 86
3	<i>Sales Tax Assessment Act 1992</i>	section 69
4	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 26 or 27
5	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 22 or 23
6	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 50
7	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 17 or 18
8	<i>Taxation Administration Act 1953</i>	subsection 8AAV(1) or (2)
9	<i>Tobacco Charges Assessment Act 1955</i>	section 21
10	<i>Wool Tax (Administration) Act 1964</i>	section 44

131 Time for payment etc. of a tax-related liability

Despite the repeal of a provision listed in the table, anything done under that provision before 1 July 2000 continues to have effect on and after that day as if the provision had not been repealed.

Time for payment etc. of a tax-related liability		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 91 or 92
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 83 or 84
3	<i>Sales Tax Assessment Act 1992</i>	section 65 or 66
4	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 48
5	<i>Taxation Administration Act 1953</i>	section 45-85 in Schedule 1
6	<i>Tobacco Charges Assessment Act 1955</i>	subsection 17(2) or (3) or section 23
7	<i>Wool Tax (Administration) Act 1964</i>	section 37

Table A**132 Collecting amounts from third parties**

Despite the repeal of a provision listed in the table:

- (a) anything done under that provision before 1 July 2000 continues to have effect on and after that day as if the provision had not been repealed; and
- (b) anything done on or after that day, under that provision as it continues to have effect because of this item, has effect as if the provision had not been repealed.

Collecting amounts from third parties		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 99
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 91
3	<i>Sales Tax Assessment Act 1992</i>	section 74
4	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 40A
5	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 35
6	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 56
7	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 28A
8	<i>Wool Tax (Administration) Act 1964</i>	section 54

133 Liquidators, receivers and agents

Despite its repeal, a provision listed in the table continues to have effect in relation to:

- (a) a person who becomes a liquidator before 1 July 2000; or
- (b) a receiver, or receiver and manager, who takes possession of a company's assets before 1 July 2000; or
- (c) an agent who is instructed, before 1 July 2000, to wind up the principal's business in Australia;

as appropriate.

Liquidators, receivers and agents before 1 July 2000		
Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 96

Table A**Liquidators, receivers and agents before 1 July 2000**

Item	Act	Provision
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 88
3	<i>Sales Tax Assessment Act 1992</i>	section 123 or 124
4	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 53
5	<i>Tobacco Charges Assessment Act 1955</i>	section 27
6	<i>Wool Tax (Administration) Act 1964</i>	section 47 or 48

134 Deceased estates

Despite its repeal, a provision listed in the table continues to have effect in relation to a person who dies before 1 July 2000.

Person who dies before 1 July 2000

Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 97 or 98
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 89 or 90
3	<i>Sales Tax Assessment Act 1992</i>	section 72 or 73
4	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 54 or 55
5	<i>Tobacco Charges Assessment Act 1955</i>	section 28
6	<i>Wool Tax (Administration) Act 1964</i>	section 49, 50 or 51

136 Right of contribution if entities are jointly liable

Despite its repeal, a provision listed in the table continues to have effect in relation to a liability that arose before 1 July 2000.

Tax-related liability that became due and payable before 1 July 2000

Item	Act	Provision
1	<i>Fringe Benefits Tax Assessment Act 1986</i>	section 131
2	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 111
3	<i>Sales Tax Assessment Act 1992</i>	section 71
4	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 78
5	<i>Wool Tax (Administration) Act 1964</i>	section 53

Table A

Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001 (No. 10, 2001)

Schedule 2

94 Saving—old regulations

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

95 Regulations about transitional matters

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).

Treasury Legislation Amendment (Application of Criminal Code) Act
(No. 2) 2001 (No. 146, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Taxation Laws Amendment (Superannuation) Act (No. 2) 2002 (No. 51, 2002)

4 Amendment of assessments

Section 37 of the *Superannuation Guarantee (Administration) Act 1992* does not prevent the amendment of an assessment for the purposes of giving effect to this Act.

Schedule 1

193 Application of amendments made by Part 1—general

Subject to this Part, the amendments made by Part 1 apply in relation to:

- (a) the determination of superannuation guarantee shortfalls under the *Superannuation Guarantee (Administration) Act 1992* for quarters that commence on or after 1 July 2003; and
- (b) matters relating to such shortfalls.

Note 1: A matter relating to a shortfall includes, for example, the requirement to keep records under section 79 in respect of the period to which the shortfall relates.

Note 2: The *Superannuation Guarantee (Administration) Act 1992* continues to apply in relation to the determination of superannuation guarantee shortfalls for years that ended before 1 July 2003, and matters relating to those shortfalls, as if the amendments made by Part 1 of this Schedule had not been made.

194 Special rule for the first 2 quarters of the 2003-04 year—nominal interest component and administration component do not apply if charge paid by 28 April 2004

- (1) This item applies to an employer who, under the *Superannuation Guarantee (Administration) Act 1992* as amended by Part 1 of this Schedule, has one or more individual superannuation guarantee shortfalls for the quarter starting on 1 July 2003 or 1 October 2003.

Table A

- (2) Subject to subitem (3), the employer's nominal interest component for the quarter and the employer's administration component for the quarter are not included in the employer's superannuation guarantee shortfall for the quarter.
- (3) However, if the employer has not paid the superannuation guarantee charge on the shortfall (determined taking account of the effect of subitem (2)) in full by 28 April 2004, the employer's nominal interest component for the quarter, and the employer's administration component for the quarter, are taken to be, and always to have been, included in the employer's superannuation guarantee shortfall for the quarter.

Note: This provision does not change the day by which the superannuation guarantee charge is payable for those 2 quarters or the day on which general interest charge will begin to run.

195 Special provisions relating to conversion notices

- (1) Subject to subitem (2), the amendments made by items 17 to 21 apply in relation to conversion notices given on or after 1 July 2003 under section 6B of the *Superannuation Guarantee (Administration) Act 1992*.
- (2) Despite the amendment made by item 20, a conversion notice given on or after 1 July 2003 and before 15 August 2003 may be expressed to take effect on a day that is not earlier than 1 July 2002.
- (3) During the period starting on 1 July 1998 and ending on the commencement of this item, section 6B of the *Superannuation Guarantee (Administration) Act 1992* is taken to have had effect as if the references to the Commissioner of Insurance and Superannuation were instead references to the Australian Prudential Regulation Authority.

Note: 1 July 1998 is the day on which the *Insurance and Superannuation Commissioner Act 1987* was repealed and the *Australian Prudential Regulation Authority Act 1998* commenced.

- (4) If this item commences before 1 July 2003, then during the period starting on the commencement of this item and ending on 1 July 2003, section 6B of the *Superannuation Guarantee (Administration) Act 1992* is taken to have effect as if the references to the Commissioner of Insurance and Superannuation were instead references to the Commissioner of Taxation.

196 Special provisions relating to benefit certificates

- (1) Subject to subitem (2), the amendment made by item 25 applies in relation to benefit certificates given on or after 1 July 2003 under section 10 of the *Superannuation Guarantee (Administration) Act 1992*.
- (2) Despite the amendment made by that item, a benefit certificate given on or after 1 July 2003 and before 15 August 2003, or a later day allowed by the Commissioner, may be expressed to have effect from a day that is not earlier than 1 July 2002 and not later than the day on which the certificate is issued.

197 Reporting of superannuation contributions

The amendment made by item 116 applies in relation to contributions made on or after 1 July 2003.

198 Default assessments

The amendment made by item 149 applies in relation to assessments made on or after 1 July 2003 (irrespective of when the relevant superannuation guarantee shortfall arose).

199 Shortfall components—payments direct to superannuation accounts etc. and people over 65

The amendments made by items 162, 165 and 166 apply in relation to payments (or other dealings) by the Commissioner of an amount of a shortfall component made on or after 1 July 2003 (irrespective of when the relevant superannuation guarantee shortfall arose).

200 Relief from annual national payroll requirements for pre-1 July 2003 shortfalls if employer's base year is 1996-97 or later

If:

- (a) an employer has a superannuation guarantee shortfall for a period that ended before 1 July 2003; and
- (b) the employer's base year, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* as it continues to apply in relation to shortfalls for years that ended before 1 July 2003 (see item 193), is the year beginning on 1 July 1996 or a later year;

Table A

the employer does not, from 1 July 2003, have to comply with the requirements of paragraph 33(2)(f), subparagraph 59(2)(a)(i) and paragraph 79(2)(a) of that Act (as so continuing to apply) in relation to that shortfall and that period.

Note: This provision relieves the employer from having to comply with requirements related to the employer's annual national payroll. However, an employer whose base year is an earlier year must continue to comply with those requirements in relation to shortfalls for pre-1 July 2003 periods.

201 Preservation of regulations made for the purposes of subsection 65(1)

Regulations in force for the purposes of subsection 65(1) of the *Superannuation Guarantee (Administration) Act 1992* immediately before 1 July 2003 have effect on and after that day as if they were made for the purposes of that subsection as amended by item 162 of this Schedule.

Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003
(No. 10, 2003)

Schedule 1

83 Application—items 76 and 77

- (1) The amendments made by items 76 and 77 of this Schedule apply in relation to superannuation guarantee shortfalls for the year starting on 1 July 2003 and all later years.
- (2) In this item:
superannuation guarantee shortfalls has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.
year has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

Table A

Superannuation Laws Amendment (2004 Measures No. 2) Act 2004
(No. 93, 2004)

4 Application of amendments

- (3) The amendments made by items 5, 6 and 7 of Schedule 1 apply to the quarter commencing on 1 July 2008 and to all subsequent quarters.

Taxation Laws Amendment Act (No. 1) 2004 (No. 101, 2004)

Schedule 11

100 Application

The amendments of the *Superannuation Guarantee (Administration) Act 1992* made by this Division apply in relation to test times (within the meaning of section 15A of that Act) on or after 1 July 2000.

129 Application

The amendment of the *Superannuation Guarantee (Administration) Act 1992* made by this Division applies in relation to test times (within the meaning of section 15A of that Act) on or after 1 July 2000.

Tax Laws Amendment (Superannuation Reporting) Act 2004 (No. 142, 2004)

Schedule 1

2 Application

The amendment made by item 1 applies to contributions made on or after 1 January 2005.

Table A

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
- (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;
- then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

- (2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister's determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005
(No. 147, 2005)

Schedule 6

10 Application

- (1) The amendments made by items 1, 2, 4, 5 and 9 of this Schedule apply to contributions made on or after 1 January 2006.
- (2) The amendments made by items 3, 6, 7 and 8 of this Schedule apply to obligations relating to the quarter beginning on 1 October 2005 and later quarters.

Schedule 7

19 Previous interpretation preserved

The amendments made by this Schedule are not to be taken to affect by implication the interpretation of a provision amended by this Schedule at a time before the commencement of this Schedule.

20 Application

The amendments made by this Schedule apply to payments made on or after the first day of the first quarter after the quarter in which this Act receives the Royal Assent.

Tax Laws Amendment (2006 Measures No. 2) Act 2006 (No. 58, 2006)

Schedule 6

2 Application

The amendment made by this Schedule applies to contributions made on or after 1 July 2006.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

Table A

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

Table A

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Table A

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Table A

Tax Laws Amendment (Simplified Superannuation) Act 2007 (No. 9, 2007)

Schedule 4

16 Application

The amendments made by this Schedule apply in relation to things that are done and events that occur on or after 1 July 2007.

Note: For transitional rules about provisions related to the application of Division 292 of the *Income Tax Assessment Act 1997* in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

Superannuation Legislation Amendment (Simplification) Act 2007
(No. 15, 2007)

Schedule 1

406 Application

- (1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.
- (2) Despite subitem (1), those amendments apply to the 2007-2008 financial year and later years, to the extent that they relate to Division 292 of the *Income Tax Assessment Act 1997*.
- (3) Despite subitem (1), those amendments apply on and after 1 July 2007, to the extent that they relate to any of the following:
 - (a) Divisions 82 and 83 of the *Income Tax Assessment Act 1997*;
 - (b) Divisions 301 to 307 of that Act.

Tax Laws Amendment (2007 Measures No. 1) Act 2007 (No. 56, 2007)

Schedule 2

2 Application

- (1) The amendment made by this Schedule applies to records made, or information divulged or communicated, on or after 1 July 2007.

Table A

- (2) Subitem (1) applies regardless of when the information recorded, divulged or communicated was obtained.

Corporations Amendment (Insolvency) Act 2007 (No. 132, 2007)

Schedule 1

14 Application—section 52 of the *Superannuation Guarantee (Administration) Act 1992*

The repeal of section 52 of the *Superannuation Guarantee (Administration) Act 1992* by this Schedule, in so far as it relates to a company that is being wound up under the *Corporations Act 2001*, applies if the relevant date (within the meaning of the *Corporations Act 2001*) is on or after the day on which this item commences.

15 Application—subsection 64B(3A) of the *Superannuation Guarantee (Administration) Act 1992*

- (1) Paragraph 64B(3A)(a) of the *Superannuation Guarantee (Administration) Act 1992* applies if the relevant date (within the meaning of the *Corporations Act 2001*) is on or after the day on which this item commences.
- (2) Paragraph 64B(3A)(b) of the *Superannuation Guarantee (Administration) Act 1992*, in so far as it relates to a bankruptcy, applies if the date of the bankruptcy is on or after the day on which this item commences.
- (3) Paragraph 64B(3A)(b) of the *Superannuation Guarantee (Administration) Act 1992*, in so far as it relates to a personal insolvency agreement, applies if the relevant authority under section 188 of the *Bankruptcy Act 1966* became effective on or after the day on which this item commences.
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Tax Laws Amendment (2008 Measures No. 2) Act 2008 (No. 38, 2008)

Schedule 2

7A Application of section 23A of the *Superannuation Guarantee (Administration) Act 1992* as amended

- (1) Section 23A of the *Superannuation Guarantee (Administration) Act 1992*, as amended by this Schedule, applies to:
- (a) contributions made before, on or after 1 January 2006; and
 - (b) elections made on or after 24 June 2008.

Note: The amendments of that section made by this Schedule commenced on 24 June 2008.

- (2) This item has effect subject to items 8 and 9.
- (3) To avoid doubt, this item:
- (a) has effect despite subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*; and
 - (b) does not affect the application of amendments of section 23A of the *Superannuation Guarantee (Administration) Act 1992* commencing after the commencement of the amendments of that section made by this Schedule.

Note: Subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005* applied the amendment inserting section 23A in the *Superannuation Guarantee (Administration) Act 1992* to contributions made on or after 1 January 2006.

8 Transitional—charge remaining payable at commencement

- (1) If, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, superannuation guarantee charge:
- (a) became payable under an assessment before the commencement of this Schedule (apart from item 7A); and
 - (b) was not fully paid before that commencement;
- this item applies in relation to the employer's liability to pay the proportion of the charge (the **remaining charge**) remaining payable at that commencement.
- (2) After that commencement, subsection 23A(2) of that Act applies as if the remaining charge became payable at that commencement.

Table A

- (3) If it is proposed to amend the assessment to effect a reduction, as a result of an offset under section 23A of that Act, in the employer's liability to pay the remaining charge, then:
- (a) subsection 37(3) of that Act applies as if the assessment were made at that commencement; and
 - (b) paragraph 37(5)(a) of that Act applies as if the remaining charge became payable under the assessment at that commencement.
- (4) If the assessment was of superannuation guarantee charge payable in relation to a year (instead of a quarter), then that Act also applies as if references in that Act to a quarter were references to a year.

9 Transitional—charge for a year that becomes payable after commencement

If, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, superannuation guarantee charge:

- (a) is payable in relation to a year (instead of a quarter) happening before the commencement of this Schedule (apart from item 7A); and
 - (b) does not become payable until after that commencement;
- then that Act applies, in relation to the employer's liability to pay the charge, as if references in that Act to a quarter were references to a year.

Tax Laws Amendment (2008 Measures No. 6) Act 2009 (No. 14, 2009)

Schedule 3

5 Application

The amendments made by this Schedule apply to elections under section 23A of the *Superannuation Guarantee (Administration) Act 1992* made on or after the commencement of this Schedule.

Fair Work (State Referral and Consequential and Other Amendments) Act 2009
(No. 54, 2009)

4 Definition

In this Act:

WR Act repeal day has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Schedule 18

32 *Superannuation Guarantee (Administration) Act 1992*

Despite the amendments of section 5B of the *Superannuation Guarantee (Administration) Act 1992* made by this Schedule, that section continues to apply, on and after the WR Act repeal day, as if those amendments had not been made, in relation to:

- (a) the Australian Industrial Relations Commission, as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- (b) the Australian Fair Pay Commission, as it continues in existence because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and
- (c) the *Workplace Relations Act 1996*, as that Act continues to apply because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Tax Laws Amendment (2010 Measures No. 1) Act 2010 (No. 56, 2010)

Schedule 1

9 Application provision

The amendments made by Part 1 of this Schedule apply to a payment made to an approved clearing house on or after the commencement of this item.

Table A

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

Superannuation Guarantee (Administration) Amendment Act 2012
(No. 22, 2012)

The following provision commences on 1 July 2013:

Schedule 1

5 Application

The amendments made by this Schedule apply for the purpose of calculations under section 19 of the *Superannuation Guarantee (Administration) Act 1992* for quarters starting on and after 1 July 2013.