
CHAPTER 2: DESCRIPTION OF THE SGL

The package of bills dealing with superannuation comprises four separate Bills:

- the *Superannuation Guarantee (Administration) Bill 1991*
- the *Superannuation Guarantee Charge Bill 1992*
- the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 1992*
- the *Superannuation Guarantee (Consequential Amendments) Bill 1992*

2.1 The third of these Bills is not related to the other Bills. *The Consequential Amendments and Transitional Provisions Bill* amends 28 Acts to update provisions in them relating to superannuation; but the amendments have no bearing on the superannuation guarantee initiative that is the subject of this Report. In the words of the Minister for Finance, the Hon Ralph Willis MP, the Bill 'makes only consequential amendments that reflect changes that have previously been put in place'.¹ For this reason, the Committee did not further consider this Bill and **recommends to the Senate that the Bill be agreed to without amendment.**

2.2 The constitutional basis of the three Superannuation Guarantee Bills is:

... the taxation power contained in sub-section 51(ii) of the Constitution. The use of this power to impose the training guarantee levy is currently subject to a challenge in the High Court and if that challenge is successful the implication is that the taxation power cannot be used to support the SGL. However, if this is the case, the Commonwealth will be able to rely on other powers, such as the corporations and trade and commerce powers, to ensure a wide application of the levies. If these powers were relied on, the levies would not have the universal application they have relying on the taxation power.²

2.3 The *Superannuation Guarantee (Administration) Bill 1991* (as amended by the House of Representatives) establishes the Superannuation Guarantee Scheme and provides for its administration. The Scheme is to commence on 1 July 1992. The Scheme will require a levy to be paid where employers fail to contribute a percentage of employee's earnings to a fully vesting superannuation fund.

2.4 The Administration Bill has nine parts. Part 1 states that the legislation applies to the Commonwealth and all States and Territories, but it goes on to exclude Commonwealth and tax-exempt Commonwealth authorities from liability to pay the superannuation guarantee charge. Part 2 defines terms used in the Bill including 'complying superannuation fund', 'defined benefit superannuation scheme', 'employee' and

¹ Second reading speech, House of Representatives, 2 April 1992.

² Parliamentary Research Services, Bills Digest, SG sub no. 1, p 3.

'employer', 'maximum contribution base', 'notional earnings base', 'ordinary time earnings', 'salary or wages' and 'superannuation scheme'. Part 2 also stipulates that the maximum contribution base is \$80 000.

2.5 Part 3 of the Bill provides that the superannuation guarantee charge imposed on an employer's superannuation guarantee shortfall for a year is payable by the employer. The shortfall is made up of the total of individual shortfalls for the year plus the nominal interest component and the administration component. The shortfall is to be calculated on an annual basis in 1992-3 but on a monthly basis for later years. The shortfall is calculated by multiplying wages or salary by a 'charge percentage' which varies as to whether an employer has a notional payroll for the base year of over or under \$500 000. However, in both cases the charge percentage is to be nine per cent by the year 2000.

2.6 Part 3 also provides for reductions in the charge percentage in certain circumstances:

Where the contributions are to a defined benefits scheme and a benefit certificate has been issued that specifies the contribution rate for a class of employees, the required contribution is reduced by the contribution rate multiplied by the percentage of time in a contribution period for which the contribution was made... For contributions made in accordance with industrial awards, or under a superannuation agreement, which are based on the employees notional earnings base, the required contribution rate is to be reduced in the same manner as described above. Where the employees notional earnings base is not specified, the contribution rate is to be calculated as a percentage of the employees ordinary time earnings.³

2.7 Further, Part 3 outlines certain exclusions from the Superannuation Guarantee Charge; these include salary or wages paid to an employee aged 65 (or over) and to a part-time employee who is under 18. Also exempt are employees who receive less than \$250 per month.

2.8 The Bill was amended in the House of Representatives, principally:

to allow for the situation where an employer makes superannuation contributions up to 12 months in advance of a monthly contribution period...[and] to provide that salary or wages paid to 'prescribed employees' are to be excluded from the shortfall calculation. It is proposed that a prescribed employee (to be set out in regulations) would include certain foreign executives working in Australia for short periods of time.⁴

2.9 The nominal interest rate component of the shortfall charge is set at 14.026% per annum and is subject to regulatory change. The administration component is \$50 plus \$30 for each employee in respect of whom the employer has a superannuation guarantee shortfall. Both the \$50 and the \$30 are subject to regulatory amendment.

2.10 Part 4 of the Administration Bill deals with superannuation guarantee statements and assessments, which involve the employer and the Commissioner of Taxation who is responsible for the general administration of the legislation (Part 5).

³ *ibid*, p 4.

⁴ Australian Taxation Office, SG sub no. 35, p 2.

2.11 Part 6 of the Bill deals with the collection and recovery of the charge, and Part 7 describes the penalty charge. Part 8 outlines the way in which the Commissioner of Taxation is to deal with the shortfall component of a payment of superannuation guarantee charge in relation to a particular employee. The final Part of the Bill contains miscellaneous provisions.

2.12 The *Superannuation Guarantee Charge Bill 1992* imposes a charge based on any shortfall in superannuation contributions for employees. The superannuation guarantee shortfall is calculated by reference to the relevant provisions of the Administration Bill.

2.13 The *Superannuation Guarantee (Consequential Amendments) Bill 1992* similarly provides for the amendment of certain Acts to take account of the proposed changes to superannuation provisions.