

1993

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CSL SALE BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance,
the Hon Ralph Willis, MP)



CSL SALE BILL 1993

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GENERAL OUTLINE

The CSL Sale Bill 1993 puts in place the necessary framework for the sale of CSL Limited (CSL) by the Commonwealth.

The main purposes of the Bill are to ensure that:

post-sale, CSL retains an Australian-controlled board of directors by ensuring that significant foreign shareholders may elect no more than one-third of the board of directors of CSL and that its place of incorporation and head office remain in Australia;

CSL continues to produce plasma products for use by the Australian community by providing a mechanism for the Commonwealth to enforce its contract(s) with CSL for production of plasma products through the Federal Court and by requiring that CSL retain unencumbered ownership of its new plasma facility. There is also a requirement that its principal facilities for Australian plasma be retained in Australia;

existing Commonwealth legislation applying to CSL because of its status as a Commonwealth-owned entity will not apply to CSL from the sale day and that post-sale, CSL is, as far as practicable, not subject to Commonwealth legislation which does not also govern the activities of other private sector companies;

- the post-sale service of specific categories of employees is recognised as public employment for the purposes of qualifying for certain rights and benefits;

there are savings provisions which allow for certain pre-sale rights or obligations to continue post-sale in respect of matters which occurred during the pre-sale period. The principal areas involve obligations to employees and some administrative and legal issues; and

certain parts of the Commonwealth Serum Laboratories Act 1961 are amended or repealed.

The Bill also makes consequential amendments to various Commonwealth Acts and Regulations.

FINANCIAL IMPACT STATEMENT

The prime financial impact arising from the sale of CSL will be the offset to outlays occurring when the sale receipts are credited to the Commonwealth Public Account.

Apart from sale receipts, the CSL Sale Bill contains provisions which have financial impacts in four areas:

Dividend - there will be no further dividends from CSL to the Commonwealth as shareholder;

Employee matters - primarily in relation to superannuation where no further employer contributions will be received from CSL. It should be noted that employer superannuation contributions are classified as financing transactions and do not affect the Budget outcome. Contributions made under the Occupational Health & Safety (Commonwealth Employment) Act 1991 and premiums payable to Comcare will also no longer be made;

- exemption from certain State and Territory taxes and fees during the sale process; and
- CSL will no longer be liable to pay any levy after the sale day under the Commonwealth Borrowing Levy Act 1987.

In addition, ongoing costs of monitoring CSL faced by the portfolio department (the Department of Health, Housing, Local Government and Community Services) and the Department of Finance will no longer be incurred following the sale.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Division 1 - Short title and commencement

Clause 1 - Short Title

Commencement: Royal Assent

1. Provides for the Act to be cited as the CSL Sale Act 1993.

Clause 2 - Commencement

Commencement: Royal Assent

2. Clause 2(1) provides for certain clauses to commence on Royal Assent. These are:

formal clauses relating to procedural matters and interpretation (clauses 1, 2, 3 and 4);

the insertion of a new Part 3A into the Commonwealth Serum Laboratories Act 1961 dealing with national interest matters (clause 7); and

- exemptions from certain State and Territory taxes and fees (clause 47).

3. Clause 2(2) provides that all the remaining provisions (except clauses 5 and 6) commence on the sale day.

4. Clause 2(3) provides that clauses 5 and 6 (amendments to section 8 of the Commonwealth Serum Laboratories Act 1961) are taken to have commenced on 22 February 1991.

5. Clause 2(4) places a limit on the period of time within which the provisions contained in the Bill can be commenced. Any provisions which have not commenced before 31 December 1994 are taken to have been repealed on that day.

Division 2 - Interpretation

Clause 3 - Interpretation

Commencement: Royal Assent

6. Clause 3(1) provides definitions of terms used in the Bill. Among these is "CSL body" which is defined to mean CSL or a CSL subsidiary.

7. Clause 3(2) provides for the term "subsidiary" to have the same meaning as in the Corporations Law.

Clause 4 - The sale day

Commencement: Royal Assent

8. Clause 4 requires the Minister for Finance to declare a specified day to be the sale day by notice in the *Gazette*. It is the first day after Royal Assent on which, in the opinion of the Minister, the majority of the voting shares in CSL have been acquired by a person or persons, other than the Commonwealth, or a nominee of the Commonwealth. The notice must be published within 14 days after the specified day.

PART 2 - AMENDMENT OF THE COMMONWEALTH SERUM LABORATORIES ACT 1961

9. This Part inserts a new Part 3A into the Commonwealth Serum Laboratories Act 1961 to provide for certain national interest matters in relation to CSL.

10. The new Part would firstly require that CSL's articles of association contain limitations on voting by significant foreign shareholders in order that CSL remain under the direction of an Australian-controlled board. There would also be a requirement that its head office and principal facilities for production of products derived from blood or plasma collected in Australia remain in Australia (Division 2).

11. Secondly, Divisions 3 and 4 of the new Part are aimed at ensuring that CSL continues to produce plasma based products for the Australian community following the sale day. In particular, it will not be able to dispose of, grant an interest in or encumber the new blood fractionation facility at Broadmeadows without Commonwealth consent. In addition, the Minister will be given the power to seek injunctions and other orders from the Federal Court should CSL fail to meet its obligations under a contract with the Commonwealth for the production of certain plasma products.

12. This Part also clarifies the impact of the Commonwealth Serum Laboratories Act 1961 on CSL's issued and authorised capital.

Clause 5 - Principal Act

Commencement: This provision is taken to have commenced on 22 February 1991.

13. This clause provides that the "Principal Act" means the Commonwealth Serum Laboratories Act 1961.

Clause 6 - Share capital of CSL

Commencement: This provision is taken to have commenced on 22 February 1991.

14. This provision amends section 8 of the Principal Act so as to clarify that only CSL's issued capital is to be equal to the amount ascertained under section 9 of the Principal Act. The amount of its authorised capital is not to be affected by section 9.

Clause 7 - New Part

Commencement: This provision commences on Royal Assent.

15. This clause inserts a new Part 3A into the Commonwealth Serum Laboratories Act 1961 ("the Principal Act").

Proposed new Division 1 - Purpose and Interpretation

Proposed Section 19A - Purpose

16. This section would set out the purpose of the new Part, namely, to provide for certain matters in the national interest and to provide remedies in relation to these matters.

Proposed Section 19B - Interpretation

17. This section would provide definitions for the Part. Particular definitions are referred to with the relevant provisions. CSL, CSL subsidiary and CSL body are given the same meaning as they have in other parts of the Bill (see definitions in clause 3 of the Bill).

18. This section would also provide the meaning of the term "relevant interest" as used in the Division. The concept of a relevant interest is used in the Corporations Law to establish a relationship between a person and shares in a company. The term is used in this Division in order to establish a connection between a foreign person and shares in CSL. The basic rules for establishing whether a foreign person has a relevant interest in a CSL share would focus on whether the person has power to vote in respect of a voting share or has power to dispose of a share (section 31 of the Corporations Law). Control through indirect means such as interconnected shareholdings, company chains or shareholders' agreements could result in a person being taken to have a relevant interest in a CSL share even if the person is not the registered holder of the share.

19. While relevant interests are generally to be ascertained in accordance with the provisions of Division 5 of Part 1.2 of the Corporations Law, the operation of section 33 of the Corporations Law is specifically excluded because that section provides a test of relevant interest which is considered too wide to operate in relation to the limitations which are imposed by the proposed section 19C.

Proposed new Division 2 - Requirements regarding CSL's articles of association

20. This Division would require that CSL's articles of association contain certain provisions, predominantly in order to limit foreign control of CSL. It would also provide a mechanism which would allow the Minister to enforce the requirements of the articles should the need arise.

Proposed section 19C - CSL's articles of association to include certain provisions

21. This section would require that the following national interest safeguards be incorporated into CSL's articles of association on and from the sale day:

- (a) the votes attaching to all significant foreign shareholdings cannot be counted in respect of the appointment, removal and replacement of more than one-third of the directors of CSL who hold office at any particular time. A significant foreign shareholding is a shareholding in voting shares of CSL in which a foreign person has a relevant interest if the foreign person has relevant interests in 5% or more of CSL's voting shares (proposed section 19C(2));
- (b) in order to enforce the requirements of paragraph (a), CSL's directors are required to take reasonable steps to ascertain whether there are any significant foreign shareholdings;
- (c) CSL's directors must have the power to remove particular directors or disenfranchise particular shareholders in relation to voting for the appointment, removal and replacement of directors in order to enforce the restrictions referred to in paragraph (a);
- (d) the head office of CSL must remain in Australia;
- (e) the principal facilities used by CSL and its subsidiaries (taken together) that are used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must be located in Australia;
- (f) at least two-thirds of the directors on the board of CSL must be Australian citizens, as defined in the Australian Citizenship Act 1948;
- (g) the Chairman of any meeting of the main CSL board must be an Australian citizen. Committees of the board or board meetings of CSL subsidiaries would not be covered by this requirement; and
- (h) the Company must not seek incorporation outside Australia.

22. A foreign person is a person who is not an Australian person - see proposed section 19B(1).

Australian persons are:

- 'Australian individuals' which is defined to mean Australian citizens, or persons who are ordinarily resident in Australia as defined in the Foreign Acquisitions and Takeovers Act 1975. Under that Act, a person is ordinarily resident in Australia at a particular time if the person has actually been in Australia for at least 200 days in the previous twelve months and there is no legal limitation on the person remaining in Australia indefinitely;
- 'Australian government bodies' which is defined to mean:
 - the Commonwealth, a State or Territory or an authority of the Commonwealth, a State or Territory;
 - a local government body; or
 - a nominee of any of the above;

'Australian bodies corporate' which is defined to be bodies corporate incorporated in Australia which are substantially owned and, in the opinion of CSL's directors, effectively controlled by:

- Australian individuals;
- Australian government bodies;
- Australian bodies corporate (under a previous application of the definition);
- Australian fund managers.

A body corporate is only regarded as substantially owned by the persons mentioned above if foreign persons have relevant interests in less than 40% of its issued share capital.

Whether a body corporate is effectively controlled by the persons mentioned above is to be determined by CSL's directors having regard to circumstances specified in proposed section 19B(6). If any of these circumstances exist in relation to a body corporate, CSL's directors must form the opinion that the body is not effectively controlled by the persons mentioned above unless they are satisfied on reasonable grounds that the body corporate is effectively controlled by the persons mentioned above (proposed sections 19B(4) and (5)). The circumstances are as follows:

- a single foreign person has relevant interests in 15% or more of the voting shares of the body corporate and cannot show that he or she is not in a position to control the body corporate;
- foreign persons (excluding foreign employees unless there is some basis other than their employment) and associates are in a position to exercise control either directly or indirectly of a significant proportion of the operations of the body corporate;
- foreign persons and associates either directly or indirectly are in a position to veto any significant action taken by the board of directors of the body corporate;
- foreign persons and associates are in a position either directly or indirectly to appoint, to secure the appointment or veto the appointment of at least half of the board of directors of the body corporate;
- foreign persons (excluding foreign employees unless there is some basis other than their employment) and associates are in a position to exercise in any manner whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the body corporate;
- the body corporate or at least 50% of its directors act or are accustomed to act or under a contract or arrangement or understanding are intended or expected to act in accordance with the directions, instructions or wishes of foreign persons and associates either generally or in relation to the body corporate's dealings with CSL or with shares in CSL.

The meaning of the term 'associate' has been taken from the Corporations Law excluding sections 13 and 14 which are not relevant to these provisions.

'Australian fund managers' which is defined to mean persons in the capacity of trustees and managers of funds in which the total interests of Australian individuals, Australian government bodies and Australian bodies corporate represent at least 60% of the total interests in the fund. This is designed to cover the situation where a clear majority of moneys in a fund are invested by Australian persons but the trustee or manager of the fund is a foreign person. The definition will ensure that such a fund is not classed as a foreign person just because the person managing the investments of the fund is foreign. A similar approach was taken in relation to the initial issue of shares in the Commonwealth Bank and in relation to Qantas - see section 27K(3) of the Commonwealth Banks Act 1959 and section 7(6) of the Qantas Sale Act 1992.

Proposed Section 19D - Inconsistent alteration to CSL's articles of association to have no effect

23. Proposed section 19D(1) provides that any special resolution of the company is to have no effect if it would have the effect of altering CSL's articles of association so that those articles become inconsistent with the requirements of proposed section 19C.

24. Proposed section 19D(2) provides that any resolution that would, if acted upon, result in a contravention of the requirements of proposed section 19C (or would have the effect of ratifying such a contravention) is to have no effect.

Proposed section 19E - CSL to maintain a register of foreign-held voting shares

25. The section would require CSL to maintain a register of 'foreign-held voting shares' which are voting shares in which foreign persons have, or are declared by the directors of CSL to have, relevant interests. The directors must make reasonable inquiries before declaring shares to be shares in which a foreign person has a relevant interest. The register, or a copy of the register, is to be made available to the Minister for examination on request. The purpose of the register is to monitor foreign interests in CSL shares for the purposes of paragraph 19C(1)(a). Accordingly, it could be expected that the register would relate predominantly to significant foreign shareholdings (as defined in proposed section 19C(2)).

Proposed sections 19F to 19M - Injunctions in relation to contraventions of a mandatory article or section 19E

26. These sections would provide that where a provision which is required to be contained in CSL's articles of association is threatened to be, is being or has been breached by CSL or another person or CSL is not complying with the requirement to keep a register of 'foreign-held voting shares' under proposed section 19E, the Minister is empowered to apply to the Federal Court of Australia for an injunction to restrain CSL or the person from engaging in the conduct or requiring CSL or the person to do an act or thing (proposed section 19F). The provisions are similar to section 1324 of the Corporations Law. The Court, for example, could be asked to require CSL's directors to comply with the requirements of CSL's articles. The Court will also be able to make other orders which it considers appropriate (proposed section 19M), to grant interim injunctions (proposed section 19H) and injunctions by consent (proposed section 19G). The Minister is not to be required to give an undertaking as to damages if he or she applies for an interim injunction (proposed section

19L). Proposed sections 19J and 19K would set out certain factors relevant to the Court's consideration under proposed section 19F.

Proposed Division 3 - Prohibition on disposal etc. of the Broadmeadows facility

27. The purpose of this Division is to ensure that the supply of plasma products to the Australian Community is not jeopardised by CSL disposing of, granting an interest in or giving security over the Broadmeadows facility (see notes to proposed section 19N for the meaning of this term).

Proposed section 19N - Declaration of Broadmeadows land

28. A plasma fractionation facility is currently being constructed at Broadmeadows in Victoria on land owned by the Commonwealth. Prior to the sale day, the land and the facility will be transferred to CSL or a wholly-owned subsidiary. This is likely to involve a subdivision of land currently contained on one certificate of title into two separate holdings.

29. This section would allow the Minister to declare the land on which the facility is located to be 'Broadmeadows land' for the purposes of the section. This land and the buildings and fixtures which are on the land when transferred or are subsequently added are referred to in section 19P as the "Broadmeadows facility" (see proposed section 19P(7)).

Proposed section 19P - Prohibition on disposal etc. of Broadmeadows facility

30. Once the Broadmeadows facility is transferred to CSL or a wholly-owned subsidiary, this section is intended to prevent the facility coming under the control of a person other than CSL and its wholly-owned subsidiaries without the consent of the Minister. This section would prohibit CSL or a wholly-owned subsidiary from disposing of the whole of the Broadmeadows facility, or granting an interest in the facility without obtaining the written approval of the Minister. It would also prohibit CSL or a wholly-owned subsidiary from encumbering all or any part of the facility without the written approval of the Minister. In both cases, the approval may be given subject to conditions (proposed sections 19P(1) and (5)).

31. The section would allow for the facility itself or interests in the facility to be transferred between CSL and any of its wholly-owned subsidiaries (proposed sections 19P(2) and (3)).

32. If the facility is owned by a wholly-owned subsidiary, either because it was initially transferred to that subsidiary or because of a subsequent transfer, CSL and any interposed subsidiary must not dispose of the shares in the subsidiary or take any other action which might cause the subsidiary to no longer be a wholly-owned subsidiary of CSL.

33. If an act or transaction occurs in contravention of the proposed section, it is ineffective. For example, if there were an attempt to mortgage the Broadmeadows facility where the Minister had not given his or her consent, the mortgage would not be effective in granting the mortgagee a security interest in the facility.

34. The limitations which are applicable to CSL or a wholly-owned subsidiary under this section are also applicable to an 'administering body' of such a body (see proposed section 19B(9)). An 'administering body' is a liquidator, provisional liquidator, receiver, receiver and manager, controller, and various administrators as each of these terms is used in the Corporations Law (see definition in proposed section 19B(1)).

Proposed Division 4 - Injunctions to ensure performance of plasma products contracts

35. The purpose of this Division is to ensure that if there is a breach of a contract between CSL and the Commonwealth for the production of products derived from human plasma collected from blood or plasma donated by individuals in Australia in circumstances where there may be a threat to the continued production of these products, the Commonwealth will be able to take quick and effective action to safeguard that product supply.

Proposed section 19Q - Injunction to ensure performance of plasma products contracts

36. This section (and the Division generally) would apply if the Commonwealth and CSL have entered into a contract at any stage in relation to the production by CSL or a CSL subsidiary of products derived from human plasma collected from blood or plasma donated by individuals in Australia.

37. The section would not apply to any contract which relates to products derived from blood or plasma collected overseas.

38. It is possible that there could be a number of contracts between CSL and the Commonwealth which are covered by the section. They may run concurrently or subsequently to each other. In either case, the section would be applicable (proposed section 19Q(2)).

39. If CSL has breached, is breaching or is proposing to breach the contract, the Minister can seek an injunction from the Federal Court restraining CSL from acting in breach of the contract or requiring it to act in accordance with the contract. The Court is required to grant the injunction. The Court's usual procedures would be applicable to the action, including, in urgent circumstances, the possibility of obtaining an interim injunction on an ex parte basis.

40. If CSL's default is caused or contributed to by action or a failure to act by a CSL subsidiary, orders including injunctions may be made against that subsidiary.

41. If a receiver, administrator, liquidator or similar person ("administering body" - see definition in proposed section 19B(1)) has been appointed to CSL or a CSL subsidiary, the Court may also make orders against such a person (see proposed section 19B(9)).

Proposed sections 19R to 19W - Injunction provisions

42. These sections would allow the Federal Court to grant consent and interim injunctions and other additional orders which it thinks appropriate (proposed sections 19R, 19S and 19W). They also refer to certain factors which the Court is required to consider in exercising its powers under this Division. In particular, any other remedies which the Commonwealth may have are not to preclude the grant of an injunction under section 19Q (proposed sections

19T and 19U). Where the Minister seeks an interim injunction, no undertakings are to be required by the Court (proposed section 19V).

Proposed Division 5 - Miscellaneous

Proposed section 19X - Delegation by Minister

43. This section would enable the Minister to delegate powers under this Part to a Senior Executive Service officer in his or her Department.

Proposed section 19Y - Jurisdiction of courts

44. This section would confer jurisdiction on the Federal Court of Australia in relation to matters arising under this Part.

Proposed section 19Z - This Part to have effect despite the Corporations Law

45. This section would provide for the Part to operate despite any provisions of the Corporations Law. It clarifies the relationship between this Part and the Corporations Law. It is required because of section 9(1) of the Corporations Act 1989.

Proposed section 19ZA - Remedies under this Part to be additional remedies

46. This section would confirm that the remedies provided to the Commonwealth under this Part do not replace any other remedies the Commonwealth might have. In particular, where the Commonwealth and CSL have entered into a contract to which Division 4 applies regarding plasma products, the power of the Minister to seek an injunction would not replace the usual remedies which the Commonwealth would have for breach of contract such as an action for damages.

Clause 8 - Other Amendments

Commencement: This provision commences on the sale day.

47. This clause enacts amendments to the Principal Act which are contained in Schedule 1 and further described under that Schedule.

PART 3 - AMENDMENT OF THE LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) REGULATIONS

48. This Part amends the Regulations made under the Long Service Leave (Commonwealth Employees) Act 1976 ("LSL(CE) Act") which prescribe the bodies which the Act covers.

Clause 9 - Principal Regulations

Commencement: This provision and clause 10 commence on the sale day. Transitional and savings provisions will also commence on the sale day to preserve employee benefits under the LSL(CE) Act (clauses 15-21).

49. This Clause defines the term "Principal Regulations" to mean the Long Service Leave (Commonwealth Employees) Regulations.

Clause 10 - Schedule 1A

Commencement: This provision commences on the sale day.

50. Clause 10(1) omits reference to CSL Limited from the relevant schedule to the Principal Regulations. Hence, employees of CSL will no longer be covered by the LSL(CE) Act from the sale day. See clauses 15-21 for transitional and savings provisions.

51. Clause 10(2) ensures that the amendment of the Principal Regulations does not prevent the Governor-General from further amending or repealing those Regulations.

PART 4 - AMENDMENT OF THE MATERNITY LEAVE (COMMONWEALTH EMPLOYEES) REGULATIONS

52. This Part amends the Regulations made under the Maternity Leave (Commonwealth Employees) Act 1973 ("ML(CE) Act") which prescribe the bodies which the Act covers.

Clause 11 - Principal Regulations

Commencement: This provision and Clause 12 commence on the sale day.

53. This clause defines the term "Principal Regulations" to mean the Maternity Leave (Commonwealth Employees) Regulations.

Clause 12 - Schedule 2A

Commencement: This provision commences on the sale day.

54. Clause 12(1) omits reference to CSL Limited from the relevant schedule to the Principal Regulations. Hence, employees of CSL will no longer be covered by the ML(CE) Act from the sale day. See clauses 39 and 40 for transitional provisions.

55. Clause 12(2) ensures that the amendment of the Principal Regulations does not prevent the Governor-General from further amending or repealing those Regulations.

PART 5 - AMENDMENT OF THE PROCEEDS OF CRIME REGULATIONS

This Part amends the Regulations made under the Proceeds of Crime Act 1987.

Clause 13 - Principal Regulations

Commencement: This provision commences on the sale day.

56. Clause 13 defines the term "Principal Regulations" to mean the Proceeds of Crime Regulations.

Clause 14 - Regulation 3B

Commencement: This provision commences on the sale day.

57. Clause 14 omits reference to CSL from regulation 3B of the Principal Regulations. CSL will not, therefore, from the sale day be a Government Business Enterprise (GBE) for the purposes of the Proceeds of Crime Act 1987 and may not receive payments out of the Trust Fund established by that Act as a GBE. Clause 45 provides for a saving provision as to relevant offences causing loss to CSL prior to the sale day.

PART 6 - TRANSITIONAL AND SAVING PROVISIONS

58. Transitional and savings provisions continue or modify certain obligations of CSL and its subsidiaries. They also allow for the completion of matters commenced pre-sale and provide for the attribution of certain employee benefits associated with pre-sale service that would otherwise be foregone because of the sale.

59. The savings provisions also recognise the post-sale service of specific categories of employees as public employment for the purposes of qualifying for certain deferred pension benefits.

Division 1 - Transitional and saving provisions in relation to long service leave

Commencement: Provisions under this Division commence on the sale day and will coincide with the commencement of clause 10, which removes CSL from the ambit of the LSL(CE) Act.

60. CSL employees currently accrue long service leave entitlements (3 months for every 10 years service) under the LSL(CE) Act.

61. For most employees, pre-sale service of less than 10 years will not normally qualify for any long service leave entitlement under the LSL(CE) Act.

62. To ensure equity, these provisions provide that when those employees either complete 10 years service with CSL or cease to be employees in circumstances under which LSL(CE) Act entitlements would have applied had CSL not been sold, long service leave benefits at the LSL(CE) Act standard are provided in relation to service before the sale day. The provisions of the Division are intended to mirror the LSL(CE) Act.

63. Thus, under the transitional provisions, a CSL employee with 9 years service as at the sale day could be granted long service leave of 9/10 of 3 months once the employee has served 10 years with a CSL body. The employee's long service leave entitlements relating to service after the sale day will accrue and be credited according to the long service leave regime in operation after the sale day. The Division also saves entitlements accrued before the sale day (generally those employees with at least 10 years service before the sale day).

Clause 15 - Interpretation

Commencement: This clause commences on the sale day

64. This clause provides for the definition of terms used in this Division. Expressions used in this Division to have the same meaning as in the LSL(CE) Act. "Combined service period" of an employee is defined as the total of the employee's service for the purposes of the LSL(CE) Act before the sale day and the employee's service with a CSL body after the sale day.

Clause 16 - Long service leave for employees with less than 10 years service

Commencement: This clause commences on the sale day

65. The provision applies to a person who was an employee of CSL immediately before the sale day and whose period of service at sale day was less than 10 years. If the employee continues to be employed by a CSL body until his or her combined service period with a CSL body is at least 10 years, the CSL body may grant the employee long service leave.

66. Clause 16(5) provides for granting of the long service leave in the circumstances of retirement or retrenchment as long as the employee has a combined service period with CSL of at least one year. Leave granted under this clause is to be taken so as to expire immediately before the employee is retired or retrenched (clause 16(7)).

67. Clause 16(6) allows for an employee to request leave on half pay.

68. Clause 16(8) provides for the application of section 20 of the Long Service Leave Act to calculate the rate of salary to be used in working out the full salary of an employee for the purposes of this provision.

69. In each case, the period of long service leave is calculated by reference to the period of service on the sale day (clause 19).

Clause 17 - Payments in lieu of long service for employees with less than 10 years service

Commencement: This clause commences on the sale day

70. Clause 17 provides that a CSL body must, in certain circumstances, pay an amount to an employee in place of that employee taking long service leave (clause 17(1)). For clause 17 to apply, an employee must have been an employee of CSL immediately before the sale day and not have accrued a period of service under the LSL(CE) Act of 10 or more years at that time (clause 17(2)).

71. Clause 17 applies to persons who cease to be employees of CSL after the sale day, but not to those who cease to be employees because they die (clause 17(3)). If a person ceases to be an employee and has at that time a combined service period of at least 10 years, the CSL body by which he or she is employed must pay him or her an amount in lieu of long service leave (clause 17(4)). This includes a person who voluntarily leaves employment prior to reaching the minimum retirement age.

72. If a person does not have a combined service period of 10 years or more but does have a combined service period of at least 1 year then he or she is entitled to be paid an amount in lieu of long service leave if the reason that he or she ceases to be an employee is because he or she has reached minimum retiring age (clause 17(5)) or because of retrenchment (clause 17(5)) or because of ill health (clause 17(6)).

73. The amount that an employee is paid in lieu is equivalent to his or her full salary in respect of his or her long service leave credit under clause 19(2). Clause 17(9) provides for the application of section 21 of the LSL(CE) Act to calculate the rate of salary to be used in working out the full salary of an employee for the purposes of this provision.

Clause 18 - Payments on the death of an employee

Commencement: This clause commences on the sale day

74. This clause requires payment to a deceased employee's dependant (or dependants) of the amount that would have been payable to the employee under clause 17 on the day of the employee's death, if the employee had stopped being an employee on or after reaching minimum retirement age. This provision applies if immediately before the sale day the employee had less than 10 years service and at the time of death had a combined service period of at least one year.

Clause 19 - Employee's long service leave credit for the purposes of sections 16 and 17

Commencement: This clause commences on the sale day

75. This clause defines the long service leave credit of CSL employees as being equal to the employee's long service leave credit under the LSL(CE) Act as at the sale day. In the case of clause 17, the credit is reduced by any amount of leave already taken under clause 16.

Clause 20 - Division not to affect an employee's post-sale long service leave rights

Commencement: This clause commences on the sale day

76. This clause declares to avoid doubt that the provisions of the Division do not affect an employee's post-sale long service leave rights. Long service leave associated with post-sale day service with CSL will be a matter for CSL and its employees to agree in the context of relevant State and Territory legislation.

Clause 21 - Saving - Long Service Leave Act

Commencement: This provision commences on the sale day.

77. This clause ensures that accrued long service leave credits, arising from pre-sale service with CSL under the LSL(CE) Act are retained post-sale.

Division 2 - Transitional and saving provisions relating to the Safety, Rehabilitation and Compensation Act 1988

78. This Division is intended to ensure that any matters which were covered by the Safety, Rehabilitation and Compensation Act 1988 ("SRC Act") prior to the sale day continue to be covered by that Act and that a CSL body's obligations in relation to those matters are retained.

Clause 22 - Interpretation

Commencement: This provision commences on the sale day.

79. This clause provides for the expressions used in this Division to have the same meaning as in the SRC Act.

Clause 23 - Continued application of the SRC Act

Commencement: This provision commences on the sale day.

80. Clause 23 provides that upon a CSL body ceasing to be a Commonwealth authority for the purposes of the SRC Act, that Act continues to apply to the extent provided by the succeeding provisions of the Division. (The only CSL bodies that are currently Commonwealth authorities under the Act are CSL itself and its subsidiary Filtron Pty Ltd.)

Clause 24 - Transitional provisions relating to the SRC Act that relate to CSL body employees and former CSL body employees

Commencement: This provision commences on the sale day.

81. Clause 24(1) continues the operation of the SRC Act in relation to injuries suffered by employees of a CSL body before the sale day, and to loss of or damage to the property of such persons incurred before the sale day. It covers former employees to the extent that they would be covered under the Act prior to the sale day. The provision is not intended to modify rights and obligations, only to preserve the pre-sale position.

82. Clause 24(2) provides that for the purposes of the saved operation of the Act under clause 24(1), a CSL body is to be treated as a Commonwealth authority, and the chief executive officer of a CSL body is to be treated as the principal officer of a Commonwealth authority.

Clause 25 - Transitional provisions relating to Division 4A of Part VII of the SRC Act

Commencement: This provision commences on the sale day.

83. Clause 25 provides for Division 4A of Part VII of the SRC Act to continue to apply to CSL bodies. Division 4A relates to premiums payable by Commonwealth authorities and Departments to Comcare.

84. Clause 25(1) provides that a CSL body continues as an authority for the purposes of the Division, but that it is not required to pay a premium for that part of a financial year following the sale day, and that Comcare may vary an estimate of premium, taking into account the fact that a CSL body is not required to pay premium for part of a financial year. It is likely that a refund of premium would be required where a CSL body has paid a premium

for a full financial year and the sale day occurs before the end of the financial year. A shortfall might occur if a CSL body had a greater number of employees during the course of the year than was originally expected.

85. Clause 25(2) confirms that any amount of premium that was payable by a CSL body prior to the sale day remains payable, and any such premium which remains unpaid 60 days after the sale day is a debt due to the Commonwealth and payable to Comcare.

Clause 26 - Transitional provision relating to Part VIIIA of the SRC Act

Commencement: This provision commences on the sale day.

86. Part VIIIA of the SRC Act allows for a body to be licensed to perform certain functions under the Act rather than Comcare performing them. This provision provides for any such licence to be cancelled from the sale day. Clause 29 provides for a licence fee to be refunded. Any on-going obligation under the licence for the period prior to the sale day would remain in force.

Clause 27 - Transitional provision relating to section 128A of the SRC Act

Commencement: This provision commences on the sale day.

87. Clause 27 provides that a CSL body that was, before the sale day, liable as a prescribed Commonwealth authority to pay any amount in respect of an injury, loss or damage suffered by one of its employees prior to 1 July 1989 under section 128A of the SRC Act, continues to be so liable after the sale day.

Clause 28 - Notification of amount of salary etc. paid to employees of a CSL body

Commencement: This provision commences on the sale day.

88. Clause 28 requires that the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees be notified of the amount of pay, salary or wages paid to employees of a CSL body (which was a Commonwealth authority under the SRC Act immediately before the sale day) for that part of the financial year ending on the day before the sale day. The actual wage and salary bill is relevant to the calculation of any refund of premium to the CSL body or amount payable to Comcare (as provided for in clause 25 of the Bill).

Clause 29 - Refund of licence fee paid under the SRC Act

Commencement: This provision commences on the sale day.

89. This clause provides for a pro-rata refund of any licence fee paid under section 127R of the SRC Act in the event that a CSL body is granted a licence under the SRC Act prior to the sale day.

Clause 30 - Amendment of declarations under the SRC Act

Commencement: This provision commences on the sale day.

90. This clause removes references to CSL bodies from declarations under the SRC Act identifying a CSL body as a Commonwealth authority to which the SRC Act applies. From the sale day it is intended that a CSL body will be required to comply with generally applicable workers' compensation legislation (including possibly remaining covered under the SRC Act (Part VIIIB) but under different conditions to Commonwealth authorities).

Division 3 - Transitional and saving provisions in relation to superannuation and other retirement benefits

Clause 31 - Saving - deferred benefits under the Superannuation Act 1922

Commencement: This provision commences on the sale day.

91. This clause applies to employees of a CSL body who up to the sale day were accumulating service with a CSL body as service in public employment (20 years in most cases) in order to qualify to obtain deferred benefits under the Superannuation Act 1922.

92. Employees who elected to preserve their superannuation rights (and deferred their benefits) under the Superannuation Act 1922 will be able to continue to count employment with a CSL body after sale day as public employment for the purposes of the Act.

Clause 32 - Saving - deferred benefits under the Superannuation Act 1976

Commencement: This provision commences on the sale day.

93. Employees of a CSL body who ceased to be members of the Commonwealth Superannuation Scheme before reaching a total of 5 years contributory membership, may qualify to defer their pension benefits if they remain in public employment for the balance of the 5 year period.

94. Similarly to clause 31 (Superannuation Act 1922) and clause 34 (DFRDB Act), this clause ensures that employees who have elected to preserve their superannuation pension benefits are able to continue counting post-sale service with a CSL body as public employment. A period of employment with a CSL body will therefore count towards the five year qualifying period for eligibility for deferred benefits even after the sale day.

Clause 33 - Saving - period of eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976

Commencement: This provision commences on the sale day.

95. This clause provides that any period of employment with a CSL body which would have been regarded as eligible employment for the purposes of Division 3 of Part IX of the Superannuation Act 1976 (which allows for the preservation of rights of persons ceasing to be eligible employees) prior to the sale day continues to be regarded as such for the purposes of the person qualifying for deferred benefits.

Clause 34 - Saving - deferred benefits under the DFRDB Act

Commencement: This provision commences on the sale day.

96. This clause relates to the Defence Force Retirement and Death Benefits Act 1973 ("DFRDB Act"). Current employees of CSL bodies who were formerly members of the Defence Force and who have elected to take deferred DFRDB benefits are required to complete an aggregate of 20 years (in most circumstances) in the Defence Force or in subsequent public employment to enable deferred benefits to be paid.

97. In the absence of a specific provision, an employee who has not served the required period prior to the Commonwealth ceasing to have a controlling interest in those CSL bodies would lose his or her entitlement to the deferred benefits available under the DFRDB Act.

98. Clause 34(1) is intended to enable former members of the Defence Force who:

- are employed by a CSL body;
- had deferred their benefits under the DFRDB Act; and
- were accruing service in public employment with a CSL body,

to count employment with a CSL body as public employment, even after the sale day.

99. These employees would be entitled to their deferred benefits if they remain with a CSL body (or in other public employment) until the qualifying period (usually 20 years) is completed.

Clause 35 - Saving - period of eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act

Commencement: This provision commences on the sale day.

100. This clause ensures that any period of employment with a CSL body which would have been eligible employment for the purposes of Division 3 of Part IX of the DFRDB Act (which allows for the preservation of rights of contributing members who cease to be members of the Defence Force) prior to the sale day, continues to be regarded as such for the purposes of the person qualifying for deferred benefits.

Clause 36 - Application - Superannuation Act 1922

Commencement: This provision commences on the sale day.

101. This provision ensures that from the sale day CSL is not to be taken to be an approved authority for the purposes of section 145 of the Superannuation Act 1922. This provision does not affect the operation of clause 31 which allows for eligible CSL employees to continue to qualify to defer their pension benefits post-sale. Section 145 deals with payments by approved authorities to the Commonwealth.

Clause 37 - Application - Superannuation Act 1976

Commencement: This provision commences on the sale day.

102. This clause provides that from the sale day, CSL will no longer be an approved authority for the purposes of the Superannuation Act 1976. Accordingly, CSL employees will no longer be entitled to contribute to the Commonwealth Superannuation Scheme established under this Act.

Clause 38 - Application - Superannuation Act 1990

Commencement: This provision commences on the sale day.

103. Although CSL is not, and never has been, an approved authority for the purposes of the Superannuation Act 1990 as it has been excluded by a declaration by the Minister, this provision is intended to ensure that if the declaration is ever repealed, there will be no doubt that CSL is not an approved authority for the purposes of the Superannuation Act 1990.

Division 4 - Other Transitional and saving provisions

Clause 39 - Transitional maternity leave provisions relating to employees of CSL who are not on maternity leave immediately before the sale day

Commencement: This provision commences on the sale day and will coincide with the commencement of clause 12 which removes CSL from the ambit of the ML(CE) Act.

104. CSL employees are currently able to avail themselves of benefits provided under the ML(CE) Act including leave of up to 12 months, of which 12 weeks may be on full pay and the remainder without pay.

105. This clause will preserve the entitlements of employees of CSL who were employees of CSL pre-sale to apply for and be granted leave under the ML(CE) Act provided that the person would have been entitled to begin such leave within 12 months of the sale day.

Clause 40 - Transitional maternity leave provisions relating to employees of CSL who are on maternity leave on or before the sale day

Commencement: This provision commences on the sale day and will coincide with the commencement of clause 12 which removes CSL from the ambit of the ML(CE) Act.

106. This clause preserves the existing rights of those employees who are on maternity leave at the sale day.

Clause 41 - Saving - Crimes (Superannuation Benefits) Act 1989

Commencement: This provision commences on the sale day.

107. This clause is designed to stop the Crimes (Superannuation Benefits) Act 1989 from applying to acts or omissions of employees of CSL bodies that would or might constitute corruption offences, where those acts or omissions occur on or after the sale day.

108. Clause 41(1) allows the Act to continue to apply in relation to a corruption offence committed before the sale day. Clause 41(2) prevents a superannuation order made under the Act from affecting employer superannuation contributions made after the sale day.

109. Clause 41(3) provides that a superannuation scheme to which a CSL body contributes as an employer is not a superannuation scheme for the purposes of the Act in relation to a corruption offence committed after the sale day, and employer contributions to that scheme may not therefore be the subject of a superannuation order.

110. Clause 41(4) provides that where a superannuation order may be made affecting an employee's entitlements under the Commonwealth Superannuation Scheme and employer contributions in relation to that person's membership of the scheme have been paid into the Consolidated Revenue Fund but no corresponding benefits have been paid to the person, then the appropriate order is that the proportion of funds representing those contributions and interest belongs to the Commonwealth.

111. Clause 41(5) provides that where an employee has received a superannuation payment from the Consolidated Revenue Fund, then the relevant superannuation order is that the employer contributions and interest component are to be repaid to the Commonwealth.

Clause 42 - Saving - Commonwealth Serum Laboratories Act 1961

Commencement: This provision commences on the sale day.

112. Section 40 of the Commonwealth Serum Laboratories Act 1961 requires CSL's annual return to be tabled in Parliament. That section is repealed by Schedule 1 of this Bill, but this provision continues the requirement to table an annual return for the financial year in which the sale day occurs (unless the sale occurs on 1 July) and all preceding financial years.

Clause 43 - Saving - DPP Act

Commencement: This provision commences on the sale day.

113. This clause ensures that the Director of Public Prosecutions Act 1983 ("DPP Act") continues to apply to acts or omissions that occurred prior to the sale day and that civil remedies in relation to those matters can continue to be pursued. This provision is required because the DPP Act will no longer apply to a CSL body as a Commonwealth authority from the sale day.

Clause 44 - Saving - Judiciary Act 1903

Commencement: This provision commences on the sale day.

114. This clause is intended to ensure that the Australian Government Solicitor ("AGS") will, post-sale, continue to be able to act on behalf of CSL in relation to proceedings which were commenced prior to the commencement of the section. The AGS may also continue to act where a certificate has been given by the Secretary to the Attorney-General's Department or a person holding a Senior Executive Service office in that Department stating that

instructions were given by CSL prior to the sale day or that a matter involves a claim against CSL in respect of which the Commonwealth has indemnified CSL.

Clause 45 - Saving - Proceeds of Crime Act 1987

Commencement: This provision commences on the sale day.

115. This clause provides that where a relevant offence under the Act was committed prior to the sale day and it caused financial loss to CSL, then section 34C of the Proceeds of Crime Act 1987 continues to apply to CSL as though CSL continued to be a Government Business Enterprise, thus allowing CSL to receive payments out of the Trust Fund established by the Act that comprises the proceeds of confiscated assets relating to any such relevant offence.

PART 7 - OTHER PROVISIONS RELATING TO THE SALE OF CSL

Clause 46 - CSL not to be established by or under an Act or established by the Commonwealth

Commencement: This provision commences on the sale day.

116. This clause is intended to ensure that CSL is not to be taken to be established by or under an Act or established by the Commonwealth. This will prevent CSL from being subject to Acts which apply to Commonwealth authorities where the definition of Commonwealth authority includes a body so established.

117. The provision does not affect the operation of any law including the operation of the Commonwealth Serum Laboratories Act 1961 prior to the commencement of this clause. In particular, it does not affect CSL's deemed incorporation pursuant to that Act.

Clause 47 - Exemption from State and Territory taxes and fees

Commencement: Royal Assent

118. This provision exempts from State and Territory taxes and fees (other than fees under the Corporations Law), a variety of transactions relating to the sale of the Commonwealth's shareholding in CSL, including:

- the transfer of any property from the Commonwealth to a CSL body on or before the sale day;
- the issue or allotment of new shares by CSL or a CSL subsidiary before the sale day and any agreements relating thereto;
- the transfer of the Commonwealth's shares in a CSL body to another person and any agreements relating thereto; and

the receipt of money by the Commonwealth, a CSL body or another person acting on behalf of the Commonwealth or a CSL body from persons who are buying or subscribing

for shares in CSL on or before the sale day.

119. The intention of the provision is to achieve, in respect of each of these transactions, a result which will enhance the return to the taxpayers generally from the sale of the Commonwealth's shares in CSL. The exempt matters are all connected with the sale process and would occur in the period during or leading up to the Commonwealth disposing of all of its shares in CSL.

120. An example of a situation where the return from the sale could be reduced in the absence of such a provision is where stamp duty is levied by a particular State or Territory in relation to the transfer of the Commonwealth's shares in CSL and therefore the amount which a purchaser would be prepared to pay for those shares is potentially reduced. Imposts applicable to transactions associated with the sale (such as financial institutions duty) could also either reduce the value of CSL or indirectly increase the costs associated with the Commonwealth's disposal of its equity in CSL.

121. The Minister, the Secretary to the Department or an authorised delegate (who must be a member of the Senior Executive Service of the Department) may certify that a matter is exempt or has been done because of, or for a purpose connected with or arising out of, a specified exempt matter. Such a certificate is evidence of that matter.

Clause 48 - Regulations connected with the sale of CSL

Commencement: This provision commences on the sale day.

122. This provision enables regulations made pursuant to other Acts which include a declaration that they are connected with the sale of CSL to take effect on the sale day even if it is not practicable to have the regulations made prior to the sale day.

Clause 49 - Cessation of mobility rights

Commencement: This provision commences on the sale day.

123. This clause extinguishes the mobility rights of employees of CSL bodies under Part IV the Public Service Act 1922 and the repealed Officers' Rights Declaration Act 1928. Access to mobility arrangements under Part IV of the Public Service Act 1922 has not been available to new staff at CSL since CSL was converted into a public company in 1991. However a small number of CSL staff may have acquired mobility rights before CSL was converted to a public company and their rights had been preserved. The most significant element of these mobility rights was the opportunity to have special consideration given to reappointment to the Australian Public Service in the event of redundancy.

Clause 50 - Refund of contribution paid under the Occupational Health and Safety (Commonwealth Employment) Act 1991

Commencement: This provision commences on the sale day.

124. Schedule 2 of the Bill provides that the reference to CSL is to be omitted from the Schedule to the Occupational Health and Safety (Commonwealth Employment) Act 1991

("OH&S Act"), so that CSL is not from the sale day deemed to be a Government Business Enterprise for the purposes of that Act. After the sale day, a CSL body will also not be a Commonwealth authority for the purposes of that Act. Clause 50 provides for a refund if the sale day falls part way through a financial year and the relevant company has paid a contribution under section 67H of the OH&S Act in respect of the administration of that Act.

Clause 51 - CSL body not to be eligible or relevant body for the purposes of the Superannuation Benefits (Supervisory Mechanisms) Act 1990

Commencement: This provision commences on the sale day.

125. This clause removes the reference to CSL bodies from certain declarations made under the Superannuation Benefits (Supervisory Mechanisms) Act 1990. Following the sale it is intended that this Act cease to apply to CSL bodies.

Clause 52 - Ending CSL's liability under the Commonwealth Borrowing Levy Act 1987

Commencement: This provision commences on the sale day.

126. This clause provides that CSL is not liable to pay any levy after the sale day under the Commonwealth Borrowing Levy Act 1987 in respect of any borrowing, though it is still required to pay any amount that became payable prior to the sale day. Schedule 2 of the Bill omits the reference to CSL from that Act so that a levy is not imposed from the sale day on any new borrowings.

Clause 53 - Amendments of other Acts

Commencement: This provision commences on the sale day.

127. This clause provides for the Acts as specified in Schedule 2 to be amended as set out in that Schedule.

SCHEDULE 1**OTHER AMENDMENTS OF THE COMMONWEALTH SERUM
LABORATORIES ACT 1961**

128. It is necessary to retain some of the provisions of this Act in order to preserve the basis of the company's incorporation. Other provisions in this Act are to be repealed, as described below:

Some definitions in section 3 and section 4 (an interpretation section) are omitted.

Subsection 16(1), which deemed the Commonwealth to be a holding company for the purposes of the requirements as to the number of shareholders and directors of CSL under the Companies Code (now the Corporations Law) is omitted.

Part 4, which protected company and business names, is repealed. It is considered that CSL should rely on the same laws for such protection as other companies do, and no longer have the advantage of the specific provisions of Part 4.

Section 30, which preserved the Public Service mobility rights of certain CSL personnel from the date of conversion of the Act, is repealed. The repeal of this section combined with clause 49 of the Bill removes all Public Service mobility rights for employees of a CSL body.

Sections 39 and 40 are repealed. Section 39 stated that CSL could take on additional powers and functions that might be conferred on it by a State or Territory. For section 40, see clause 42 of this Bill.

Subsection 42(2) is omitted. It had a limited operation following the conversion of CSL from the Commonwealth Serum Laboratories Commission, in relation to business and company names.

SCHEDULE 2

AMENDMENTS OF OTHER ACTS

129. CSL Limited is presently subject to a range of statutes by virtue of its Commonwealth ownership. It is intended that it be removed from the ambit of most of the applicable legislation from the sale day. This will ensure that legislation which applies specifically to Commonwealth Government Business Enterprises does not apply to CSL. This accords with the intention that CSL be treated by Commonwealth legislation consistently with private sector enterprises from that point on.

Commencement: Schedule 2 commences on the sale day (see clause 53).

130. Acts to be amended are:

Administrative Decisions (Judicial Review) Act 1977

A further paragraph is added to Schedule 1 of this Act so that decisions of CSL Limited or a company that is a subsidiary of that company cannot be reviewed under this Act.

Commonwealth Borrowing Levy Act 1987

See clause 52 of the Bill.

Insurance Act 1973

This Schedule omits section 5(2B) of the Act which provided that Coselco Insurance Pty Ltd, CSL's captive insurer (a subsidiary), was not subject to the requirements of the Act.

National Crime Authority Act 1984

Schedule 2 of the Bill omits a reference to CSL which appears in Schedule 2 of the Act. That reference existed so as to prevent CSL being deemed an "agency" under that Act and therefore subject to requests by the National Crime Authority under section 19A of that Act. The reference is no longer needed because CSL does not now fall within the definition of "agency".

Occupational Health and Safety (Commonwealth Employment) Act 1991

See clause 50.