

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

SUPERANNUATION LEGISLATION AMENDMENT BILL 1986

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1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 19 March 1986

(Minister representing the Minister for Finance)

A BILL

FOR

**An Act to amend the *Superannuation Act 1976* and the
Superannuation Act 1922, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Superannuation Legislation Amendment Act 1986*.

Commencement

2. (1) Sub-section 4 (1), section 5 and sub-section 6 (1) shall be deemed to have come into operation on 1 July 1976.

10 **(2)** The remaining provisions of this Act shall come into operation on the day on which it receives the Royal Assent.

PART II—AMENDMENTS OF THE SUPERANNUATION ACT 1976

Principal Act

3. The *Superannuation Act 1976*¹ is in this Part referred to as the Principal Act.

Interpretation

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4. (1) Section 3 of the Principal Act is amended—

- (a) by omitting “while the deceased person was a retirement pensioner and not later than 5 years before the deceased person’s death,” from sub-sub-paragraph (e) (ii) (A) of the definition of “spouse” in sub-section (1) and substituting “not later than 5 years before the deceased person’s death but after the deceased person became a retirement pensioner and after the deceased person attained the age of 60 years,”; 10
- (b) by omitting “while the deceased person was an eligible employee and not later than 3 years before the deceased person’s death,” from sub-sub-paragraph (e) (ii) (B) of the definition of “spouse” in sub-section (1) and substituting “not later than 3 years before the deceased person’s death but before the deceased person became a retirement pensioner or attained the age of 60 years, whichever last occurred,”; and 15
20
- (c) by omitting “while the deceased person was an eligible employee but later than 3 years before the deceased person’s death,” from sub-sub-paragraph (e) (ii) (C) of the definition of “spouse” in sub-section (1) and substituting “later than 3 years before the deceased person’s death but before the deceased person became a retirement pensioner or attained the age of 60 years, whichever last occurred,”. 25

(2) Section 3 of the Principal Act is amended—

- (a) by omitting “and the Chairman of the Trust” from paragraph (g) of the definition of “eligible employee” in sub-section (1);
- (b) by inserting after the definition of “invalidity pension” in sub-section (1) the following definition: 30
 “‘invest’ means expend moneys with a view to obtaining a present or future financial return (whether by way of income, profit or otherwise);”;
- (c) by inserting after the definition of “permanent employee” in sub-section (1) the following definitions: 35
 “‘principal member’ means the member of the Trust referred to in paragraph 30 (1) (a);
 ‘profit’ includes capital profit;”; and
- (d) by inserting after the definition of “Public Service Act” in sub-section (1) the following definition: 40

“‘relevant industrial organization’ means an organization the members, or a substantial proportion of the members, of which are eligible employees;”.

Children of deceased retirement pensioners

- 5 5. Section 9 of the Principal Act is amended—
- (a) by omitting from sub-paragraph (1) (b) (i) “while the pensioner was a retirement pensioner and not later than 5 years before the pensioner’s death,” and substituting “not later than 5 years before the pensioner’s death but after the pensioner became a retirement pensioner and after the pensioner attained the age of 60 years,”;
 - 10 (b) by omitting from sub-paragraph (1) (b) (ii) “while the pensioner was an eligible employee and not later than 3 years before the pensioner’s death,” and substituting “not later than 3 years before the pensioner’s death but before the pensioner became a retirement pensioner or attained the age of 60 years, whichever last occurred,”; and
 - 15 (c) by omitting from sub-paragraph (1) (b) (iii) “while the pensioner was an eligible employee but later than 3 years before the pensioner’s death,” and substituting “later than 3 years before the pensioner’s death but before the pensioner became a retirement pensioner or
 - 20 attained the age of 60 years, whichever last occurred,”.

Medical examinations and benefit classification certificates

6. (1) Section 16 of the Principal Act is amended—
- 25 (a) by omitting from sub-section (4) “the person is not likely” and substituting “there is a real risk that the person”;
 - (b) by omitting from sub-section (4) “to continue” and substituting “will not continue”;
 - (c) by omitting from paragraph (8) (a) “the person is not likely” and substituting “there is not a real risk that the person”;
 - 30 (d) by omitting from paragraph (8) (a) “to cease to continue” and substituting “will not continue”;
 - (e) by omitting from paragraph (8) (a) “before” and substituting “until”;
 - (f) by omitting from sub-paragraph (8) (b) (i) “the person is not likely” and substituting “there is not a real risk that the person”;
 - 35 (g) by omitting from sub-paragraph (8) (b) (i) “to cease to continue” and substituting “will not continue”;
 - (h) by omitting from sub-paragraph (8) (b) (i) “before” and substituting “until”;
 - (j) by omitting from sub-paragraph (8) (b) (ii) “the person is not likely” and substituting “there is a real risk that the person”; and
 - 40 (k) by omitting from sub-paragraph (8) (b) (ii) “to continue” and substituting “will not continue”.

(2) Where—

- (a) the Commissioner, before the day on which this Act receives the Royal Assent, has issued a benefit classification certificate in respect of a person pursuant to sub-section 16 (4) of the *Superannuation Act 1976*; and 5
- (b) the Administrative Appeals Tribunal has, before the day on which this Act receives the Royal Assent, made a decision setting aside the decision of the Commissioner to issue the certificate,

the decision of the Administrative Appeals Tribunal is not affected by the amendments made by sub-section (1) of this section and the Commissioner is not required or authorised to consider further whether to issue a benefit classification certificate in respect of that person pursuant to sub-section 16 (4) of the *Superannuation Act 1976*. 10

7. (1) Section 26 of the Principal Act is repealed and the following section is substituted: 15

Staff

“26. (1) The staff required to assist the Commissioner to perform the functions of the Commissioner under this Act or any other law of the Commonwealth (including any function that the Commissioner has by virtue of being the Chairman of the Defence Force Retirement and Death Benefits Authority) shall be persons appointed or employed under the Public Service Act. 20

“(2) The Commissioner has all the powers of, or exercisable by, a Secretary under the Public Service Act so far as those powers relate to the branch of the Australian Public Service comprising staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.”. 25

(2) Where—

- (a) immediately before the commencement of this section, an office existed in a branch of the Australian Public Service, being a branch of the Australian Public Service in the Department of Finance; and 30
- (b) by virtue of sub-section 26 (2) of the *Superannuation Act 1976* the Commissioner has all the powers of, or exercisable by, a Secretary under the Public Service Act in relation to that branch of the Australian Public Service, 35

the office is, by virtue of this section, transferred from the Department of Finance to the Department that, by virtue of paragraph (b) of the definition of “Department” in sub-section 7 (1) of the *Public Service Act 1922*, is constituted by that branch of the Australian Public Service (in this section referred to as the “relevant Department”) and the *Public Service Act 1922* has effect as if the office had been duly created in the relevant Department. 40

(3) A reference in any law of the Commonwealth or law of a Territory, or in any regulation or other instrument made or issued under such a law, to the holder for the time being, or to the person for the time being 45

performing the duties, of an office, being an office that has been transferred from the Department of Finance to the relevant Department by virtue of sub-section (2), shall, except in relation to matters that occurred before the commencement of this section, be construed as a reference to the holder for the time being, or to the person for the time being performing the duties, of the office as it exists in the relevant Department.

8. After section 29 of the Principal Act the following section is inserted:

Objective and duties of Trust

“29A. (1) The Trust is established to manage and invest the Superannuation Fund in such manner as to maximize the return earned on the Fund, having regard to—

- (a) the need to make provision for payments out of the Fund under this Act;
- (b) the need for equity among eligible employees; and
- (c) the need to exercise reasonable care and prudence in order to maintain the integrity of the Fund.

“(2) It is the duty of the Trust—

- (a) to establish from time to time policies in respect of the investment of moneys standing to the credit of the Superannuation Fund and the strategies that are to be adopted to achieve those policies;
- (b) to determine, authorize or approve programs for the investment of moneys standing to the credit of the Superannuation Fund;
- (c) to ensure that the decisions and operations of the Trust are directed towards achieving the objective referred to in sub-section (1);
- (d) to ensure that the Trust has, or has access to, the skills, facilities and resources required to achieve the objective referred to in sub-section (1);
- (e) to take reasonable steps, consistently with the objective referred to in sub-section (1) and subject to sub-section (4), to inform eligible employees about the management and investment of the Superannuation Fund;
- (f) to liaise with relevant industrial organizations concerning the interests of eligible employees and, subject to sub-section (4), to inform those organizations about the management and investment of the Superannuation Fund;
- (g) to ensure that the Trust conducts its operations in an efficient manner; and
- (h) to ensure that the Trust complies with its obligations under this Act and its other legal obligations.

“(3) Without limiting the generality of paragraph (2) (a), the Trust shall develop and maintain plans and procedures for the implementation of the investment strategies of the Trust.

“(4) The Trust shall, in performing its duties under paragraphs (2) (e) and (f), have regard to the need to protect information the disclosure of which could adversely affect the financial position or the commercial or other operations of the Trust.

“(5) Without limiting the generality of paragraph (2) (e), the Trust shall, at least once in each financial year, publish to eligible employees a summary that contains information of the kind referred to in that paragraph. 5

“(6) If the Minister at any time furnishes to the principal member a statement of the policy of the Commonwealth Government on any matter that is relevant to the performance of the functions of the Trust, together with a request that the Trust consider that policy in the performance of its functions, the Trust shall ensure that consideration is given to that policy. 10

“(7) Where the Minister furnishes a statement to the principal member under sub-section (6), the Minister shall cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the furnishing of the statement to the principal member. 15

“(8) The reference in paragraph (2) (f) to relevant industrial organizations is a reference to relevant industrial organizations the objectives of which extend to representing the interests of their members in relation to the terms and conditions of employment of those members.”. 20

Membership of Trust

9. Section 30 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) “Chairman” and substituting “principal member”;

(b) by omitting from paragraph (1) (b) “or a pensioner”; 25

(c) by omitting sub-section (3) and substituting the following sub-section:

“(3) The principal member shall be appointed as a full-time member.”;

(d) by omitting from sub-section (4) “him with such organizations as he considers appropriate, being organizations the members, or a substantial proportion of the members, of which are eligible employees or pensioners” and substituting “the Minister with such relevant industrial organizations as the Minister considers appropriate”; 30
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(e) by omitting sub-section (5);

(f) by omitting from sub-section (6) “Chairman of the Trust” and substituting “principal member”;

(g) by omitting from sub-section (6) “his instrument” (wherever occurring) and substituting “the instrument”; 40

(h) by omitting from sub-section (8) “Chairman of the Trust” (wherever occurring) and substituting “principal member”;

- (j) by omitting from sub-section (8) “he” and substituting “the person”; and
- (k) by omitting from sub-section (11) “his selection or appointment” and substituting “the selection or appointment of the member”.

5 **10.** After section 30 of the Principal Act the following section is inserted:

Principal member

10 “30A. The principal member shall be the executive member of the Trust and it is the duty of the principal member to manage the affairs of the Trust (including matters relating to the staff of the Trust) in accordance with policies determined by, and directions given by, the Trust.”.

Principal member not to engage in other work

11. Section 31 of the Principal Act is amended—
- (a) by omitting “Chairman” and substituting “principal member”; and
 - (b) by inserting “or her” after “his”.

15 **Remuneration and allowances**

12. Section 32 of the Principal Act is amended—
- (a) by omitting from sub-section (1) “Chairman” and substituting “principal member”;
 - (b) by omitting from sub-section (2) “Chairman” and substituting “principal member”; and
 - (c) by omitting from sub-section (3) “1973-1975” and substituting “1973”.

Resignation

- 25 13. Section 34 of the Principal Act is amended—
- (a) by omitting “his”;
 - (b) by omitting “him” and substituting “the member”; and
 - (c) by omitting “, but the resignation does not have effect until it is accepted by the Governor-General”.

30 **14.** (1) After section 34 of the Principal Act the following section is inserted:

Disclosure of interests

- 35 “34A. (1) Each person who is a member of the Trust shall—
- (a) as soon as possible after, but in any case not later than 60 days after, appointment as a member of the Trust; and
 - (b) as soon as possible after, but in any case not later than 60 days after, each anniversary of the member’s appointment as a member of the Trust,

present to a meeting of the Trust a statement in writing setting out particulars of those interests, whether pecuniary or otherwise and whether

direct or indirect, of the member as at the day of appointment or as at that anniversary, as the case requires, that could reasonably be expected to conflict with the proper performance by the member of the member's duties as a member of the Trust.

“(2) A statement presented by a member to a meeting of the Trust in pursuance of sub-section (1) shall be incorporated into the minutes of the meeting. 5

“(3) Where a member of the Trust acquires an interest, whether pecuniary or otherwise and whether direct or indirect, that could reasonably be expected to conflict with the proper performance by the member of the member's duties as a member of the Trust and a statement containing particulars of the interest has not been given to a meeting of the Trust in accordance with sub-section (1), the member shall, as soon as possible after acquiring that interest, present to a meeting of the Trust a statement in writing setting out particulars of the interest and the statement shall be incorporated in the minutes of the meeting. 10 15

“(4) A member of the Trust who has a direct or indirect pecuniary interest in a matter being considered by the Trust shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest at a meeting of the Trust. 20

“(5) A disclosure under sub-section (4) shall be recorded in the minutes of the meeting of the Trust and the member shall not, unless the Trust or the Minister otherwise determines—

(a) be present during any deliberation of the Trust with respect to that matter; or 25

(b) take part in any decision of the Trust with respect to that matter.

“(6) For the purpose of the making of a determination by the Trust under sub-section (5) in relation to a member who has made a disclosure under sub-section (4), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not— 30

(a) be present during any deliberation of the Trust for the purpose of making the determination; or

(b) take part in the making by the Trust of the determination.

“(7) Where a member of the Trust is obliged by sub-section (4) to disclose the nature of an interest at a meeting of the Trust, the fact that the member has presented to a meeting of the Trust a statement under sub-section (1) or (3) that includes particulars of that interest does not relieve the member of the member's obligation under sub-section (4).” 35

(2) Section 34A of the *Superannuation Act 1976* applies to and in relation to the persons who hold office as members of the Trust immediately before the commencement of this section as if— 40

- (a) the reference in paragraph 34A (1) (a) of that Act to the appointment of a person as a member of the Trust were a reference to the commencement of this section; and
- (b) the reference in paragraph 34A (1) (b) of that Act to each anniversary of a member's appointment as a member of the Trust were a reference to each such anniversary occurring after the commencement of this section.

Termination of appointment

15. Section 35 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The Governor-General may terminate the appointment of a member of the Trust for—

- (a) misbehaviour or physical or mental incapacity; or
- (b) inefficiency or incompetence.”;

- (b) by omitting from sub-paragraph (2) (a) (i) “his” (wherever occurring) and substituting “the member’s”;

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

“(ii) fails, without reasonable excuse, to comply with the member's obligations under section 34A;”;

- (d) by omitting from paragraph (2) (b) “Chairman of the Trust” and substituting “principal member”;

- (e) by omitting from sub-paragraph (2) (b) (i) “his” and substituting “the member’s”;

- (f) by omitting from sub-paragraph (2) (c) (i) “he” and substituting “the member”;

- (g) by omitting from sub-paragraph (2) (c) (ii) “either an eligible employee or a pensioner” and substituting “an eligible employee”; and

- (h) by omitting sub-sections (3), (4) and (5).

16. Section 36 of the Principal Act is repealed and the following section is substituted:

Acting appointments

36. (1) The Minister may appoint a person to act as principal member—

- (a) during a vacancy in the office of principal member; or
- (b) during any period, or during all periods, when the principal member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office of principal member.

“(2) The Minister may appoint a person to act as a part-time member of the Trust—

(a) during a vacancy in the office of a part-time member of the Trust;
or

(b) during any period, or during all periods, when a part-time member of the Trust is acting as principal member, is absent from Australia or is, for any reason, unable to perform the duties of that office.

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“(3) The Minister shall not appoint a person to act as the part-time member referred to in paragraph 30 (1) (b) unless—

(a) the person is an eligible employee; and

(b) the Minister has consulted such relevant industrial organizations in relation to the appointment as the Minister considers appropriate.

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“(4) An appointment under sub-section (1) or (2) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(5) A person appointed under sub-section (1) or (2) to act during a vacancy in an office shall not continue so to act for more than 12 months.

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“(6) Where a person is acting in an office pursuant to an appointment under sub-section (1) or (2) otherwise than by reason of a vacancy in the office and the office becomes vacant while the person is so acting, then, subject to sub-section (4), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurs expires, whichever first occurs.

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“(7) While a person is acting as principal member or as a part-time member of the Trust, the person has and may exercise all the powers, and shall perform all the duties, of the principal member or the part-time member of the Trust, as the case may be.

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“(8) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed to act in an office under sub-section (1) or (2); and

(b) terminate such an appointment at any time.

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“(9) A person appointed to act in an office under sub-section (1) or (2) may resign the appointment by writing signed by the person and delivered to the Minister.

“(10) Anything done by or in relation to a person purporting to act under sub-section (1) or (2) is not invalid on the ground that—

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(a) the occasion for the person’s appointment had not arisen;

(b) there is a defect or irregularity in connection with the person’s appointment;

(c) the person’s appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.”.

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Meetings of Trust

17. Section 37 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “Chairman” and substituting “principal member”;
- (b) by omitting from sub-section (3) “Chairman” and substituting “principal member”;
- (c) by omitting from sub-section (3) “he” and substituting “principal member”;
- (d) by omitting from sub-section (4) “Chairman” and substituting “principal member”; and
- (e) by omitting sub-section (10).

Delegation by Trust

18. Section 38 of the Principal Act is amended by omitting from sub-section (1) “(including the Chairman or acting Chairman, or a part-time member or acting part-time member, of the Trust)” and substituting “(including a member of the Trust)”.

19. Section 39 of the Principal Act is repealed and the following section is substituted:

Delegation by principal member

“39. (1) The principal member may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the principal member, delegate to a person (including another member of the Trust) all or any of the principal member’s powers under this Act, other than this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the principal member.

“(3) A delegation under this section does not prevent the exercise of a power by the principal member.”.

Fund to be managed by Trust

20. Section 41 of the Principal Act is amended—

- (a) by inserting after paragraph (2) (a) the following paragraphs:
 - “(aa) to underwrite or sub-underwrite any form of investment;
 - (ab) subject to sub-section (3), to borrow moneys;”;
- (b) by inserting in paragraph (2) (d) “and investment managers” after “consultants”; and
- (c) by adding at the end the following sub-sections:

“(3) The Trust shall not borrow an amount of moneys (in this sub-section referred to as the ‘relevant amount’) if the aggregate of the relevant amount and the amounts that—

- (a) have previously been borrowed by the Trust; and
- (b) have not been repaid by the Trust,

exceeds an amount equal to 10% of the market value of the total assets of the Fund.

“(4) The Trust may give security over the whole or any part of the assets of the Fund for the repayment by the Trust of moneys borrowed pursuant to sub-section (2).” 5

“(5) Without limiting the generality of sub-section (2), the reference in that sub-section to the doing of things necessary or convenient to be done as incidental to the investment under section 42 of moneys standing to the credit of the Fund includes a reference to the taking of action to control or manage, or to enhance or protect the value of, any investment made out of those moneys or to enhance or protect the return on any such investment.” 10

“(6) Without limiting the generality of paragraph (2) (aa), the reference in that paragraph to underwriting or sub-underwriting any form of investment includes a reference to underwriting or sub-underwriting the issue of shares, debentures or units in a unit trust.” 15

“(7) The reference in paragraph (2) (d) to the engagement of investment managers shall be read as a reference to the placement of funds with persons who undertake to invest, and manage the investment of, those funds on behalf of the Trust.” 20

“(8) Nothing in this section or section 42 shall be read as derogating from the Trust’s duties under section 29A.”

Investment of Fund 25

21. Section 42 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “this section” and substituting “this Part”;
- (b) by omitting sub-sections (2), (3) and (4) and substituting the following sub-section: 30

“(2) Moneys that, by virtue of sub-section (1), are required to be invested by the Trust may be invested in any manner and, without limiting the generality of the foregoing, may be invested by the Trust jointly with another person or other persons.”; and

- (c) by omitting sub-section (6). 35

Borrowing

22. Section 43 of the Principal Act is repealed.

Trust to keep accounts and records in respect of Fund

23. Section 44 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

5 “(1A) The accounts kept in pursuance of sub-section (1) shall be kept consistently with the accounting policies (if any) prescribed by the regulations.”.

24. After Division 2 of Part III of the Principal Act the following Division is inserted in that Part:

“Division 3—Staff

10 **Staff**

“44A. (1) The Trust may appoint such officers, and engage such employees, as it considers necessary for the performance of its functions and duties and the exercise of its powers.

15 “(2) The terms and conditions of service or employment of the officers and employees of the Trust are such as are determined by the Trust with the approval of the Minister.

Trust officers and employees to have certain rights of entry into the Australian Public Service

20 “44B. (1) Where, pursuant to section 50 of the Public Service Act, notification of a vacancy in an office in a Department is given in the *Gazette*, a relevant staff member is entitled to apply for appointment to the office.

“(2) Where—

- 25 (a) a relevant staff member applies under sub-section (1) for appointment to an office in a Department; and
(b) the Secretary of the Department requests the Board to appoint the relevant staff member to the office,

the Board may appoint the relevant staff member, in accordance with section 42 or 43 of the Public Service Act, to the office.

30 “(3) Notwithstanding section 47 of the Public Service Act, the appointment of a relevant staff member, pursuant to an application made under sub-section (1), to an office in a Department shall not, if the relevant staff member has been an officer or employee of the Trust for the period of 12 months immediately preceding the appointment, be an appointment on
35 probation.

“(4) Where the Board appoints a relevant staff member, pursuant to an application under sub-section (1), to an office in a Department—

- 40 (a) the provisions of Subdivision D of Division 5 of Part III of the Public Service Act (other than sections 50E, 50EA and 52) and of the *Merit Protection (Australian Government Employees) Act 1984* apply to and in relation to the appointment as if—

- (i) the appointment were a promotion (in this sub-section referred to as the 'deemed promotion') of the relevant staff member to the office by the Secretary of the Department, being a promotion—
 - (A) in a case where the appointment is in accordance with the advice of a Joint Selection Committee—made under section 50DA of the Public Service Act; or 5
 - (B) in any other case—made under section 50 of the Public Service Act; and
- (ii) the relevant staff member were an officer within the meaning of the Public Service Act; 10
- (b) the deemed promotion takes effect—
 - (i) in a case where the deemed promotion is a promotion under section 50 of the Public Service Act—
 - (A) if no appeal is made under section 50B of that Act against the deemed promotion of the relevant staff member or an appeal is, or appeals are, made under section 50B of that Act against the deemed promotion, but the appeal or each of the appeals, is disallowed or becomes inoperative not later than the prescribed day in respect of the deemed promotion—on the prescribed day in respect of the deemed promotion; or 15
 - (B) if an appeal is, or appeals are, made under section 50B of that Act against the deemed promotion and the appeal, or each of the appeals, is disallowed or becomes inoperative but the day on which the appeal or one of the appeals is disallowed or becomes inoperative is later than the prescribed day in respect of the deemed promotion—on the day on which the appeal is disallowed or becomes inoperative or the latest day on which any of the appeals is disallowed or becomes inoperative, as the case may be; or 20
 - (ii) in a case where the deemed promotion is a promotion under section 50DA of that Act—on the prescribed day in respect of the deemed promotion; 25
- (c) the relevant staff member may, by writing signed by the relevant staff member and delivered to the Board, decline the deemed promotion at any time before the deemed promotion takes effect and, if the relevant staff member so declines the deemed promotion, the deemed promotion shall be taken not to have been made; 30
- (d) the appointment does not take effect upon the making of the appointment but takes effect on the day (if any) on which the deemed promotion takes effect; 35
- (e) the relevant staff member shall be deemed to be absent from the Service on leave of absence without pay until the relevant staff 40

member commences to perform the duties of the office; and

- (f) if the relevant staff member does not commence to perform the duties of the office within a reasonable time after the appointment takes effect, the Board may cancel the appointment.

- 5 “(5) In this section, unless the contrary intention appears—
‘Board’, ‘Department’, ‘office’, ‘Secretary’ and ‘Service’ have the same
respective meanings as they have in the Public Service Act;
‘Joint Selection Committee’, ‘prescribed day’, ‘promotion’ and ‘vacancy’
10 have the same respective meanings as they have in Division 4 of
Part III of the Public Service Act;
‘relevant staff member’ means an officer or employee of the Trust
appointed or engaged under section 44A who—
(a) is not an officer, within the meaning of the Public Service
15 Act, to whom Division 2 of Part IV of the Public Service
Act applies; and
(b) is not a person to whom Division 3 of Part IV of that Act
applies.”

25. After section 126 of the Principal Act the following section is inserted in Division 1 of Part IX:

20 **Modification of Act in relation to former eligible employees who become members of a superannuation scheme**

25 “126A. (1) This section applies to a person who has ceased or is to cease to be an eligible employee, being a person who, immediately after the person so ceased or will so cease to be an eligible employee, became or will become a member of a superannuation scheme (in this section referred to as ‘the relevant superannuation scheme’ in relation to the person) other than the superannuation scheme constituted by this Act.

30 “(2) The regulations may make provision for modifying this Act, or a specified provision of this Act, in the application of this Act or that provision to or in respect of a person to whom this section applies, or to or in respect of persons included in a specified class of persons to whom this section applies.

35 “(3) The modifications that may be made by regulations pursuant to sub-section (2) in relation to the application of the Act or a provision of the Act to or in respect of a person, or persons included in a class of persons, include, but are not limited to, modifications providing for—

40 (a) benefits to or in respect of that person or each of those persons in substitution for benefits under this Act to or in respect of that person or each of those persons, whether or not superannuation benefits are also provided to or in respect of that person or each of those persons under the superannuation scheme that is the relevant superannuation scheme in relation to that person or each of those persons;

- (b) where superannuation benefits are provided to or in respect of that person or each of those persons under the superannuation scheme that is the relevant superannuation scheme in relation to that person or each of those persons—the exclusion of benefits to or in respect of that person or each of those persons under this Act; 5
- (c) the payment, at such times, in such manner and in such instalments as may be specified, out of the Fund of an amount in respect of the whole or a part of the accumulated contributions of that person or each or all of those persons to the person administering the superannuation scheme that is the relevant superannuation scheme in relation to that person or each of those persons; 10
- (d) in lieu of the payment of the whole or a part of the amount referred to in paragraph (c), the assignment of an asset of the Fund consisting of an investment from the Trust to the person administering the superannuation scheme that is the relevant superannuation scheme in relation to that person or each or all of those persons; and 15
- (e) the exemption of an instrument or document made, executed or given by reason of, or for a purpose connected with or arising out of, the operation of regulations made by virtue of paragraph (d) from stamp duty or other tax under a law of the Commonwealth or of a State or Territory. 20

“(4) Regulations made by virtue of paragraph (3) (e) have effect notwithstanding any law of the Commonwealth or of a State or Territory that is inconsistent with those regulations.”. 25

Payments to the Commonwealth by authorities in respect of eligible employees

26. (1) Section 159 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, whether before or after that amount is paid out of the Consolidated Revenue Fund,” after “declared by the Minister”; 30
- (b) by inserting in sub-section (1) “, subject to any determinations made under sub-section (2),” after “the authority shall”;
- (c) by omitting from sub-section (1) “less, where an amount has been paid or is payable out of the Superannuation Fund into the Consolidated Revenue Fund in respect of the person, such amount as the Minister determines,”; 35
- (d) by inserting in sub-section (1A) “, whether before or after that amount is paid out of the Consolidated Revenue Fund,” after “declared by the Minister”; 40
- (e) by inserting in sub-section (1A) “, subject to any determinations made under sub-section (2),” after “the authority or body shall”;
- (f) by omitting from sub-section (1A) “less, if an amount has been paid or is payable out of the Superannuation Fund into the Consolidated

Revenue Fund in respect of the person, such amount as the Minister determines,”;

- (g) by omitting sub-section (2) and substituting the following sub-sections:

5 “(2) Subject to sub-section (2A), the Minister may, from time to time, determine in writing that, in lieu of the amounts payable under sub-section (1) or (1A) to the Commonwealth by—

(a) an authority or body specified in the determination; or

10 (b) authorities or bodies of the kind specified in the determination, the authority or body, or authorities or bodies of that kind, shall pay to the Commonwealth amounts calculated in accordance with the method specified in the determination and the authority or body, or an authority or body of that kind, as the case requires, may apply for that purpose any moneys under its control.

15 “(2A) A determination by the Minister under sub-section (2) shall not have the effect of making an authority or body liable, in particular circumstances, to pay to the Commonwealth an amount greater than the amount that the authority or body would be liable to pay to the Commonwealth under sub-section (1) or (1A) in those circumstances.

20 “(2B) A determination under sub-section (2) applies to amounts that become payable after the determination is made and may, if the determination so specifies, apply in relation to amounts that became payable before the determination is made.

25 “(2C) Nothing in sub-section (1), (1A) or (2) shall be taken to imply that 2 or more authorities or bodies cannot, under that sub-section, be liable to pay amounts to the Commonwealth in respect of the same amount, being an amount that has been paid out of the Consolidated Revenue Fund to or in respect of a person who is or has been an eligible employee, being an eligible employee—

30 (a) who is or was employed; or

(b) who is, by virtue of a declaration or declarations under that sub-section, to be treated, for the purposes of this section, as if the eligible employee were or had been employed,

35 by each of those authorities or bodies.

40 “(2D) An authority or body (whether or not the authority or body is or has been an approved authority) may, and, if the Minister so directs, shall, enter into an arrangement with the Minister for the making of payments to the Commonwealth by the authority or body, in lieu of payments that, but for the arrangement, the authority or body would be required to make under sub-section (1), (1A) or (2), being an arrangement that the Minister is satisfied will provide a fair basis of payment to the Commonwealth in respect of amounts—

(a) that have been paid, are payable or are likely to become payable, in pursuance of the provisions of this Act, out of the Consolidated Revenue Fund; and

(b) in respect of which, but for the arrangement, the authority or body would be, or would be likely to become, liable to make payments to the Commonwealth under sub-section (1), (1A) or (2),

and the authority or body may apply for the purposes of the arrangement any moneys under its control.”;

(h) by omitting from sub-section (3) “sub-sections (1) and (2)” and substituting “sub-section (1)”;

(j) by adding at the end the following sub-section:

“(4) The reference in sub-section (2) to an amount calculated in accordance with a method specified in a determination shall be read as including a reference to a nil amount.”.

(2) An arrangement entered into pursuant to sub-section 159 (2) of the Principal Act and in force immediately before the commencement of this section continues in force, on and after the commencement of this section, for the purposes of the Principal Act as amended by sub-section (1) as if the arrangement had been entered into under sub-section 159 (2D) of the Principal Act as so amended.

Annual report of Trust

27. Section 161 of the Principal Act is amended by adding at the end the following sub-sections:

“(4) Where the Trust does not furnish a report and financial statements in respect of a year (in this sub-section referred to as the ‘relevant year’) to the Commissioner under sub-section (1) before the expiration of the period (in this sub-section referred to as the ‘relevant period’) of 6 months commencing on the day next following the end of the relevant year, the Trust shall, not later than 14 days after the expiration of the relevant period, furnish to the Minister a report on the management of the Fund by the Trust during the relevant year, together with interim financial statements in respect of the relevant year.

“(5) The financial statements furnished to the Minister under sub-section (4) shall be in the form approved by the Minister for the purposes of sub-section (1) but need not be accompanied by a report of the Auditor-General of the kind referred to in sub-section (2).

“(6) Where the Trust furnishes a report and financial statements to the Minister under sub-section (4), the Minister shall—

(a) cause a copy of the report and a copy of the financial statements to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister; and

(b) furnish a copy of the report and a copy of the financial statements to the Australian Council of Trade Unions and, upon request made by a relevant industrial organization, to the relevant industrial organization.

5 “(7) A report furnished by the Trust under this section in relation to a year shall include particulars of any statement of policy furnished to the principal member of the Trust by the Minister during that year under sub-section 29A (6), the consideration given by the Trust to that policy and the action (if any) taken by the Trust as a result of that consideration.

10 “(8) A reference in this section to a relevant industrial organization is a reference to a relevant industrial organization the objectives of which extend to representing the interests of its members in relation to the terms and conditions of employment of those members.”

PART III—AMENDMENTS OF THE SUPERANNUATION ACT 1922

15 **Principal Act**

28. The *Superannuation Act 1922*² is in this Part referred to as the Principal Act.

29. (1) Section 145 of the Principal Act is repealed and the following section is substituted:

20 **Payments to the Commonwealth by approved authorities**

“145. (1) Where any pension or other benefit is payable on or after 1 July 1976 under this Act to or in respect of any person who was employed by an approved authority, the authority shall pay to the Commonwealth, in respect of the payment of that pension or other benefit—

25 (a) such amount as the Minister determines; or
(b) an amount calculated in accordance with a method determined by the Minister in respect of the authority or in respect of authorities included in a class of authorities to which the authority belongs,
and the authority may apply for that purpose any moneys under its control.

30 “(2) A determination under sub-section (1) may be made at any time before or after the pension or other benefit becomes payable.

35 “(3) Nothing in sub-section (1) shall be taken to imply that 2 or more authorities cannot, under that sub-section, be liable to pay amounts to the Commonwealth in respect of the same amount, being an amount that has been paid to or in respect of a person who has been employed by each of those authorities.

40 “(4) An authority may, and, if the Minister so directs, shall, enter into an arrangement with the Minister for the making of payments to the Commonwealth by the authority, in lieu of payments that, but for the arrangement, the authority would be required to make under sub-section

(1), being an arrangement that the Minister is satisfied will provide a fair basis of payment to the Commonwealth in respect of amounts paid, payable or likely to become payable out of the Consolidated Revenue Fund to or in respect of persons who have been employed by the authority and the authority may apply for the purposes of the arrangement any moneys under its control. 5

“(5) Where—

- (a) but for this sub-section, an authority would be liable to pay to the Commonwealth an amount or amounts in respect of any pension or other benefit that was paid before 1 July 1976 under this Act; and 10
- (b) the Minister determines that the authority should be relieved of that liability,

the authority ceases, upon the making of the determination, to be liable for that amount or those amounts.

“(6) The reference in sub-section (1) to an amount determined by the Minister, or to an amount calculated in accordance with a method determined by the Minister, shall be read as including a reference to a nil amount.”. 15

(2) An arrangement entered into in pursuance of sub-section 145 (2) of the Principal Act and in force immediately before the commencement of this section continues in force, on and after the commencement of this section, for the purposes of the Principal Act as amended by sub-section (1) as if the arrangement had been entered into under sub-section 145 (4) of the Principal Act as so amended. 20

NOTES

1. No. 31, 1976, as amended. For previous amendments, see No. 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1983; and No. 165, 1984.
2. No. 33, 1922, as amended. For previous amendments, see No. 45, 1924; No. 22, 1930; No. 10, 1931; No. 45, 1934; No. 28, 1937; No. 53, 1942; No. 18, 1943; Nos. 15 and 30, 1945; No. 2, 1946; Nos. 1 and 35, 1947; No. 19, 1948; No. 76, 1950; Nos. 49 and 62, 1951; No. 92, 1952; No. 11, 1954; No. 27, 1955; Nos. 19 and 112, 1956; No. 94, 1957; No. 45, 1958; No. 102, 1959; No. 102, 1963; Nos. 97 and 154, 1965; Nos. 69 and 86, 1966; No. 52, 1967; Nos. 49 and 57, 1968; Nos. 14 and 26, 1969; No. 46, 1971; Nos. 46, 83 and 135, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 59, 1974; Nos. 32 and 37, 1976; No. 17, 1978; No. 92, 1981; and No. 63, 1984.

