

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

OCCUPATIONAL SUPERANNUATION STANDARDS
AMENDMENT BILL 1992

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1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 16 December 1992

(Minister assisting the Treasurer)

A BILL

FOR

An Act to amend the *Occupational Superannuation Standards Act 1987*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Occupational Superannuation Standards Amendment Act 1992*.

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

Commencement

2.(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

10 (2) Section 11 commences on the same day as Part 11 of the *Superannuation Industry (Supervision) Act 1992*.

(3) Section 12 commences on the same day as Part 12 of the *Superannuation Industry (Supervision) Act 1992*.

(4) Subject to subsection (5), the remaining provisions commence on a day or days to be fixed by Proclamation.

(5) If a provision referred to in subsection (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

Amendment of title

3. The title of the Principal Act is amended by omitting **“to provide operating standards for”** and substituting **“relating to taxation in respect of”**. 10

Short title

4. Section 1 of the Principal Act is amended by omitting *“Occupational Superannuation Standards”* and substituting *“Superannuation Entities (Taxation)”*. 15

Introduction

5. Section 3 of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of “approved auditor”, “approved form”, “approved purposes”, “approved rules”, “approved trustee”, “basic levy amount”, “dependant”, “depositor”, “employer sponsor”, “governing rules”, “late lodgment amount”, “late payment penalty”, “legal personal representative”, “levy”, “levy avoidance scheme”, “levy month” and “minimum basic levy amount”; 20 25

(b) by omitting paragraphs (a), (b), (c), (d) and (e) of the definition of “reviewable decision” in subsection (1);

(c) by omitting from subsection (1) the definitions of “approved deposit fund”, “pooled superannuation trust” and “superannuation fund” and substituting the following definitions: 30

“**‘approved deposit fund’** has the same meaning as in the *Superannuation Industry (Supervision) Act 1992*;

‘pooled superannuation trust’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1992*;

‘superannuation fund’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1992*.”; 35

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

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 15D

8. Sections 10 to 15D of the Principal Act are repealed.

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

Definitions

“15DAA. In this Part:

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

‘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;

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

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

20 ‘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.”.

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

Liability to levy

25 “15DA. A trustee who lodges a return under section 21 of the *Superannuation Industry (Supervision) Act 1992* is liable to pay a levy on that lodgment.”.

11. After Part IIIAA of the Principal Act the following Part is inserted:

“PART IIIAB—COLLECTION OF LEVY UNDER SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY ACT

30

Definitions

“15DI. In this Part:

‘Account’ means the Superannuation Protection Account established by section 95 of the *Superannuation Industry (Supervision) Act 1992*;

‘approved deposit fund’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1992*;

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

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

‘levy’ means levy imposed by regulations under the *Superannuation (Financial Assistance Funding) Levy Act 1992*; 5

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

‘superannuation fund’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1992*.

Fund’s accounts to be *prima facie* evidence of value of its assets 10

“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.

“(2) For the purposes of this Part, the accounts are *prima facie* evidence 15 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 20 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.

“(2) The date to be so specified must not be earlier than the 28th day 25 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:

- (a) the beginning of the first levy month after the time when it became 30 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:

$$\text{Unpaid levy} \times \frac{0.2}{12} \quad 35$$

where:

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

5 “(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

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

- 10 (a) levy that is due and payable;
 (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

15 “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:

- 20 (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;
are to 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:

- 25 (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;
are to be paid into the Account.

Remission of late payment penalty

30 “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.

35 “(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.

Delegation

“15DS. The Minister may, by signed writing, delegate to the 5
Commissioner all or any of his or her powers under this Part.”.

12. Before Part IIIA of the Principal Act the following Part is inserted:

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

Definitions

10

“15DT. this Part:

‘eligible rollover fund’ has the same meaning as in Part 12 of the *Superannuation Industry (Supervision) Act 1992*;

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

‘levy’ means levy imposed by regulations under the *Superannuation 15*
(Rolled-Over Benefits) Levy Act 1992;

‘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:

(a) accounts of an eligible rollover fund were prepared for a financial 20
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. 25

“(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

“15DV. The trustee of an eligible rollover fund is liable to pay a levy 30
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. 35

“(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

5 “15DX.(1) If any levy payable by the trustee of an eligible rollover fund remains unpaid as at:

(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;

10 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:

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

where:

15 ‘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.

Recovery of levy and late payment penalty

20 “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

25 “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

30 “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.

35 “(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.”.

Approved deposit funds, life assurance companies and registered organisations to provide certain information 5

13. Section 15F of the Principal Act is amended by omitting subsection (3).

Payers to provide certain information

14. Section 15G of the Principal Act is amended by omitting subsections (10) and (11). 10

Deemed commutation of annuities and pensions

15. Section 15S of the Principal Act is amended by omitting subsection (4).

Review of certain decisions

16. Section 16 of the Principal Act is amended by omitting from subsection (1) “, (a), (b), (c), (d), (e)”. 15

Secrecy

17. Section 18 of the Principal Act is amended:

(a) by inserting in paragraphs (2)(a) and (b) “or to a court” after “any person”; 20

(b) by omitting the penalty at the end of subsection (2);

(c) by omitting subsection (2A);

(d) by omitting the penalty at the end of subsection (6);

(e) by omitting subsection (7) and substituting the following subsection: 25

“(7) A protected document or a document containing protected information is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.”.

Commissioner may publish statistical information

18. Section 19 of the Principal Act is repealed. 30

Regulations

19. Section 22 of the Principal Act is amended by adding at the end the following subsection:

“(2) In this section:

'levy' means:

- 5 (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 1992*; or
- (c) levy imposed by regulations under the *Superannuation (Rolled-Over Benefits) Levy Act 1992*."
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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 and 98, 1992.









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