





# **Treasury Laws Amendment (Recovering Unpaid Superannuation) Act 2020**

**No. 21, 2020**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Recovering Unpaid Superannuation) Act 2020

No. 21, 2020

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

[Assented to 6 March 2020]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Recovering Unpaid Superannuation) Act 2020*.

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2020

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2020
2. Schedule 1, items 1 to 9	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2020
3. Schedule 1, items 10 to 12	24 May 2018.	24 May 2018
4. Schedule 1, item 13	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	6 September 2020
5. Schedule 1, item 14	24 May 2018.	24 May 2018

Note: This table relates only to the provisions of this Act as originally enacted.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.

- (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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### ***Income Tax Assessment Act 1997***

#### **1 Section 26-95**

Before “You”, insert “(1)”.

#### **2 At the end of section 26-95**

Add:

- (2) However, if the charge relates to a \*superannuation guarantee shortfall for which you qualify for an amnesty under section 74 of the *Superannuation Guarantee (Administration) Act 1992*, this section does not apply to a payment that:

- (a) is made, under that Act, during the amnesty period (within the meaning of subsection 74(3) of that Act); and
- (b) is made in relation to the charge, whether or not the Commissioner applies the payment to satisfy your liability to pay the charge;

except to the extent that the payment, when taken together with any other such payments made in relation to the charge, exceeds the amount paid as a result of a disclosure to which paragraph 74(1)(a) of that Act applies in relation to the shortfall.

#### **3 Section 290-95**

Before “You”, insert “(1)”.

#### **4 Section 290-95 (note)**

Repeal the note, substitute:

Note: Section 26-95 restricts deductions for charges imposed by the *Superannuation Guarantee Charge Act 1992*.

#### **5 At the end of section 290-95 (after the note)**

Add:

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- (2) However, this section does not apply to such a contribution that is made during the amnesty period (within the meaning of subsection 74(3) of the *Superannuation Guarantee (Administration) Act 1992*), to the extent that the charge relates to a \*superannuation guarantee shortfall for which you qualify for an amnesty under section 74 of that Act.

## 6 After subsection 291-465(2)

Insert:

- (2A) Paragraph (2)(a) does not apply if:
- (a) the determination relates to a contribution that is an amount the Commissioner pays for your benefit under Part 8 of the *Superannuation Guarantee (Administration) Act 1992*; and
  - (b) the amount represents an amount of a charge payment (within the meaning of section 63A of that Act) paid as a result of a disclosure to which paragraph 74(1)(a) of that Act applies; and
  - (c) the entity making the disclosure qualified, under section 74 of that Act, for an amnesty in relation to the \*superannuation guarantee shortfall to which the charge payment relates.

## 7 At the end of subsection 293-30(4)

Add:

- ; (c) an amount that the Commissioner pays for your benefit under Part 8 of the *Superannuation Guarantee (Administration) Act 1992*, if:
- (i) the amount represents an amount of a charge payment (within the meaning of section 63A of that Act) paid as a result of a disclosure to which paragraph 74(1)(a) of that Act applies; and
  - (ii) the entity making the disclosure qualified, under section 74 of that Act, for an amnesty in relation to the \*superannuation guarantee shortfall to which the charge payment relates;
- (d) an amount that an entity contributes for your benefit that is offset, under section 23A of that Act, against the entity's liability to pay superannuation guarantee charge (within the meaning of that Act), if:

- (i) the amount represents an amount of a superannuation guarantee charge covered by a disclosure to which paragraph 74(1)(a) of that Act applies; and
- (ii) the entity qualified, under section 74 of that Act, for an amnesty in relation to the superannuation guarantee shortfall to which the superannuation guarantee charge relates.

## **8 Subsection 995-1(1)**

Insert:

*superannuation guarantee shortfall* has the meaning given by section 17 of the *Superannuation Guarantee (Administration) Act 1992*.

## **9 Application of amendments**

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to the 2017-18 income year and later income years.

## ***Superannuation Guarantee (Administration) Act 1992***

### **10 Section 32**

Before “An”, insert “(1)”.

### **11 At the end of section 32**

Add:

- (2) If:
  - (a) under section 74, the employer qualifies for an amnesty in relation to part of the employer’s superannuation guarantee shortfall for the quarter; and
  - (b) that shortfall includes one or more individual superannuation guarantee shortfalls for employees (*newly included employees*) for the quarter that would not have been so included if the information in the disclosure that gave rise to the amnesty were not taken into account; and
  - (c) any assessment of the employer’s superannuation guarantee shortfall for the quarter that was made before the employer

qualified for the amnesty did not take into account an individual superannuation guarantee shortfall for newly included employees for the quarter;

in working out under subsection (1) the employer's administration component for the quarter, the employer is taken not to have an individual superannuation guarantee shortfall for any of the newly included employees for the quarter.

- (3) Despite subsection (1), an employer's administration component for a quarter is nil if:
- (a) under section 74, the employer qualifies for an amnesty in relation to the whole of the employer's superannuation guarantee shortfall for the quarter; and
  - (b) an assessment of the employer's superannuation guarantee shortfall for the quarter has not been made (or taken to have been made) under Part 4 before the employer qualified for the amnesty.

## **12 After section 59**

Insert:

### **60 Amnesty from liability to pay additional superannuation guarantee charge**

- (1) If:
- (a) under section 74, an employer qualifies for an amnesty in relation to part of the employer's superannuation guarantee shortfall for a quarter; and
  - (b) any assessment made under section 62, before the employer qualified for the amnesty, of the additional superannuation guarantee charge payable by the employer for the quarter did not take into account the extent of the increase in the shortfall as a result of the disclosure of information that gave rise to the amnesty;

in working out under section 59 the employer's liability to pay additional superannuation guarantee charge, the amount of the superannuation guarantee charge payable by the employer for the quarter is reduced by the extent to which the employer qualifies for the amnesty for the quarter.

- (2) Despite section 59, an employer's liability to pay additional superannuation guarantee charge under this Part for a quarter is nil if:
- (a) under section 74, the employer qualifies for an amnesty in relation to the whole of the employer's superannuation guarantee shortfall for the quarter; and
  - (b) the Commissioner has not, before the employer qualified for the amnesty, made an assessment under section 62 of the additional superannuation guarantee charge payable by an employer under this Part for the quarter.

### **13 At the end of section 62**

Add:

- (4) If:
- (a) an employer is liable under section 59 to additional superannuation guarantee charge for a quarter that started on or before 1 January 2018; and
  - (b) there is particular information that is relevant to the amount of the employer's superannuation guarantee shortfall for the quarter; and
  - (c) since the start of the amnesty period, either:
    - (i) the employer has not disclosed that information to the Commissioner; or
    - (ii) the employer has disclosed that information to the Commissioner, but only after the Commissioner informed the employer that the Commissioner was examining, or intended to examine, the employer's compliance with an obligation to pay the superannuation guarantee charge for the quarter; and
  - (d) by taking that information into account, the employer's superannuation guarantee shortfall for the quarter exceeds what it would be if that information were not taken into account;

to the extent that the additional superannuation guarantee charge relates to that excess, the Commissioner's power under subsection (3) of this section to remit the additional superannuation guarantee charge is limited to remitting no more than half of the charge.

- (5) However, subsection (4) does not apply if the Commissioner is satisfied that there were exceptional circumstances that prevented the employer from:
- (a) disclosing that information to the Commissioner; or
  - (b) disclosing that information to the Commissioner before the Commissioner informed the employer as mentioned in subparagraph (4)(c)(ii);
- as the case requires.

#### **14 After section 73**

Insert:

#### **74 Amnesty in relation to historic amounts of superannuation guarantee shortfall**

##### *Qualifying for the amnesty*

- (1) An employer qualifies for an amnesty for the employer's superannuation guarantee shortfall for a quarter if:
- (a) during the period (the *amnesty period*) provided by subsection (3), the employer discloses to the Commissioner, in the approved form, information that:
    - (i) relates to the amount of the employer's superannuation guarantee shortfall for the quarter; and
    - (ii) was not disclosed to the Commissioner before the amnesty period; and
  - (b) the amnesty period started after the end of the period of 28 days after the end of the quarter; and
  - (c) the Commissioner has not, at any time before the disclosure, informed the employer that the Commissioner is examining, or intends to examine, the employer's compliance with an obligation to pay the superannuation guarantee charge for the quarter.
- (2) However, if the employer would have a superannuation guarantee shortfall for the quarter even if the information in the disclosure were not taken into account, the employer qualifies for an amnesty for the shortfall only to the extent of the increase in the shortfall as a result of taking the information into account.

- (3) The ***amnesty period*** is the period that:
- (a) started on 24 May 2018; and
  - (b) ends 6 months after the day the *Treasury Laws Amendment (Recovering Unpaid Superannuation) Act 2020* receives the Royal Assent.

*Ceasing to qualify for the amnesty*

- (4) The employer ceases to qualify, and is taken never to have qualified, for the amnesty for the employer's superannuation guarantee shortfall for the quarter if the Commissioner notifies the employer under subsection (5).
- (5) The Commissioner may notify the employer in writing that the employer has ceased to qualify, and is taken never to have qualified, for that amnesty if:
- (a) the employer:
    - (i) has not, on or before the day on which superannuation guarantee charge on the employer's superannuation guarantee shortfall for the quarter became payable, paid that superannuation guarantee charge; and
    - (ii) has not, at any time, entered into an arrangement with the Commissioner that includes the payment of that superannuation guarantee charge; or
  - (b) the employer has entered into such an arrangement, but has failed to comply with it.
- (6) For the purposes of subparagraph (5)(a)(i), a payment under this Act of an amount equal to the amount of the superannuation guarantee charge mentioned in that subparagraph is taken to be a payment of that charge whether or not the Commissioner applies the payment to satisfy the employer's liability to pay that charge.

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*[Minister's second reading speech made in—  
House of Representatives on 18 September 2019  
Senate on 2 December 2019]*

*(180/19)*

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*10 Treasury Laws Amendment (Recovering Unpaid Superannuation) Act No. 21, 2020  
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