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THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA

THE HOUSE OF REPRESENTATIVES

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TAXATION LAWS AMENDMENT (SUPERANNUATION) BILL  
1992

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SUPPLEMENTARY EXPLANATORY MEMORANDUM

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



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## **Superannuation Guarantee Charge**

### **General outline and financial impact**

The amendments will amend the Taxation Laws Amendment (Superannuation) Bill 1992 to:

- extend the measures in the Bill which allow superannuation contributions based on the earnings of a 'standard employee' to be acceptable for superannuation guarantee purposes to apply to all employers making contributions under industrial awards or laws in place prior to 21 August 1991 (regardless of whether or not the employer was contributing at that time).

## **Notional Earnings Bases**

### **Summary of proposed amendments**

***Purpose of amendments:*** The proposed amendments will extend the application of the existing amendments in the Bill which allow an employee's notional earnings base to be based on the earnings of a standard employee. The existing amendments will be extended to employers who were not making superannuation contributions prior to 21 August 1991 in accordance with an award or law, but who are now making contributions under an award or law which was in place prior to that date.

***Date of effect:*** 1 July 1992

### **Background to the legislation**

The Bill contains amendments to remove the requirement that a notional earnings base be related only to the earnings of the employee in question. The notional earnings base is the level of earnings against which an employer's superannuation contribution is compared to work out the actual level (ie the percentage) of superannuation support provided by an employer for an employee.

Where an employer was contributing for the benefit of an employee prior to 21 August 1991 under an award or law, and the requisite superannuation contribution under that award or law was based on the earnings of a member of a class of employees ('the standard employee'), the Bill provides that the notional earnings base for employees will be the earnings of the standard employee. [*Clause 78*]

In addition the Bill contains a further amendment to address cases where the requisite superannuation contribution under an industrial award is a flat dollar contribution. In those circumstances the Bill provides that if:

the employer was contributing for an employee prior to 21 August 1991 in accordance with the industrial award;  
and

that flat dollar contribution was required to be increased automatically as the earnings of a member of a class of employees ('the standard employee') increased;

then the notional earnings base for employees will be the earnings of the standard employee which are used to increase the flat dollar contribution. *[Clause 80]*

### **Explanation of proposed amendments**

#### *Amendment 1: Notional Earnings Bases - employer not contributing prior to 21 August 1991*

The first amendment will extend the amendment to be made by Clause 78 of the Bill.

The amendment made by Clause 78 allows an employee's notional earnings base to be based on the earnings of a standard employee if the employer was contributing prior to 21 August 1991 under an industrial award or law which specified the requisite contribution based on the earnings of a standard employee.

The amendment now proposed will extend this measure to apply to any employer who makes a contribution in accordance with an award or law which was in place prior to 21 August 1991 (even though the employer was not making contributions for an employee at that time).

The amendment operates by assuming the employer had made a contribution for an employee prior to 21 August 1991. If the award or law was in place at that time and the requisite contribution under the award or law was based on the earnings of a standard employee, the employer will satisfy section 13 of the Superannuation Guarantee (Administration) Act (the Act). Accordingly, the earnings of the standard employee will be the notional earnings base. *[New subsection 14(2A)]*

Essentially, the effect of the proposed amendment will be that new employers making contributions for an employee in accordance with an award or law in place prior to 21 August 1991, where the award or law required the

contribution for the employee to be based on the earnings of a standard employee, will be able to use the earning of the standard employee as the employee's notional earnings base.

**Example**

Assume an award in place prior to 21 August 1991 required an employer to make a contribution for all drivers of an amount equal to 4% of the earnings of a Grade 1 driver. An employer who contributes in accordance with that award would have an earnings base for all drivers equal to the earnings of the Grade 1 driver. This is the case, regardless of when the employer first commenced making contributions under the award.

*Amendment 2 : Consequential amendments*

Former subsections 23(2) and 23(9) have been removed and replaced with new subsections 23(2) and 23(9). The only difference between the new and old subsections is that the new subsections contain references to laws of a kind referred to in paragraphs 13(1)(ab) or 14(1)(ab) of the Act.

This amendment is a consequential amendment arising from amendment 1 above.

*Amendment 3 : Notional Earnings Bases - flat dollar award superannuation contributions*

The third amendment will amend new section 25A so that it applies to an employer who is making a flat dollar superannuation contribution in accordance with an industrial award in place prior to 21 August 1991, but who was not so contributing prior to 21 August 1991 in accordance with the industrial award.

Essentially, the amendment applies to new employers who were not making superannuation contributions prior to 21 August 1991, but who are now making contributions in accordance with an award in place at that time. If this is the case and:

- the award required a flat dollar contribution to be made for an employee; and
- that flat dollar amount was, and still is, required to be increased automatically as the earnings of a member of a class of employees ('the standard employee') increase;

then the notional earnings base for the employee is the increased earnings ('the adjustment earnings') of the standard employee which are used to adjust the flat dollar contribution. *[New subsections 25A(2) and (3)]*

An award in place on 21 August 1991 which did not contain a requirement that the flat dollar contribution be increased in accordance with the earnings of a standard employee, is not covered by section 25A. New paragraph 25A(2)(b) requires an award having an adjustment earnings component to have been **operative** immediately before 21 August 1991 for the section to apply.

The amendment also provides that if an award is amended after 20 August 1991 in such a way that the employee's notional earnings base is reduced, the employer will no longer be able to use that notional earnings base. In such cases the employer will be forced to determine the notional earnings base under the existing provisions of the Act as though no superannuation support was provided prior to 21 August 1991. *[New paragraph 25A(2)(b)]*

This measure prevents employers reducing the notional earnings base for their employees and still making use of the new flat dollar award contribution provisions in proposed section 25A.

The amendment also ensures that the employer is not expected to provide excessive superannuation support by limiting the notional earnings base to a maximum amount, ie the maximum contribution base. The maximum contribution base is \$40,000 for the half yearly contribution periods in the 1992-93 year and \$20,000 (indexed) for the quarterly contribution periods in later years. *[New subsection 25A(4)]*

Finally, the amendment has redrafted subsections 25A(3) and(4) to make it clear that under the flat dollar award contribution provisions in section 25A, the notional earnings base is the earnings (as increased from time to time) by reference to which adjustments are made to the flat dollar contribution.

The deemed notional earnings base provision in section 25A assumes both the employee for whom the employer is contributing and the standard employee are full time employees. Where this is not the case an appropriate adjustment would be made to the notional earnings base. For example, if an employee is a part time worker (working 20 hours per week) and the standard employee earnings used to determine the employee's notional earnings base is based on the full time rate (say, 40 hours per week), the employee's notional earnings base will be reduced proportionally. That is, the employee's notional earnings base will be half of the standard employee's earnings.

*Amendment 4 : Application Date*

This amendment ensures that these Parliamentary amendments apply from 1 July 1992.