

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**OCCUPATIONAL SUPERANNUATION STANDARDS
AMENDMENT BILL 1993**

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 27 May 1993

(Parliamentary Secretary to the Treasurer)

A BILL

FOR

An Act to amend the *Occupational Superannuation Standards Act 1987*, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title etc.

5 1.(1) This Act may be cited as the *Occupational Superannuation Standards Amendment Act 1993*.

(2) In this Act, “**Principal Act**” means the *Occupational Superannuation Standards Act 1987*¹.

Commencement

10 2.(1) Parts 1 and 2 commence immediately after the commencement of the amendments made by Division 2 of Part 3 of the *Taxation Laws Amendment (Superannuation) Act 1992*.

(2) Parts 3 and 4 commence immediately after the commencement of the amendments made by Part 2.

PART 2—TERMINATION OF THE OSS SYSTEM OF OPERATING STANDARDS FOR SUPERANNUATION ENTITIES

Title

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3. The title of the Principal Act is amended by omitting “**to provide operating standards for**” and substituting “**relating to taxation in respect of**”.

Short title

4. Section 1 of the Principal Act is amended by omitting “*Occupational Superannuation Standards*” and substituting “*Superannuation Entities (Taxation)*”.

Interpretation

5. Section 3 of the Principal Act is amended:

(a) by omitting from subsection (1) all the definitions other than the definitions of “Commissioner”, “fund or unit trust affected by a reviewable decision”, “reviewable decision”, “trustee”, “unit trust” and “year of income”;

(b) by omitting paragraphs (a), (b), (da), (db), (dc), (dd), (de), (df) and (e) of the definition of “reviewable decision” in subsection (1);

(c) by omitting from subsection (1) the definition of “trustee” and substituting the following definition:

“**trustee**, in relation to a fund or trust, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*”;

(d) by omitting subsections (2), (3), (4), (5), (6) and (7).

Repeal of sections 4, 5, 6 and 6A

6. Sections 4, 5, 6 and 6A of the Principal Act are repealed.

Repeal of Part II

7. Part II of the Principal Act is repealed.

Repeal of sections 10 to 15CA (inclusive)

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8. Sections 10 to 15CA (inclusive) of the Principal Act are repealed.

9. Before section 15DA of the Principal Act the following section is inserted in Part IIIAA:

Definitions

“15DAA. In this Part:

‘basic levy amount’ has the meaning given by section 6 of the *Superannuation Supervisory Levy Act 1991*;

5 ‘late lodgment amount’ has the meaning given by section 6 of the *Superannuation Supervisory Levy Act 1991*;

‘late payment penalty’ means penalty payable under section 15DC;

‘levy’ means the levy imposed by the *Superannuation Supervisory Levy Act 1991*;

10 ‘levy month’ means one of the 12 months of the calendar year;

‘minimum basic levy amount’, in relation to a year of income, means the lowest basic levy amount applicable to returns for the year of income for funds and unit trusts that are in existence at all times during the year of income.”.

15 10. Section 15DA of the Principal Act is repealed and the following section is substituted:

Liability to levy

20 “15DA. A trustee who lodges a return under section 36 of the *Superannuation Industry (Supervision) Act 1993* is liable to pay a levy on that lodgment.”.

Review of certain decisions

11. Section 16 of the Principal Act is amended:

25 (a) by omitting from subsection (1) “, being a decision referred to in paragraph (a), (b), (c), (d), (da), (db), (dc), (dd), (de), (df), (e) or (f) of the definition of ‘reviewable decision’ in subsection 3(1),”;

(b) by omitting subsection (5A).

Repeal of sections 18, 18A and 19

12. Sections 18, 18A and 19 of the Principal Act are repealed.

Delegation

30 13. Section 20 of the Principal Act is amended:

(a) by omitting from subsection (1) all the words after “powers” and substituting “under this Act”;

(b) by omitting subsections (2) and (3).

Repeal of section 21

35 14. Section 21 of the Principal Act is repealed.

Regulations

15. Section 22 of the Principal Act is amended:

- (a) by omitting paragraph (c);
- (b) by adding at the end the following subsection:

“(2) In this section:

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‘levy’ means:

- (a) the levy imposed by the *Superannuation Supervisory Levy Act 1991*; or
- (b) levy imposed by regulations under the *Superannuation (Financial Assistance Funding) Levy Act 1993*; or
- (c) levy imposed by regulations under the *Superannuation (Rolled-Over Benefits) Levy Act 1993*.”

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Application of amendments

16.(1) Despite the amendments made, and the repeals effected, by this Part, the compliance system provisions of the Principal Act continue to apply, subject to the changes set out in subsection (2) of this section, as if those amendments had not been made and those repeals had not been effected.

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(2) The changes are as follows:

- (a) subsections 10(1), (1AAA) and (1AA) of the Principal Act do not apply to a fund or trust established on or after 1 July 1994;
- (b) sections 11, 18, 19 and 21 and paragraph 22(c) of the Principal Act do not apply to a matter relating to the 1994-95 year of income of a fund or trust or a later year of income;
- (c) a reference in section 10, 12, 13, 14, 15, 15B or 15C of the Principal Act to a year of income does not include a reference to the 1994-95 year of income or a later year of income.

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(3) In this section:

“**compliance system provisions of the Principal Act**” means:

- (a) sections 4, 5, 6 and 6A of the Principal Act; and
- (b) Part II of the Principal Act; and
- (c) sections 10 to 15CA (inclusive) of the Principal Act; and
- (d) Part IIIAA of the Principal Act; and
- (e) the remaining provisions of the Principal Act in so far as they relate to any or all of the provisions mentioned in the preceding paragraphs of this definition.

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**PART 3—AMENDMENTS RELATING TO THE COLLECTION OF
FINANCIAL ASSISTANCE FUNDING LEVY AND
ROLLED-OVER BENEFITS LEVY**

Interpretation

5 17. Section 3 of the Principal Act is amended by adding at the end of the definition of “reviewable decision” the following word and paragraphs:

- “or (g) a decision of the Minister under section 15DQ; or
(h) a decision of the Commissioner under section 15DZA;”.

18. After Part IIIAA of the Principal Act the following Parts are inserted:

10 **“PART IIIAB—COLLECTION OF LEVY UNDER THE
SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING)
LEVY ACT 1993**

Definitions

“15DI. In this Part:

15 ‘**Account**’ means the Superannuation Protection Account established by section 228 of the *Superannuation Industry (Supervision) Act 1993*;

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

‘**fund**’ means a superannuation fund or an approved deposit fund;

20 ‘**late payment penalty**’ means penalty payable under section 15DM;

‘**levy**’ means levy imposed by regulations under the *Superannuation (Financial Assistance Funding) Levy Act 1993*;

‘**levy month**’ means one of the 12 months of the calendar year;

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

Fund’s accounts to be *prima facie* evidence of value of its assets

“15DJ.(1) This section applies if:

- (a) accounts of a fund were prepared for a financial year; and
(b) an amount is shown in those accounts as the value of an asset of the fund as at the end of that financial year.

30 “(2) For the purposes of this Part, the accounts are *prima facie* evidence of the value of the asset at the end of that financial year.

“(3) The Minister may certify that a document is a copy of the accounts.

“(4) This section applies to the certified copy as if it were the original.

Liability to levy

“15DK. The trustee of a fund is liable to pay a levy imposed on the fund.

When levy due for payment

“15DL.(1) A levy payable by the trustee of a fund is due and payable on such date as is specified in the regulations imposing the levy. 5

“(2) The date to be so specified must not be earlier than the 28th day after the day on which the regulation imposing the levy took effect.

Penalty for non-payment of levy

“15DM.(1) If any levy payable by the trustee of a fund remains unpaid as at: 10

(a) the beginning of the first levy month after the time when it became due for payment; or

(b) the beginning of a later levy month;

the trustee is liable to pay to the Commonwealth, in respect of that levy month, by way of penalty, the amount worked out using the formula: 15

$$\text{Unpaid levy} \times \frac{0.2}{12}$$

where:

‘Unpaid levy’ means the amount of levy unpaid as at the beginning of the levy month.

“(2) Late payment penalty for a levy month is due and payable at the end of the levy month. 20

Recovery of levy and late payment penalty

“15DN. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

(a) levy that is due and payable; 25

(b) late payment penalty that is due and payable.

Payment of levy and late payment penalty

“15DO. Levy and late payment penalty are payable to the Minister.

How payments of levy and late payment penalty and repayments of financial assistance are to be applied 30

“15DP.(1) If a levy is imposed as a result of a determination by the Minister to make a grant of financial assistance out of the Consolidated Revenue Fund:

(a) any amounts of that levy, and of late payment penalty in respect of that levy, that are received by the Minister; and 35

(b) any repayments of that financial assistance;
must be paid into the Consolidated Revenue Fund.

“(2) If a levy is imposed as a result of a determination by the Minister to make a grant of financial assistance out of the Account:

5 (a) any amounts of that levy, and of late payment penalty in respect of that levy, that are received by the Minister; and

(b) any repayments of that financial assistance;
must be paid into the Consolidated Revenue Fund.

10 “(3) There must be paid into the Account amounts equal to amounts paid into the Consolidated Revenue Fund under subsection (2).

“(4) The Consolidated Revenue Fund is appropriated for the purposes of subsection (3).

Remission of late payment penalty

15 “15DQ. The Minister may remit the whole or a part of an amount of late payment penalty.

Exempting laws ineffective

“15DR.(1) Nothing in a law passed before the commencement of this section exempts a person from liability to levy.

20 “(2) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability to pay taxes under laws of the Commonwealth or to pay certain taxes under those laws that include levy, other than a law or a provision that expressly exempts a person from liability to pay levy, is not taken to exempt the person from liability to pay levy.

25 Delegation

“15DS. The Minister may, by signed writing, delegate to the Commissioner all or any of his or her powers under this Part.

“PART IIIAC—COLLECTION OF LEVY UNDER THE SUPERANNUATION (ROLLED-OVER BENEFITS) LEVY 30 ACT 1993

Definitions

“15DT. In this Part:

‘eligible rollover fund’ has the same meaning as in Part 24 of the *Superannuation Industry (Supervision) Act 1993*;

35 ‘late payment penalty’ means penalty payable under section 15DX;

'levy' means levy imposed by regulations under the *Superannuation (Rolled-Over Benefits) Levy Act 1993*;

'levy month' means one of the 12 months of the calendar year.

Fund's accounts to be *prima facie* evidence of value of its assets

"15DU.(1) This section applies if: 5

- (a) accounts of an eligible rollover fund were prepared for a financial year; and
- (b) an amount is shown in those accounts as the value of an asset of the fund as at the end of that financial year.

"(2) For the purposes of this Part, the accounts are *prima facie* evidence of the value of the asset as at the end of that financial year. 10

"(3) The Commissioner may certify that a document is a copy of the accounts.

"(4) This section applies to the certified copy as if it were the original.

Liability to levy 15

"15DV. The trustee of an eligible rollover fund is liable to pay a levy imposed on the fund.

When levy due for payment

"15DW.(1) A levy payable by the trustee of an eligible rollover fund is due and payable on such date as is specified in the regulations imposing the levy. 20

"(2) The date to be so specified must not be earlier than the 28th day after the end of the financial year in respect of which the levy is payable.

Penalty for non-payment of levy

"15DX.(1) If any levy payable by the trustee of an eligible rollover fund remains unpaid as at: 25

- (a) the beginning of the first levy month after the time when it became due for payment; or
- (b) the beginning of a later levy month;

the trustee is liable to pay to the Commonwealth, in respect of that levy month, by way of penalty, the amount worked out using the formula: 30

$$\text{Unpaid levy} \times \frac{0.2}{12}$$

where:

'Unpaid levy' means the amount of levy unpaid as at the beginning of the levy month. 35

“(2) Late payment penalty for a levy month is due and payable at the end of the levy month.

Recovery of levy and late payment penalty

5 “15DY. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) late payment penalty that is due and payable.

Payment of levy and late payment penalty

10 “15DZ.(1) Levy and late payment penalty are payable to the Commissioner.

“(2) The Commissioner must pay into the Consolidated Revenue Fund any amounts received by him or her under subsection (1).

Remission of late payment penalty

15 “15DZA. The Commissioner may remit the whole or a part of an amount of late payment penalty.

Exempting laws ineffective

“15DZB.(1) Nothing in a law passed before the commencement of this section exempts a person from liability to levy.

20 “(2) A law, or a provision of a law, passed after the commencement of this section that purports to exempt a person from liability to pay taxes under laws of the Commonwealth or to pay certain taxes under those laws that include levy, other than a law or a provision that expressly exempts a person from liability to pay levy, is not taken to exempt the person from liability to pay levy.”.

25 **Review of certain decisions**

19. Section 16 of the Principal Act is amended by inserting before subsection (1) the following subsection:

30 “(1AA) This section applies in relation to a decision of the Minister under section 15DQ as if a reference in this section to the Commissioner were a reference to the Minister.”.

Statements to accompany notification of decisions

20. Section 17 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(a) “or the Minister, as the case may be,” after “the Commissioner”;
- 35 (b) by inserting in subsection (2) “or the Minister” after “the Commissioner”.

PART 4—REPEAL OF SECTION 15D

Interpretation

21. Section 3 of the Principal Act is amended by omitting paragraphs (c) and (d) of the definition of “reviewable decision”.

Repeal of section 15D

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22. Section 15D of the Principal Act is repealed.

Application of amendments

23.(1) Despite the amendment made, and the repeal effected, by this Part, the pre-1 July 88 funding credit provisions of the Principal Act continue to apply, subject to the changes set out in subsection (2) of this section, as if that amendment had not been made and that repeal had not been effected. 10

(2) The changes are as follows:

- (a) subsection 15D(2) of the Principal Act does not apply to an application made on or after 1 July 1994;
- (b) the Commissioner must not give a notice on or after 1 July 1994 15 under:
 - (i) subsection 15D(4) or (6) of the Principal Act; or
 - (ii) regulations made for the purposes of subsection 15D(7) of the Principal Act.

(3) In this section: 20

“pre-1 July 88 funding credit provisions of the Principal Act” means:

- (a) section 15D of the Principal Act; and
- (b) the remaining provisions of the Principal Act in so far as they relate to section 15D of the Principal Act.

NOTE

1. No. 97 of 1987, as amended. For previous amendments, see No. 138, 1987; Nos. 97 and 105, 1989; Nos. 61 and 135, 1990; Nos. 55 and 216, 1991; and Nos. 92, 98 and 208, 1992.