

# Superannuation Update Notes

October 2003 – September 2004

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As a guide to readers the following rating system has been applied at the front of the title of an article (the context being the section within which the article appears):

- \*\*\* indicates the item is in the “must read category” (legislation will not receive \*\*\* rating unless it has received Royal Assent.)
- \*\* indicates the item is in the “should read category”.
- \* indicates the item is in the “read if you have plenty of time” category.

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## 1. SUPERANNUATION

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### 1.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES

#### (a) Assessable & Deductible Items

Nil

#### (b) Policy & Administration

##### (1) \* Government Announces Tax Changes for Overseas Super (Coonan)

*Source (471999) Senator the Hon Helen Coonan, Minister for Revenue and Assistant Treasurer, 30 September 2003 (C092/03)*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2003/092.asp?pf=1>

Significant changes to the taxation of superannuation transfers into Australia will have the effect that growth in offshore superannuation benefits transferred into Australia more than six months after the individual becomes a resident will be treated as a taxable contribution in the superannuation fund, and thus taxed at a concessional rate.

Superannuation accumulated overseas and transferred into Australia within six months of the individual taking up residency remains tax free on transfer.

Currently individuals pay tax on the growth amount at their marginal rates of tax without having access to their superannuation benefit.

Legislation to give effect to the change will be brought forward as soon as possible.

##### (2) \* Draft Superannuation Splitting Regulations Released (Coonan)

*Source (472017) Senator the Hon Helen Coonan, Minister for Revenue and Assistant Treasurer, 13 October 2003 (C096/03)*

<http://www.treasurer.gov.au/atr/content/pressreleases/2003/096.asp>

Draft regulations to allow splitting of superannuation contributions have been released for public comment.

The draft regulations and the legislative amendments contained in the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003, currently before Parliament, provide for an 'annual split' model. This means, following the end of each financial year, a fund member can request that contributions made in the previous financial year be split with their spouse.

##### (3) Safer Super for All Australian Worker (Coonan)

*Source (489600) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C110/03 27 November 2003*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2003/110.asp?pf=1>

Key measures to provide Australian workers with a safer superannuation system have been introduced into Parliament in the Superannuation Safety Amendment Bill. (See legislation summary below).

The Bill requires:

- ◆ trustees of superannuation funds regulated by APRA to be licensed;
- ◆ the preparation of risk management plans; and
- ◆ enhanced reporting requirements to increase the flow of information to APRA.

Reforms contained in the Bill will commence on 1 July 2004, with a two-year transition period.

A number of the reforms in the Bill will be underpinned by regulations, including operating standards. The Government will consult with industry on the details of the regulations and operating standards prior to their finalisation.

#### (4) Super Co-Contribution Regulations Open For Public Comment

*Source (495391) Senator The Hon Helen Coonan, Minister for Revenue and the Assistant Treasurer C118/03 12 December 2003*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2003/118.asp>

Draft regulations to give effect to the Government's superannuation co-contribution for low income earners measure have been released for public comment.

This first instalment of draft regulations expected to be gazetted as early as possible in 2004, contain amendments to the Corporations Regulations 2001, Superannuation Industry Supervision Regulations 1994, and Retirement Savings Account Regulations 1997, as well as new regulations Superannuation Government Co-contribution for Low Income Earners Regulations 2004.

The proposals include detail about:

- ◆ the content, form and timing of additional reporting for co-contribution purposes by superannuation providers to the Australian Taxation Office (ATO) and one another;
- ◆ payment dates and interest rates that apply to late payments by the ATO; information to be reported by the ATO and superannuation providers when payments are made and overpayment recoveries are sought;
- ◆ information to be reported by superannuation providers to their members about co-contribution payments; acceptance and treatment of co-contribution payments by superannuation providers; and,
- ◆ information required when repayment of overpaid amounts to the ATO are necessary.

A second instalment of draft regulations is currently being developed. They will deal with the content of Ministerial reports to Parliament and the payment destination rules the ATO will use to prioritise the end location for co-contribution payments where multiple accounts exist for a member.

#### (5) \*\*\* Some Accountants to be able to provide advice in relation to an SMSF

*Source (500456) The Hon Peter Costello MP Treasurer of the Commonwealth of Australia No. 008 9 February 2004*

**URL:** <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/008.asp?pf=1>

A new regulation will provide relief from the Financial Services Reform Act 2001 (FSRA) for accountants who provide advice to their clients on the decision to acquire or dispose of an interest in a self managed superannuation fund (SMSF).

A 'recognised accountant' would be exempted from the previous restriction in Corporations Regulation 7.1.29 that they not make 'a recommendation that a person acquire or dispose of a superannuation product' in relation to a SMSF. The exemption will not cover the provision of advice about the particular investments that a SMSF may hold and such advice will remain subject to FSRA licensing.

Editor:

A 'recognised accountant' for the purposes of the regulation will be:

- ◆ members of CPA Australia who are entitled to use the post-nominals "CPA" or "FCPA", and are subject to and comply with CPA Australia's continuing professional education requirements;
- ◆ members of The Institute of Chartered Accountants in Australia (ICAA) who are entitled to use the post-nominals "CA", "ACA" or "FCA", and are subject to and comply with ICAA's continuing professional education requirements;
- ◆ members of the National Institute of Accountants (NIA) who are entitled to use the post nominals "PNA", "FPNA", "MNIA" or "FNIA", and are subject to and comply with the NIA's continuing professional education requirements.

**(6) Low Income Earners' Matched Super Contributions (Senator Coonan)**

*Source (508282) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C006/04 20 February 2004 (C006/04)*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/006.asp?pf=1>

Workers earning up to \$27,500, who make eligible personal superannuation contributions on or after 1 July 2003, will have those contributions matched dollar for dollar to a maximum of \$1,000 annually.

The first instalment of regulations enabling the co-contribution measures and containing amendments to the Corporations Regulations 2001, Superannuation Industry Supervision Regulations 1994, and Retirement Savings Account Regulations 1997 as well as new regulations Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004 were gazetted on 20 February 2004.

The regulations detail:

- ◆ the content, form and timing of additional reporting for co contributions purposes by superannuation providers to the Australian Taxation Office (ATO) and one another;
- ◆ payment dates and interest rates that apply to late payments by the ATO;
- ◆ information to be reported by the ATO and superannuation providers when payments are made and overpayment recoveries are sought;
- ◆ information to be reported by superannuation providers to their members about co contribution payments;
- ◆ acceptance and treatment of co-contribution payments by superannuation providers; and,
- ◆ information required when repayment of overpaid amounts to the ATO are necessary.

**(7) Changes to the Retirement Income System (Costello)**

*Source (508290) The Hon Peter Costello MP Treasurer of the Commonwealth of Australia No.011 25 February 2004*

<http://www.treasurer.gov.au/tsr/content/pressreleases/2004/011.asp?pf=1>

The Treasurer has released a policy paper outlining changes to the retirement income system. The change relates to the age pension and Superannuation Guarantee savings.

From 1 July 2005 people will be able to access their superannuation as a non-commutable income stream once they have reached their preservation age. The work test for people aged between 65 and 74 will be changed from a weekly to an annual test.

Currently, certain income streams qualify for a higher reasonable benefit limit and a social security assets test exemption. Complying income streams status (which provides for a higher RBL limit and a social security asset test exemption) will be extended to market-linked income streams purchased from 20 September 2004, which satisfy particular requirements. These new products will require an orderly draw down of capital over the life expectancy of the purchaser and cannot be commuted.

The current 100 per cent assets test exemption for purchased complying income streams will be reduced to a 50 per cent exemption for products purchased on or after 20 September 2004, although complying income streams purchased before this date will continue to be fully exempt from the assets test.

Providers of allocated pensions will no longer be required to obtain an actuarial certificate for tax purposes.

Other measures:

- ◆ will simplify the Superannuation Guarantee notional earnings bases,
- ◆ require superannuation funds to cash benefits for people once they reach age 75, and
- ◆ preserve employers eligible termination payments which are rolled over into a superannuation fund, approved deposit fund or retirement savings account.

**(8) Government claims to boost safety for APRA super funds (Coonan)**

*Source (518531) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C017/04 31 March 2004*

**URL:** <http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/017.asp?pf=1>

Under the legislation to reduce superannuation fund losses resulting from theft or fraudulent conduct, trustees of superannuation funds regulated by APRA will be licensed and required to prepare risk management documentation and comply with enhanced reporting requirements to increase the flow of information to APRA. The reforms will be underpinned by appropriate enforcement powers for APRA.

The reforms to be introduced by the Bill will commence on 1 July 2004, with a two year transition period.

**(9) \*\* Draft super co-contribution regulations open for public comment (Coonan)**

*Source (529355) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C026/04 4 May 2004*

**URL:** <http://www.treasurer.gov.au/atr/content/pressreleases/2004/026.asp?pf=1>

Draft amending regulations which give effect to the Government's superannuation co-contribution for low income earners measure were released for public comment on 3 May 2004.

The draft regulations contain amendments to the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* and to the *Superannuation Industry (Supervision) Regulations 1994*.

The regulations detail the payment destination rules that the Commissioner will use to determine where to pay a Government co-contribution, for example in the case where a member has multiple accounts.

**(10) \*\*\* Taxation and Superannuation Compliance (Costello)**

*Source (529360) The Hon Peter Costello MP Treasurer of the Commonwealth of Australia No.040 11 May 2004*

**URL:** <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/040.asp?pf=1>

The ATO will receive an additional \$216.4 million over four years to address five key compliance areas:

- ◆ Employer obligations;
  - (PAYG) withholding;
  - superannuation guarantee; and
  - fringe benefits tax.
- ◆ Compliance of businesses with turnover between \$2 million and \$100 million
  - tax performance review activity will increase;
  - capital gains tax compliance and losses will also be targeted.
- ◆ Individuals Market for Capital Gains Tax, Rental Deductions, and High Risk Refunds
  - major review of existing capital gains tax and rental investment education products.
- ◆ Leveraging Compliance through Tax Agents
  - increased focus on agents where there is a high risk of over claiming by their clients and poor return preparation quality controls.
- ◆ Superannuation
  - expanded audit coverage of self-managed superannuation funds.
  - 'lost' superannuation entitlements.
  - superannuation surcharge compliance.

**(11) \*\* Boosting Retirement Savings (Costello)**

*Source (529369) The Hon Peter Costello MP Treasurer of the Commonwealth Australia No. 029 11 May 2004*

*URL: <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/029.asp?pf=1>*

From 2004-05, the maximum Government co-contribution will be increased from \$1,000 to \$1,500, to match a \$1,000 personal contribution. The maximum Government co-contribution of \$1,500 will be available to all employees who make personal contributions with incomes below \$28,000 (previously \$27,500). Above this amount, the maximum co-contribution will reduce by 5 cents for each dollar of income to phase out completely at \$58,000 (currently \$40,000).

The superannuation surcharge rate will be lowered to 12.5 per cent in 2004-05, 10 per cent in 2005-06 and 7.5 per cent for 2006-07 and following years.

**(12) \*\* The Integrity of the Superannuation System (Coonan)**

*Source (533116) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C038/04 11 May 2004*

*<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/038.asp>*

Changes to the superannuation laws will target tax avoidance arrangements used primarily by small and non-arms length superannuation funds.

These changes will address:

- ◆ schemes involving the forfeiture of superannuation benefits;
- ◆ contributions to reserve accounts; and
- ◆ the use of defined benefit funds and defined benefit pensions.

The prudential standards that apply to funds that offer defined benefit arrangements including pensions will be changed to ensure that these funds have the capacity to provide these benefits. These funds will be required to have at least 50 defined benefit members.

Small funds will continue to be able to offer to their members account-based pensions such as allocated pensions and the new market-linked income stream. They will also be able to provide defined benefit pensions where these are purchased through a life company.

The changes will not impact on existing defined benefit funds or existing funds paying a defined benefit pension.

**(13) \* Labor - Selling Australia's Super Savings Short (Coonan)**

*Source (533122) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C044/04 14 May 2004*

*<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/044.asp?pf=1>*

Labor has flagged it will oppose Government superannuation reforms.

Senator Coonan says the Government's super co-contribution could add \$106,000 to a low-income earner's real retirement balance over a 30 year working life while Labor's proposal to stick with a two per cent cut to the contributions tax would only add \$3000 in real terms to a worker's super account over their working life.

**(14) \*\*\* Integrity Measures for DIY Funds to be Clarified (Coonan)**

*Source (537112) Senator the Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C047/04 1 June 2004*

*<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/047.asp>*

The ATO and Treasury officials met with industry on 31 May 2004 to address concerns arising from moves to improve the integrity of the superannuation system that particularly affect do-it-yourself super funds.

A number of issues were raised including the need for more certainty surrounding the grandfathering provisions in the integrity regulations that were gazetted on May 11 2004.

Both the ATO and APRA have committed to issuing clarifications that outline the conditions of the grandfathering arrangements for those currently offering lifetime and life expectancy pensions in their DIY funds.

The Government recognised that there may be some transitional issues that affect people who want to retire and provide a complying pension in their DIY fund before September 20, when the new market-linked pension product will become available.

### **(15) \*\*\* New Complying Market Linked Pension (Coonan)**

*Source (543717) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C051/04 16 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/051.asp?pf=1>

Senator Coonan has released the proposed design features of the new market linked income stream which will be available from 20 September this year and which will allow people in DIY funds to retain control of their capital and for payments to be made to dependants in the event of premature death.

#### ***Features of Market Linked Income Streams***

Market linked income streams will offer tax concessions such as:

- ◆ a 50 per cent social security assets test exemption.

As a complying pension, market linked pensions are eligible for the higher pension reasonable benefit limit of \$1,176,106 and for a 50 per cent asset test exemption.

#### ***Flexible Term***

The market linked pension provides a complying pension with flexibility over the term:

- ◆ A person will be able to choose a term between their life expectancy and their life expectancy if they were five years younger.
- ◆ The term can also be based on the spouse's life expectancy (or the spouse's life expectancy if they were 5 years younger). This can substantially extend the term of the pension.
- ◆ Example: Bob is aged 65 and his wife Jane is aged 60. Bob retires and purchases a market linked pension. His term options are:
  - ◆ A male aged 65 can choose a term between 17 and 21 years (the life expectancy of a 65 and 60 yo male respectively).
  - ◆ Alternatively, using his wife's life expectancy, Bob can choose a term between 25 and 29 years.

#### ***Investment Choice***

Market linked pensions offer the same investment choice as an allocated pension. There are no specific restrictions on investments, aside from limits on superannuation funds more broadly. Market linked pensions provide a complying pension with investment choice. For example, it allows DIY funds to manage their own assets.

People who are risk averse can invest in fixed interest assets to provide a stable income stream that resembles a life expectancy pension. Alternatively, people who want the opportunity for higher returns can invest in equities and other growth oriented investments.

#### ***Simplicity***

The market linked pension is a simple, account based pension product that can be offered by any superannuation fund, including a DIY fund.

It offers a complying pension that does not require the involvement of an actuary. This will reduce the cost to retirees and increase retirement income.

#### ***Drawdown***

The payment factors set out in regulations will extinguish the capital over the term of the product.

The factors are also designed so that the person will receive higher levels of income over time (subject to investment returns).

**Commutation**

The pension can be commuted as follows:

- ◆ within the first 6 months,
- ◆ upon death,
- ◆ to purchase another complying pension,
- ◆ to pay a surcharge liability, and
- ◆ to effect a payment split under family law.

**Treatment of capital upon death**

A market linked pension is commutable on death with the remaining assets paid to a spouse, dependant or estate.

This is the same treatment that applies to life expectancy pensions.

If the term of the pension was based on the life expectancy of a spouse, the pension cannot be commuted on death until the death the surviving spouse.

**(16) \*\* Employees to Control their Superannuation (Coonan)**

*Source (543720) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C053/04 21 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/053.asp?pf=1>

The Government has negotiated an agreement with the Australian Democrats to give employees the right to choose their own superannuation fund (Choice of Fund).

The Government will:

- ◆ establish a five person advisory committee to formulate an education campaign for Choice; and
- ◆ commit a further \$2 million to a consumer information centre on top of the \$14 million already earmarked for education campaigns for the introduction of Choice.
- ◆ regulate against super funds providing 'kick backs' to employers or unions;
- ◆ monitor and report on super fees and charges for at least five years;
- ◆ consult with industry before prescribing the characteristics and minimum level of insurance in regulations.

If an employee does not choose their own super fund, an employer will be required to pay super contributions into a fund that offers life insurance cover.

**(17) \*\*\* Changes to DIY Integrity Rules (Coonan)**

*Source (543723) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C054/04 23 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/054.asp?pf=1>

New integrity measures for SMSF's will enable SMSF's to pay a new complying market linked income stream and the complying market linked income stream will provide an alternative to complying lifetime and life expectancy pensions for most DIY fund members.

The complying market linked income stream:

- ◆ will be available to funds with less than 50 members;
- ◆ will provide the same legitimate tax concessions as defined benefit pensions including the higher pension reasonable benefit limit (RBL) of \$1,238,440;
- ◆ will qualify for a 50 per cent asset test exemption;
- ◆ will provide investment choice and the same investment flexibility as the popular allocated pension, offering the potential for higher investment returns over time;

- ◆ has been developed to provide for a life expectancy term that is more generous and flexible;
- ◆ will not require an actuary to establish and regularly review the market linked income stream;
- ◆ the balance of the income stream can be paid to a spouse, dependant or the estate on the death of the member.

### **Transition**

The Government will amend the gazetted regulations to allow SMSF fund members to continue to commence complying lifetime and life expectancy pensions until 30 June 2005.

A person who was an SMSF members on May 11 2004 and who retires will now have until 30 June 2005 to access lifetime and life expectancy pensions from their fund.

### **Review**

The Government will conduct a review to be finalised by April 2005, into the safety and tax avoidance risks of defined benefit pensions. The review will examine the continued demand for complying defined benefit pensions and whether such a product can feasibly be provided by a small fund in a manner that is not detrimental to the integrity of the retirement income and tax system.

## **(18) \*\* Changes to Employee Superannuation (Coonan)**

*Source (543724) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C055/04 23 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/055.asp?pf=1>

Employees will be given the right to choose where they invest their superannuation savings.

Some employers already offer employees choice of fund and choice has been operating successfully in Western Australia for many years.

From 1 July 2005 employers:

- ◆ will have to satisfy the new choice of fund obligations;
- ◆ must give their employees choice unless employees who are covered by state awards or have entered into certified agreements or Australian Workplace Agreements that specify the superannuation fund;
- ◆ will have to give their employees a Standard Choice Form which will advise them of the important matters they should consider before they exercise choice;
- ◆ where an employee does not choose a fund, will continue to make contributions to same fund as they do now, provided that fund offers a minimum levels of insurance cover;
- ◆ do not have to accept a choice election from an employee if the employee has previously chosen a fund within the past 12 months or if the employee provides insufficient written evidence (presumably of the fund's willingness to accept the employee's contributions).

From 1 July 2005, employees:

- ◆ will have a greater choice as to which superannuation fund their employer must pay their compulsory superannuation contributions;
- ◆ can choose a fund which provides lower fees and charges, ethical investments or other benefits they want from their fund;
- ◆ will be required to provide their employer with certain information about their chosen fund and written evidence that their chosen fund will accept their employer's contribution.

The ATO will develop a Standard Choice from which employers can give to their employees.

The ATO matches lost super with members by using tax file numbers and also operates Supermatch, a website for super funds to find lost super on behalf of their members.

**(19) \*\* Superannuation Surcharge Error (Coonan)**

*Source (543725) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C057/04 25 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/057.asp?pf=1>

Independent Senator Shayne Murphy made an error in the drafting of an amendment to the Superannuation Budget Measures Bill intended to reduce the superannuation surcharge to 10 per cent in 2006-07 as opposed to the Government's proposal to reduce the surcharge to 7.5 per cent in 2006-07.

The Government has put in place steps to allow Senator Murphy to correct his amendment.

Editor:

The drafting error had the effect of removing the surcharge completely after 2006-07.

**(20) \*\* Super reforms for Australian workers (Coonan)**

*Source (545260) Senator The Hon Helen Coonan, Minister for Revenue and the Assistant Treasurer (C05/04) 27 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/058.asp>

From 1 July 2004:

- ◆ Low income earners earning up to \$28,000 who contribute to their super will receive an extended Government co-contribution of \$1.50 for every dollar contributed up to \$1500.
- ◆ Workers earning up to \$58,000 (previously \$40,000) will receive a co-contribution if they contribute to their super.

Editor:

Co-contributions will not apply to contributions effected through salary sacrifice.

**(21) \*\* Funding Boosted for Regulators (Coonan)**

*Source (545273) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C060/04 29 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/060.asp>

Funding for APRA, ASIC and ATO will be boosted in 2004-05 by increasing the levies payable by indemnity participants.

For authorised deposit-taking institutions (ADIs), other than foreign bank branches and specialist credit card institutions, the maximum levy amount payable increases to \$1,182,000 and the rate payable on assets remains unchanged at 0.011 per cent.

Within the ADI sector, foreign bank branches and specialist credit card institutions will continue to be levied at a rate of 0.0055 per cent up to an increased maximum levy amount of \$591,000. This levy rate reflects that their supervision in Australia is less intensive than for other ADIs. In the case of foreign bank branches, it also reflects their ineligibility to accept retail deposits and the additional supervision provided by home country supervisors.

For the superannuation sector:

- ◆ the maximum levy amount and the levy rate increase to \$99,000 and 0.042 per cent respectively;
- ◆ the minimum levy amount remains unchanged at \$600.

Retirement savings account providers and non-operating holding companies have had no change to their levy obligations.

**(22) \*\* July 1 Super Changes For Australian Workers (Coonan)**

*Source (545274) Senator The Hon Helen Coonan - Minister for Revenue and the Assistant Treasurer C061/04 30 June 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/061.asp>

From 1 July 2004:

- ◆ the superannuation surcharge will be reduced from 14.5 per cent to 12.5 per cent and will be further reduced to 10 per cent from 1 July 2005;
- ◆ all Australians aged under 65 will be able to contribute to their superannuation whether they are working or not;
- ◆ those between 65 and 74 who work at least 40 hours in a consecutive period of 30 days;
- ◆ people who turn 75 will be required to access their superannuation and to preserve employer Eligible Termination Payments which are rolled over into superannuation;
- ◆ the tax on transfer of overseas superannuation will be reduced; and
- ◆ people who are currently 75 or who turn 75 before 1 July 2004 will not be affected.

**(23) Super Guarantee Reporting Made Simpler For Small Business (Coonan)**

*Source (547842) C063/04 6 July 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/063.asp>

The reporting rules for Superannuation Guarantee (SG) payments have been simplified for small business.

While employers will still be required to pay quarterly SG contributions to their employees, from 1 January 2005 employers will no longer have to provide SG reports to employees.

Superannuation funds currently provide at least annual reports to members and there are a number of provisions in Australian workplace legislation and awards that require some employers to report superannuation contributions on pay-slips.

**(24) \* Super Safety Net Expanded (Coonan)**

*Source (550664) Senator The Hon Helen Coonan Minister for Revenue and the Assistant Treasurer C065/04 7 July 2004*

<http://assistant.treasurer.gov.au/atr/content/pressreleases/2004/065.asp?pf=1>

Access to financial assistance for people whose superannuation is lost as a result of fraud or theft has been expanded following the release of a review of the operation of Part 23 of the SIS Act.

The Act will be amended so financial assistance, to a maximum of 90% of the actual loss, may be granted to individual members of an eligible fund who transfer to another eligible fund or a self-managed superannuation fund after a loss is suffered.

**(25) \*\* Terms of Reference for Review into DIY Super (Brough)**

*Source (551605) The Hon Mal Brough Minister for Revenue and the Assistant Treasurer No.001 05 August 2004*

<http://assistant.treasurer.gov.au/mtb/content/pressreleases/2004/001.asp?pf=1>

The government recently announced the terms of reference for a review into the provision of defined benefit pensions by DIY and other small superannuation funds.

A number of concerns with the provision of defined benefit pensions in small superannuation funds, including:

- ◆ access to unintended tax and social security benefits, particularly from the use of 'RBL compression';
- ◆ their use for estate planning purposes in the superannuation system outside what was intended and not available to other superannuation fund members; and

- ◆ whether a small number of members can effectively pool risk and guarantee income payments over the term of the pension.

The review will examine options for small superannuation funds to provide pensions to their members, including consideration of:

- ◆ design features of prospective pensions that address the Government's concerns and that could attract complying status for taxation and social security purposes.
- ◆ management of investment, liquidity and mortality risks.
- ◆ likely future demand for pensions with defined benefit characteristics.

Interested parties are invited to make initial submissions on the above issues up until 1 October 2004. Submissions can be sent to [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au).

## (26) Coalition's Co-Contribution Scheme (Brough)

Source (564576) *The Hon Mal Brough Minister for Revenue and the Assistant Treasurer No.005 26 August 2004*

<http://assistant.treasurer.gov.au/mtb/content/pressreleases/2004/005.asp?pf=1>

Under the Coalition	Under Labor
Someone earning \$25,000 a year over a 30 year working life: Co-contribution could add \$106,000 to the real superannuation balance. That's 86% more on their projected super balance where only superannuation guarantee contributions are made. *	Two per cent cut to the contributions tax. For the same worker, Labor's policy would add \$3000 to a low income earner's real superannuation balance.
Someone earning \$36,000 a year over a 30 year working life: Co-contribution could add \$51,000 to the real superannuation balance. That's 28% more on their projected super balance where only superannuation guarantee contributions are made. *	\$4,500 real improvement

\* Both figures are based on a person who makes the minimum level of member contributions required to receive the maximum government co-contribution

## (27) \* ASFA Survey - Wake up call for Super Funds (Brough)

Source (564580) *The Hon Mal Brough, Minister for Revenue and the Assistant Treasurer No. 006 26 August 2004*

URL: <http://assistant.treasurer.gov.au/mtb/content/pressreleases/2004/006.asp?pf=1>

The results of a recent Association of Superannuation Funds of Australia (ASFA) survey conducted by ANOP Research Services have reinforced that people need to save more, and many mature aged people have a need and desire to work at least part-time in 'semi-retirement'.

A majority of respondents recognised that they have the primary responsibility for preparing for retirement and increasing their super (56% said individuals had primary responsibility compared to 32% who said Government) but according to the survey the industry needs to do more to promote the positive benefits of superannuation.

The ANOP analysis for ASFA said:

*"The results indicate a need for more promotion of the merits of super"(p9)*

*"The study shows that many would like to continue in some kind of work in retirement, and access to super while working in retirement will also be an increasingly relevant issue. While the community would like more incentives from Government to save for retirement, existing tax benefits and co-contributions should be part of the positive communications themes about super." (Key Implications, p 12)*

The Government is also considering options for improving education and financial literacy to make people more confident in their investment choices, including:

- ◆ \$14 million to provide information on Super Choice;
- ◆ \$2 million towards an information and education strategy based on the work of the Consumer and Financial Literacy Task Force headed up by Paul Clitheroe.
- ◆ Super Choice will make funds compete and promote their benefits, creating downward pressure on fees and increased emphasis on returns.

## 1.2 COURTS & TRIBUNALS

### (a) Courts

#### (1) \* What are ordinary time earnings? (Australian Communication Exchange Ltd v Deputy C of T)

*Source (470764) Australian Communication Exchange Ltd v Deputy Commissioner of Taxation [2003] HCA 55 (1 October 2003 Gleeson CJ, Mchugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ*

[http://www.austlii.edu.au/au/cases/cth/high\\_ct/2003/55.html](http://www.austlii.edu.au/au/cases/cth/high_ct/2003/55.html)

#### *What was the issue?*

Was the court entitled to continue a legislative provision other than in a manner contended by the parties:?

#### *What were the facts?*

The taxpayer provided a national telephone relay service enabling those who have a hearing or speech impairment to communicate with others.

A person using the service used a teletypewriter, modem and telephone to send text messages to a Relay Officer.

The Relay Officer read the text messages to the intended recipient of the message and conveyed, in text, the recipient's responses to the person using the service.

The taxpayer provided this service 24 hours a day, seven days a week, through two call centres, one in Brisbane and one in Melbourne.

The Commissioner assessed the taxpayer to a superannuation guarantee charge for the years ending 30 June 1996, 30 June 1997 and 30 June 1998 in respect of some of the wages the taxpayer had paid to persons it employed as Relay Officers in its Brisbane call centre.

For the years in question, all the Relay Officers in the taxpayer's Brisbane call centre:

- ◆ were employed as casuals;
- ◆ had their employment regulated by the Award.

The commissioner wholly disallowed the taxpayer's objections. The primary judge (Dowsett J) ordered that the commissioner's decision disallowing the objection be varied by allowing the objection in full. The Full Court (Wilcox, Hill and Carr JJ):

- ◆ allowed the appeal[55] and set aside the orders of Dowsett J.
- ◆ concluded that the proper construction of the Award "provide[d] a result that lies between the positions contended for by the parties"[56]; and
- ◆ ordered that the decision to disallow the objections be varied to allow so much of the objections as would result in an assessment being made in accordance with the reasons of the Full Court.

It was necessary for the High Court to consider three different constructions of the Award obligation to make superannuation contributions:

- (i) (the taxpayer's construction) contributions were to be based on amounts paid for work within ordinary hours;
- (ii) (the Full Court's conclusion) contributions were to be based on amounts calculated by multiplying the rate of pay applicable for work in ordinary working hours by the number of hours actually worked irrespective of the times these hours were worked; and
- (iii) (the commissioner's construction) contributions were to be based on all payments made to Relay Officers.

#### *What was the legislative background?*

The Award (cl 2.1(1)) required an employer "[a]t the point of engagement of each employee" to "specify whether the engagement is on a weekly, part-time or casual basis".

By cl 4.7(1) a casual employee was defined as "an employee who is engaged by the hour and who may terminate employment or be discharged at any moment without notice". They were to be paid "an hourly rate by dividing the weekly rate of the appropriate classification by 38 and adding a loading of 19% thereto" (cl 4.7(2)).

For full-time employees the Award provided rates of pay expressed as an identified sum per week. Provision was made for some allowances (cl 3.6) and for such things as higher duties payments (cl 3.7).

For part-time employees, the Award provided that they should be paid an hourly rate by dividing the weekly rate of the appropriate classification by 38 (cl 4.6(3)) but that, subject to agreement to the contrary by the employer and a specified union official, a part-time employee was to be employed for not less than 15.2, and not more than 32, "ordinary hours per week" (cl 4.6(1)). Employees, other than casual employees, were entitled to annual leave, certain statutory holidays and sick leave (Pt 5).

The Award provided (cl 3.5(1)) that, in addition to the rates of pay it prescribed, "eligible employees ... shall be entitled to Occupational Superannuation Benefits, subject to the provisions of this clause".

Clause 3.5(2) of the Award dealt with the subject of employers' superannuation contributions, and it did so under seven headings: Clause 3.5(2) provided:

"(a) Amount - Every employer shall contribute on behalf of each eligible employee as from 20 November 1989 an amount calculated at 3% of the employee's ordinary time earnings, into an Approved Fund as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents.

Two features of those provisions should be noticed. First, on its face, cl 3.5(2)(a) required that the amount of which it spoke was to be calculated by taking 3 per cent of "the employee's ordinary time earnings". It therefore assumed that the employee's "ordinary time earnings" was an amount of money. Secondly, cl 3.5(2)(c) assumed that an employer may be required to pay superannuation contributions on behalf of casual employees, but only in respect of a week during which the employee's "ordinary time earnings" exceeded a certain amount. (The qualification sheds no light on what is meant by "ordinary time earnings". It simply sets a threshold which must be passed before superannuation contributions must be made for a casual employee. It does not say how the threshold is calculated.)

#### *What was the decision ((Hayne J.)?*

109. "Ordinary time earnings" was defined in the Award (cl 3.5(3)(d)) as:

"the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading, skill allowances and supervisory allowances where applicable. The term includes any over-award payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature."

Three features of this definition should be noted. First, it spoke of the "rate of pay the employee receives" for ordinary hours of work. Secondly, it expressly included within its meaning "casual rates received for ordinary hours of work". Thirdly, it expressly excluded from its meaning overtime and penalty rates for public holiday work.

111. The ordinary hours of work were prescribed by the Award. They were to be an average of 38 hours per week (cl 4.1(1)(a)) to be worked on not more than five consecutive days in a week, Monday to Saturday inclusive (cl 4.1(1)(b)). Subject to some qualifications and exceptions not now relevant, these hours were to be worked between 6.30 am and 6.30 pm from Monday to Friday and between 6.30 am and 12.30 pm on Saturday (cl 4.1(1)(b)(i)). Subject to agreement to the contrary by employer and employees, ordinary working hours were not to exceed eight on any day and in no case could exceed 10 (cl 4.1(1)(f)).

111. The Award also provided for overtime payments. ...

112. Relay Officers, employed by the Taxpayer as casual employees, who worked outside ordinary working hours, were paid at rates calculated in accordance with the overtime provisions of the Award. Thus, if a Relay Officer worked on a Sunday, he or she was paid at double the rate payable for work the employee did between 6.30 am and 6.30 pm from Monday to Friday. ...

113. The primary judge concluded that the Taxpayer had complied with the Award. As I have noted earlier, the Full Court adopted an intermediate position. It considered that the Award required the Taxpayer to make superannuation contributions calculated as a percentage of an amount derived by multiplying the rate at which the employee was entitled to be paid for work within ordinary working hours by the number of hours that employee actually worked, regardless of whether some or all of those hours fell outside the ordinary hours

prescribed by the Award. The Full Court said that only the increment in the rate paid for work outside normal working hours was an overtime payment[59]. This increment did not attract superannuation contributions. The Full Court said that the construction which it adopted "achieve[d] compatibility between the positions of full-time, part-time and casual employees"[60]. In the Full Court's view[61] there was "nothing in the definition in cl 3.5(3)(d) which would exclude from 'ordinary time earnings' that portion of casual employees' remuneration for working in overtime periods to which they would have been entitled if they had not worked 'outside or in excess of' ordinary working hours".

118. The Award obliged the employer to make superannuation contributions calculated as 3 per cent of a casual employee's ordinary rate of pay multiplied by the number of hours actually worked by that employee. There are several reasons for preferring this construction of the Award.
119. First, and perhaps most significantly, casual employees were what the Award referred to as "eligible employees ... entitled to Occupational Superannuation Benefits" if they were employed during five consecutive weeks and worked a minimum of 50 hours during that period. ...
120. Secondly, the tension in the definition of "ordinary time earnings" between the references to a rate of pay ("the actual ordinary rate of pay" and "casual rates") and the evident intention to prescribe an amount of money as distinct from a rate, is not resolved by fastening upon the expression "for ordinary hours of work" when used in the definition. ...
122. Thirdly, although it might be said that the increased amount which any employee, whether full-time, part-time or casual, was to receive for working outside normal working hours was intended to be full compensation for that work, that contention assumes the answer to the question now being considered. ...
124. Fourthly, the express exclusion of overtime from the definition of "ordinary time earnings" is consistent with construing the Award in the way I prefer. That exclusion would not be necessary if the only hours to be taken into account in computing "ordinary time earnings" were the ordinary hours of work which the employee performed. ...
125. By the Award, both full-time and part-time employees were to be engaged by the week. The ordinary working hours of full-time employees were fixed by the Award and, in the case of part-time employees by agreement with the employer. The weekly amount to be paid to full-time and part-time employees could, therefore, be determined before they undertook their work in any particular week. For part-time employees the calculation of an hourly rate of pay was an intermediate step in that calculation but it was no more than that. Casual employees, by contrast, were engaged by the hour. The amount which each would receive for a week's work depended entirely upon the number of hours they actually worked. The employer's superannuation contributions for full-time and part-time employees could, therefore, sensibly be fixed by reference to their weekly rates of pay. There is no discordancy with that arrangement to hold that, for casual employees, the determining elements of the calculation were their ordinary rates of pay and the number of hours actually worked.

## (2) Which transfer was assessable to duty? (Gardiner v Chief Commissioner of State Revenue)

Source (512754) *Gardiner v Chief Commissioner of State Revenue* [2004] NSWSC 107 (3 March 2004)

[http://www.austlii.edu.au/au/cases/nsw/supreme\\_ct/2004/107.html](http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2004/107.html)

### *What was the issue?*

Which of two documents transferred a house?

Should both documents be dutiable?

### *What were the facts?*

The taxpayer's father owned land and occupied the attached residence. He was separated from his second wife, Margaret and he said to the (taxpayer) his daughter:

*"Margaret is acting unstable and I am scared she may attack me again. I want to make a new will leaving Margaret out, but I want to make sure that you will get my property at St Ives when I die. I will sign a transfer of the St Ives property over to you, which you can keep to protect you until my will comes into effect."*

The taxpayer's father executed an approved form of transfer in favour of his daughter (the taxpayer) in consideration of \$1.

The (Commissioner) refused to reassess the instrument of transfer and rejected the (taxpayer)'s notice of objection against that decision. The taxpayer sought a review before the Administrative Decisions Tribunal, who concluded that instrument of transfer was intended to effect a transfer of the fee simple in the land: that dutiable transaction became ineffective and the (taxpayer) was entitled to a refund of the duty.

The Commissioner then appealed to the Appeal Panel who concluded that:

- ◆ the instrument of transfer did not effect a transfer of dutiable property and there was no obligation to stamp it in the first place.
- ◆ that the Real Property Act 1900, s 41(1) prevented a transfer in fee simple.
- ◆ the parties did not intend to effect a gift and no equitable interest arose in the (taxpayer).

The land was valued and the (taxpayer) paid ad valorem stamp duty of \$56,990 based on that value.

The taxpayer's father later executed his last will by which he devised the land to the taxpayer.

The taxpayer gave evidence that:

*"It has always been my understanding that I would take the property under the will of my father and that the transfer signed by him was to protect the disposition under his will against any claim made by his estranged second wife, whom he had not divorced prior to his death."*

After the grant of probate of her father's will, the (taxpayer) lodged such a form claiming entitlement as beneficiary of the will to be registered as proprietor of the estate or interest of her father in the land.

#### **What was the legislative background?**

The Duties Act 1997, s 293(1) provided that an instrument that failed in its intended operation and became useless was not chargeable with duty.

Section 293(2) provided that the Chief Commissioner might make a reassessment of duty in respect of a failed instrument if an application was made within a stipulated period of time.

The Real Property Act 1900 provided:

- ◆ s 46 - that where land under the provisions of that Act were intended to be transferred, the proprietor should execute a transfer in the approved form.
- ◆ s 41 - provided that no dealing, until registered in the manner provided by that Act, should be effectual to pass any estate or interest in any land under the provisions of the Act.
- ◆ s 93(1) - provided that upon the death of a registered proprietor, the person claiming consequent upon the will of the proprietor to be entitled to be registered as proprietor might apply in the approved form to the Registrar-General to be registered.

The Duties Act 1997, s 63(b) provided that duty of \$10 only was chargeable in respect of a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary. The transmission application was stamped at \$10. The (taxpayer) was subsequently registered as proprietor. Once that happened, the instrument of transfer could no longer be registered. On that basis, the (taxpayer) claimed that it had failed in its intended operation and become useless and she was entitled to a reassessment under s 293(2).

#### **What was the decision?**

- (17) Duty was charged on a transfer of dutiable property under the Duties Act 1997, s 8(1)(a). ...Unlike earlier stamp duty legislation, it was the transaction and not the instrument that gave rise to the charge to duty. Section 10 provided that it was immaterial whether or not a dutiable transaction was effected by a written instrument.
- (18) The charge to duty arose when the transfer of dutiable property occurred under the Duties Act 1997, s 12(1). However, the legislation contained an advance collection mechanism....
- (20) An advance payment mechanism requires some form of relief in the event that the transfer or other transaction does not eventuate. The Duties Act 1997, s 295(3) foreshadowed such relief....
- (21) The Duties Act 1997, s 50 performed that function with respect to agreements for sale or transfer of dutiable property. Subject to specified conditions, s 50(1) provided that such an agreement that was rescinded or annulled was not liable to duty and s 50(2) provided that if duty had been paid, the Chief Commissioner was obliged to reassess and refund the duty. Section 293 performed a like function with respect to instruments generally.

- (23) The question was not, therefore, whether the instrument of transfer was charged with duty upon first execution, but rather whether it was subject to reassessment under the Duties Act 1997, s 293(2) following the registration of the (taxpayer) as proprietor of the land under the transmission application.
- (26) The instrument of transfer evidenced a prospective transfer of land by way of gift. That transfer was not perfected by registration. The question was whether an equitable interest in the land arose in the (taxpayer).
- (33) In this case, there was no direct evidence that the (taxpayer)'s father had given her the certificate of title. However, the Administrative Decisions Tribunal at first instance concluded that if the certificate of title was not furnished to her, it was likely, on the balance of probabilities and having regard to the close relationship between the (taxpayer) and her father, that it was available to her.
- (36) While I would not have found the certificate of title was given to the (taxpayer) or made available to her, I am of the view that the Administrative Decisions Tribunal drew an inference of fact to that effect and did not state an implication. An implication is included in and is part of that which is expressed: an inference is something additional to what is stated (*Lubrano v Gollin & Co Pty Ltd* (1919) 27 CLR 113 at 118, *Rose v Hvrlic* (1963) 108 CLR 353 at 358). ...I am not prepared to set the conclusion aside. However, for the reasons expressed below, I am of the view that it does not matter whether or not the plaintiff had the certificate of title in her possession or had it available to her. I am of the view that it does not matter whether or not the (taxpayer) had the certificate of title in her possession or had it available to her.
- (37) That fact together with the claim to a caveatable interest tend to establish that the parties to the instrument of transfer intended to confer on the (taxpayer) an equitable interest. But those facts must be weighed against the rest of the evidence and in that process they are, in my view, outweighed.
- (38) ...The fact that the (taxpayer)'s father made a new will shortly after the transaction in question in which he devised the land to the (taxpayer) is, in addition, powerful evidence against the proposition that the parties intended to create an equitable interest by way of gift in the (taxpayer) upon execution of the instrument of transfer.
- (39) Whether or not the (taxpayer) had the certificate of title in her possession or available to her, the Appeal Panel was correct in concluding that there was no intention to effect a gift and the Administrative Decisions Tribunal at first instance wrongly applied the law to the facts in concluding that the (taxpayer) had not discharged the onus of establishing that a gift was not perfected.
- (40) The intended operation of the instrument of transfer was not to create an equitable interest in the land in the (taxpayer) and no such equitable interest arose. The (taxpayer) was mistaken in claiming in the caveat that she held such an interest.
- (42) The transfer was not stamped as a security. It was stamped as an instrument that would, if registered, effect a transfer of the land in fee simple.
- (43) In my view, the legislative purpose of the Duties Act 1997, s 293(2) was to provide relief when an instrument, stamped in advance of a transfer or other dutiable transaction it was proposed to effect, was subsequently found not to effect that transfer or other dutiable transaction.
- (44) Here the instrument of transfer was intended to effect a transfer of the legal title to the land if registered. It was delivered to the (taxpayer) on the basis that it should be registered to achieve that end, if necessary. When the extrinsic evidence is taken into account to determine the real nature of the transaction to which the instrument of transfer relates (*Commissioner of Stamp Duties (Qld) v Hopkins* (1945) 71 CLR 351), it is plain that what was intended by the parties was that the instrument of transfer should effect a transfer of the land by registration if a problem arose with the devise under the will. The instrument was stamped on that basis and, in my view, that was its intended operation for the purpose of the Duties Act 1997, s 293(1) and s 293(2).
- (45) The weight of authority supports the view that the (taxpayer) was entitled to register the instrument of transfer after the death of her father (*Brunker* at 585, *Corin* at 566). The (taxpayer) chose not to do so and to take, instead, by transmission under the will. That course having been adopted, the instrument of transfer could not operate to effect the transfer of the land.
- (46) There is nothing in the Duties Act 1997, s 293(1) or s 293(2) or elsewhere that limits relief to circumstances beyond the control of a party to the instrument in question. If the failure of intended operation was brought about by a party, there is no reason to deny the relief afforded by those provisions.
- (47) Upon registration of the (taxpayer) as proprietor of the land pursuant to the transmission application, the intended operation of the instrument of transfer failed and, in consequence, it became useless. The Duties Act 1997, s 293(2) was then enlivened. In my view the Appeal Panel erred in law in concluding to the contrary.

**(b) Tribunals**

Nil

## 1.3 ATO RELEASES

### (a) Rulings & Draft Rulings

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

#### (1) Tax treatment of expense incurred by superannuation fund (MT 2004/D2)

Source (567083) MT 2004/D2

<http://law.ato.gov.au/atolaw/print.htm?docid=DMT/MT2004D2/NAT/ATO/00001>

##### *What is the ruling about?*

What is the tax treatment of an expense incurred by a superannuation fund that is paid by an employer or eligible person on behalf of a superannuation fund and that is journalised as a superannuation contribution?

##### *Background?*

This draft ruling follows a paper issued by the Australian Taxation Office (“ATO”) on the issue that attracted a great deal of comment from industry. In that paper, issued by the ATO in July 2003, the ATO stated that an expense paid by an employer sponsor for a self managed superannuation fund is not a contribution and is, therefore, not deductible under section 82AAC of the Income Tax Assessment Act (ITAA 1936). The ATO also said the payments did not reduce the employer’s superannuation guarantee shortfall and contravened paragraph 52(2)(d) of the Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act) that requires the trustee of regulated superannuation funds to keep the money and other assets of the fund separate from any money and assets held by the trustee personally or a standard employer sponsor of the fund.

##### *What was the ruling?*

##### ***Deductibility by the employer under section 82AAC, or by the eligible person under section 82AAT***

Third party payments made by an employer on behalf of a superannuation fund to meet expenses incurred by the fund are deductible superannuation contributions under section 82AAC of ITAA 1936 provided that the fund recognises the payments as contributions by the employer in its accounts in the same way as it would for any direct cash contribution paid to it and provided the other conditions in section 82AAC are met.

Similarly, payments made by an individual 'eligible person' as defined in subsection 82AAS(2) of the ITAA 1936 to a third party on behalf of a superannuation fund to meet expenses incurred by the fund are deductible superannuation contributions provided the fund recognises the payments as contributions by the person in its accounts in the same way as it would for any direct cash contribution paid to it and provided the other conditions in section 82AAT are met.

The payment to the third party is treated for all tax purposes as though the employer or eligible person had made the payment directly to the fund and the fund had separately paid an equal amount to the third party.

##### ***Journal entries***

The Tax Office accepts that the actual contribution by way of a third party payment together with the entries in the accounts of both the fund and the employer or eligible person establish a contribution to the fund and payment of the associated expense for tax purposes. The journal entries need not be made immediately, but will need to be made by the earliest time necessary to establish a record of the contribution and fund expense for tax purposes. The exact time will depend on the circumstances. For example, for superannuation guarantee purposes contributions must be made on at least a quarterly basis.

##### ***Taxable contributions in the hands of the superannuation fund***

The payments are taxable contributions made to the fund under section 274 of the ITAA 1936 to the same extent that they would be had the payments been made directly to the fund.

##### ***Deductibility of expense by the superannuation fund***

The expense may be deductible by the fund subject to the normal principles governing the tax deductibility of expenditure incurred by superannuation funds.

***Superannuation guarantee***

The payments are superannuation contributions that may reduce the employer's superannuation guarantee shortfall amount for the relevant employees for the quarter.

***Superannuation surcharge***

The payments are surchargeable contributions.

***Fringe benefits tax***

Payments of the kind covered by this Ruling made by an employer are not subject to fringe benefits tax because they are excluded from the definition of a 'fringe benefit' under paragraph (j) of the definition in subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986).

***Goods and services tax***

The employer or eligible person paying the expenses incurred by the fund is not entitled to input tax credits under Division 11 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act). The fund is entitled to input tax credits, in relation to the acquisitions, but only to the extent that credits would be available if the fund had paid the expense directly.

Editor:

This is a draft miscellaneous ruling. You can forward any comments to the ATO contact officer, Irwin McAleese, by 8 October 2004.

One shortcoming of this draft ruling is that it does not address the ATO's initial view that the practice of employers paying superannuation fund expenses is a mixing of the fund's assets with those of a standard employer sponsor or associate of a standard employer sponsor, thereby, contravening paragraph 52(2)(d) of the SIS Act.

**(2) \*\*\* What allowances are included in wages for SGC purposes? (SGR 94/4A)**

*Source (490885) SGR 94/4A - Addendum*

<http://law.ato.gov.au/atolaw/print.htm?docid=SGR/SGR944A/NAT/ATO/00001>

***What issue does the Addendum consider?***

This Addendum amends Superannuation Guarantee Ruling SGR 94/4 to clarify what allowances are included in salary and wages for superannuation guarantee purposes. SGR 94/4 as amended is to be read in conjunction with Superannuation Guarantee Ruling SGR 94/5.

***What was the Addendum?***

An expense allowance paid in the expectation that the money will be fully expended in deriving income (eg. car allowance paid to real estate agents) should not be included in salary or wages for superannuation guarantee purposes and it follows that these allowances do not form part of OTE.

Other allowances are those which are paid to employees and are not expended in the course of the employee's work (eg. allowances paid because of particular conditions applying to the job do form part of salary or wages and OTE).

**(3) Clarification of the amounts included in wages for SGC purposes (SGR 94/5A)**

*Source (490872) SGR 94/5A – Addendum*

<http://law.ato.gov.au/atolaw/print.htm?docid=SGR/SGR945A/NAT/ATO/00001>

***What issue does the Addendum consider?***

The current practice of the ATO in relation to what allowances are included for superannuation guarantee purposes.

***What was the background to the ruling?***

SGR 94/5 specifies (in conjunction with SGR 94/4) the amounts that the Commissioner considers are included in salary and wages for superannuation guarantee purposes.

*What was the Addendum?*

An expense allowance with the expectation that the money will be fully expended in deriving income:

- ◆ should not be included in salary or wages for superannuation guarantee purposes; and
- ◆ does not form part of (ordinary time earnings) OTE.

Other allowances such as those which are paid to employees because of particular conditions applying to the job, such as height, dust or danger allowances do form part of salary or wages and OTE.

**(b) Determinations & Draft Determinations**

<http://law.ato.gov.au/atolaw/browse.htm?toc=04:DAB:Determinations:Taxation>

**(1) \* If the day for paying superannuation contributions is a Saturday! (SGD 2003/2)**

Source (471873) SGD 2003/2

<http://law.ato.gov.au/atolaw/print.htm?docid=SGD/SGD20032/NAT/ATO/00001>

*What issue does the determination consider?*

If the last day for making superannuation contributions, lodging a superannuation guarantee statement and paying the superannuation guarantee charge, or reporting to employees falls on a Saturday, Sunday, public holiday or bank holiday, an employer can make the contributions, lodge the statement and pay the charge, or report to employees on the next working day.

**(2) \* Calculating a notional employer contribution rate (SGD 2003/3)**

Source (471885) SGD 2003/3

<http://law.ato.gov.au/atolaw/print.htm?docid=SGD/SGD20033/NAT/ATO/00001>

*What issue does the determination consider?*

The acceptable method of calculating the notional employer contribution rate in accordance with regulation 4 of the Superannuation Guarantee (Administration) Regulations.

*What is the determination?*

For the purposes of regulation 4 of the Superannuation Guarantee (Administration) Regulations (the regulations), the ATO will accept methods of calculating a notional employer contribution rate which are consistent with Guidance Note 456 issued on 29 April 1993 (and revised in March 1995) by the Institute of Actuaries of Australia and entitled 'Preparation of Benefit Certificates Required Under The Superannuation Guarantee (Administration) Act 1992'.

This determination applies from 1 October 2003. It replaces SGD 93/8 which issued on 8 July 1993.

**(3) \* Consequences for an employer if the trustee elects for a fund to be a defined benefits fund (SGD 2003/4)**

Source (471897) SGD 2003/4

<http://law.ato.gov.au/atolaw/print.htm?docid=SGD/SGD20034/NAT/ATO/00001>

*What issue does the determination consider?*

If the trustee of a fund other than a defined benefit fund, for example an accumulation fund, elects that the fund be treated as a defined benefit superannuation scheme and an employer providing support in the fund will be treated as an employer in a defined benefit superannuation scheme.

Consequently, an employer who wishes to use the scheme for superannuation guarantee purposes will need to obtain a benefit certificate from an actuary specifying the notional employer contribution rate (the NECR) in relation to the employees specified in the certificate which can be calculated in accordance with either regulation 4, 5 or 6 of the Superannuation Guarantee (Administration) Regulations.

**(4) \* What wages count for the purposes of calculating SGC? (SGD 2003/5)**

Source (471906) SGD 2003/5

<http://law.ato.gov.au/atolaw/view.htm?docid=SGD/SGD20035/NAT/ATO/00001>

***What issue does the determination consider?***

How do the exclusions under sections 27 and 28 of the Superannuation Guarantee (Administration) Act 1992 (SGAA) interact?

***What was the background to the determination?***

Subsection 27(1) and section 28 of the SGAA detail salary or wages that are not to be taken into account for the purposes of calculating an individual superannuation guarantee shortfall under section 19 of the SGAA.

The salary and wages excluded by sub-section 27(1) and section 28 are essentially those paid to employees also are:

- ◆ non residents; or
- ◆ over 70; or
- ◆ part time employees earning less than \$450 per month and who are under 18;
- ◆ who are prescribed.

Section 27(2) provides as follows:

*“If an employer pays an employee less than \$450 by way of salary or wages in a month, the salary or wages so paid are not to be taken into account for the purpose of making a calculation, in relation to the employer and the employee, under section 19.”*

Section 28 provides as follows:

*“Salary or wages paid to a part-time employee who is under 18 are not to be taken into account for the purpose of making a calculation under section 19.”*

Section 19 deals with the calculation of individual superannuation guarantee shortfalls.

Section 28 when taken in conjunction with the definition of part-time employee in section 6, means that if a person works less than 30 hours per week and is under 18 years old those earnings are not to be taken into account when calculating the superannuation guarantee shortfall.

***What was the determination?***

Salary and wages excluded by subsection 27(1) and section 28 of the SGAA are still taken into account when calculating the total amount of salary or wages paid in the month for the purposes of subsection 27(2) of the SGAA because they are excluded only for the purpose of making a calculation under section 19, not for the purpose of making a calculation under subsection 27(2).

Editor

The determination adds nothing to section 27(2).

**(5) \*\* Dealing with advance contributions to superannuation (SGD 2003/6)**

Source (471908) SGD 2003/6

<http://law.ato.gov.au/atolaw/print.htm?docid=SGD/SGD20036/NAT/ATO/00001>

***What issue does the determination consider?***

How is an advance contribution of superannuation allocated to a particular quarter for SGC purposes?

***What is the determination?***

If an employer makes a superannuation contribution, it can be divided into separate contributions for:

- ◆ any quarter which ended within the previous 28 days (subsection 23(6));
- ◆ the current quarter; or
- ◆ any later quarter(s) which start within 12 months of the day on which the payment was made (subsection 23(7)).

Once a contribution is applied to one quarter, it cannot be counted toward any other quarter (subsection 23(8)) Superannuation Guarantee (Administration) Act.

Unless an employer specifies the period to which the contribution relates, the Commissioner will assume that it is a contribution for the previous quarter to the extent necessary to satisfy the minimum superannuation guarantee percentage for that quarter (so long as it was made within 28 days of the end of that quarter).

The remainder of the payment would be allocated as a contribution to:

- ◆ the current quarter to the extent necessary;
- ◆ then to the next quarter;

and so on.

If the payment is made later than 28 days after the end of the quarter, then the payment will be allocated to the current quarter or any later quarter(s) which starts within 12 months of the day on which the payment was made.

For superannuation guarantee purposes, it is not relevant how an award, certified agreement, Australian workplace agreement, or trust deed allocates the payment.

**Editor:**

From 1 July 2003 superannuation contributions must be paid at least quarterly or an employer will be liable for the superannuation guarantee charge. This means that in a closely held family businesses an employer could avoid the tedium of making quarterly obligations by making annual contributions in advance. However, this approach would only be viable in a limited number of situations.

What is potentially more useful is the isolation of the superannuation guarantee obligations from obligations and allocations imposed under workplace agreements, deeds, awards and certified agreements. There will be circumstances where the required contributions under the relevant workplace agreement exceed the superannuation guarantee obligation thereby resulting in an effective pre-payment of an SGC obligation equal to the excess of the obligation imposed by the award over the SGC obligation.

Exploitation of this possibility could have cash flow advantages.

**(6) \*\*\* When is a contribution made by cheque taken to be made? (SGD 2003/7)**

*Source (471909) SGD 2003/7*

<http://law.ato.gov.au/atoLaw/print.htm?docid=SGD/SGD20037/NAT/ATO/00001>

***What issue does the determination consider?***

If a contribution to a fund is made by cheque, when is the contribution made?

A contribution to a fund by cheque is made when the cheque is received by the trustee of the fund, unless the cheque is subsequently dishonoured (*Tilley v. The Official Receiver* (1960) 103 CLR 529).

If a cheque is post-dated, the contribution will be made on the later of the day the cheque is received and the date shown on the cheque because it cannot be presented before the date shown (subsection 61(2) of the Cheques Act 1986).

A contribution will not have been made if the cheque is dishonoured after presentation.

**(7) Maximum contribution base in 2004-2005 (SGD 2004/1)**

*Source (541208) SGD 2004/1*

<http://law.ato.gov.au/atoLaw/view.htm?docid=SGD/SGD20041/NAT/ATO/00001>

***What does the determination consider?***

What is the maximum contribution base for a quarter in the 2004-2005 year?

***What was the legislative background?***

By applying subsection 15(3) of the SGAA 1992, the maximum contribution base for a quarter in the 2004-2005 year is \$30,560 (maximum contribution base for a quarter in 2003-2004) \* Indexation factor for the 2004-2005 year

*What was the determination?*

\$32,180.

**(8) \*\* Surcharge threshold for 2004-2005 (SCD 2004/1)**

Source (541194) SCD 2004/1

<http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20041/NAT/ATO/00001>

*What issue does the determination consider?*

What is the surcharge threshold for the 2004-2005 financial year under the Superannuation Contributions Tax (Assessment and Collection) Act 1997?

*What was the legislative background?*

The Superannuation Contributions Tax (Assessment and Collection) Act 1997 (SCT(AC)A) provides that for each financial year the surcharge threshold is to be an amount which reflects movements in full-time adult average weekly ordinary time earnings (AWOTE).

*What was the determination?*

For the purposes of subsection 9(2) of the SCT(AC)A, the surcharge threshold for the 2004-2005 financial year is \$99,710.

**(9) \* More indexation amounts (SCD 2004/2)**

Source (542841) SCD 2004/2

URL <http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20042/NAT/ATO/00001>

*What issue does the determination consider?*

What are the indexable amounts for the 2004-2005 financial year under the Termination Payments Tax Imposition Act 1997?

*What was the background to the determination?*

These indexable amounts are relevant for working out the rate of the termination payments surcharge payable on a termination payment made to or for a taxpayer in a particular year under section 5 of the TPTIA. Superannuation Contributions Determination SCD 2004/5 provides details of the calculation of the amount represented by 'A' in the first formula contained under subsection 5(1) of the TPTIA.

*What was the determination?*

For the purpose of subsection 5(1AA) of the TPTIA, the indexable amounts (as calculated under section 6) for the 2004-2005 financial year are:

- ◆ \$99,710 (the lower income amount); and
- ◆ \$121,075 (the higher income amount).

**(10) \*\* Surcharge Threshold for 2004-2005 (SCD 2004/3)**

Source (541199) SCD 2004/3

<http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20043/NAT/ATO/00001>

*What does the determination consider?*

What is the surcharge threshold for the 2004-2005 financial year under the Termination Payments Tax (Assessment and Collection) Act 1997?

*What is the legislative background?*

The Termination Payments Tax (Assessment and Collection) Act 1997 (TPT(AC)A) provides that for each financial year the surcharge threshold is to be an amount which reflects movements in full-time adult average weekly ordinary time earnings (AWOTE).

**What was the determination?**

For the purposes of subsection 10(2) of the TPT(AC)A, the surcharge threshold for the 2004-2005 financial year is \$99,710.

**(11) \* Surcharge thresholds (SCD 2004/4)**

Source (542845) SCD 2004/4

URL: <http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20044/NAT/ATO/00001>

**What issue does the determination consider?**

What are the surchargeable contributions threshold and the indexable amounts for the 2004-2005 financial year under the Superannuation Contributions Tax Imposition Act 1997?

**What was the determination?**

In accordance with subsection 6(2) of the SCTIA, the surchargeable contributions threshold is the amount worked out using the formula:

$$\text{previous threshold} * \text{indexation factor} * (\text{current charge percentage} / \text{previous charge percentage})$$

For the 2004-2005 financial year, the current charge percentage - the number that is the employer's charge percentage under subsection 19(2) of the Superannuation Guarantee (Administration) Act 1992 for the relevant financial year - is 9.

The previous charge percentage - the number that is the employer's charge percentage under subsection 19(2) of that Act, for the financial year immediately before the relevant financial year - is also 9.

Applying the formula in subsection 6(2) of the SCTIA, the surchargeable contributions threshold for the 2004-2005 financial year is \$4,273.

The relevant indexation factor is the indexation factor for the indexing financial year and is 1.053.

For the purpose of subsection 5(1AA) of the SCTIA, the indexable amounts (as calculated under section 7) for the 2004-2005 financial year are:

- ◆ \$99,710 (the lower income amount); and
- ◆ \$121,075 (the higher income amount).

**(12) \* Determination sets surcharge formula variable (SCD 2004/5)**

Source (542847) SCD 2004/5

URL: <http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20045/NAT/ATO/00001>

**What issue does the determination consider?**

For the 2004-2005 financial year, what is the amount represented by A in the first formula contained within subsection 5(1) of the Superannuation Contributions Tax Imposition Act 1997 and subsection 5(1) of the Termination Payments Tax Imposition Act 1997?

**What is the relevant legislative provision?**

Subsection 5(1) of the SCTIA provides, subject to subsection 5(3):

*If the member's adjusted taxable income for a financial year (relevant adjusted taxable income) is not less than the lower income amount but is less than the higher income amount, the rate of the superannuation contributions surcharge that applies to the member for that year is the percentage (calculated to 5 decimal places) of the member's surchargeable contributions for that year worked out using the formula:*

$$(\text{Relevant adjusted taxable income} - \text{Lower income amount}) / A$$

where A is:

$$(\text{Higher income amount} - \text{Lower income amount}) / (\text{Maximum surcharge percentage} * 100)$$

***What was the determination?***

For the 2004-2005 financial year, A is worked out as follows:

$$\begin{aligned}\text{Higher income amount} &= \$121,075 \\ \text{Lower income amount} &= \$99,710 \\ \text{Maximum surcharge percentage} &= 13.5\% \\ &(\$121,075 - \$99,710) / (0.135 * 100) \\ &= \$1,582.59259.\end{aligned}$$

The amount represented by A in the first formula contained within subsection 5(1) of the Superannuation Contributions Tax Imposition Act 1997 (SCTIA) and subsection 5(1) of the Termination Payments Tax Imposition Act 1997 (TPTIA) is \$1,582.59259.

In a similar way, for the 2004-2005 financial year, the amount represented by A in the first formula contained within subsection 5(1) of the TPTIA is also \$1,582.59259.

**(13) Indexation amounts (SCD 2003/2 - Addendum)**

*Source (559522) SCD 2003/2 - Addendum*

<http://law.ato.gov.au/atolaw/print.htm?docid=SCD/SCD20032A/NAT/ATO/00001>

***What issue does the Addendum consider?***

What are the indexable amounts for the 2003-2004 financial year under the Termination Payments Tax Imposition Act 1997?

***What was the Addendum?***

SCD 2003/2 amended as follows:

1. *Paragraph 4*  
*Omit the paragraph and substitute:*
4. *For the purpose of this Determination, the relevant previous indexable amounts as advised by Superannuation Contributions Determination SCD 2002/2 are \$90,527 and \$109,924.*
2. *Paragraph 5*  
*Omit '\$1,355'.*

**(14) \* The Surchargeable contributions threshold (SCD 2003/4 - Addendum)**

*Source (559541) SCD 2003/4 - Addendum*

<http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20034A/NAT/ATO/00001>

***What issue does the Addendum consider?***

What are the surchargeable contributions threshold and the indexable amounts for the 2003-2004 financial year under the Superannuation Contributions Tax Imposition Act 1997?

***What was the Addendum?***

Variations were made to paragraphs 8 and 10 omitting \$ amounts.

**(15) \* What is the "A" content in formula (SCD 2004/5 - Addendum)***Source (559542) SCD 2004/5 - Addendum*<http://law.ato.gov.au/atolaw/view.htm?docid=SCD/SCD20045A/NAT/ATO/00001>*What issue does the Addendum consider?*

For the 2004-2005 financial year, what is the amount represented by A in the first formula contained within subsection 5(1) of the Superannuation Contributions Tax Imposition Act 1997 and subsection 5(1) of the Termination Payments Tax Imposition Act 1997?

*What was the Addendum?*

SCD 2004/5 is amended as follows:

## 1. Paragraph 1

Omit the paragraph and substitute:

1. The amount represented by A in the first formula contained within subsection 5(1) of the Superannuation Contributions Tax Imposition Act 1997 (SCTIA) and subsection 5(1) of the Termination Payments Tax Imposition Act 1997 (TPTIA) is \$ 1,709.20000 .

## 2. Paragraph 3

Omit the paragraph and substitute:

3. For the 2004-2005 financial year, A is worked out as follows:

Higher income amount = \$121,075

Lower income amount = \$99,710

Maximum surcharge percentage = 12.5%

$(\$121,075 - \$99,710) / (0.125 * 100)$

= \$1,709.20000

## 3. Paragraph 5

Omit the paragraph and substitute:

5. In a similar way, for the 2004-2005 financial year, the amount represented by A in the first formula contained within subsection 5(1) of the TPTIA is also \$1,709.20000.<sup>2</sup>

## 4. Footnote 1

Omit the footnote.

## 5. Footnote 2

Omit the footnote and substitute:

- <sup>1</sup> See Superannuation Contributions Determination SCD 2004/4 and subsection 5(1AA) of the SCTIA.

## 6. Footnote 3

Omit the footnote and substitute:

- <sup>2</sup> See Superannuation Contributions Determination SCD 2004/2 and subsection 5(1AA) of the TPTIA.

This Addendum applies on and from 1 July 2004, the date of application of the amendments.

**(16) \*\* Superannuation limits and thresholds in 2004-2005 (TD 2004/18)***Source (541210) TD 2004/18*<http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD200418/NAT/ATO/00001>*What does the determination consider?*

What are the thresholds and limits for superannuation amounts in 2004-2005?

**What was the legislative background?**

The 1936 Act requires the Commissioner to determine various limits and thresholds each year.

**What was the determination?**

For the purposes of subsection 27A(20) of the 1936 Act, the tax free amounts of a bona fide redundancy payment or of an approved early retirement scheme payment are:

- ◆ \$6,194 (formerly \$5,882); and
- ◆ \$3,097 (formerly \$2,941).

For the purposes of subsections 82AAC(2B) and 82AAT(2B) of the 1936 Act, the age based deduction limits for superannuation contributions by employers and eligible persons are:

- ◆ \$13,934 (formerly \$13,233);
- ◆ \$38,702 (formerly \$36,754); and
- ◆ \$95,980 (formerly \$91,149).

For the purposes of subsection 140ZD(3) of the 1936 Act, the RBL limits are:

- ◆ Lump Sum RBL \$619,223 (formerly \$588,056); and
- ◆ Pension RBL \$1,238,440 (formerly \$1,176,106).

The upper limit for determining the residual amount for the purposes of section 159SG of the 1936 Act, that is the threshold on the post-June 1983 component of an eligible termination payment is \$123,808 (formerly \$117,576).

**(c) Interpretative Decisions**

Source: (461760)

<http://law.ato.gov.au/atolaw/Browse.htm?ImA=Collapse&Node=5&OpenNodes=,2,5~0,5#5>

**(1) Deductions**

ID 2003/678	Superannuation: deduction for personal contributions – section 82AAT notice 1 August 2003
ID 2004/339	Deduction: management fees debited to an allocated pension account 16 April 2004

**(2) ETP**

ID 2003/602	Superannuation, retirement & employment termination: eligible termination payment and invalidity 18 July 2003
ID 2004/369	Medicare levy: family income - post June 83 component of ETP received by taxpayer's spouse 7 May 2004

**(3) Pensions**

ATO ID 2004/174	Superannuation: Superannuation pension rebate 24 February 2004
ATO ID 2004/189	Taxable contributions and exempt pension income 27 February 2004

ATO ID 2004/190	Taxable contributions and exempt pension income 27 February 2004
ID 2004/304	Additional contribution to a superannuation pension that has commenced to be paid 2 April 2004

**(4) RBL**

ID 2003/808	Reasonable benefit limits (RBL): effect of changing the terms of a superannuation pension after the date of commencement. 5 September 2003
ID 2004/130	Reasonable benefit limits: Highest Average Salary 6 February 2004

**(5) RIE's**

ID 2003/832	Retirement income entities – trustee has enduring power of attorney in respect of member 12 September 2003
ATO ID 2003/1127	Retirement income entities – acquisition of collectable banknotes and coins from a related party 12 December 2003
ID 2004/92	Retirement income entities - acquisition of residential property from members 30 January 2004

ID 2004/251	Retirement income entities - arms length arrangement. 26 March 2004
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**(6) Surcharge**

ID 2003/830	Superannuation Contributions Surcharge – apportioning the surcharge liability of a deceased member of a Constitutionally Protected Fund to the member's beneficiaries 12 September 2003
ID 2003/831	Superannuation Contributions Surcharge – surcharge liability upon death of a member of a Constitutionally Protected Fund 12 September 2003

**(7) UPP**

ID 2003/661	Superannuation: Undeducted Purchase Price (UPP) – Foreign pension – lifetime pension commencing prior to 1 July 1983. 1 August 2003
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**(8) Other**

ID 2003/1147	Restructure/resettlement of superannuation fund (from statute to deed based) - new eligible entity 19 December 2003
ID 2003/1148	Restructure/resettlement of superannuation fund (from statute to deed based) - application of CGT Event A1 19 December 2003
ID 2003/1149	Restructure/resettlement of superannuation fund (from statute to deed based) - application of CGT Event E1 19 December 2003
ID 2003/1150	Restructure/resettlement of superannuation fund (from statute to deed based) - application of CGT Event E2 19 December 2003
ID 2003/1151	Restructure/resettlement of superannuation fund (from statute to deed based) - application of section 26BB 19 December 2003

ID 2003/1152	Restructure/resettlement of superannuation fund (from statute to deed based) - transfer of security to new trustee 19 December 2003
ATO ID 2004/191	Rollovers – Taxable contributions for superannuation funds 27 February 2004
ATO ID 2004/225	Superannuation - Retirement and employment termination. Deferred Annuity - Deferred Annuity Products. 12 March 2004
ID 2004/229	Business real property - water licences 19 March 2004
ID 2004/230	Water licences - acquisition of a tradable water right from a related party of a Self Managed Superannuation Fund. 19 March 2004
ID 2004/231	Water licences - leasing of water licences to a related party 19 March 2004
ID 2004/248	Investment in art by a Self Managed Superannuation Fund (SMSF) 26 March 2004
ID 2004/249	Investment in art by a Self Managed Superannuation Fund (SMSF) and its display 26 March 2004
ID 2004/250	Investment in art by a Self Managed Superannuation Fund (SMSF) - in-house asset. 26 March 2004
ID 2004/310	Division 6AA: excepted assessable income - benefit from a superannuation fund 2 April 2004
ID 2004/340	Personal superannuation contributions made by member over age 70 16 April 2004
ID 2004/352	Superannuation: exempt non-resident foreign termination payment 30 April 2004
ID 2004/353	Superannuation: foreign tax credits - tax paid by overseas superannuation fund 30 April 2004

**(d) Practice Statements****(1) \*\*\* Employer's Reporting Obligations for Superannuation Contributions (PS LA 2004/1)**

Source (493958) PS LA 2004/1

<http://law.ato.gov.au/atolaw/print.htm?docid=PSR/PS20041/NAT/ATO/00001>

**What is the issue considered by the Practice Statement?**

To outline the circumstances in which the Commissioner will regard an employer as having satisfied their reporting obligations under section 23A of the Superannuation Guarantee (Administration) Act 1992.

**What is the legislative background?**

Section 23A requires an employer who makes a superannuation guarantee contribution to an employee's accumulation fund or retirement savings account (defined benefit funds are excluded) to give the employee a report on the contributions.

Subsection 23A(3) provides that the employer must give the report within 30 days of making the contribution.

**What is the Practice Statement?**

For practical purposes the Tax Office will regard employers as having adequately complied with subsection 23A(3) for a quarter if they give the relevant reports to their employees within 30 days of the final contribution being made for all employees for that quarter irrespective of the time during the quarter when an employee departed.

The requirement to give a report to employees within 30 days of the final contribution being made for a quarter is a minimum requirement. An employer may choose to report every time they make a contribution to a fund for the benefit of their eligible employees.

Each report must be in writing and include the following information:

- ◆ the amount of the contributions; and
- ◆ the name of the superannuation provider; and
- ◆ where the employer has the information, the employee's account or membership number.

The employer may use any format including:

- ◆ a letter to the employee;
- ◆ email, if the employee consents to receiving reports electronically;
- ◆ a written notification from the employer's business software package, eg, a payslip stating that contributions have been made to the fund as detailed on the payslip;
- ◆ if available, a copy of a receipt for contributions from the superannuation provider.

**(e) Fact Sheets**

Nil

**(f) Other Publications & Updates**

Source ATO Website (452798)

**(1) Life insurance**

22 Jun 2004	Taxation of life insurance companies Skilling module 7 - Case study  This case study explores the numerous issues regarding the application of
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	Division 320 of ITAA 1997 to the activities of a life insurance company. NAT 10884
01 Jul 2004	Life insurance bonuses  Explains what you need to declare if you received a bonus from a life insurance company or friendly society.

## (2) SMSF's

31 Jul 2003	<p>Australian Taxation Office Superannuation Circular No. 2003/Draft for comment – business real property</p> <p>The aim of this Circular is to provide guidance on what constitutes 'business real property' in relation to self managed superannuation funds.</p>
03 Jun 2004	<p>Self managed superannuation funds education – telephone survey of new trustees</p> <p>If you are a trustee of a newly registered self managed superannuation fund (SMSF), you may be contacted as part of an ongoing telephone survey.</p>
04 Jun 2004	<p>Self managed superannuation funds and pensions</p> <p>This information provides an overview on the different types of pensions that a self managed superannuation fund can pay their members on retirement.</p>
04 Jun 2004	<p>Self managed superannuation funds—examining the developments in regulations and compliance</p> <p>A speech by Mark Jackson, Deputy Commissioner of Superannuation, Australian Taxation Office to the SMSF Technical Forum on 26 May 2004.</p>
04 Jun 2004	<p>Changes for self managed superannuation funds audits</p> <p>Article published to inform SMSFs, Super Professionals and Tax Professionals of our progress with the Superannuation Safety Amendment Act.</p>
07 Jun 2004	<p>SMSF address by Mark Jackson to CPA Australia's Superannuation Day</p> <p>Mark Jackson's speech to CPA Symposium, 10:10am May 2004.</p>
24 Dec 2003	<p>Illegal arrangements to withdraw your superannuation</p> <p>The Tax Office is concerned about the promotion of schemes that use the establishment of an self managed superannuation fund (SMSF) to facilitate improper early access to preserved superannuation. Setting up an SMSF to gain improper early access to superannuation or soliciting such activity is illegal.</p>

30 Jun 2004	<p>Self managed superannuation funds - Role and responsibilities of trustees</p> <p>This guide introduces new trustees of self managed superannuation funds to the rules governing the operations of these funds and outlines their responsibilities.</p>
02 Jul 2004	<p>Self managed superannuation funds - Role and responsibilities of approved auditors</p> <p>This guide outlines the responsibilities of approved auditors of self managed superannuation funds, and explains what the Tax Office expects of auditors conducting audits.</p>
21 Jul 2004	<p>DIY Super: It's your money...but not yet!</p>

## (3) Superannuation Guarantee

28 Oct 2003	<p>Superannuation guarantee (quarterly) statement</p> <p>This statement should be completed by employers and their representatives who are required to lodge a quarterly superannuation guarantee statement due to a superannuation guarantee shortfall for any employee. NAT 9599</p>
28 Oct 2003	<p>Superannuation guarantee (quarterly) instruction guide and statement</p> <p>This instruction guide and statement should give you enough information to complete your quarterly superannuation guarantee statement. NAT 9600.</p>
28 Oct 2003	<p>Superannuation guarantee—Individuals' application for direct payment</p> <p>This form should be completed when you are requesting a withdrawal of your superannuation guarantee entitlements held by us. NAT 8678</p>
28 Oct 2003	<p>Superannuation guarantee (quarterly) statement</p> <p>This statement should be completed by employers and their representatives who are required to lodge a quarterly superannuation guarantee statement due to a superannuation guarantee shortfall for any employee. NAT 9599</p>

28 Oct 2003	<p>Superannuation guarantee (quarterly) instruction guide and statement</p> <p>This instruction guide and statement should give you enough information to complete your quarterly superannuation guarantee statement. NAT 9600.</p>
28 Oct 2003	<p>Superannuation guarantee—Individuals' application for direct payment</p> <p>This form should be completed when you are requesting a withdrawal of your superannuation guarantee entitlements held by us. NAT 8678</p>
19 Dec 2003	<p>Superannuation guarantee reporting interview findings</p> <p>This document has been prepared in order to further investigate and # issues being experienced by employers in relation to their new quarter superannuation guarantee reporting obligations.</p>

**(4) Surcharge**

29 Jun 2004	<p>Who pays the superannuation contributions surcharge?</p> <p>This information will explain who pays the superannuation contribution surcharge.</p>
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**(5) Other**

30 Jul 2003	<p>Departing Australia superannuation payments (DASP) system help—view or change an application page</p> <p>This is the online Help for the DASP Internet system.</p>
21 Aug 2003	<p>2003 Lodgment Gazette Notice – Superannuation</p> <p>The original notice requiring lodgment of income tax returns for the 2002 year was signed by the Commissioner on the 24 June 2003 and published in a special edition (No. s240) of the Gazette on 27 June 2003.</p>
27 Aug 2003	<p>Superannuation speakers and seminars</p> <p>This page provides information on how to request a superannuation speaker from the Tax Office.</p>

28 Aug 2003	<p>Unclaimed superannuation—superannuation matching request electronic media specification version 3.0</p> <p>This specification details the system requirements necessary for you to electronically send individual superannuation details to us to assess if they are 'lost' members and match them with superannuation entitlements held by us. NAT9815.</p>
28 Aug 2003	<p>Unclaimed superannuation—superannuation matching report electronic media specification version 2.0</p> <p>This specification details the system requirements necessary for you to electronically receive the Superannuation matching (Supermatch) report. The report details the outcomes of a Tax Office data matching activity. NAT9814.</p>
08 Sep 2003	<p>SuperUpdate newsletter September 2003</p> <p>This issue includes information on trustee integrity, the new Tax Office website and Bizstart seminars.</p>
06 Nov 2003	<p>SuperUpdate newsletter November 2003</p> <p>This issue includes information on SuperMatch, quarterly superannuation, co-contributions, surcharge rate reduction and SMSF promoters.</p>
06 Nov 2003	<p>SuperUpdate newsletter November 2003</p> <p>This issue includes information on SuperMatch, quarterly superannuation, co-contributions, surcharge rate reduction and SMSF promoters.</p>
10 Feb 2004	<p>SuperUpdate newsletter February 2004</p> <p>This issue includes information on lodgment and reporting obligation for SMSFs, illegal schemes, electronic media specifications, SuperMatch update and formats of surcharge notices.</p>
12 Mar 2004	<p>Super Co-contribution online media kit.</p> <p>This explains the Government superannuation co-contributions which applies to contributions made on or after 1 July 2003.</p>
24 Mar 2004	<p>Superannuation payment variation advice (PVA) instructions</p> <p>These instructions are to assist suppliers or superannuation providers in completing a Superannuation payment variation advice (PVA) statement. NAT 8450.</p>

## ATO Releases

02 Apr 2004	<p>SuperUpdate newsletter April 2004</p> <p>This issue includes information on lodgment and reporting obligation for superannuation funds, calculation of exempt pension income, rollovers that include post-June 83 untaxed elements and LMR.</p>
23 Apr 2004	<p>This guide is for payroll, HR, financial and legal officers in the Australian government. It is a joint product developed by the Tax Office and Department of Finance and Administration.</p>
30 Apr 2004	<p>Super Co-contributions calculator</p> <p>Super Co-contributions calculator - use this calculator to work out the Super Co-contribution you could be eligible to receive, based on information you provide about your income and personal super contributions.</p>
17 May 2004	<p>Superannuation outcome of lodgment report error manual — version 11.0</p> <p>This manual is the current superannuation outcome of lodgment report and explains to superannuation providers what errors on their lodgments mean and how to correct them. Applies from 15 May 2004.</p>
20 May 2004	<p>Provider assessment data (SPAD) file—electronic media specification version 8</p> <p>This specification details the system requirements necessary for you to electronically receive Superannuation provider assessment data (SPAD) files.</p>
01 Jul 2004	<p>Understanding tax in retirement</p> <p>When you retire, some of the changes in your life may have an effect on your tax situation. If you are actively planning your retirement or if you have already retired, this publication is for you.</p>
01 Jul 2004	<p>Superannuation reporting and lodgment dates—2004/05</p> <p>This calendar lists superannuation reporting and lodgment obligations for the period July 2004 to June 2005.</p>

02 Jul 2004	<p>SuperUpdate newsletter July 2004</p> <p>This issue includes information on Super Co-contribution, calculating capital gains, non lodgment of MCS, RBL reporting, self managed superannuation funds and pensions and an update on wind up of funds.</p>
12 Jul 2004	<p>Superannuation fund nomination</p> <p>This request should be completed if you want to nominate a particular account to receive any superannuation entitlements we are holding for you.</p>
13 Jul 2004	<p>Super Co-contribution calculators</p> <p>Use these calculators to work out the Super Co-contribution you could be eligible to receive, based on information you provide about your income and personal super contributions for the relevant income year.</p>
30 Jul 2004	<p>Some employees affected by super processing difficulties</p>
30 Jul 2004	<p>Tax treatment of payments from overseas superannuation funds from 1 July 2004</p>
30 Jul 2004	<p>Option for an Australian superannuation fund to pay tax on payments from overseas funds</p>
30 Jul 2004	<p>Update: Expenses paid by an employer treated as superannuation contributions</p>
02 Aug 2004	<p>Super Co-contribution does not need to be claimed</p> <p>Personal super contributions do not need to be included in an individual's income tax return for the purpose of claiming the Super Co-contribution.</p>
04 Aug 2004	<p>Guidance on recontributions to superannuation</p>
04 Aug 2004	<p>Employee Benefit Arrangements</p>

**(6) \* Federal Court Denies Deductions in Offshore Superannuation Scheme (ATO Media)**

Source (489771) Australian Taxation Office Media Release - 2003/119 8 December 2003

<http://www.ato.gov.au/corporate/content.asp?doc=/content/mr2003119.htm>

The Commissioner welcomed the Federal Court decision in *Walstern Pty Ltd v Commissioner of Taxation* which held that an offshore superannuation scheme was not tax effective. (See case summary above).

The Court:

- ◆ denied deductions for contributions made by a company to a New Zealand based superannuation fund on behalf of its owners who were also its sole employees.
- ◆ agreed with the Commissioner that the sole purpose of the contribution was not to provide superannuation benefits to people who were employees.
- ◆ held that fringe benefits tax (FBT) applied in respect of the contributions at the time the amounts contributed were allocated by the fund to the employee owners.

**(7) \* Warning against illegal schemes offering early access to super benefits (ASIC & ATO)**

Source (500452) Australian Taxation Office Media Release - Nat 04/06 29 January 2004

URL: <http://www.ato.gov.au/print.asp?doc=/content/mr2004006.htm>

ASIC and the ATO have jointly warned the public against using illegal schemes promising access to their superannuation before retirement.

The schemes target people on low incomes, and those in financial difficulty.

Promoters urge people to set up a Self Managed Superannuation Fund (SMSF) into which they roll their preserved superannuation. The client is told that as trustee of the SMSF they can decide how its assets are spent.

The promoter then charges a commission, usually 20 per cent or more of the fund's assets, for their services.

Legal early access to superannuation can be obtained by:

- ◆ The trustee of a superannuation fund releasing money on grounds of financial hardship if the member satisfies very strict criteria set out in the Superannuation Industry Supervision Act.
- ◆ Early payment on compassionate grounds being approved by the Australian Prudential Regulation Authority (APRA), which processes applications, free of charge, if the applicant meets strict legislative requirements.

**(8) \*\*\* Letter from Commissioner to SMSF Trustees (Carmody)**

Source (517355) Carmody

***Important information about your self managed superannuation fund***

We are writing to you about - \_ \_ \_ \_ \_ Superannuation Fund, which is a self managed superannuation fund (SMSF).

Being the regulator for all self managed funds, we are committed to helping fund trustees meet their administrative and legal obligations.

As part of our commitment to raising awareness of trustee responsibilities, we encourage you to obtain a copy of *A guide for trustees running a self management superannuation fund* for all trustees of \_ \_ \_ \_ \_ Superannuation Fund. The guide outlines in an easy to read style the duties and obligations of SMSF trustees.

You can access the guide in two ways:

- ◆ via our website at [www.ato.gov.au/super](http://www.ato.gov.au/super)

To access the guide online, select the 'What you can do' link under the Self managed superannuation funds heading, click on the Fact sheets & Publications option and open the 'General' link. Additional information regarding early access to superannuation is also available on the website.

- ◆ order a hard copy publication

To order one or more paper guides phone 1300 720 092. When ordering, please quote the name of the guide and its publication number, NAT 3206.

You should be aware that the responsibility for correctly running an SMSF lies with each trustee, even if a professional person is used to act on a fund's behalf. If you do not apply the requirements of the *Superannuation Industry (Supervision) Act 1993* and Regulations 1994 your fund may be treated as non-complying and lose its tax concessions.

Just like any other superannuation fund, an SMSF is established to provide retirement income. However, we are concerned some of these funds are being set up to gain early access to superannuation. Trustees involved in improper early access are breaking the law, which can result in heavy penalties and increased taxes being imposed on the fund's assets.

If you or another trustee requires further information about SMSF responsibilities, please contact us using one of the methods shown below.

(Mark Jackson)

Deputy Commissioner of Taxation

### (9) \*\* Some employees affected by super processing difficulties (ATO Media)

Source (551601) Australian Taxation Office Media Release – Nat 04/057 30 July 2004

<http://www.ato.gov.au/print.asp?doc=/content/mr2004057.htm>

Employees and employers affected by difficulties with the ATO Super Guarantee processing system will be paid full financial compensation.

Only a small minority of Australia's 9.6 million employees and 900,000 employers are affected by the system problems. Individuals potentially affected are those with outstanding employer-funded super entitlements and obligations.

A new computer system was put in place last December to administer the new quarterly Super Guarantee legislation and to make direct payments to super funds of employee entitlements.

The new system has been effective in paying \$45.2 million to 62,000 individuals in cases of employer-declared shortfalls or claimed super vouchers since May. However, more complex cases involving past year calculations are being processed manually. Currently, \$97 million in super recovered for 193,000 employees is being processed this way. To date, \$1.4 million has been paid directly to the funds.

Employers affected by ATO delays in calculating and collecting the unpaid employee entitlements will have any penalties waived.

Where an employer fails to pay super to (sic) eligible employees, the ATO collects entitlements and penalties on behalf of employees and transfers the money to the employee's super fund.

Editor:

It is remarkable that the ATO administers the punitive SGC system but can boast of depositing to the relevant super funds only 1/3 of the deposits it has received.

More remarkable is that only 1.5% of the more difficult deposits have been dealt with as required.

### (10) \*\* Guidance on recontributions to superannuation (ATO Media)

Source (559708) Australian Taxation Office Media Release – Nat 04/058 4 August 2004

<http://www.ato.gov.au/print.asp?doc=/content/mr2004058.htm>

The ATO recently confirmed that commonly-used superannuation strategies will not attract the anti-avoidance provisions in the tax law.

The Strategies are:

- ◆ A person withdraws an eligible termination payment (ETP) from their super fund and then recontributes the same or a similar amount shortly after to the same fund for the purpose of commencing a superannuation pension. The effect of the strategy is to reduce the assessable portion of the annual pension over the person's retirement years.

- ◆ Simple variations to the first scenario such as where a person commences a pension in the year or years following that in which the ETP was paid, or where the recontribution is made to a fund other than the one that paid the ETP (for example, a spouse fund). Again, the effect is to reduce the assessable portion of the annual pension.

When a person makes a large undeducted contribution to their super fund before they receive an ETP. The effect is to reduce the amount of tax payable on the ETP.

**(11) \*\* Tax Office acts on small business debt (ATO Media)**

*Source (551611) Australian Taxation Office Media Release - Nat 04/060 12 August 2004*

<http://www.ato.gov.au/print.asp?doc=/content/mr2004060.htm>

Around 60 per cent [2001 out of 3500] of the initial group of small businesses and individuals who were given the opportunity to clean up their tax debts have taken up the offer.

On 30 June 2004, the ATO announced it would offer reduced interest rates and flexible payment options on outstanding tax owed by small businesses and individuals provided they paid by direct debit and met current and future lodgement and payment obligations. That time has now expired for the first group to receive the offer.

A total of 35,000 offers have now been issued, involving almost \$330 million in debt.

**(12) \* Draft ruling on superannuation fund expenses paid by an employer (ATO Media)**

*Source (564575) Australian Taxation Office Media Release - Nat 04/063 25 August 2004*

<http://www.ato.gov.au/print.asp?doc=/content/mr2004063.htm>

Draft Taxation Ruling MT 2004/D2 issued today by the ATO:

- ◆ confirms that expense payments made by an employer are superannuation contributions for tax or superannuation purposes.
- ◆ clarifies the tax treatment when a super fund expense is paid by a self employed person and the payment is journalised as a contribution to their fund.

The practice is commonly used by small businesses, including the self employed, that manage their own super fund for administrative ease.

Examples of such expenses include auditor's and accountant's fees and investment advice costs.

The draft ruling considers the practice acceptable provided the journal entries to establish a record of the contribution and fund expense are made in a timely fashion.



## 2. LEGISLATION

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### 2.1 AUSTRALIAN PARLIAMENT

#### (a) Acts which Received Royal Assent

##### (1) \*\* Superannuation (Government Co-contribution for Low Income Earners) Act 2003

*Received Royal Assent on 12 November 2003.*

This Bill is consequential to the 2002 Bill of the same name. This Act makes amendments to a number of Acts, including the Income Tax Assessment Act, 1997 No.38, Taxation Administration Act, 1953 No.1, Superannuation Act 1976 No.31 and various others.

The amendments relate to:

- ◆ eligibility to Government co-contributions;
- ◆ co-contribution arrangements for certain defence personnel and Commonwealth employees;
- ◆ taxation treatment of Government co-contributions;
- ◆ review of certain decisions regarding the administration of the Government co-contributions;
- ◆ interest that may be levied on late repayments of Government co-contribution overpayments; and
- ◆ use of the Superannuation Holding Accounts Reserve for Government co-contributions.

##### (2) \*\* Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003

*Received Royal Assent on 12 November 2003.*

This Act amends various Acts. The amendments relate to:

- ◆ eligibility for Government co-contributions;
- ◆ taxation treatment of Government co-contributions;
- ◆ co-contribution arrangements for certain defence personnel and Commonwealth employees;
- ◆ review of certain decisions about administration of the Government co-contributions;
- ◆ interest that may be levied on late repayments of Government co-contribution overpayments.

The amendments take effect from 1 July 2002.

##### (3) \*\* Superannuation (Surcharge Rate Reduction) Amendment Act 2003

*Introduced to the House on 29 May 2003. Passed by the House on 19 June 2003. Introduced to the Senate on 23 June 2003. Passed by the Senate on 7 October 2003. Received Royal Assent on 12 November 2003.*

This Act:

- ◆ reduces the superannuation surcharge rates by one tenth of their current levels over a three-year period.
- ◆ makes several consequential amendments.

This Act amends the *Superannuation Contributions Tax Imposition Act 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* and the *Termination Payments Tax Imposition Act 1997* to reduce the superannuation contributions and termination payments surcharge rates by 10% of their current levels in each of the three income years commencing from 1 July 2002.

The Act also amends the provisions in the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* which imposes a limit on the maximum amount of surcharge payable by members of CPFs and the maximum reduction of benefits of members of certain unfunded defined benefits superannuation schemes.

#### **(4) \* Superannuation Safety Amendment Act 2004**

*Introduced to the House on 27 November 2003. Passed the House on 10 February 2004. Introduced to the Senate on 11 February 2004. Passed the Senate on 10 March 2004. Received Royal Assent on 27 April 2004 as Act No. 53 of 2004.*

These reforms do not apply to SMSFs and exempt public sector superannuation schemes.

This Act:

- ◆ amends the *Superannuation Industry (Supervision) Act* by introducing new Parts 2A and 2B;
- ◆ significantly reforms the regulation of superannuation trustees and funds from 1 July 2004;
- ◆ provides for APRA to license trustees of the superannuation entities it regulates;
- ◆ facilitates the registration of superannuation entities other than self-managed superannuation funds;
- ◆ introduces reporting requirements for actuaries and auditors;
- ◆ is a response to the recommendations made by the Superannuation Working Group to improve disclosure requirements on trustees; and
- ◆ provides enforcement powers and establishes penalty provisions.

There will be a two-year transition period during which existing superannuation trustees will have to become licensed with APRA under the requirements of the Act. Trustees will have to register “registrable superannuation entities” being:

- ◆ regulated superannuation funds;
- ◆ approved deposit funds; or
- ◆ pooled superannuation trusts.

#### **(5) \* Parliamentary Superannuation Act 2004**

*Received Royal Assent on 23 June 2004 as Act No. 72 of 2004.*

This Act:

- ◆ allows for the payment of superannuation contributions of 9% of total Parliamentary salaries to persons newly elected to the Federal Parliament from the next general election; and
- ◆ allows for the payment of the 9% contribution to a superannuation fund or Retirement Savings Account nominated by the member or senator.

#### **(6) \* Parliamentary Superannuation and Other Entitlements Legislation Amendment Act 2004**

*Received Royal Assent on 29 June 2004 as Act No. 96 of 2004.*

This Act establishes new superannuation arrangements for persons who become members of parliament at or after next election.

#### **(7) \* Superannuation Budget Measures Act 2004**

*Received Royal Assent on 30 June 2004 as Act No. 106 of 2004.*

This Act:

- ◆ reduces the “maximum surcharge percentage” to 12.5% for the year 2004-2005 to 10% 2005-2006 and 7.5% in 2006-2007; and
- ◆ applies to Constitutionally protected funds to benefit members of those schemes.

**(8) Superannuation Laws Amendment (2004 Measures No. 1) Act 2004**

*Received Royal Assent on 29 June 2004 as Act No. 92 of 2004.*

This Act:

- ◆ extends the Government co-contribution for low income earners to some employees who currently do not qualify; and
- ◆ removes the taxation deduction available for personal superannuation contributions made by individuals who under this bill will now qualify for a Government co-contribution;
- ◆ specifies an interest rate to be applied to late Government co-contribution payments;
- ◆ requires superannuation providers to repay Government co-contribution amounts which are not credited to the member's account within a specific time frame; and
- ◆ imposes the general interest charge where a superannuation provider does not repay the Government co-contribution amount within a specific time frame.

**(9) \* Superannuation Laws Amendment (2004 Measures No. 2) Act 2004**

*Received Royal Assent on 29 June 2004 as Act No. 93 of 2004.*

This Act:

- ◆ amends the *Income Tax Assessment Act 1936*, removing the requirement for superannuation funds to obtain an actuary's certificate in order to qualify for exemption from tax on income derived by assets supporting certain pension liabilities or an exemption of a proportion of income attributable to certain pension liabilities;
- ◆ amends the *Income Tax Assessment Act 1997* to provide an additional condition that needs to be satisfied by taxpayers below the age of 18 in order to claim a taxation deduction for personal superannuation contributions; and
- ◆ amends the *Superannuation Guarantee (Administration) Act 1992* to simplify the earnings base of an employee for superannuation guarantee purposes.

**(b) Bills Awaiting Royal Assent**

Nil

**(c) Bills Laid Aside or Removed from Notice Paper**

Nil

**(d) Bills which lapsed when Parliament was prorogued on 31 August 2004****(1) Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2004**

*Introduced to the House of Representatives on 12 August 2004. Lapsed as at 31 August 2004.*

This Bill proposed to amend the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* as part of a package of seven Bills which were to introduce a number of changes to the arrangements for the determination of levies paid by regulated financial entities. The changes were to give effect to the Government's response to the Review of Financial Sector Levies.

**(2) Superannuation (Entitlements of Same Sex Couples) Bill 2004**

*Introduced to the House of Representatives on 21 June 2004. Lapsed as at 31 August 2004.*

This Bill proposed to remove discrimination against same sex couples in respect of superannuation benefits.

**(3) Superannuation Legislation Amendment Bill 2004**

*Introduced to the House of Representatives on 11 August 2004. Lapsed as at 31 August 2004.*

This Bill proposed to make amendments in relation to the superannuation salary for Secretaries of Departments and certain other persons who are appointed to Australian Government offices and who are members of either the Public Sector Superannuation scheme or the Commonwealth Superannuation scheme by amending:

- ◆ the *Superannuation Act 1976*; and
- ◆ the *Superannuation Act 1990*.

**(4) Superannuation Supervisory Levy Imposition Amendment Bill 2004**

*Introduced to the House of Representatives on 12 August 2004. Lapsed as at 31 August 2004.*

This Bill proposed to amend the *Superannuation Supervisory Levy Imposition Act 1998* as part of a package of seven Bills which were to introduce a number of changes to the arrangements for the determination of levies paid by regulated financial entities. The changes were to give effect to the Government's response to the Review of Financial Sector Levies.

**(5) Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003**

*Introduced to the House of Representatives on 11 September 2003. Passed in the House of Representatives on 17 September 2003. Introduced to the Senate on 18 September 2003. Lapsed as at 31 August 2004.*

This Bill proposed to :

- ◆ set out the tax consequences of split contributions made in accordance with those regulations; and
- ◆ set out the tax consequences of superannuation contributions splitting.

**(e) Bills Before Parliament****(1) Superannuation Legislation Amendment Bill 2002**

*Introduced to the House and second reading speech on 27 June 2002 and introduced to the Senate 11 November 2002.*

This Bill will amend various acts as a consequence of the Superannuation (Government Co-contributions for Low Income Earners) Bill 2002.

The Bill will reduce the superannuation surcharge rates by one-tenth of their current level over 3 years.

**(2) Superannuation Legislation Amendment (Family Law) Bill 2002**

*Introduced to the House and second reading speech on 12 December 2002. Passed House 14 May 2003 and Introduced to Senate 15 May 2003.*

This Bill proposed to allow for superannuation interest to be apportioned between a couple that intends to file for divorce.

**(3) Parliamentary (Choice of Superannuation) Bill 2003**

*Introduced to the House on 8 September 2003*

The Bill amends the *Parliamentary Contributory Superannuation Act 1948* (the Act) to give Senators and Members of the House of Representatives the freedom to opt out of the compulsory parliamentary superannuation scheme.

**(4) \* Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002**

*Introduced to the House and second reading speech 27 June 2002. Passed by House on 5 December 2003.*

This Bill proposes to amend the Superannuation Guarantee (Administration) Act 1992 No. 111 (Cth) by introducing a formal process by which employers must allow their employees to make a choice as to which complying superannuation fund, superannuation scheme or retirement savings account they wish to make contributions to.

The Bill proposes to introduce penalties for the breach of those choice of fund requirements.

**(f) Regulations Promulgated****(1) \* Superannuation (Government Co-contribution for Low Income Earners) Amendment Regulations 2004 (Draft)**

*Introduced to the House of representatives on 3 May 2004.*

These Regulations:

- ◆ amend the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004*;
- ◆ inserts the meaning of 'eligible account' to be used by the complying superannuation fund or RSA;
- ◆ omit Regulation 4; and
- ◆ insert in Division 2.1 where a Government Co-contribution or underpaid amount is to be directed in accordance with the table outlined in the Regulations.

**(2) \* Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004**

*Introduced to the House of Representatives on 12 December 2003.*

These Regulations:

- ◆ support the necessary administration requirements of the *Superannuation Government (Co-contribution for Low Income Earners) Act 2003* and the *Superannuation Government (Co-contribution for Low Income Earners) (Consequential Amendments) Act 2003*;
- ◆ outline the co-contribution determinations;
- ◆ outlines requirements for superannuation providers; and
- ◆ outlines what personal details individuals need to provide.

Editor:

Contributions to personal superannuation through salary sacrifice will not fall within the description of eligible personal superannuation contributions. However, a person could salary sacrifice down to a \$32,000 income and then make a qualifying contribution.

**(3) Retirement Savings Account Regulations 2004**

The purpose of the proposed regulations is to facilitate the splitting of superannuation contributions between a member and their spouse.

The proposed regulation:

- ◆ provide single income couples, including those not able to make voluntary contributions, with access to two low rate ETP thresholds and two reasonable benefit limits in the same way as dual income families;
- ◆ provide for an "annual split" model for the splitting of superannuation contributions. That is, after the end of the financial year the member could request that contributions made in the previous year be split with their spouse; and
- ◆ would apply from 1 July 2004, but would only be mandatory on funds in respect of requests received on or after 1 July 2005.

**(4) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 3)**

These Regulations amend the *Superannuation Industry (Supervision) Regulations 1994*.

**(5) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)**

These Regulations amend the *Superannuation Industry (Supervision) Regulations 1994*.

**(6) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 5)**

These Regulations amend the *Superannuation Industry (Supervision) Regulations 1994*.

**(7) Superannuation Industry (Supervision) Amendment Regulation 2004 (No. 6)**

These Regulations:

- ◆ amend the *Superannuation Industry (Supervision) Regulations 1994*;
- ◆ amend the *Superannuation Industry (Supervision) Regulations 1994*, as amended by the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)*.

**(8) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 7)**

These Regulations amend the *Superannuation Industry (Supervision) Regulations 1994*, as amended by the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)*.

**(9) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 8)**

These Regulations amend the *Superannuation Industry (Supervision) Regulations 1994*.

## 2.2 STATE PARLIAMENTS

Source: Various State Parliament Websites (517483.3)

<a href="http://www.dms.dpc.vic.gov.au">www.dms.dpc.vic.gov.au</a>	<a href="http://www.parliament.wa.gov.au">www.parliament.wa.gov.au</a>
<a href="http://www.parliament.nsw.gov.au">www.parliament.nsw.gov.au</a>	<a href="http://www.parliament.sa.gov.au">www.parliament.sa.gov.au</a>
<a href="http://www.parliament.qld.gov.au">www.parliament.qld.gov.au</a>	<a href="http://www.legassembly.act.gov.au">www.legassembly.act.gov.au</a>
<a href="http://www.parliament.tas.gov.au">www.parliament.tas.gov.au</a>	<a href="http://www.nt.gov.au">www.nt.gov.au</a>

### (a) Victoria

#### (1) \*\*\*Parliamentary Salaries and Superannuation (Amendment) Bill 2004.

*Introduced to Legislative Assembly on 24 August 2004.*

This Bill proposes to amend the *Parliamentary Salaries and Superannuation Act 1968* to:

- ◆ limit the increase in the salary payable to members of the Parliament of Victoria to 3% for the 2004-2005 financial year;
- ◆ amend the definition of “basic salary” in section 3 of the Act by substituting the figure “\$500” with “\$1442”; and
- ◆ repeal section 3A of the Act.

#### (2) \*\*\* Sentencing (Superannuation Orders) Bill 2004

*Introduced to Legislative Assembly on 1 June 2004. Passed in the Legislative Assembly on 25 August 2004.*

This Bill proposes to enable the Court to impose an order for payment of a fine, determined by reference to superannuation benefits which the offender has or will receive. This applies to public sector employees who are convicted of an indictable offence.

This Act amends the *Duties Act 2000* to:

- ◆ impose duty on land use entitlements;
- ◆ confirm that the value of pre-existing equitable interests are included in the value of dutiable property;
- ◆ confirm that tenant's fixtures are generally included in the unencumbered value of land and to clarify the circumstances in which tenant's fixtures are not to be included in the unencumbered value of land; and
- ◆ clarify the circumstances in which, the transfer of goods used in connection with the business carried on in connection with the land, will not be subject to duty.

### (b) New South Wales

#### (1) \* Superannuation Administration Amendment Act 2004

*Introduced to the Legislative Assembly on 4 December 2003. Passed Legislative Assembly on 25 February 2004. Introduced to Legislative Council on 26 February 2004. Passed Legislative Council on 10 March 2004. Received assent on 17 March 2004 as Act No 10 of 2004.*

This Act amends the *Superannuation Administration Act 1996* and regulations under that Act in relation to:

- ◆ the provision of information and the monitoring of activities of the general administration of FSS Trustee Corporation and SAS Trustee Corporation superannuation schemes and funds;
- ◆ clarification of roles in dispute resolution; and
- ◆ quorums and voting procedures.

**(c) Queensland**

*Please Note: Queensland has only one house of Parliament*

Nil

**(d) Western Australia****(1) \* Coal Industry Superannuation Amendment Bill 2004**

*Introduced to the Legislative Assembly on 4 March 2004. Passed in the Legislative Assembly on 22 June 2004. Introduced to Legislative Council on 24 June 2004.*

This Bill proposes to amend the *Coal Industry Superannuation Act 1989* to provide a specialised superannuation service for coal miners in Western Australia.

**(e) Australian Capital Territory**

Nil

**(f) South Australia****(1) \* Superannuation Funds Management Corporation of South Australia (Miscellaneous) Amendment Bill 2003**

*Introduced to the Legislative Council on 14 October 2003.*

This Bill proposes to amend the *Superannuation Funds Management Corporation of South Australia Act 1995* to:

- ◆ improve governance arrangements for the Superannuation Funds Management Corporation of South Australia, known as “Funds SA”;
- ◆ extend Funds SA’s functions regarding the management and investment of funds on behalf of Government and related bodies;
- ◆ extend the Governor’s power to remove Government nominated directors; and
- ◆ provide the Treasurer with the power of direction and control, with limitations.

**(2) \* Parliamentary Superannuation (Choice of Superannuation) Amendment Bill 2004**

*Introduced to the Legislative Council on 18 February 2004.*

This Bill proposes to allow a member under the current parliamentary superannuation scheme to opt out of that scheme and to join the Triple S Superannuation Scheme.

**(3) \* Statutes Amendment (Miscellaneous Superannuation Measures) Bill 2004**

*Received Royal Assent on 5 August 2004 as Act No. 37 of 2004.*

This Bill proposes to amend the *Police Superannuation Act 1990*, the *Southern State Superannuation Act 1994* and the *Superannuation Act 1988* to expand the law in relation to deferred superannuation contributions in all three Acts.

**(g) Tasmania**

Nil

**(h) Northern Territory**

Nil

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