

THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA

SENATE

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TAXATION LAWS AMENDMENT  
(SUPERANNUATION) BILL 1992

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SUPPLEMENTARY EXPLANATORY  
MEMORANDUM

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





## **General Outline and Financial Impact**

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

- allow a new industrial agreement for the NSW coal industry to be accepted as an award which was in place prior to 21 August 1991. This will have the effect of allowing the standard employee earnings base in that agreement to be acceptable for superannuation guarantee purposes;
- extend the time for an employer to obtain a statement from a superannuation scheme so that benefit certificates in relation to it are deemed to relate to a complying superannuation scheme. The extended time will be 30 days after the Bill receives Royal Assent.
- to ensure that all retired persons, irrespective of their date of retirement, are allowed to transfer benefits into a superannuation fund in accordance with Clause 72 of the Bill

***Financial impact:*** These amendments are not expected to have a significant financial impact.

## **Notional Earnings Bases**

### **Summary of proposed amendments**

***Purpose of amendments:*** The proposed amendments will treat a new industrial agreement for the NSW coal industry as an award that was in place prior to 21 August 1991. This will have the effect of allowing the standard employee earnings base in that agreement to be acceptable for superannuation guarantee purposes.

***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 makes a contribution for the benefit of an employee under an award or law which was in place prior to 21 August 1991 and the requisite superannuation contribution under that award or law was based on the earnings of a member of a class of employee ('the standard employee'), the Bill provides that the notional earnings base for employees will be the earnings of the standard employee [*Clause 79*].

### **Explanation of proposed amendments**

#### ***Amendment 1***

The amendment will amend Clause 79 of the Bill to include a reference to proposed subsection 14(2B) in existing subsection 14(2) of the *Superannuation Guarantee (Administration) Act 1992*. This amendment is a consequential amendment arising from Amendment 2 below.

*Amendment 2*

The amendments made by Clause 79 of the Bill allow an employee's notional earnings base to be based on the earnings of a standard employee if the employer is contributing in accordance with an industrial award or law (in place prior to 21 August 1991) which specified the requisite contribution based on the earnings of a standard employee.

The proposed amendment will extend this measure to employers in the NSW coal industry who are covered by a new industrial agreement. That is, employers in the NSW coal industry who contribute to a fund for the benefit of an employee in accordance with the New South Wales Coal Mining Industry Statutory Superannuation Fund (Salary Sacrifice) Agreement, will be able to use the standard employee earnings base set out in that industrial agreement as the notional earnings base for employees covered by the agreement. This is so even though the agreement was not in place prior to 21 August 1991. *[New subsection 14(2B)]*

## **Deemed complying funds**

### **Summary of proposed amendment**

***Purpose of the amendment:*** The proposed amendments will extend the time for an employer to obtain a statement from a superannuation scheme so that benefit certificates in relation to it are deemed to relate to a complying superannuation scheme. The extended time will be 30 days after the date the Bill receives Royal Assent.

***Date of effect:*** Date of introduction of the amendments.

### **Background to the legislation**

#### ***Amendments 3 and 4***

Existing paragraph 24(1)(a) of the *Superannuation Guarantee (Administration) Act 1992* gives an employer 30 days from the start of the contribution period to obtain a written statement from the trustee of a superannuation scheme. This statement must state that the superannuation scheme has been operating in accordance with the *Occupational Superannuation Standards Act 1987* from the start of the contribution period.

If an employer has not obtained this statement and the scheme proves not to be a complying superannuation scheme, then the employer could be liable for the superannuation guarantee charge.

The contribution period for the 1992 - 1993 year starts on 1 July 1992. However, because the *Superannuation Guarantee (Administration) Act 1992* did not receive royal assent until 21 August 1992, many employers were unaware of these provisions within the 30 days. Therefore, they did not seek to obtain the relevant statement.

To ensure that employers were not disadvantaged in the first contribution period in 1992 - 1993, paragraph 24(1)(a) was amended by Clause 87 of the Bill to enable an employer to satisfy the paragraph if the employer obtained the relevant statement before the end of 30 days after the date of introduction of the Bill. *[Clause 87]*

### **Explanation of proposed amendments**

The amendment now proposed will amend Clause 87 to extend this time period even further. The amendment will allow an employer to satisfy paragraph 24(1)(a) of the *Superannuation Guarantee (Administration) Act 1992* if the employer obtains the relevant statement before the end of 30 days after the Bill receives Royal Assent.

## **Amendments to allow retired persons to transfer their benefits into superannuation funds**

### **Summary of proposed amendment**

***Purpose of the amendment:*** The proposed amendment is intended to make clear that all retired persons, irrespective of their date of retirement, are allowed to transfer benefits into a superannuation fund in accordance with the provisions of Clause 72 of the Bill.

***Date of effect:*** Royal Assent to the Bill.

### **Background to the legislation**

The Bill contains amendments to the *Occupational Superannuation Standards Act 1987* which insert a new category of membership into the definition of "superannuation fund" in the form of a definition of "transferred retiree member". This change allows superannuation funds to accept the benefits of persons who have retired which are transferred from a superannuation fund, approved deposit fund, life assurance company or a registered organisation.

Clause 73 of the Bill has the possible unintended effect of restricting the application of the change to persons who retire on or after the date of Royal Assent to the Bill. The proposed amendment clarifies the intention that all persons, irrespective of their date of retirement, be allowed to transfer benefits into a superannuation fund.

### **Explanation of the proposed amendment**

The amendment will omit the current Clause 73 of the Bill and substitute a new Clause 73 which ensures that the amendments made by Division 4 apply to all retired persons regardless of whether they retired before, on or after the date of Royal Assent to the Bill.