

Division 10A—Superannuation contributions

116A Division does not apply to certain employees or employers in referring States

This Division does not apply in relation to:

- (a) an employee who is a national system employee only because of section 30C or 30M (which extend the meaning of *national system employee*); or
- (b) an employer that is a national system employer only because of section 30D or 30N (which extend the meaning of *national system employer*).

116B Employer’s obligation to make superannuation contributions

An employer must make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the employee.

116C Reduction of employer’s liability to the extent of superannuation charge payments

The obligation to make contributions for an employee under section 116B does not apply to an employer to the extent that:

- (a) the employer has made a charge payment (within the meaning of section 63A of the *Superannuation Guarantee (Administration) Act 1992*) in respect of the employee under Part 8 of that Act; and
- (b) the employee is a benefiting employee (within the meaning of that Part); and
- (c) the Commissioner of Taxation is required to pay, or otherwise deal with, a shortfall component (within the meaning of that Part) for the benefit of the employee under that Part.

Section 116D

116D Preventing multiple actions

Scope

- (1) This section applies if:
- (a) an employer has contravened, or allegedly contravened, a civil remedy provision that relates to a contravention of this Division; and
 - (b) the contravention, or alleged contravention, relates wholly or partly to an employee; and
 - (c) the employee or another person referred to in an item in column 2 of the table in subsection 539(2) would be entitled to apply for an order under Division 2 of Part 4-1 in relation to the contravention, or alleged contravention.

No application for orders in certain circumstances

- (2) An application for such an order may not be made if:
- (a) the Commissioner of Taxation has commenced proceedings against the employer to recover an amount of superannuation guarantee charge; and
 - (b) either:
 - (i) the Commissioner has obtained an order for recovery of the charge; or
 - (ii) if the proceedings have not been finally disposed of— the Commissioner has not discontinued the proceedings; and
 - (c) the employer's superannuation guarantee shortfall in respect of which the charge is imposed includes an individual superannuation guarantee shortfall for the employee.
- (3) Terms (apart from employee and employer) used in this section that are defined in the *Superannuation Guarantee (Administration) Act 1992* have the same meaning in this section as they have in that Act.

116E Orders for compensation

- (1) This section applies if a court makes an order under section 545 awarding compensation to an employee for a contravention of a civil remedy provision that relates to a contravention of this Division.
- (2) The court must have regard to the principle that any component of the compensation payable on account of unpaid superannuation contributions should usually be paid to a superannuation fund for the benefit of the employee.