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No. 16 2002–03

## Superannuation Legislation Amendment Bill 2002

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No. 16 2002–03

Superannuation Legislation Amendment Bill 2002

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15 August 2002

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# Superannuation Legislation Amendment Bill 2002

**Date Introduced:** 27 June 2002

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** Royal Assent, however, the provisions and measures have various application dates, which are described below.

## Purpose

The purpose of this Bill is to:

- make amendments consequential to the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002, and
- reduce the superannuation surcharge rates by one-tenth of their current level over 3 years.

## Background

Background to the Government co-contribution for low income earners

For general information on the Government co-contribution for low income earners, refer to the Bills Digest for the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002.

Background to reducing the superannuation surcharge rates

General information on reducing the superannuation surcharge rates was provided in the Bills Digest for the original Bill for this measure, Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002.<sup>1</sup>

During debate on the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002 on 27 June 2002, the Government withdrew the amendments that reduced the superannuation surcharge rates.<sup>2</sup> These amendments have been reintroduced in **Schedule 2** of this Bill.

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### 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. For the 2002-03 income year, the surcharge is phased in over the income levels of \$90 527 to \$109 924 with the surcharge increasing by one per cent for each additional \$1295 of income from \$90 527.

### 2001 Election: Coalition Promises on Superannuation

During the 2001 election campaign, the Government released *A Better Superannuation System*<sup>3</sup> containing a number of proposed reforms to superannuation. This document contained 13 election promises. One of these promises was to 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) with a date of effect of 1 July 2002

### 2002-03 Budget announcement

The 2002-03 Budget provided further details about the implementation of these proposals. This section provides the Budget announcements on this measure.

#### *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.

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>4</sup>

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## Main Provisions

Schedule 1 – Amendments consequential on the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002.

**Item 1** inserts a new **paragraph 82AAS(2)(b)** into the *Income Tax Assessment Act 1936*. The Superannuation (Government Co-contribution for Low Income Earners) Bill 2002 provides circumstances when a Government co-contribution is payable. One circumstance is when a person has employer-supported superannuation and is not an 'eligible person' as defined by **section 82AAS** of the *Income Tax Assessment Act 1936*. The existing definition of 'eligible person' excludes persons receiving superannuation support from a spouse, relative, friend or employer. The Government's co-contribution is to be paid to low income earners who also had employer superannuation support. The current definition of 'eligible person' would make the co-contribution payable to a wider range of people. The amendment introduced by this item widens the definition of 'eligible person' and therefore narrows the test for 'not an eligible person' to ensure that only low income earners who also had employer superannuation support should receive a Government co-contribution.

**Item 3** repeals **Subdivision AAC of Division 17 of Part III** of the *Income Tax Assessment Act 1936*, and therefore the low income superannuation rebate for personal superannuation contributions by low income earners (the rebate being replaced by the Government co-contribution).

**Items 4 to 6** amend the *Income Tax Assessment Act 1936* to ensure that Government co-contributions are not included in the taxable income of superannuation entities, nor subject to the superannuation surcharge.

**Items 7 and 8** amend the *Income Tax Assessment Act 1997* to ensure that Government co-contributions paid to a person directly, their legal representatives or the superannuation holding accounts reserve (SHAR) are exempt from tax.

The rules of one of the two defence personnel superannuation schemes (the Defence Force Retirement and Death Benefits Scheme) prevent it from accepting Government co-contribution payments for its members. **Item 9** amends the *Military Superannuation and Benefits Act 1991* to authorise the Minister for Defence to authorise the Military Superannuation Benefits Board to accept Government co-contribution payments for members of the Defence Force Retirement and Death Benefits Scheme.

**Items 10 to 15** amend the *Small Superannuation Accounts Act 1995* to enable the SHAR to hold Government co-contribution payments. The amendments include:

- a definition of Government co-contribution (**item 12**)

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- the circumstances in which the Commissioner of Taxation can transfer a persons SHAR balance (including Government co-contribution) to another superannuation entity (**item 14**), and
- the handling and crediting of deposits to, and withdrawals from, SHAR (**item 15**).

**Items 16 and 17** amend the *Superannuation Act 1976* to redefine the definition of 'transfer amount' to enable payment of an individual member's Government co-contributions to the Commonwealth Superannuation Scheme.

**Items 18 to 21** amend the *Superannuation Contributions Tax (Assessment and Collections) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collections Act 1997* to clarify that Government co-contributions do not form part of the surchargeable contributions of a defined benefit superannuation scheme.

**Items 22 and 23** amend the *Superannuation (Resolution of Complaints) Act 1993* to enable persons to complain to the Superannuation Complaints Tribunal about Government co-contribution statements provided by superannuation entities to the Commissioner of Taxation.

**Item 24** amends the *Taxation Administration Act 1953* to allow the Commissioner of Taxation to impose a general interest charge for the late payment of repayment of overpaid amounts of Government co-contribution.

### Commencement

**Item 25** provides that the amendments made by **schedule 1** apply in relation to contributions made to complying superannuation funds and retirement savings accounts on or after 1 July 2002.

**Items 16 and 17** commence on the latter of Royal Assent, or immediately after the commencement of item 48 of schedule 1 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 2002* (that is, on 1 July 2002).

All other items in **schedule 1** commence the day on which the Bill receives the Royal Assent.

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

### Part 1—Amendments related to the reduction of the surcharge rate

**Item 1** adds a new **subsection 5(1)** 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

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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 not 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<sup>5</sup> 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 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 of Schedule 2** enable 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.

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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) and 15(6A)(b)** of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

### Part 3—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.

## Concluding Comments

The amendments in **schedule 1** of this Bill contain a miscellany of generally beneficial but minor consequential amendments. Most of these amendments involve the treatment of Government co-contributions under taxation legislation.

The amendments in **schedule 2** reduce the superannuation surcharge rates by one-tenth of their current level over 3 years. These amendments are the subject of some controversy. The Government is implementing its election promises to reduce the superannuation surcharge. Apart from *2002-03 Budget Papers*, the Government has not produced any economic analysis of the benefits of this proposal. The Government could correctly argue that such arguments have been made elsewhere.<sup>6</sup>

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Notwithstanding this omission, the inescapable conclusion is that this Bill will narrow the tax base and reduce the tax burden of high income earners by \$370 million over the next four years. 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>7</sup> This Bill will reduce these collections significantly. The 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. The Government has yet to justify the vertical inequity of this measure (ie, why high income earners should be treated to this tax cut and not lower income earners).

The Leader of the Opposition, the Hon. Simon Crean, MP, argued that this proposal 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>8</sup>

It is arguable that reducing the surcharge rates is a step in the right direction. Much has been written about its complexity, poor design, and effect on the incentive for employees to save for their retirement. At the very least, the measures in the Bill are a small concession to those who would prefer to see the surcharge abolished altogether.

If the Parliament passes this Bill, the surcharge legislation will remain on the statute books. Many of the witnesses to the 23rd 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>9</sup>

## Endnotes

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- 1 <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd161.pdf> .
- 2 See Senator the Hon. Helen Coonan, Senate, *Debates*, 27 June 2002, p. 2963.
- 3 Liberal Party of Australia, 5 November 2001.

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- 4 The Hon. Peter Costello, MP, Treasurer, *Budget Paper No. 2: Budget Measures 2002-03*, p. 14.
- 5 The *Income Tax Assessment Act 1936* section 267(1) defines these as "a fund that is declared by the regulations to be a constitutionally protected fund." These are State superannuation funds that cannot be taxed under the Commonwealth's taxing power (see *South Australia v The Commonwealth* 92 ATC 4066). The funds are listed in Income Tax Regulation 177, schedule 14.
- 6 For example, the 23rd report of the former Senate Select Committee on Superannuation, *Superannuation Surcharge Legislation*.
- 7 Commissioner of Taxation, *Annual Report 2000-01*, p. 23.
- 8 The Hon. Simon Crean, MP, House of Representatives, *Debates*, 16 May 2002, Second Reading Speech, Appropriation Bill (No. 1) 2002-03, p. 2391.
- 9 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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