NORTHERN TERRITORY OF AUSTRALIA

SUPERANNUATION GUARANTEE (SAFETY NET) ACT

As in force at 18 June 2009

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 18 June 2009. Any amendments that commence after that date are not included.

SUPERANNUATION GUARANTEE (SAFETY NET) ACT

An Act to provide superannuation benefits for certain employees and office-holders in the public sector, and for related purposes

1 Short title

This Act may be cited as the *Superannuation Guarantee (Safety Net) Act*.

2 Commencement

This Act shall be deemed to have come into operation on 1 July 1992.

3 Definitions

In this Act, unless the contrary intention appears:

Commissioner means the Commissioner of Superannuation appointed under the *Superannuation Act*.

Commonwealth Act means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

employee, in relation to the Territory, means:

(a) a person who is, by virtue of the Commonwealth Act, an employee of the Territory; and

(b) a person or a person of a class of persons declared to be an employee under section 4(1)(a),

but does not include:

(c) a person or a person of a class of persons declared under section 4(1)(b) not to be an employee.

Family Law Act means the *Family Law Act 1975* of the Commonwealth and includes regulations made under that Act.

member spouse, in relation to a superannuation interest, means the person who is the member spouse in relation to that interest under Part VIIIB of the Family Law Act.

non-member spouse, in relation to a superannuation interest, means the person who is the non-member spouse in relation to that interest under Part VIIIB of the Family Law Act.

splitting instrument means a superannuation agreement, a flag lifting agreement that provides for a payment split, or a splitting order, each within the meaning of Part VIIIB of the Family Law Act.

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the Surcharge Act.

superannuation interest means an interest that an employee or former employee has under this Act.

Surcharge Act means the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth and includes the regulations under that Act.

Surcharge Collection Act means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth and includes the regulations under that Act.

Territory includes a statutory corporation.

3A Scheme to comply with superannuation surcharge laws and agreements with Commonwealth

This Act is to be administered in accordance with:

(a) the Surcharge Act and the Surcharge Collection Act; and

(b) a written agreement entered into by the Territory and the Commonwealth relating to exempt public sector superannuation schemes within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

3B Surcharge debt accounts

(1) The Commissioner must establish and maintain for the purposes of section 16 of the Surcharge Collection Act a surcharge debt account for each employee in relation to whom superannuation contributions surcharge is paid or payable, by the Commissioner, in respect of superannuation benefits under this Act.

(2) The Commissioner must debit to the surcharge debt account of an employee:

(a) superannuation contributions surcharge in relation to the employee paid or payable by the Commissioner in respect of superannuation benefits under this Act; and

(b) interest paid or payable under the Surcharge Collection Act on the amount by which the account is in debit.

(3) The Commissioner must credit to the surcharge debt account of an employee an amount paid under section 3C by the employee.

3C Advance payments to reduce superannuation contributions surcharge

(1) An employee may, on lodging an approved election form with the Commissioner, pay an amount to the Commissioner for the purpose of reducing the amount by which the employee's surcharge debt account is in debit.

(2) A payment under this section may be made on a periodic or single payment basis.

(3) An election form lodged under subsection (1) is to specify the amount to be paid and the manner of the payment.

(4) An employee may, by lodging an approved election form with the Commissioner:

(a) vary in accordance with the form the amount or manner of payment of periodic payments; or

(b) revoke an election under this section.

(5) In this section, ***approved election form*** means a form approved by the Commissioner.

3D Repayment of superannuation contributions surcharge

Notwithstanding any other provision of this Act, the Commissioner may deduct from a superannuation benefit to be paid under this Act in relation to an employee an amount equal to the balance of the employee's surcharge debt account.

4 Declaration

(1) The Commissioner may, for the purposes of this Act, declare that a person or a person of a class of persons:

(a) is an employee; or

(b) is not an employee,

of the Territory.

(2) A declaration under subsection (1):

(a) shall be in writing; and

(b) subject to subsection (3), takes effect from the date specified in the declaration or, where no date is specified, from the date of the declaration.

(3) A declaration under subsection (1) may be expressed to take effect on and from a date before the date of the declaration, and the declaration shall have effect accordingly.

(4) A copy of a declaration under subsection (1), where it relates to an individual person, shall be given to the person or, where it relates to a person of a class of persons, shall be published in the *Gazette*.

5 Benefit payments

(1) Where superannuation benefits, if any, to which an employee is entitled are less than the amount required to avoid payment of a superannuation guarantee charge under the Commonwealth Act in respect of the employee, the Territory shall pay, in respect of the employee, a superannuation benefit of an amount not less than that required to avoid payment of the charge.

(2) In addition to subsection (1), the Territory may pay a superannuation benefit under this Act in respect of an employee notwithstanding that there is not a liability to pay a superannuation guarantee charge under the Commonwealth Act in respect of the employee.

(3) A superannuation benefit paid under this section shall be the amount calculated in accordance with the administrative instructions prepared under section 6.

(4) A superannuation benefit paid under this section shall be paid from moneys set aside for superannuation purposes and, to the extent that those moneys are inadequate, the benefit shall be paid from the public moneys of the Territory and the appropriation for that purpose is hereby established or increased to the extent necessary.

6 Administrative instructions

(1) For the purposes of this Act, the Commissioner shall prepare administrative instructions setting out the employees or classes of employees entitled to superannuation benefits under this Act, the method of calculating and paying those benefits, the notification to be given to employees of those benefits and such other matters as are necessary or convenient to ensure the efficient processing of benefit payments under this Act.

(2) Administrative instructions prepared under subsection (1):

(a) shall be in writing;

(b) are of no force or effect unless approved by the Minister; and

(c) subject to subsection (3), take effect on and from the date on which approved.

(3) Administrative instructions prepared under subsection (1) may be expressed to take effect on and from a date before the instructions are approved under subsection (2), and such instructions shall have effect accordingly.

7 Act to be administered so as to comply with Family Law Act provisions in relation to superannuation

(1) This section applies despite any other provision of this Act.

(2) This Act is to be administered in accordance with the provisions of the Family Law Act relating to superannuation.

(3) Subject to the provisions of the Family Law Act relating to superannuation, this Act is to be administered in relation to a person in accordance with the provisions of a splitting instrument, if any, that applies in relation to the person.

(4) The Commissioner may prepare written administrative instructions that are necessary or convenient to give effect to:

(a) the provisions of the Family Law Act relating to superannuation;

(b) splitting instruments; and

(c) Acts of the Commonwealth relating to superannuation and regulations under those Acts.

(5) Without limiting the generality of subsection (4), administrative instructions for the purposes of that subsection may include, but are not limited to, the following:

(a) the methods of calculating and paying a superannuation interest to member spouses and non-member spouses, including calculations that may reduce the superannuation interest of a member spouse;

(b) the establishing of interests and accounts, including accounts under the *Superannuation Act*, for non-member spouses.

(6) Administrative instructions prepared under subsection (4) may amend, or modify the application of, administrative instructions made under section 6.

(7) An administrative instruction prepared under subsection (4) takes effect on the date specified in the instruction.

(8) If a provision of this Act or the administrative instructions made under this Act is inconsistent with:

(a) a provision of the Family Law Act relating to superannuation; or

(b) a splitting instrument,

the provision of this Act or the administrative instructions is taken to have been complied with if the provision of the Family Law Act or a splitting instrument, as the case may be, has been complied with.

8 Commissioner may charge fees for additional services

The Commissioner may charge a person the reasonable cost of performing on behalf of the person a service in relation to this Act that the Commissioner undertakes at the request of the person.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Superannuation Guarantee (Safety Net) Act 1993 (Act No. 26, 1993)

Assent date	24 June 1993
Commenced	1 July 1992 (s 2)

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 *Financial Management Act 1992* (Act No. 4, 1995) and *Gaz* S13, 31 March 1995)

Superannuation Guarantee (Safety Net) Amendment Act 1998 (Act No. 70, 1998)

Assent date	23 September 1998
Commenced	20 October 1998 (*Gaz* S41, 20 October 1998)

Superannuation Guarantee (Safety Net) Amendment Act 2003 (Act No. 8, 2003)

Assent date	18 March 2003
Commenced	28 May 2003 (*Gaz* G21, 28 May 2003, p 3)

Financial Management Amendment Act 2009 (Act No. 15, 2009)

Assent date	18 June 2009
Commenced	18 June 2009

3 LIST OF AMENDMENTS

s 3	amd No. 70, 1998, s 4; No. 8, 2003, s 4
ss 3A – 3D	ins No. 70, 1998, s 5
s 5	amd No. 5, 1995, s 19; No. 15, 2009, s 16
ss 7 – 8	ins No. 8, 2003, s 5