

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Treasury)

**SUPERANNUATION INDUSTRY (SUPERVISION)
LEGISLATION AMENDMENT BILL 1994**

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1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Treasury)

A BILL

FOR

An Act to amend the law relating to superannuation

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Superannuation Industry (Supervision) Legislation Amendment Act 1994*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

10 **(2)** Divisions 5, 12 and 15 of Part 2 are taken to have commenced on 1 December 1993.

(3) Subject to subsection (4), Divisions 7, 8, 11 and 17 of Part 2 commence on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(4) If that twenty-eighth day is before 1 July 1994, Division 7 of Part 2 commences on 1 July 1994. 5

(5) If this Act receives the Royal Assent before 1 July 1994, Divisions 9 and 16 of Part 2 commence on 1 July 1994.

(6) Part 3 commences, or is taken to have commenced, as the case requires, immediately after the commencement of the *Superannuation (Resolution of Complaints) Act 1993*. 10

PART 2—AMENDMENT OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

Division 1—Principal Act

Principal Act

3. In this Part, “**Principal Act**” means the *Superannuation Industry (Supervision) Act 1993*¹. 15

Division 2—Amendments relating to the rules of approved deposit funds

Object

4. The object of this Division is to abolish the requirement for approved deposit funds to have approved rules. 20

Definitions

5. Section 10 of the Principal Act is amended:

- (a) by omitting “and” from the end of paragraph (b) of the definition of “approved deposit fund”; 25
- (b) by omitting paragraph (c) of the definition of “approved deposit fund”;
- (c) by omitting the definition of “approved rules”.

Application

6. The amendments made by this Division apply in determining whether a fund is an approved deposit fund at any time after the commencement of this section. 30

Division 3—Amendments relating to non-bank financial institutions

Objects

7. The objects of this Division are: 35

- (a) to allow approved guarantees to be given by approved non-bank financial institutions; and
- (b) to exclude deposits with approved non-bank financial institutions from the definition of “in-house asset”.

5 **Definitions**

8. Section 10 of the Principal Act is amended:

- (a) by omitting the definition of “approved guarantee” and substituting the following definition:

“**‘approved guarantee’** means:

- 10 (a) a guarantee given by an approved bank; or
- (b) a guarantee given by an approved non-bank financial institution; or
- (c) a guarantee given by or on behalf of the Commonwealth, a State or a Territory;”;

- 15 (b) by inserting the following definition:

“**‘approved non-bank financial institution’** means a society, or a special services provider, within the meaning of any of the following codes:

- 20 (a) the Financial Institutions (NSW) Code of New South Wales;
- (b) the Financial Institutions (Victoria) Code of Victoria;
- (c) the Financial Institutions (Queensland) Code of Queensland;
- (d) the Financial Institutions (Western Australia) Code of Western Australia;
- 25 (e) the Financial Institutions (South Australia) Code of South Australia;
- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Australian Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory;

30 but does not include:

- (i) a society (within the meaning of any of those codes) that is specified in the regulations; or
- (j) a special services provider (within the meaning of any of those codes) that is specified in the regulations;”.

35 **Meaning of “in-house asset”**

9. Section 71 of the Principal Act is amended by inserting after paragraph (1)(b) the following paragraph:

“(ba) a deposit with an approved non-bank financial institution; or”.

Division 4—Amendments relating to the purposes for which an approved deposit fund may be maintained

Object

10. The object of this Division is to enable the Commissioner to extend the purposes for which an approved deposit fund may be maintained.

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Definitions

11. Section 10 of the Principal Act is amended:

(a) by omitting “the purposes of” from the definition of “approved purposes”;

(b) by inserting “the purpose of” before “receiving” in paragraph (a) of the definition of “approved purposes”;

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(c) by inserting “the purpose of” before “dealing” in paragraph (b) of the definition of “approved purposes”;

(d) by adding at the end of the definition of “approved purposes” the following word and paragraph:

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“and (d) such other purposes (if any) as the Commissioner approves in writing;”.

Division 5—Amendments relating to the meaning of the expressions “private sector fund” and “public sector fund”

Object

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12. The object of this Division is to confirm that the expressions “private sector fund” and “public sector fund” are confined to funds covered by paragraph (a) of the definition of “superannuation fund” in section 10 of the Principal Act.

Definitions

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13. Section 10 of the Principal Act is amended:

(a) by inserting “covered by paragraph (a) of the definition of ‘superannuation fund’,” before “other than” in the definition of “private sector fund”;

(b) by omitting from the definition of “public sector fund” all the words after “superannuation fund” and substituting the following words and paragraphs:

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“that is:

(a) covered by paragraph (a) of the definition of ‘superannuation fund’; and

35

(b) part of a public sector superannuation scheme;”.

Division 6—Amendments to make technical corrections to the definition of “reviewable decision”

Object

5 **14.** The object of this Division is to make technical corrections to the definition of “reviewable decision”.

Definitions

15. Section 10 of the Principal Act is amended:

- 10 **(a)** by omitting “18(5) or (6)” from paragraph (a) of the definition of “reviewable decision” and substituting “18(6) or (7)”;
- 10 **(b)** by omitting “18(9)” from paragraph (b) of the definition of “reviewable decision” and substituting “18(10)”.

Application

16. The amendments made by this Part apply to decisions made before or after the commencement of this section.

15 ***Division 7—Amendments relating to applications for the issue of superannuation interests and applications to become a standard employer-sponsor***

Object

20 **17.** The object of this Division is to regulate the following types of applications:

- (a) an application for the issue of a superannuation interest in a public offer entity;
- (b) an application to become a standard employer-sponsor of a public offer entity.

25 **Trustee must not issue interests, or permit persons to become standard employer-sponsors, except pursuant to applications**

18. Section 153 of the Principal Act is amended:

- 30 **(a)** by inserting in subsections (1) and (2) “eligible” before “application”;
- 30 **(b)** by adding at the end the following subsections:
- “(3) For the purposes of this section, an application is an **eligible application** if:
- (a)** the application was made in writing on a form made available by or on behalf of the trustee; and
- 35 **(b)** the form is in accordance with the requirements (if any) specified in a determination made under subsection (4); and

- (c) when the applicant received the form, the applicant also received such additional information (if any) and such additional documents (if any) as are required by a determination made under subsection (4).

“(4) The Commissioner may make a written determination for the purposes of subsection (3). 5

“(5) An instrument under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Division 8—Amendments relating to arm’s length investments of superannuation entities 10

Object

19. The object of this Division is to ensure that the parties to an investment transaction of a superannuation entity can deal with each other otherwise than at arm’s length so long as the terms and conditions of the relevant transaction are no more favourable than those which it is reasonable to expect would apply if the parties were dealing with each other at arm’s length. 15

Investments of superannuation entity to be made on arm’s length basis 20

20. Section 109 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) The trustee or investment manager of a superannuation entity must not invest money of the entity unless:

- (a) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are dealing with each other at arm’s length in respect of the transaction; or 25

(b) both:

- (i) the trustee or investment manager, as the case may be, and the other party to the relevant transaction are not dealing with each other at arm’s length in respect of the transaction; and 30

- (ii) the terms and conditions of the transaction are no more favourable to the other party than those which it is reasonable to expect would apply if the trustee or investment manager, as the case may be, were dealing with the other party at arm’s length in the same circumstances.”. 35

***Division 9—Amendment relating to rollover of benefits between
superannuation funds***

Object

5 21. The object of this Division is to modify the test for determining the
minimum threshold for automatic rollover of benefits between funds.

What happens if benefits are below minimum amount

22. Section 248 of the Principal Act is amended by omitting
paragraph (b) and substituting the following paragraph:

10 “(b) the amount concerned is less than the minimum amount ascertained
in accordance with the regulations;”.

***Division 10—Amendments relating to the validity of the governing rules
of superannuation entities***

Object

15 23. The object of this Division is to ensure that the governing rules of
a superannuation entity are only invalid to the extent of any inconsistency
with subsections 58(1) and 59(1) of the Principal Act.

Trustee not to be subject to direction

24. Section 58 of the Principal Act is amended by omitting
subsection (3) and substituting the following subsection:

20 “(3) If the governing rules of a superannuation entity are inconsistent
with subsection (1), that subsection prevails, and the governing rules are, to
the extent of the inconsistency, invalid.”.

Exercise of discretion by person other than trustee

25 25. Section 59 of the Principal Act is amended by omitting
subsection (2) and substituting the following subsection:

“(2) If the governing rules of a superannuation entity are inconsistent
with subsection (1), that subsection prevails, and the governing rules are, to
the extent of the inconsistency, invalid.”.

30 ***Division 11—Amendments relating to the rule prohibiting a
superannuation fund from acquiring assets from its members***

Object

35 26. The object of this Division is to allow an excluded superannuation
fund to acquire real property used in a business carried on by a member, or
a relative of a member, only if the business is the principal business of the
member or of the relative, as the case requires.

Acquisitions of certain assets from members of regulated superannuation funds prohibited

27. Section 66 of the Principal Act is amended:

(a) by inserting in paragraph (2)(a) “exempt” before “business real property”;

(b) by omitting “the person’s business” from the definition of “business real property” in subsection (5) and substituting “a business carried on by the person”;

(c) by inserting in subsection (5) the following definition:

“**‘exempt business real property’**, in relation to a person, means:

(a) if the person carries on a single business—the business real property of the person; or

(b) if the person carries on 2 or more businesses—so much of the business real property of the person as is used wholly and exclusively in whichever of those businesses is the principal business carried on by the person;”.

Division 12—Amendments relating to the representation of employers and members in relation to the management and control of standard employer-sponsored funds

Object

28. The object of this Division is to give standard employer-sponsored funds the option of complying with the basic equal representation rules if the funds are public offer funds.

Pre-1 July 1995 rules—funds with 200 or more members

29. Section 91 of the Principal Act is amended by omitting paragraph (3)(a) and substituting the following paragraph:

“(a) either:

(i) the trustee of the fund must be an independent trustee; or

(ii) the fund must comply with the basic equal representation rules; and”.

Post-30 June 1995 rules—funds with more than 4, but fewer than 50, members

30. Section 92 of the Principal Act is amended by omitting paragraph (3)(a) and substituting the following paragraph:

“(a) either:

(i) the trustee of the fund must be an independent trustee; or

(ii) the fund must comply with the basic equal representation rules; and”.

Post-30 June 1995 rules—funds with more than 49 members

31. Section 93 of the Principal Act is amended by omitting paragraph (3)(a) and substituting the following paragraph:

“(a) either:

- 5 (i) the trustee of the fund must be an independent trustee; or
 (ii) the fund must comply with the basic equal representation rules; and”.

Division 13—Amendment relating to the transition to the superannuation industry supervision scheme

10 **Object**

32. The object of this Division is to ensure that the existing trustee of a superannuation entity may retire without having to hold a meeting of beneficiaries.

Existing trustee may give notice of retirement

15 33. Section 363 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) The provisions of the governing rules of the fund or trust concerned have no effect to the extent to which they require the holding of a meeting of beneficiaries before the existing trustee may give a notice.”.

20 ***Division 14—Amendments relating to the disclosure of information***

Objects

34. The objects of this Division are:

- (a) to allow the Minister to authorise the public disclosure of information collected under the Principal Act; and
25 (b) to limit the circumstances in which personal information may be disclosed.

Secrecy

35. Section 346 of the Principal Act is amended:

30 (a) by adding at the end of subsection (6) the following word and paragraph:

“; or (f) if the Minister states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.”;

35 (b) by inserting after subsection (6) the following subsection:

Limitation on disclosure of personal information

“(6A) Paragraphs (6)(e) and (f) do not authorise the disclosure of information, or the production of a document, relating to the personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.”. 5

Division 15—Amendments relating to the payment of amounts equal to the interests of beneficiaries in approved deposit funds

Object

36. The object of this Division is to clarify the obligations imposed on the trustee of an approved deposit fund in relation to the payment of amounts equal to the interests of beneficiaries. 10

Definitions

37. Section 10 of the Principal Act is amended by omitting paragraph (c) of the definition of “approved purposes” and substituting the following paragraph: 15

“(c) subject to any inconsistent requirement in the standards from time to time applicable to the fund under section 32, the purpose of paying to beneficiaries, or to the legal personal representatives of beneficiaries, upon request, amounts equal to the beneficiary’s interest in the fund;”. 20

Approved deposit funds—payments by trustees

38. Section 15 of the Principal Act is amended:

(a) by inserting in subsection (1) “and for the purposes of section 53” after “section 10”; 25

(b) by omitting paragraph (1)(a) and substituting the following paragraph: 25

“(a) a beneficiary has an interest in a fund; and”;

(c) by omitting from paragraph (1)(b) “a beneficiary, the amount” and substituting “the beneficiary, an amount equal to the beneficiary’s interest”; 30

(d) by omitting from subsection (1) “amount is taken to be a repayment by the fund of the amount concerned” and substituting “trustee of the fund is taken to have paid the amount”;

(e) by inserting after subsection (1) the following subsections:

“(1A) For the purposes of paragraph (c) of the definition of ‘approved purposes’ in section 10 and for the purposes of section 53, if: 35

- (a) a beneficiary has an interest in a fund; and
- (b) on the request of the beneficiary, an amount equal to the beneficiary's interest is paid by the fund to:
 - (i) an approved deposit fund; or
 - (ii) a regulated superannuation fund;

the trustee of the first-mentioned fund is taken to have paid the amount to the beneficiary on request.

“(1B) For the purposes of paragraph (c) of the definition of ‘approved purposes’ in section 10, if a payment is not made immediately on request but is deferred for a period determined by the trustee concerned, the payment is taken to have been made on request.”;

- (f) by inserting in subsection (2) “or (1A)” after “(1)”.

Covenants to repay amounts to beneficiaries in approved deposit funds

39. Section 53 of the Principal Act is amended:

- (a) by omitting paragraph (2)(a) and substituting the following paragraph:

“(a) that, if:

- (i) a beneficiary, by written notice given to the trustee, requests the trustee to pay to the beneficiary an amount equal to the beneficiary's interest in the fund; and
- (ii) compliance by the trustee with the request would not be inconsistent with the standards applicable to the fund under section 32;

the trustee will pay that amount within a period (not being more than 12 months) determined by the trustee; and”;

- (b) by inserting after subsection (2) the following subsection:

Legal personal representatives of beneficiaries

“(2A) A reference in subsection (2) to a beneficiary includes a reference to the legal personal representative of a beneficiary.

Note: Section 15 sets out additional rules relating to the interpretation of subsection (2).”.

Division 16—Amendments relating to rights in respect of benefits that have been automatically rolled-over between funds

Object

40. The object of this Division is to ensure that mere contingent rights to death or disability benefits are not treated as rights in respect of benefits that have been automatically rolled-over between funds.

Rights of beneficiary to rolled-over benefits

41. Section 251 of the Principal Act is amended by adding at the end the following subsections:

“(2) For the purposes of this section, a mere contingent right to a death or disability benefit is taken not to be a right in respect of the first-mentioned benefits. 5

“(3) Subsection (2) is enacted for the avoidance of doubt.”.

Division 17—Amendment relating to custodians of superannuation entities

Object 10

42. The object of this Division is to provide that disqualified persons (within the meaning of Part 15 of the Principal Act) must not be custodians of superannuation entities.

Insertion of new section

43. After section 126 of the Principal Act the following section is inserted: 15

Disqualified persons not to be custodians of superannuation entities

Basic prohibition

“126A.(1) A person must not intentionally be, or act as, a custodian of a superannuation entity (other than an excluded fund) if the person is, and knows that the person is, a disqualified person. 20

Penalty: Imprisonment for 2 years.

Exception—transition to new custodian

“(2) Subsection (1) does not prohibit a person from being or acting as a custodian of a superannuation entity if: 25

(a) the person immediately tells the trustee of the entity and the Commissioner in writing that the person is, or has become, a disqualified person; and

(b) the person is, or is acting as, the custodian of the entity during:

(i) the 28-day period beginning at whichever is the later of the following times: 30

(A) the time when the person became a disqualified person;

(B) the beginning of the entity’s 1994-95 year of income;

or

- (ii) such longer period as the Commissioner allows; and
- (c) the trustee of the entity has made, or proposes to make, arrangements for the orderly dismissal of the person as the custodian; and
- (d) the person is taking, or is willing to take, all reasonable steps to assist the trustee in carrying out those arrangements.

Prohibition—responsible officer of body corporate

“(3) A body corporate that is a custodian of a superannuation entity must not permit a disqualified person to be, or act as, a responsible officer of the body corporate if the body corporate knows, or has reasonable grounds to suspect, that the person is a disqualified person.

Penalty: 600 penalty units.

Obligations where custodian is or becomes a disqualified person

“(4) If a custodian of a superannuation entity is or becomes a disqualified person:

- (a) the custodian must immediately tell the trustee of the entity and the Commissioner in writing; and
- (b) the trustee must make arrangements for the orderly dismissal of the custodian; and
- (c) the trustee must make those arrangements before the end of:
- (i) the 28-day period beginning at whichever is the later of the following times:
- (A) the time when the custodian became a disqualified person;
- (B) the beginning of the entity’s 1994-95 year of income; or
- (ii) such longer period as the Commissioner allows.

Contravention of paragraph (4)(a)

“(5) A person who contravenes subsection (4) because of paragraph (a) of that subsection is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

Contravention of paragraph (4)(b) or (c)

“(6) A person who contravenes subsection (4) because of paragraph (b) or (c) of that subsection is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.”.

Division 18—Amendment relating to the removal of trustees of public offer entities

Object

44. The object of this Division is to ensure that the governing rules of a public offer entity do not permit the trustee of the entity to be removed by a person other than the Commissioner. However, this rule will not apply if the removal is of a kind specified in the regulations. 5

Insertion of new section

45. After section 60 of the Principal Act the following section is inserted: 10

Dismissal of trustee of public offer entity

“60A.(1) Subject to subsection (2), the governing rules of a public offer entity must not permit the trustee to be removed by a person other than the Commissioner. 15

Note: Part 17 provides for the removal of trustees by the Commissioner. 15

“(2) Subsection (1) does not apply to a removal of a kind specified in regulations made for the purposes of this subsection. 15

“(3) If the governing rules of the public offer entity are inconsistent with subsection (1), that subsection prevails, and the governing rules are, to the extent of the inconsistency, invalid.”. 20

Division 19—Application of certain amendments

Application

46. The amendments made by this Part (other than the amendments of Parts 1, 19 and 24 of the Principal Act) do not apply to a fund, scheme or trust in relation to a year of income of the fund, scheme or trust earlier than the 1994-95 year of income. 25

**PART 3—AMENDMENT OF THE SUPERANNUATION
(RESOLUTION OF COMPLAINTS) ACT 1993**

Object

47. The object of this Part is to make a technical correction to the definition of “excluded subject matter” in subsection 3(2) of the *Superannuation (Resolution of Complaints) Act 1993*. 30

Principal Act

48. In this Part, “Principal Act” means the *Superannuation (Resolution of Complaints) Act 1993*². 35

Interpretation

49. Section 3 of the Principal Act is amended by inserting “subject matter” after “means” in the definition of “excluded subject matter” in subsection (2).

NOTES

1. No. 78, 1993, as amended. For further amendments, see No. 118, 1993.
2. No. 80, 1993.



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