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No. 161 2001-02

Taxation Laws Amendment (Superannuation) Bill (No. 2)  
2002

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5 June 2002

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# Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002

**Date Introduced:** 16 May 2002

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** The provisions and measures have various application dates, which are described below.

## Purpose

To enhance the overall attractiveness, accessibility and security of superannuation by:

- requiring employers to make at least quarterly superannuation contributions on behalf of their employees
- reducing the superannuation surcharge rates by one-tenth of their current level each year for the next 3 years
- allowing superannuation contributions to be made on behalf of children who would not otherwise have superannuation
- increasing the deduction limit for personal superannuation contributions made by the self employed, and
- increasing from 70 to 75 the age up to which working members of superannuation funds can make personal superannuation contributions.

## Background

Superannuation is a tax-effective investment vehicle, but is known for its complexity and frequent change. The complexity covers most areas of the superannuation system including prudential legislation, taxation legislation and disclosure regulation. Frequent legislative changes contribute to the system's complexity. In addition, the superannuation system constantly changes as many of the financial thresholds are indexed.

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The superannuation and taxation laws both compel certain things be done, and use incentives in the taxation system to encourage things to be done. This section summarises the laws so that the amendments in this Bill can be placed in context.

## Summary of current law

### Surcharge on superannuation contributions

All employer contributions, certain 'golden handshakes' and tax deductible personal contributions made to superannuation funds for high-income earners are subject to a surcharge of up to 15 per cent. The surcharge is currently phased in over the income levels of \$85 242 to \$103 507 with the surcharge increasing by one per cent for each additional \$1219 of income from \$85 242. The surcharge may also be payable if a member doesn't quote their Tax File Number to their superannuation fund. For an account which existed prior to 7 May 1997 and received less than the surchargeable contributions threshold of \$3248, the surcharge will not be levied merely due to the non-quotation of a Tax File Number in relation to that account for that year.

### Superannuation Guarantee (SG)

The SG scheme requires all employers to provide a minimum level of superannuation support in each financial year for employees (with limited exceptions). The SG scheme operates in conjunction with award superannuation so that contributions made by an employer in conjunction with an industrial award may be counted towards the employer's superannuation guarantee obligations. The minimum level of employer support is currently 8 per cent of employee earnings. On 1 July 2002, this rate increases to its legislated maximum of 9 per cent of earnings. Contributions are required to be made on an annual basis, although employers are not prevented from making more frequent contributions.

### Self employed deduction

Self-employed persons get a full tax deduction on the first \$3000 of contributions plus 75 per cent of the remaining contribution up to the age based deduction limits. The deduction limits for 2001-02 are:

Age of employee (years)	Deduction limit
under 35	\$11 912
35 to 49	\$33 087
50 and over	\$82 054

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### Superannuation for people over 65 years of age

Superannuation funds may accept non-SG and non-award employer contributions in respect of a person who is gainfully employed on at least a part-time basis. Where a member is aged 65 but less than 70, the fund must be satisfied that the member is gainfully employed for a minimum of 10 hours each week in respect of which they accept non-mandated employer contributions. Non-SG and non-award employer contributions cannot be accepted for members aged 70 or over in any circumstances.

A summary of the laws affecting the ability of people over the age of 65 is in the Department of the Parliamentary Library's *Research Note 26 2001-02, Superannuation For People Primarily Over 65 Years of Age*.<sup>1</sup>

### Children under 18 years of age

In general, all employees (including minors) earning more than \$450 per month are eligible to receive SG contributions. An exception to the rule is certain minors that work part time. An employer does not have to make superannuation contributions for part-time employees (who work not more than 30 hours per week) under 18 years of age.<sup>2</sup> Minors that are covered by a relevant Federal or State industrial awards may also be eligible for compulsory employer superannuation contributions. An example of this would be, say, an apprentice under the age of 18. Minors can also make voluntary superannuation contributions to a superannuation fund, however, superannuation funds require:

- the member has, at any time in the two years before acceptance of the contributions, engaged in full-time or part-time gainful employment<sup>3</sup>
- a member is 'gainfully employed' if employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. 'Full-time' means gainfully employed for at least 30 hours per week; 'part-time' means gainfully employed for at least 10 hours and less than 30 hours per week.<sup>4</sup>

### Basis of policy commitment

#### 2001 Election: Coalition Promises on Superannuation

During the 2001 election campaign, the Government released *A Better Superannuation System*<sup>5</sup> containing a number of proposed reforms to superannuation. This document contained 13 election promises. One of these promises has already been legislated.<sup>6</sup> The proposed reforms from *A Better Superannuation System* implemented via this Bill are summarised in the following table.

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<b>Proposed reform</b>	<b>Proposed date of effect</b>
Require all employers to make at least quarterly superannuation contributions on behalf of their employees	1 July 2003
Reduce the superannuation and termination payments surcharge rates by ten per cent of their current level over each of the next three years (a maximum of 1.5 percentage points each year)	1 July 2002
Allow superannuation contributions up to \$1000 per annum to be made on behalf of children under 18 years of age who do not otherwise have superannuation	1 July 2002
Increase the current full deduction limit for the self employed to \$5000 (from \$3000) and 75% tax deductible for contributions over \$5000 (up from \$3000) up to the person aged based limit.	1 July 2002
Increase from 70 years to 75 years the age up to which working members of superannuation funds can make personal superannuation contributions	1 July 2002

## 2002-03 Budget Announcements

The 2002-03 Budget provided further details about the implementation of these proposals. This section summarises the Budget announcements regarding these measures.

### Quarterly superannuation contributions

#### *A Better Superannuation System — quarterly Superannuation Guarantee contributions*

##### *Revenue (\$m)*

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	35.0	5.0	6.0

##### *Explanation*

From 1 July 2003, employers will be required to make Superannuation Guarantee (SG) contributions to a complying superannuation fund or retirement savings account on behalf of their eligible employees on at least a quarterly basis. Currently, employers are only required to make SG contributions on an annual basis, although most employers make contributions more frequently than this.

As part of a quarterly SG regime, the following will also apply:

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- for defaulting employers, the Superannuation Guarantee Charge (SGC) will be imposed quarterly with a lower administration component and the nominal interest component calculated from the beginning of the relevant quarter;
- the earnings threshold that determines whether an employee is entitled to SG will change from \$450 per month to \$1,350 per quarter;
- employers will be required to report to their employees the amount and destination of SG contributions when contributions are made; and
- in order to assist employers make the transition to quarterly payments, no administration or nominal interest components of the SGC will apply to shortfalls arising within the first two quarters from 1 July 2003.<sup>7</sup>

As part of the 2002-03 Budget announcement, the Minister for Revenue and Assistant Treasurer, Senator the Hon. Helen Coonan justified changing the earnings threshold that determines whether an employee is entitled to SG will change from \$450 per month to \$1,350 per quarter in the following terms.

The quarterly threshold should reduce the compliance impact on business, particularly those with seasonal or casual workers (e.g. rural and retail sectors).<sup>8</sup>

Senator Coonan also announced that employers will be required to report to their employees the amount and destination of SG contributions when contributions are made. According to Senator Coonan, "such a reporting regime would enhance employee ownership of retirement incomes issues and provide a mechanism that should alert employees in a timely fashion to the non-payment of SG."

#### Superannuation surcharge rate

##### *A Better Superannuation System — reducing the Superannuation Surcharge rate*

##### *Revenue (\$m)*

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	-50.0	-120.0	-200.0

##### *Explanation*

From 1 July 2002, the superannuation and termination payments surcharge rates will be reduced by one tenth of their current levels for each of the next three income years. As a consequence, the maximum surcharge rates will be reduced to 13½ per cent in 2002-03, 12 per cent in 2003-04 and 10½ per cent in 2004-05 and succeeding years.

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Further, in keeping with its election commitment, the Government will review the surcharge arrangements after three years to determine whether any further changes are required.<sup>9</sup>

### Superannuation child accounts

#### ***A Better Superannuation System — superannuation for life: child accounts***

##### *Revenue (\$m)*

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-0.2	-0.6	-1.0	-1.5

##### *Explanation*

From 1 July 2002, parents, grandparents, other relations and friends will be able to contribute to superannuation on behalf of children. Under this measure, contributions of up to \$3,000 per child per 3 year period can be made on behalf of a child.

The proposal in *A Better Superannuation System* limited contributions on behalf of a child to \$1,000 per annum. The changed contribution limit of \$3,000 per child per 3 year period will provide greater flexibility for persons making contributions on behalf of a child and increases the range of superannuation funds that will accept these contributions.

Contributions on behalf of a child will not form part of the taxable income of a superannuation fund or retirement savings account provider, and will not be eligible for the Government co-contribution or attract a tax deduction.<sup>10</sup>

### Higher deduction limits for self-employed persons

#### ***A Better Superannuation System — higher fully deductible amount for superannuation contributions by self-employed persons***

##### *Revenue (\$m)*

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	-10.0	-10.0	-10.0

##### *Explanation*

From 1 July 2002, the fully deductible amount for superannuation contributions by self-employed and other eligible persons will be increased from \$3,000 to \$5,000.

Contributions above the fully deductible amount will continue to be 75 per cent tax deductible with a maximum deduction equal to the taxpayer's age based limit.<sup>11</sup>

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## Superannuation contributions to age 75

***A Better Superannuation System — continuing superannuation contributions to age 75****Revenue (\$m)*

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	..	..	..	..

*Explanation*

From 1 July 2002, working people aged over 70 but less than 75 will be able to make personal contributions to superannuation.

Currently, people aged over 70 cannot make personal contributions to superannuation, although funds can accept mandated employer contributions (generally only those made under an industrial award). This measure will allow these people to contribute to superannuation if they are working at least 10 hours per week. This is consistent with the current treatment of people aged over 65 but less than 70.

This measure does not extend Superannuation Guarantee arrangements to people working past age 70.

Individuals aged over 70 but less than 75, who are making personal superannuation contributions, will not be eligible for an income tax deduction or the co-contribution. Furthermore, employers will only be able to claim a tax deduction for employer contributions made for individuals aged over 70 if they are mandated employer contributions under an industrial award obligation.

The Government will also amend the compulsory cashing standards so that individuals aged over 70 but less than 75 will only be required to cash their superannuation benefits if they are no longer working 10 hours per week.<sup>12</sup>

**Position of significant interest groups/press commentary**

The Association of Superannuation Funds of Australia (ASFA) welcomed the move to require employers to make more regular quarterly payments of super contributions, but criticised the proposal to change the SG threshold from \$450 per month to \$1350 per quarter. According to ASFA, many casual, part-time and seasonal employees will miss out on their super entitlements altogether if they have one or several part-time or casual jobs (below that threshold) in any quarter. Women, who make up 72 per cent of part-time employees, will be hardest hit by this move.<sup>13</sup>

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### ALP policy position

The ALP members of the Senate Select Committee on Superannuation and Financial Services supported the recommendations in the report *Enforcement of the Superannuation Guarantee Charge*, including the recommendation to introduce quarterly SG contributions.

The ALP has indicated that it is unlikely to support the proposal to change the earnings threshold from \$450 per month to \$1350 per quarter. Senator the Hon. Nick Sherry, Shadow Minister for Retirement Incomes and Savings, and Consumer Affairs has said that the Government's proposals will eliminate tens of thousands of casual employees who are currently receiving superannuation, and that Labor will refer it to a Senate committee.<sup>14</sup>

In relation to the cut in the surcharge rate, the Leader of the Opposition the Hon. Simon Crean, MP argued that it benefits the top 3 per cent of income earners. His alternative proposal is outlined below.

Our alternative propositions for the use of the money are these: we can redirect the money earmarked for the few into cutting the superannuation tax for all Australians from the present 15 per cent to 13 per cent; or we can cut the tax to 11 and a half per cent for people over 40 years of age—the age when most people start getting serious about planning for their retirement. The last option would mean a cut of more than 25 per cent in superannuation contributions tax. It would add many thousands of dollars to everyone's retirement income whilst still being economically responsible. It would be a powerful incentive for Australians to invest in their own future, helping us to cope with our future needs. It is a fairer alternative.<sup>15</sup>

### Australian Democrats policy position

The Australian Democrats member of the Senate Select Committee on Superannuation and Financial Services supported the recommendations in the report *Enforcement of the Superannuation Guarantee Charge*, including the recommendation to introduce quarterly SG contributions.

## Main Provisions

### Schedule 1 – quarterly SG Charge and miscellaneous amendments

This schedule has three parts. Part 1 contains the main amendments to the *Superannuation Guarantee (Administration) Act 1992* to introduce quarterly SG contributions. Part 2 contains consequential amendments to legislation other than the SG legislation. Part 3 sets out the application of the amendments in Parts 1 and 2.

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### Part 1: Amendments to *Superannuation Guarantee (Administration) Act 1992*

**Items 1 to 3** amend section 5 to ensure the new method of calculating any SG shortfall (quarterly as opposed to the current method of annually) applies to the Commonwealth.

**Item 14** replaces the definition of 'quarter' with a more detailed definition, namely, a three-month period commencing on the first days of January, April, July and October.

Section 6B of the *Superannuation Guarantee (Administration) Act 1992* contains procedures for the trustees of superannuation fund to provide the Commissioner of Taxation with 'conversion notices,' or statements that they wish to be treated as a defined benefit fund. **Item 20** updates the date of effect of conversion notices to take account of the move to quarterly imposition of superannuation SG.

Section 10 of the *Superannuation Guarantee (Administration) Act 1992* deals with benefit certificates, which are statements written by actuaries certifying that a particular defined benefit superannuation fund complies with the requirements of the Act. **Item 25** updates the date of effect of benefit certificates conversion notices to take account of the move to quarterly imposition of superannuation SG.

**Items 41 to 44** replace the calculation of the maximum contributions base (the maximum SG contribution an employer has to make in respect of an employee per quarter) in **section 15**. This amendment will simplify the indexation of the maximum contributions base in subsequent years.

**Item 48** provides a new method for determining a SG shortfall. The formula replaces the current method of calculating an annual SG liability with a new method of calculating a quarterly SG liability. A new innovation is stipulated in **new subsection 19(2)** that the SG 'charge percentage is 9.' This replaces the phase-in schedules in sections 20 and 21, which by 1 July 2002 will reach the maximum level of 9 per cent. The schedules will be redundant from that date, which is why **item 51** repeals sections 20 and 21.

**Item 116** inserts a **new section 23A** to require employers to report to employees the amount and destination of any SG contributions made to accumulation (or defined contribution superannuation funds) within 30 days of the contribution being made.

Subsection 27(2) excludes employees who earn less than \$450 per month from the SG system. **Item 126** increases this threshold to \$1350 per quarter. This amendment has the potential of excluding many part-time and casual workers from SG. This fact is considered briefly in the Explanatory Memorandum's 'Detailed explanation of the new law,' and the 'Assessment of impacts.'<sup>16</sup>

Under section 35, SG contributions must be paid by 14 August for SG liabilities accrued over the previous financial year. **Items 145, 146 and 150** provide four new deadlines by which quarterly contributions must be paid that is, the 14<sup>th</sup> day of the second month following the end of the quarter.

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**Items 45, 154, 155, 156 and 158** make amendments to ensure that certain obligations previously required to be made annually must now be made annually. Under a system of annual SG contributions, the Act uses the term 'contribution period.' **Items 16, 26 to 40, 49, 52, 54 to 58, 62 to 64, 68, 69, 71, 73 to 75, 77 to 80, 86 to 89, 90, 101, 103 to 105, 108 to 110, 114, and 117 to 122** replace 'contribution period' with references to quarters.

**Item 131** amends the nominal interest component in section 31 so that interest is calculated in a quarter rather than from the beginning of a financial year. **Items 132 to 135** amend section 32 to reduce the penalties imposed for non compliance in line with the shift from an annual to a quarterly regime. **Item 135** reduces the administrative component of any penalty from \$30 to \$20.

## Part 2: Consequential amendments

Part 2 of Schedule 1 of the Bill makes consequential amendments to the following Acts to reflect the quarterly contributions being introduced under Part 1 of Schedule 1:

- *Defence Act 1903*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Superannuation Contributions Tax Imposition Act 1997*, and
- *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997*.

## Part 3: Application and transition provisions

**Item 193** makes the amendments made by Part 1 of Schedule 1 take effect from 1 July 2003. The *Superannuation Guarantee (Administration) Act 1992* continues to apply for SG shortfalls and related matters for years that end before 1 July 2003 as if the amendments in Schedule 1 had not been made.

**Item 194** provides a transitional provision by waiving certain nominal interest or administration components where there is a SG shortfall in either or both of the first two quarters of 2003-04.

**Items 195 and 196** ensure that conversion notices and benefit certificates issued before 1 July 2003 remain valid when the quarterly contribution requirement is introduced.

## Schedule 2 – Amendments related to reduction of the surcharge rate

This schedule has three parts. Part 1 reduces the superannuation contributions and terminations payment surcharge rates by 1/10<sup>th</sup> of their current levels in each of the 3

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income years commencing from 1 July 2002. Part 2 amends the provisions that impose a limit on the maximum amount of surcharge payable by members of constitutionally protected superannuation funds and the maximum reduction of benefits of members of certain unfunded defined benefit superannuation schemes. Part 3 sets out the application of the amendments in parts 1 and 2.

### **Part 1: Amendments related to the reduction of the surcharge rate**

**Item 1** adds a new **subsection 5(1AA)** into the *Superannuation Contributions Tax Imposition Act 1997* (SCT Act) that changes the definitions in a formula used to calculate the superannuation surcharge. This simplifies the calculation of the surcharge over the years in which the surcharge rate is reduced each year. The new terms in the formula do not affect the indexation of the thresholds, only the maximum rate of surcharge levied over the next three financial years.

**Item 3** inserts a new **subsection 5(1) (formula)** into the SCT Act to substitute a new formula for calculating the surcharge to incorporate the new definitions in **item 1**.

**Item 9** adds a new **subsection 5(1A)** into the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* (SCTMCPSF Act) that changes the definitions in a formula used to calculate the superannuation surcharge. This simplifies the calculation of the surcharge over the years in which the surcharge rate is reduced each year. The new terms in the formula do not affect the indexation of the thresholds, only the maximum rate of surcharge levied over the next three financial years.

**Item 11** inserts a new **subsection 5(1) (formula)** into the SCTMCPSF Act to substitute a new formula for calculating the surcharge to incorporate the new definitions in **item 9**.

**Item 17** adds a new **subsection 5(1AA)** into the *Terminations Payment Tax Imposition Act 1997* (TPTI Act) that changes the definitions in a formula used to calculate the superannuation surcharge. This simplifies the calculation of the surcharge over the years in which the surcharge rate is reduced each year. The new terms in the formula do affect the indexation of the thresholds, only the maximum rate of surcharge levied over the next three financial years.

**Item 19** inserts a new **subsection 5(1) (formula)** into the TPTI Act to substitute a new formula for calculating the surcharge to incorporate the new definitions in **item 9**.

### **Part 2: Amendments related to the reduction of the surcharge cap**

Constitutionally protected superannuation schemes have complicated methods of calculating superannuation surcharge, primarily due to the design of such schemes. For members of these schemes, superannuation surcharge liability accumulates in a 'surcharge debt account.' The member's liability is the lesser of the amount in the 'surcharge debt account' and 15 per cent of the employer contribution (reflecting the current maximum

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surcharge rate). Trustees of certain constitutionally protected superannuation funds can reduce the benefits payable to members of such funds by no more than 15 per cent of the employer financed component that accrued after the commencement of the surcharge to discharge a surcharge liability.

The items in this Part 2 enables trustees to reduce this employer component of a benefit by the following amounts:

- 13.5% for the amount that accrued in the 2002-03 financial year
- 12% for the amount that accrued in the 2003-04 financial year
- 10.5% for the amount that accrued in the 2004-05 financial year.

The new reduction amounts are implemented by:

- **Item 24**, which replaces **subsection 6C(3)** of the *Defence Force Retirement and Death Benefits Act 1973*
- **Item 25**, which replaces **subsection 4E(3)** of the *Parliamentary Contributory Superannuation Act 1948*
- **Item 26**, which replaces **subsection 80A(3)** of the *Superannuation Act 1976*
- **Items 27 and 28**, which replace **subsections 4(1) and 4(2)** of the *Superannuation Contributions Tax (Application to the Commonwealth—Reduction of Benefits) Act 1997*
- **Items 29, 30 and 31**, which replace **paragraphs 15(6)(b) and 15(6AA)(d)** of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

## Part 2: Application provisions

**Item 32** states that amendments made in Part 1 of Schedule 2 apply to surcharge in respect of the 2002-03 and subsequent financial years.

**Item 33** states that amendments made by **items 24 to 29** apply in relation to benefits that become payable on or after 1 July 2002. **Item 34** states that the amendment made by **item 30** continues to apply in relation to benefits that become payable before that **item** commences as if the amendment made by that item had not been made. **Item 35** states that the amendment made by **item 31** applies in relation to superannuation funds that cease to be constitutionally protected funds on or after 1 July 2002.

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### Schedule 3 – Deductions for contributions to complying superannuation funds or RSA (particularly for persons aged over 70)

This schedule amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to implement the election promise to enable working people aged over 70 but less than 75 to make personal contributions to superannuation. The new age limit of 75 years will be implemented by amending the *Superannuation Industry Regulations 1994*, whereas the amendments in this Schedule establish the tax status of such contributions.

**Item 1** amends the **subsection 82AAC(1)** of the *Income Tax Assessment Act 1936* by adding a new **Note 3** that a tax deduction might be denied or reduced if the contribution is made more than 28 days after the month in which the employee turns 70.

**Item 2** amends the **subsection 82AAT(1)** of the *Income Tax Assessment Act 1936* by adding a new **Note** that states that a tax deduction might be denied or reduced if the contribution is made more than 28 days after the month in which the employee turns 70.

**Item 3** inserts a new **section 26-80** into the *Income Tax Assessment Act 1997*. Under proposed **section 26-80**, a superannuation contribution will be deductible if the contribution is made more than 28 days after the month in which the employee turns 70. However, an exception to this rule will apply where the contribution is required by an industrial award or to meet SG obligations. This means that if an employee is over 70 years of age, and the employer is required by SG or an award to contribute to a superannuation fund on behalf of that employee, the contributions are tax deductible to the employer.

**Item 4** states that the amendments implemented by **items 1 to 3** apply for the 2002-03 and subsequent income years.

### Schedule 4 – Taxable contributions paid for the benefit of children under 18 years

This schedule amends the *Income Tax Assessment Act 1936* to exempt from the taxable income of a complying superannuation fund those contributions made on behalf of persons under 18 years of age (other than those made by an employer). Section 274 provides that taxable superannuation contributions generally include contributions made by one person for another person. There are a number of exemptions from what are deemed taxable contributions. **Items 1 and 2** amend subparagraph 274(1)(a)(i) and subparagraph 274(1)(ba)(i) to expand these exemptions to include contributions made on behalf of persons under 18 years of age (other than those made by an employer).

**Item 3** makes the exemptions from taxation introduced by **items 1 and 2** apply for the 2002-03 and subsequent income years.

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## Schedule 5 – Increased deduction limits for superannuation contributions

This schedule amends the *Income Tax Assessment Act 1936* to increase the deduction available to the self-employed for personal superannuation contributions. **Item 1** amends subparagraphs 82AAT(2)(a)(i) and (ii). The amendment has two effects: first, it increases the fully tax deductible amount for eligible self employed persons, from \$3000 to \$5000; second, it allows for a 75 per cent tax deduction for superannuation contributions that exceed \$5000 (up to the person's age based limit).

**Item 2** makes the higher deduction limits introduced by **item 1** apply for the 2002-03 and subsequent income years.

## Schedule 6 – Other Amendments

This schedule makes technical amendments to correct legislative oversights arising in a number of Acts that have been passed by the Parliament. The most significant of these amendments is an amendment to the *Bankruptcy Act 1966* to ensure that SG Charge and any related General Interest Charge have a priority in bankruptcy equal to that of salary and wages.

## Concluding Comments

The amendments in this Bill implement a number of the Government's pre-election promises and Budget announcements on superannuation. Few would doubt the merit of the proposal regarding deductions for contributions for persons aged over 70 (Schedule 3), the proposal to make taxable contributions paid for the benefit of children under 18 years (Schedule 4), and increased deduction limits for superannuation contributions for the self employed (Schedule 5). These proposals enable the groups targeted by the measures to increase their retirement income.

In relation to the measures for children under age 18 (Schedule 4), the 2002-03 Budget Announcement introduced a contribution limit of \$3,000 per child per 3 year period. The Bill does not contain any items that introduce this contributions limit. However, the Explanatory Memorandum notes that the Superannuation Industry Supervision Regulations and Retirement Savings Accounts Regulations will be amended to enable superannuation funds and RSA to accept such contributions, but is silent on whether the contributions limit will be contained in these amendments to Regulations. The intended location of the contribution limit has not been provided. This may be a legislative oversight, or something that will be included in Regulations.

The introduction of quarterly superannuation contributions (Schedule 1) makes mandatory a practice conducted by 85 per cent of employers. A down-side for employers is increased reporting requirements, namely, the requirement to inform employees when and where

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superannuation contributions were made. The biggest change introduced by this measure is the expansion of the exemption from SG from employees earning \$450 per month to \$1350 per quarter. The effect of expanding the exemption will be to exclude many part-time and casual workers from the SG system. It is arguable that this is an appropriate trade-off for employer's increased burden in other areas. However, a contrary case could be argued that this is an alternative means of the Government implementing its 1996 election promise (but never implemented) to employees earning between \$450 to \$900 per month to receive wages or salary in lieu of SG. This proposal was called 'opting out of the SG system,'<sup>17</sup> and has the following chief advantages:

- reduced administrative costs for employers, and
- for low income earners, more cash in the hand and no concern keeping track of small superannuation accounts.

Even though, 'opting-out' was voluntary, the effect of expanding the SG exemption is the same, if not harsher since employees will not have the extra cash in the hand promised under 'opting –out.'

It is arguable that reducing the surcharge rates is a step in the right direction, or a small concession to those who would prefer to see it abolished altogether. Nonetheless, the superannuation contributions and termination payments surcharge are important sources of revenue for the Government. In 2000-01 surcharge collections alone amounted to almost \$700 million.<sup>18</sup> These surcharges were introduced as 'equity measures' to make the level of superannuation taxation concessions available to high income earners more comparable to those available to middle and lower income earners. The amendments in Schedule 2 undermine this purpose by increasing the level of tax concession available to high income earners. Despite amending the surcharge rates, the surcharge legislation remains on the statute books. Many of the witnesses to the 23<sup>rd</sup> report of the former Senate Select Committee on Superannuation provisions will still be dealing with the complex administration, clumsy assessment procedures and on-going administration costs that are born not just by high income earners, but all superannuation fund members.<sup>19</sup>

## Endnotes

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- 1 Access this document via the link:<http://www.aph.gov.au/library/pubs/rn/2001-02/02rn26.pdf>.
- 2 CCH Australia, *Australian Master Superannuation Guide 2000-01*, p. 428.
- 3 *Superannuation Industry Supervision Regulations 1994*, Regulation 7.04 (1)(b).
- 4 *Australian Master Superannuation Guide*, p. 42.

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- 5 Liberal Party of Australia, 5 November 2001.
- 6 Legislation to enable non-residents who permanently depart Australia to access their superannuation was passed on 12 March 2002. Details of the relevant Bill can be accessed via *Bills Digest No. 99 2001-02 Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002* (<http://www.aph.gov.au/library/pubs/bd/2001-02/02bd099.pdf>).
- 7 The Hon. Peter Costello, MP, Treasurer, *Budget Paper No. 2: Budget Measures 2002-03*, Canberra, 14 May 2002, pp. 13–14.
- 8 Senator the Hon. Helen Coonan, Minister for Revenue and Assistant Treasurer, *A Better Superannuation System - Quarterly Superannuation Guarantee Contributions*, Press Release C49/02, 14 May 2002.
- 9 *Budget Paper No. 2: Budget Measures 2002-03*, p. 14.
- 10 *ibid.*, p. 16.
- 11 *ibid.*, p. 13.
- 12 *ibid.*, pp. 12–13.
- 13 Association of Superannuation Funds of Australia, *New Rule Means Thousands Left Out Of Super*, Press Release, 15 May 2002.
- 14 The Hon. Simon Crean and the Hon. Nick Sherry, *Superannuation, Federal Budget, Pharmaceutical Benefits Scheme*, Doorstop Interview, Canberra, 17 May 2002.
- 15 The Hon. Simon Crean, MP, House of Representatives, *Debates*, 16 May 2002, Second Reading Speech, Appropriation Bill (No. 1) 2002-03, p. 2391.
- 16 See page 15; and the sections on pages 26-27 on the costs to employers, government, and the ATO. The examination of the costs to employees receive cursory coverage compared with other stakeholders.
- 17 See The Hon. Peter Costello, MP, Treasurer, *Budget Paper No. 2: Budget Measures 1997-98*, Canberra, 13 May 1997, pp. 191–192.
- 18 Commissioner of Taxation, *Annual Report 2000-01*, p. 23.
- 19 See the 23rd report of the former *Senate Select Committee on Superannuation, Superannuation Surcharge Legislation*, especially Chapter 4: The Proposed Collection Mechanism.

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