



Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013

No. 89, 2013

**An Act to amend the law relating to taxation and
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to taxation and
superannuation, and for related purposes**

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Laws Amendment
(MySuper Capital Gains Tax Relief and Other Measures) Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2013
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	28 June 2013
3. Schedule 1, items 3 to 8	The day this Act receives the Royal Assent.	28 June 2013
4. Schedule 1, item 9	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 3 to the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	28 June 2013 (paragraphs (a) and (b) are the same day)
5. Schedule 1, items 10 to 13	The day this Act receives the Royal Assent.	28 June 2013
6. Schedule 1, items 14 to 19	2 July 2019.	2 July 2019
7. Schedule 1, item 20	The later of: (a) the start of 2 July 2019; and (b) immediately after the commencement of item 1 of Schedule 3 to the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions</i>	2 July 2019 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Cap and Other Measures) Act 2013.</i>	
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
8. Schedule 1, items 21 to 25	2 July 2019.	2 July 2019
9. Schedule 2	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013.</i>	28 June 2013 (paragraphs (a) and (b) are the same day)
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedule 3, items 1 to 9	The day this Act receives the Royal Assent.	28 June 2013
11. Schedule 3, item 10	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 47 of Schedule 1 to the <i>Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013.</i>	28 June 2013 (paragraph (a) applies)
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
12. Schedule 3, items 11 to 34	The day this Act receives the Royal Assent.	28 June 2013
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Loss relief and asset roll-over for transfer of amounts to a MySuper product

Part 1—Main amendment

Income Tax Assessment Act 1997

1 After Division 310

Insert:

Division 311—Loss relief and asset roll-over for transfer of amounts to a MySuper product

Table of Subdivisions

	Guide to Division 311
311-A	Object of this Division
311-B	Choosing loss transfers and asset roll-overs
311-C	Consequences of choosing to transfer losses
311-D	Consequences of choosing asset roll-over
311-E	Choices

Guide to Division 311

311-1 What this Division is about

This Division provides tax relief for certain entities if a member's accrued default amount is required to be transferred to a MySuper product in another complying superannuation fund.

A trustee of a complying superannuation fund, a life insurance company or a trustee of a pooled superannuation trust that satisfies certain conditions can:

- (a) choose to transfer a loss; or

- | |
|--|
| <p>(b) choose an asset roll-over; or</p> <p>(c) choose to transfer a loss and choose an asset roll-over.</p> |
|--|

Note 1: This Division and associated provisions will be repealed on 2 July 2019: see Part 3 of Schedule 1 to the *Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013*.

Note 2: Part 2C of the *Superannuation Industry (Supervision) Act 1993* provides rules about MySuper products.

Operative provisions

Subdivision 311-A—Object of this Division

Table of sections

311-5 Object

311-5 Object

The object of this Division is to ensure that default members of *complying superannuation funds are not adversely affected if their *accrued default amounts are compulsorily transferred to MySuper products in other complying superannuation funds.

Subdivision 311-B—Choosing loss transfers and asset roll-overs

Table of sections

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

- (1) If an *arrangement is made for which the conditions in this section are satisfied, a trustee of a *complying superannuation fund, a *life insurance company or a trustee of a *pooled superannuation trust (the *transferring entity*) can:
- (a) choose to transfer a loss; or
 - (b) choose an asset roll-over; or
 - (c) choose to transfer a loss and choose an asset roll-over.

Entity must hold certain assets

- (2) The first condition is satisfied if, just before the *arrangement was made:
- (a) for an entity that is a trustee of a *complying superannuation fund (the **original fund**)—its assets included assets other than:
 - (i) a *complying superannuation/FHSA life insurance policy; or
 - (ii) units in a *pooled superannuation trust; or
 - (b) for an entity that is a *life insurance company—a complying superannuation/FHSA life insurance policy issued by the entity was held by a complying superannuation fund (the **original fund**); or
 - (c) for an entity that is a trustee of a *pooled superannuation trust—units in the entity were held by a complying superannuation fund (the **original fund**).

Transfer of accrued default amount and membership of continuing fund

- (3) The second condition is satisfied if:
- (a) under the *arrangement, the original fund transfers, to a *complying superannuation fund (the **continuing fund**), an *accrued default amount of a person who is a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
 - (b) the amount is transferred to the continuing fund:
 - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
 - (ii) under section 388 of that Act; and
 - (c) the member is a member of the continuing fund immediately after the time that the transfer occurs (the **completion time**).

Choice relates to period from 1 July 2013 to 1 July 2017

- (4) The third condition is satisfied if the completion time occurs during the period beginning on 1 July 2013 and ending on 1 July 2017.

Subdivision 311-C—Consequences of choosing to transfer losses

Table of sections

311-15	Who losses can be transferred to
311-20	Losses that can be transferred
311-25	Effect of transferring a net capital loss
311-30	Effect of transferring a tax loss
311-35	Realisation of certain assets after completion time

311-15 Who losses can be transferred to

The transferring entity can choose to transfer any or all of the transferring entity's losses set out in section 311-20, in whole or in part, to one or more of the following entities (a *receiving entity*):

- (a) the continuing fund for the choice;
- (b) a *pooled superannuation trust in which units are held by the continuing fund for the choice just after the completion time;
- (c) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by the continuing fund for the choice just after the completion time.

311-20 Losses that can be transferred

(1) The transferring entity's losses that can be transferred are:

- (a) any of its *net capital losses for income years earlier than the income year that includes the completion time (the *transfer year*), to the extent that they were not *utilised before the completion time; and
- (b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time; and
- (c) any of its *tax losses for income years earlier than the transfer year, to the extent that they were not utilised before the completion time; and
- (d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time;

worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over for the same arrangement, none of the CGT events for the roll-over

will contribute towards a loss transferred under this Subdivision (see section 311-45 and subsections 311-50(1) and 311-55(1)).

Modifications for transferred losses

- (2) For a choice under Subdivision 311-B by an entity that is a trustee of a *complying superannuation fund, work out those losses by only considering *capital gains, *capital losses, assessable income and deductions to the extent that they are reasonably attributable to the *accrued default amount of the member.
- (3) For a choice under Subdivision 311-B by an entity that is a *life insurance company, work out those losses by only considering the following to the extent that they are reasonably attributable to the *accrued default amount of the member, and to a *complying superannuation/FHSA life insurance policy issued by the transferring entity and held by the original fund:
 - (a) *capital gains from *complying superannuation/FHSA assets;
 - (b) *capital losses from complying superannuation/FHSA assets;
 - (c) assessable income covered by subsection 320-137(2) (about complying superannuation/FHSA assets);
 - (d) deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets).
- (4) For a choice under Subdivision 311-B by an entity that is a trustee of a *pooled superannuation trust, work out those losses by only considering *capital gains, *capital losses, assessable income and deductions to the extent that they are reasonably attributable:
 - (a) to the *accrued default amount of the member; and
 - (b) to units in the transferring entity held by the original fund.

311-25 Effect of transferring a net capital loss

To the extent that a loss of a kind referred to in paragraph 311-20(1)(a) or (b) is transferred to a receiving entity:

- (a) if the loss is for an income year earlier than the transfer year—the transferring entity is taken not to have made the loss for that earlier income year; and
- (b) if the loss is for the transfer year—the following is reduced by an amount equal to the transferred amount:

- (i) if the transferring entity is a *life insurance company—the sum of the transferring entity’s *capital losses from *complying superannuation/FHSA assets for the transfer year;
- (ii) otherwise—the sum of the transferring entity’s capital losses for the transfer year; and
- (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation/FHSA assets made by the receiving entity on the day of the completion time; and
- (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity on the day of the completion time.

311-30 Effect of transferring a tax loss

To the extent that a loss of a kind referred to in paragraph 311-20(1)(c) or (d) is transferred to a receiving entity:

- (a) if the loss is for an income year earlier than the transfer year—the transferring entity is taken not to have made the loss for that earlier income year; and
- (b) if the loss is for the transfer year—the following is reduced by an amount equal to the transferred amount:
 - (i) if the transferring entity is a *life insurance company—the sum of the transferring entity’s deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets) for the transfer year;
 - (ii) otherwise—the sum of the transferring entity’s deductions for the transfer year; and
- (c) for the purposes of sections 36-15 and 36-17, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a life insurance company—a *tax loss of the *complying superannuation/FHSA class that the receiving entity incurred for the income year of the receiving entity immediately prior to the income year in which the completion time occurs; or
 - (ii) otherwise—a tax loss that the receiving entity incurred for the income year of the receiving entity immediately

prior to the income year in which the completion time occurs; and

- (d) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a life insurance company—a tax loss of the *complying superannuation/FHSA class that the receiving entity incurred on the day of the completion time; or
 - (ii) otherwise—a tax loss that the receiving entity incurred on the day of the completion time.

311-35 Realisation of certain assets after completion time

- (1) In working out the *net capital loss referred to in paragraph 311-20(1)(b), or the sum of the transferring entity's *capital losses referred to in paragraph 311-25(b), treat any amount:
 - (a) that is a *capital loss or *capital gain that the transferring entity makes after the completion time; and
 - (b) that arises as a result of realisation of assets for the purpose of enabling payment to the receiving entity in connection with the transfer of the *accrued default amount of the member;as if the loss or gain were made during the transfer year but before the completion time.
- (2) In working out the *tax loss referred to in paragraph 311-20(1)(d), or the sum of the transferring entity's deductions referred to in paragraph 311-30(b), treat any amount:
 - (a) that is an amount of a deduction for the transferring entity, or an amount of assessable income by the transferring entity, arising after the completion time; and
 - (b) that arises as a result of realisation of assets for the purpose of enabling payment to the receiving entity in connection with the transfer of the *accrued default amount of the member;as if the amount of the deduction, or the amount of income, arose during the transfer year but before the completion time.

Subdivision 311-D—Consequences of choosing asset roll-over

Table of sections

311-40	Assets roll-over
311-45	CGT assets
311-50	Revenue assets
311-55	Further consequences for roll-overs involving life insurance companies

311-40 Assets roll-over

- (1) The transferring entity can choose an asset roll-over for an asset in relation to which, under the *arrangement, a *CGT event happens if:
 - (a) subsection (2) applies to the asset; and
 - (b) an asset (the *received asset*) becomes an asset of one of the following (the *receiving entity*) as a result of the event:
 - (i) the continuing fund for the choice;
 - (ii) a *pooled superannuation trust in which units are held by the continuing fund for the choice just after the completion time;
 - (iii) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by the continuing fund for the choice just after the completion time.
- (2) The asset is an asset to which this subsection applies (an *original asset*) if:
 - (a) in a case where the entity choosing under Subdivision 311-B is a trustee of a *complying superannuation fund—the asset is reasonably attributable to the *accrued default amount of the member; or
 - (b) in a case where the entity choosing under Subdivision 311-B is a *life insurance company—the asset is reasonably attributable to:
 - (i) the accrued default amount of the member; and
 - (ii) a *complying superannuation/FHSA life insurance policy issued by the transferring entity and held by the original fund; or

- (c) in a case where the entity choosing under Subdivision 311-B is a trustee of a *pooled superannuation trust—the asset is reasonably attributable to:
 - (i) the accrued default amount of the member; and
 - (ii) units in a pooled superannuation trust issued by the transferring entity and held by the original fund.

311-45 CGT assets

If the roll-over is chosen:

- (a) disregard any *capital gain or *capital loss the transferring entity makes from transferring an original asset to the receiving entity; and
- (b) the first element of the received asset's *cost base, in the hands of the receiving entity, is the transferring entity's cost base just before the time of the *CGT event; and
- (c) the first element of the received asset's *reduced cost base, in the hands of the receiving entity is worked out similarly.

311-50 Revenue assets

Consequences for transferring entity

- (1) For each of the original assets that are *revenue assets, the transferring entity's gross proceeds for the relevant *CGT event are taken, for the purposes of this Act, to be the amount (the **deemed proceeds**) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Consequences for receiving entity

- (2) For each of the received assets that are *revenue assets, the receiving entity is taken, for the purposes of this Act, to have incurred an amount for that asset at the time of the *CGT event that is equal to the deemed proceeds for the corresponding original asset.

311-55 Further consequences for roll-overs involving life insurance companies

- (1) Section 320-200 does not apply for a *CGT event for the roll-over if either the transferring entity or the receiving entity is a *life insurance company.

Note: Section 320 is about the consequences of transferring assets to or from a complying superannuation/FHSA asset pool.

- (2) If the receiving entity for the roll-over is a *life insurance company, each received asset of that entity is taken:
- (a) to be a *complying superannuation/FHSA asset of that entity; and
 - (b) not to be, in whole or in part, a *life insurance premium.

Subdivision 311-E—Choices

Table of sections

311-60 Choices

311-60 Choices

- (1) A choice under this Division must be made:
- (a) by the day the transferring entity's *income tax return is lodged for the transfer year for the entity; or
 - (b) within a further time allowed by the Commissioner.
- (2) The way the transferring entity's *income tax return is prepared is sufficient evidence of the making of the choice.

2 Application

The amendment made by this Part applies to income years that include 1 July 2013, and to later income years.

Part 2—Other amendments

Income Tax Assessment Act 1997

3 Subsection 40-340(1) (at the end of the table)

Add:

- | | | |
|---|--|---|
| 7 | Disposal of asset as part of transfer to a MySuper product | The transferor chooses a roll-over under Subdivision 311-B in relation to the disposal. |
|---|--|---|

4 Section 112-97 (at the end of the table)

Add:

- | | | | |
|----|---|--|----------------|
| 36 | An entity chooses an asset roll-over, or chooses to transfer a loss and chooses an asset roll-over, under Subdivision 311-B | First element of cost base and reduced cost base | Section 311-45 |
|----|---|--|----------------|

5 Subsection 115-30(1) (at the end of the table)

Add:

- | | | |
|----|--|--|
| 11 | A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 311-D | When the transferring entity for the roll-over acquired the corresponding original asset for the roll-over |
|----|--|--|

6 At the end of section 290-170

Add:

Amounts transferred to a MySuper product in another complying superannuation fund

- (6) If:
- (a) under an *arrangement, the fund (the **original fund**) transfers an *accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):
 - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
 - (ii) under section 388 of that Act;

- to another superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and
- (b) the arrangement takes effect after the making of your contribution; and
 - (c) you are a member (within the meaning of that Act) of the continuing fund immediately after the arrangement takes effect; and
 - (d) you did not give a notice under subsection (1) in relation to the contribution while you were a member (within the meaning of that Act) of the original fund;
- then subsections (1) to (4) of this section, and section 290-180, apply as if references in those provisions to the original fund (or the trustee of the original fund) were references to the continuing fund (or the trustee of the continuing fund).

7 At the end of section 290-180

Add:

Amounts transferred to a MySuper product in another complying superannuation fund

- (6) If:
 - (a) under an *arrangement, the fund (the ***original fund***) transfers an *accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):
 - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
 - (ii) under section 388 of that Act;to another superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and
 - (b) the arrangement takes effect after a valid notice is given under section 290-170; and
 - (c) you are a member (within the meaning of that Act) of the continuing fund immediately after the arrangement takes effect; and
 - (d) you seek to vary the valid notice after you cease to be a member (within the meaning of that Act) of the original fund;then subsections (2) and (3A) apply as if references in those subsections to the original fund (or the trustee of the original fund)

were references to the continuing fund (or the trustee of the continuing fund).

8 Paragraphs 292-25(2)(b) and 292-90(2)(b)

After “subsection 290-170(5) (about successor funds)”, insert “or subsection 290-170(6) (about MySuper products)”.

9 At the end of subparagraph 293-30(2)(b)(ii)

Add “or subsection 290-170(6) (about MySuper products)”.

10 Subsection 295-190(1) (table item 2A)

Repeal the item, substitute:

2A	CSF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) the CSF or *RSA is: (i) a *successor fund; or (ii) a superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and (b) the benefit relates to a contribution that, before it was transferred to the successor fund or continuing fund, was not covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) while the benefit is held in the successor fund or continuing fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of that fund under that section
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11 Subsection 295-490(1) (table item 2A)

Repeal the item, substitute:

2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the CSF or *RSA is:	The notice mentioned in paragraph (c) is
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- (i) a *successor fund; or received
- (ii) a superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and
- (b) the benefit relates to a contribution that, before it was transferred to the successor fund or continuing fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and
- (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund or continuing fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section)

12 Subsection 995-1(1)

Insert:

accrued default amount has the meaning given by section 20B of the *Superannuation Industry (Supervision) Act 1993*.

13 Application

The amendments made by this Part apply to income years that include 1 July 2013, and to later income years.

Part 3—Repeals and related amendments

Income Tax Assessment Act 1997

14 Subsection 40-340(1) (table item 7)

Repeal the item.

15 Section 112-97 (table item 36)

Repeal the item.

16 Subsection 115-30(1) (table item 11)

Repeal the item.

17 Subsection 290-170(6)

Repeal the subsection.

18 Subsection 290-180(6)

Repeal the subsection.

19 Paragraphs 292-25(2)(b) and 292-90(2)(b)

Omit “or subsection 290-170(6) (about MySuper products)”.

20 Subparagraph 293-30(2)(b)(ii)

Omit “or subsection 290-170(6) (about MySuper products)”.

21 Subsection 295-190(1) (table item 2A)

Repeal the item, substitute:

2A CSF
*RSA provider

A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that:

- (a) the CSF or *RSA is a *successor fund; and
- (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was not covered by a valid and acknowledged notice given to any *superannuation

provider under section 290-170;
and

- (c) while the benefit is held in the successor fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of the successor fund under that section

22 Subsection 295-490(1) (table item 2A)

Repeal the item, substitute:

2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section)	The notice mentioned in paragraph (c) is received
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23 Division 311

Repeal the Division.

24 Subsection 995-1(1) (definition of *accrued default amount*)

Repeal the definition.

25 Application

- (1) The amendments made by items 19, 20, 21 and 22 apply in relation to:
-

- (a) notices given under section 290-170 of the *Income Tax Assessment Act 1997* on or after the commencement of this item; and
 - (b) notices of variation given under section 290-180 of that Act on or after the commencement of this item (whether the notices being varied were given before, on or after the commencement of this item).
- (2) If, before the commencement of this item, paragraph 290-180(6)(a) of the *Income Tax Assessment Act 1997* applied to the transfer of an accrued default amount to a superannuation fund:
 - (a) section 290-180 of that Act as amended by this Part applies after that commencement to a variation of a valid notice in relation to a contribution related to that accrued default amount as if subsection 290-180(6) of that Act had not been repealed by this Part; and
 - (b) table item 2A of subsection 295-490(1) of that Act as amended by this Part applies after that commencement as if references in that table item to a successor fund included references to that superannuation fund.

Schedule 2—Sustaining the superannuation contribution concession: consequential amendments for Defence Force superannuation

Defence Force Retirement and Death Benefits Act 1973

1 Subsection 3(1) (definition of *benefit*)

Repeal the definition, substitute:

benefit means pension benefit, and includes the following:

- (a) a lump sum payment under subsection 32(2) or section 48;
- (b) a refund of contributions under section 56;
- (c) a release authority lump sum paid in relation to a release authority issued to a person under Subdivision 135-A in Schedule 1 to the *Taxation Administration Act 1953*.

2 Subsection 3(1)

Insert:

release authority lump sum has the meaning given by section 49K.

3 At the end of subsection 24(2A)

Add:

Note: This amount is reduced if a release authority lump sum has been paid: see section 49M.

4 At the end of subsection 32A(4)

Add:

Note: This amount is reduced if a release authority lump sum has been paid: see section 49M.

5 Subsection 48(5)

Repeal the subsection, substitute:

- (5) In this section, a reference to the amount of retirement pay or invalidity pay paid or payable to a member of the scheme before the member's death shall be read as including the following:

- (a) if an election has been made, by or on behalf of the member, under section 24 or 32A, to commute a portion of the retirement pay or invalidity pay, as the case may be, payable to the member—the amount paid or payable to or in respect of the member under paragraph 24(3)(a) or 32A(5)(a), as the case may be, by virtue of that election;
- (b) if the member’s retirement pay or invalidity pay is reduced under section 49N to reflect a release authority lump sum paid in relation to a release authority issued to the member—the amount of the release authority lump sum.

6 After Part VIA

Insert:

Part VIB—Sustaining the superannuation contribution concession: release of benefit to meet deferred tax liability

49K Release of benefits under a release authority

A lump sum (the *release authority lump sum*) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to CSC in accordance with Subdivision 135-B in that Schedule.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

49L Limit on amount that may be released

- (1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum must not have the effect that a benefit of the person under this Act is reduced below zero.
- (2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of a person’s benefit is to be worked out

after taking account of any reduction under another provision of this Act, apart from the following:

- (a) a reduction under section 24 in relation to an amount not yet paid;
- (b) a reduction under section 32A in relation to an amount not yet paid.

Note: Other provisions that reduce a person's benefit before a release authority lump sum include the following:

- (a) subsections 23(6) and 31(4) (which deal with surcharge elections), if the election under section 124 is made before giving CSC the release authority (see subsection 124(3));
- (b) subsections 75(3A) and (4A) (which deal with surcharge deduction amounts for deferred benefits);
- (c) Part VIA (which deals with family law superannuation splitting).

49M Priority order in relation to commutation of pension

- (1) This section applies if:
 - (a) a person gives CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) an amount has not yet been paid to the person by virtue of a commutation under section 24 or 32A.
- (2) The release authority lump sum is to be paid before an amount is paid to the person by virtue of a commutation under section 24 or 32A.
- (3) To avoid doubt, the person's retirement pay or invalidity pay is to be reduced under this Part to reflect the release authority lump sum, and the following are to be worked out having regard to that reduced amount of retirement pay or invalidity pay:
 - (a) the amount that may be paid by virtue of the commutation;
 - (b) the retirement pay or invalidity pay payable after the commutation takes effect.

49N Calculation of person's benefits after payment of release authority lump sum

- (1) If a release authority lump sum is paid in relation to a release authority issued to a person, any benefits to which the person is

entitled under this Act must be reduced to reflect the release authority lump sum.

- (2) If:
- (a) a release authority lump sum is paid in relation to a release authority issued to a person; and
 - (b) the person is entitled to retirement pay or invalidity pay; the rate at which retirement pay or invalidity pay is payable to the person is to be reduced so that it equals the amount worked out using this formula:

$$\text{Pre-reduction rate} - \frac{\text{Release authority lump sum}}{\text{Conversion factor}}$$

where:

conversion factor means the factor that is applicable to the person under the determination made by CSC under subsection (3).

pre-reduction rate means the annual rate at which retirement pay or invalidity pay would, apart from this section (but having regard to any other provisions of this Act that affect that rate at the time), be payable to the person at the time that pay becomes payable.

- (3) CSC may, by legislative instrument, determine the conversion factor, or the method for working out the conversion factor, for the purposes of subsection (2).

49P Modification for candidates at parliamentary elections

For the purposes of paragraph 55(5)(a), disregard a benefit that is a release authority lump sum.

Note: Subsection 55(5) is about benefits that must be repaid.

49Q Modification for section 62

- (1) If:
- (a) a person's retirement pay or invalidity pay, worked out having regard to section 49N, is cancelled under subsection 62(1); and
 - (b) after that cancellation, the person becomes entitled to retirement pay or invalidity pay;

the rate of the person's retirement pay or invalidity pay mentioned in paragraph (b) is to be reduced in accordance with section 49N.

- (2) However, for the purpose of the formula in subsection 49N(2), the amount of the release authority lump sum is reduced by the amount of any reductions made because of the previous application of section 49N to the retirement pay or invalidity pay before it was cancelled.

7 At the end of section 124

Add:

- (3) However, a person may not make an election under subsection (1) if the person has given CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

Schedule 3—Default superannuation

Fair Work Amendment Act 2012

1 After item 3 of Schedule 1

Insert:

3A Section 12

Insert:

employer MySuper product: see subsection 23A(1B).

2 After item 4 of Schedule 1

Insert:

4A Section 12

Insert:

first stage test: see section 156Q.

3 Item 5 of Schedule 1

Repeal the item, substitute:

5 Section 12

Insert:

interim application period: see paragraph 156N(2)(b).

5A Section 12 (definition of *MySuper product*)

Repeal the definition, substitute:

MySuper product: see subsection 23A(1).

5B Section 12

Insert:

Schedule of Approved Employer MySuper Products: see paragraph 156L(1)(a).

4 Item 6 of Schedule 1

Repeal the item, substitute:

6 Section 12

Insert:

second stage test:

- (a) in relation to a standard MySuper product—see subsection 156H(2); and
- (b) in relation to an employer MySuper product—see section 156S.

6A Section 12

Insert:

standard application period: see paragraph 156N(2)(a).

6B Section 12

Insert:

standard MySuper product: see subsection 23A(1A).

5 Item 9 of Schedule 1 (new subsection 23A(1))

Repeal the subsection, substitute:

- (1) *MySuper product* has the meaning given by the *Superannuation Industry (Supervision) Act 1993*.
- (1A) A *standard MySuper product* is a MySuper product that is not an employer MySuper product.
- (1B) An *employer MySuper product* is a tailored MySuper product or a corporate MySuper product.

6 Item 11 of Schedule 1 (at the end of the new paragraph relating to Division 4A)

Add:

It also sets out the process for making the Schedule of Approved Employer MySuper products in a 4 yearly review, and amending

the schedule after it is made to include other employer MySuper products. If an employer MySuper product is on the schedule, an employer covered by a modern award can make contributions, for the benefit of a default fund employee, to a superannuation fund that offers the product (see subsection 149D(1A)).

7 Item 13 of Schedule 1 (heading to new subsection 149D(1))

Omit “generic”, substitute “standard”.

8 Item 13 of Schedule 1 (new paragraph 149D(1)(a))

Omit “generic”, substitute “standard”.

9 Item 13 of Schedule 1 (new paragraph 149D(1)(d))

Before “(2)”, insert “(1A)”.

10 Item 13 of Schedule 1 (at the end of new subsection 149D(1))

Add:

Note: If a superannuation fund is specified in the default fund term of a modern award in relation to a standard MySuper product and, in addition to offering the standard MySuper product, the fund offers a tailored MySuper product that a default fund employee is entitled to hold, then any contributions made by the employer to the fund for the benefit of that employee will be paid into the tailored MySuper product instead of the standard MySuper product (see section 29WB of the *Superannuation Industry (Supervision) Act 1993*).

11 Item 13 of Schedule 1 (after new subsection 149D(1))

Insert:

Superannuation funds offering employer MySuper products on the schedule

(1A) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that offers an employer MySuper product that:

- (a) relates to the employer; and
- (b) is on the Schedule of Approved Employer MySuper Products.

Note: The Schedule of Approved Employer MySuper Products is made during a 4 yearly review of default fund terms of modern awards under Division 4A of Part 2-3.

12 Item 18 of Schedule 1 (new subsection 156A(3))

Repeal the subsection, substitute:

First stage—the Default Superannuation List

- (3) In the first stage, the FWC must make the Default Superannuation List for the purposes of the review.

Note: In the first stage, the FWC must be constituted by an Expert Panel for the purposes of making the list and determining applications to include standard MySuper products on the list (see paragraphs 617(4)(a) and (b)).

13 Item 18 of Schedule 1 (before new subsection 156A(4))

Insert:

Second stage—reviewing and varying default fund terms

14 Item 18 of Schedule 1 (at the end of new section 156A)

Add:

The Schedule of Approved Employer MySuper Products

- (5) In the 4 yearly review, the FWC must also make the Schedule of Approved Employer MySuper Products.

Note: The FWC must be constituted by an Expert Panel for the purposes of making the schedule and determining applications to include employer MySuper products on the schedule (see paragraphs 617(4)(c) and (d)).

15 Item 18 of Schedule 1 (new subsection 156B(2))

Omit “generic”, substitute “standard”.

16 Item 18 of Schedule 1 (heading to new section 156C)

After “list a”, insert “standard”.

17 Item 18 of Schedule 1 (new subsections 156C(1) and (3))

Omit “generic”, substitute “standard”.

18 Item 18 of Schedule 1 (heading to new section 156D)

After “list a”, insert “standard”.

19 Item 18 of Schedule 1 (heading to new section 156E)

After “list a”, insert “standard”.

20 Item 18 of Schedule 1 (new subsection 156E(1))

Omit “generic”, substitute “standard”.

21 Item 18 of Schedule 1 (new subsection 156E(2))

Omit “interest”, substitute “interests”.

22 Item 18 of Schedule 1 (new subsection 156G(2))

Omit “generic”, substitute “standard”.

23 Item 18 of Schedule 1 (new paragraph 156H(1)(a))

Omit “in relation to a generic MySuper product”.

24 Item 18 of Schedule 1 (new paragraph 156H(1)(b))

Omit “10”, substitute “15”.

25 Item 18 of Schedule 1 (new paragraph 156H(1)(b))

Omit “generic”, substitute “standard”.

26 Item 18 of Schedule 1 (note to new subsection 156H(1))

Omit “10”, substitute “15”.

27 Item 18 of Schedule 1 (new subsections 156H(2) and (3))

Omit “generic”, substitute “standard”.

28 Item 18 of Schedule 1 (new subsection 156H(3))

Omit “10”, substitute “15”.

29 Item 18 of Schedule 1 (new subsection 156K(1))

After “149D(1),” insert “(1A),”.

30 Item 18 of Schedule 1 (new section 156L)

Repeal the section, substitute:

Subdivision D—The Schedule of Approved Employer MySuper Products

156L The Schedule of Approved Employer MySuper Products

- (1) In the 4 yearly review, the FWC must:
 - (a) make and publish the *Schedule of Approved Employer MySuper Products*; and
 - (b) revoke any previous Schedule of Approved Employer MySuper Products.

Note: If an employer MySuper product is on the schedule, an employer covered by a modern award can make contributions, for the benefit of a default fund employee, to a superannuation fund that offers the product (see subsection 149D(1A)).

- (2) When the schedule is made, it must specify any employer MySuper product that the FWC has determined under section 156P is to be included on the schedule.
- (3) After the schedule is made, it must be amended to specify any employer MySuper product that the FWC has determined under section 156P is to be included on the schedule.

Note: The FWC must be constituted by an Expert Panel for the purposes of amending the schedule (see paragraph 617(5)(b)).
- (4) If the schedule is amended as referred to in subsection (3), the FWC must publish the schedule as amended.
- (5) The schedule must not specify any other product.

156M FWC to invite applications to include employer MySuper products on schedule

- (1) Before making the schedule, the FWC must publish a notice that invites:
 - (a) superannuation funds that offer an employer MySuper product; and
 - (b) employers to which an employer MySuper product relates; to apply to the FWC to have the product included on the schedule.
- (2) The notice must specify the period in which an application may be made.

156N Making applications to include employer MySuper products on schedule

- (1) The following may apply to the FWC to have an employer MySuper product included on the schedule:
 - (a) a superannuation fund that offers the product;
 - (b) an employer to which the product relates.
- (2) The application must be made:
 - (a) in the period (the *standard application period*) specified in the notice under section 156M; or
 - (b) in the period (the *interim application period*) that:
 - (i) starts immediately after the schedule is made under paragraph 156L(1)(a); and
 - (ii) ends immediately before the next 4th anniversary of the commencement of this Part.

Note: Paragraph (2)(a) deals with applications that are made in a 4 yearly review of default fund terms, and paragraph (2)(b) deals with applications that are made outside a 4 yearly review.
- (3) The application must also:
 - (a) be accompanied by any fees that are prescribed by the regulations; and
 - (b) provide information relating to the first stage criteria.
- (4) The FWC must publish any application made under subsection (1).
- (5) However, if an application includes information that is claimed by the applicant to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive:
 - (a) the FWC may decide not to publish the information; and
 - (b) if it does so, it must instead publish a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive).
- (6) A reference in this Act (other than in this section) in relation to an application made under subsection (1) includes a reference to a summary referred to in paragraph (5)(b).

- (7) Only one application in relation to an employer MySuper product may be made under subsection (1) in the period that:
- (a) starts at the start of the standard application period; and
 - (b) ends at the end of the interim application period.

156P FWC to determine applications

- (1) If an application is made under subsection 156N(1) to have an employer MySuper product included on the schedule, the FWC must make a determination about whether to include the product on the schedule.

Note: The FWC must be constituted by an Expert Panel for the purposes of making this determination (see paragraphs 617(4)(d) and (5)(a)).

- (2) The FWC must not determine that the product is to be included on the schedule unless the product satisfies the first stage test and the second stage test.

156Q The first stage test

An employer MySuper product satisfies the *first stage test* if the FWC is satisfied that including the product on the Schedule of Approved Employer MySuper Products would be in the best interests of default fund employees, or a particular class of those employees, taking into account:

- (a) the information provided in the application; and
- (b) the first stage criteria; and
- (c) any submissions that were made in relation to whether the product satisfies the first stage test.

156R Submissions about the first stage test

- (1) The FWC must ensure that all persons and bodies have a reasonable opportunity to make written submissions to the FWC about whether an employer MySuper product satisfies the first stage test.
- (2) If:
- (a) a person or body makes a written submission in relation to whether an employer MySuper product satisfies the first stage test; and

- (b) the person or body has an interest in relation to:
 - (i) the superannuation fund that offers the product; or
 - (ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund;
 then the person or body must disclose that interest in the submission.
- (3) The FWC must publish any submission that is made.

156S The second stage test

An employer MySuper product satisfies the *second stage test* if the FWC is satisfied that including the product on the Schedule of Approved Employer MySuper Products would be in the best interests of default fund employees of an employer to which the product relates, or a particular class of those employees, taking into account:

- (a) any submissions that were made in relation to whether the product satisfies the second stage test; and
- (b) any other matter the FWC considers relevant.

156T Submissions about the second stage test

- (1) The FWC must ensure that the following persons have a reasonable opportunity to make written submissions to the FWC about whether an employer MySuper product satisfies the second stage test:
 - (a) an employee of an employer to which the product relates;
 - (b) an employer to which the product relates;
 - (c) an organisation that is entitled to represent the industrial interests of a person referred to in paragraph (a) or (b).
- (2) If:
 - (a) a person or body (whether or not a person referred to in subsection (1)) makes a written submission in relation to whether an employer MySuper product satisfies the second stage test; and
 - (b) the person or body has an interest in relation to:
 - (i) the superannuation fund that offers the product; or

(ii) if the person or body refers to another superannuation fund in the submission—that superannuation fund; then the person or body must disclose that interest in the submission.

(3) The FWC must publish any submission that is made.

Subdivision E—Publishing documents under this Division

156U Publishing documents under this Division

If the FWC is required by this Division to publish a document, the FWC must publish the document on its website or by any other means that the FWC considers appropriate.

31 Item 20 of Schedule 1 (new subsection 159A(1))

Omit “generic”, substitute “standard”.

32 Item 39 of Schedule 2

Repeal the item, substitute:

39 At the end of section 617

Add:

Expert Panel for 4 yearly review of default fund terms

- (4) In a 4 yearly review of default fund terms of modern awards, the following must be made by an Expert Panel constituted for the purposes of the review:
- (a) the Default Superannuation List;
 - (b) a determination under section 156E on an application to have a standard MySuper product included on the Default Superannuation List;
 - (c) the Schedule of Approved Employer MySuper Products;
 - (d) a determination under section 156P on an application made in the standard application period to have an employer MySuper product included on the Schedule of Approved Employer MySuper Products.

Note: For the constitution of an Expert Panel for those purposes, see subsection 620(1A).

Expert Panel for amending the Schedule of Approved Employer MySuper Products

- (5) If an application is made in the interim application period to have an employer MySuper product included on the Schedule of Approved Employer MySuper Products, the following must be made by an Expert Panel constituted for the purposes of determining the application:
- (a) a determination under section 156P on the application;
 - (b) if the determination is to include the product on the schedule—an amendment of the schedule to specify the product.

Note: For the constitution of an Expert Panel for those purposes, see subsection 620(1A).

33 Item 43 of Schedule 2 (new subsection 620(1A))

Repeal the subsection, substitute:

Constitution of an Expert Panel for 4 yearly reviews of default fund terms etc.

- (1A) An Expert Panel constituted under this section for a purpose referred to in subsection 617(4) or (5) consists of 7 FWC Members (except as provided by section 622), and must include:
- (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
 - (b) 3 Expert Panel Members who have knowledge of, or experience in, one or more of the following fields:
 - (i) finance;
 - (ii) investment management;
 - (iii) superannuation.

34 Item 1 of Schedule 11 (after new clause 2)

Insert:

2A Transitional provision—when first variations of default fund term take effect

- (1) This clause applies to the first 4 yearly review of default fund terms of modern awards under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (2) In the review, determinations under that Division (whether made under section 156H or 156J) varying the default fund term of a modern award:
 - (a) must take effect at the same time; and
 - (b) must not take effect before 1 January 2015.

2B Transitional provision—modern awards made on or after 1 January 2014

If a modern award is made in the period that starts on 1 January 2014 and ends on 31 December 2017, then, until the default fund term of the award is varied after that period under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act), this Act has effect in relation to the award as if subsection 149D(1A) (as inserted by that Schedule) were as follows:

Superannuation funds offering employer MySuper products

- (1A) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that offers an employer MySuper product that relates to the employer.

*[Minister's second reading speech made in—
House of Representatives on 29 May 2013
Senate on 24 June 2013]*

(144/13)

*Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act
2013 No. 89, 2013 39*