



1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) BILL 1990

EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF
REPRESENTATIVES TO THE BILL AS INTRODUCED

SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) BILL 1990

GENERAL OUTLINE

The aim of this Bill is to make provision for supervisory mechanisms to apply to the provision of superannuation benefits to Commonwealth sector employees. The Bill re-enacts Part XA of the Superannuation Act 1976 in a separate Act, with certain minor drafting changes.

With a body of legislation now governing superannuation arrangements for Commonwealth sector employees, it is appropriate that these supervisory mechanisms be detached from the legislation establishing the major superannuation schemes.

No significant alteration is to be made to existing arrangements under which two different forms of supervisory mechanism are applied to the provision of superannuation arrangements to persons employed under Commonwealth law and employees of certain Commonwealth owned or funded bodies:

- (a) it will still be necessary, in general, to obtain the written approval of the Minister for Finance both to the provision of such benefits and to the detail of the superannuation arrangement which provides the benefits; and
- (b) where appropriate, the Minister will be able to issue superannuation guidelines, in which case, the employer will have complete freedom to operate within those guidelines and only proposals outside the guidelines will require the Minister's specific approval.

The provisions of the Bill dealing with contraventions of these arrangements also continue, virtually unchanged, the corresponding provisions in Part XA.

Certain drafting changes have been made to ensure that the arrangements operate as intended when Part XA was first introduced, and to reflect self-government in the Australian Capital Territory. The most notable drafting changes:

- (a) allow the arrangements to be applied even-handedly to all subsidiaries of Commonwealth authorities and bodies;
- (b) ensure the Australian Capital Territory, the Northern Territory, and all authorities, companies and bodies established, owned or funded by those territories are outside the scope of these arrangements; and
- (c) allow the Minister to determine guidelines which are common to groups of Commonwealth employers.

The Bill also contains consequential amendments of the Superannuation Act 1976.

FINANCIAL IMPACT

There are no new financial effects resulting from this Bill, as its provisions are in most respects identical to those of Part XA of the Superannuation Act 1976, which it replaces.

NOTES ON CLAUSES

Clause 1 - Short title etc.

1. Provides for the Act to be referred to as the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

Clause 2 - Commencement

2. The Bill will come into operation on 1 July 1990.

Clause 3 - Interpretation

3. This clause regulates the meaning of various terms and words used in the Bill. The clause corresponds to section 153AA in Part XA of the Superannuation Act 1976.

4. **Subclause (1)** contains definitions of terms used in the Bill.

5. **Subclause (2)** ensures that the Minister may declare certain companies, bodies or authorities which have or will have appropriate characteristics to be relevant bodies (that is, employers to which this Bill applies - the term is described in greater detail in paragraph 13 below) or eligible bodies (relevant bodies to which superannuation guidelines are to be applied), notwithstanding the fact that some of those organisations are not yet in existence at the time the declaration is made. This provision will come into play where the Minister declares a class of organisations (for example, all subsidiary companies controlled by a particular statutory authority which are incorporated in Australia) to be relevant bodies or eligible bodies for the purposes of this Bill.

6. **Subclause (3)** provides that a reference in the Bill to a person being employed includes a reference to a person holding an appointment or office under a law or in a body. This simplifies the language of the remainder of the Bill as well as ensuring that the Bill applies to statutory office-holders.

7. **Subclause (4)**, to remove any doubt, provides that a director of a company or corporation is to be taken to be an employee of that company or corporation.

8. **Subclause (5)** seeks to remove any possible ambiguity as to who is an employer for the purposes of the Bill by providing that the Minister may declare that the person holding or occupying a particular office or appointment is to be taken to be the employer of specified persons. Upon publication in the Gazette the person so declared is to be taken to be the employer for the purposes of the Bill. The provision will be used, for example, where a statutory office-holder, who legally may have no "employer", is covered by Clause 6. In this case, the Minister

responsible for the relevant Act, or the Chairman of the Board of the organisation managed by the office-holder, could be declared as the office-holder's employer. This subclause does not require the Minister to make a declaration for every employer. Where an employer is identifiable the provision will only apply if the Minister decides to specify the holder of an office or appointment to be the employer. For example, the chief executive of a company could be declared as the employer of the company's staff, as opposed to the company itself.

Clause 4 - Application

9. Clause 4 provides that the Bill will apply within and outside Australia. This ensures that the supervisory mechanisms contained in the Bill will continue to apply to the provision of superannuation benefits to appropriate persons when they are outside the geographic confines of Australia, although persons engaged overseas solely for overseas service are excluded from the operation of this Bill by virtue of the definition of "overseas employee", and the operation of subclauses 5(1) and (2).

Clause 5 - Restrictions upon provision of superannuation

10. Clause 5 restricts the circumstances in which superannuation benefits can be provided to persons employed or appointed within the broad Commonwealth sector. In particular, the clause gives to the Minister the exclusive power to prospectively permit the provision of superannuation to persons, except in the circumstance where a law of the Commonwealth under which a person is employed, or another Commonwealth law, specifically refers to the provision of superannuation. The clause corresponds to section 153AB in Part XA of the Superannuation Act 1976.

11. **Subclause (1)** provides that superannuation benefits can only be provided to persons employed under a "relevant law" (that is, all laws of the Commonwealth except those providing for self-government of the two internal Territories) in one of three circumstances:

- (a) those benefits are provided in accordance with guidelines or approvals determined under Clause 6;
- (b) a relevant law under which the person is employed or another relevant law that applies to the person contains provisions expressly providing for the benefits; or
- (c) there is sufficient authority in a relevant law that applies to the person to allow the benefits to be provided (for example, the law contains a power to set terms and conditions of employment) and the Minister approves the provision of those benefits.

The Superannuation Act 1976 and the Superannuation Act 1990 contain express provisions of the kind referred to in paragraph (b) above, and it is therefore unnecessary to obtain the

Minister's approval under these provisions for a person to whom this Bill applies to become a member of the superannuation schemes established by those Acts. Other examples of such express provision include the Defence Force Retirement and Death Benefits Act 1973 and the Judges' Pensions Act 1968.

12. The Minister's approval under this subclause can only be prospective. Any retrospective approvals must be made under Clause 7. The subclause does not give the Minister an independent power to provide superannuation benefits, it merely allows an existing power to be used. Persons engaged overseas for service overseas are to be excluded from the Ministerial approval arrangements.

13. Subclause (2) provides that superannuation benefits can only be provided to persons employed by a "relevant body" in one of three circumstances:

- (a) the provision of benefits is permitted under subclause (1);
- (b) the benefits are provided in accordance with guidelines or approvals determined under Clause 6; or
- (c) the body has the power to provide benefits and the Minister has approved the provision of those benefits.

(Essentially, a "relevant body" is a Commonwealth owned company, a Commonwealth funded body, or a subsidiary controlled by a Commonwealth owned company or other body, which is either an "approved authority" for the purposes of the Superannuation Act 1976 or the Superannuation Act 1990 - that is, some of its staff are contributors to the principal superannuation schemes established by the Commonwealth for its employees - or is declared by the Minister to be a "relevant body".)

14. As is the case with subclause (1), the Minister's approval under this subclause can only be prospective, and the subclause does not give an independent power to provide benefits; it merely allows an existing power to be used. Persons engaged overseas for service overseas are again excluded from the approval arrangements.

15. Subclause (3) provides that where the provision of benefits is allowed under subclauses (1) and (2), those benefits may be provided either under a superannuation arrangement that will provide benefits only to people employed under the relevant law or by the relevant body in question or under an arrangement which will also apply to other people. For example, a Commonwealth employer could participate in a superannuation arrangement covering all employees in a particular industry.

16. Subclause (4) provides that where the Minister approves the provision of superannuation benefits under paragraphs (1)(c) and (2)(c) a superannuation arrangement, or a subsequent amendment to an arrangement, that is to provide those benefits has no force or effect unless it is also approved by the Minister. This means

that the Minister's approval is required both for the provision of benefits and for an arrangement that is to deliver those benefits. The provision relating to amendments requiring approval does not apply to arrangements which will also provide benefits to persons who are not Commonwealth sector employees.

17. **Subclause (5)** provides that where superannuation benefits are provided in accordance with guidelines approved by the Minister under Clause 6, a superannuation arrangement, or a subsequent amendment to an arrangement, that is inconsistent with the guidelines is of no force or effect to the extent of the inconsistency. In addition, this subclause provides that a superannuation arrangement that also provides benefits to persons who are not Commonwealth sector employees or a subsequent amendment to such an arrangement which is contrary to the guidelines is, to the extent of the inconsistency, of no force or effect in its application to the Commonwealth sector employees to which it applies.

18. **Subclause (6)** makes provision for the case where a superannuation arrangement, other than a superannuation arrangement referred to in subclause (4) or (5), has been established contrary to subclauses (1) or (2). Where superannuation benefits are purportedly provided without the approval of the Minister under subclauses (1) or (2), a superannuation arrangement intended to deliver those benefits has no force or effect.

19. **Subclause (7)** provides that subclauses (1) or (11), both of which restrict the provision of superannuation benefits, do not apply to arrangements established or put into effect before 24 April 1978 (the date of effect of Section 167A, which Part XA replaced), and in operation on that day.

20. **Subclause (8)** provides that subclauses (2) or (11), both of which restrict the provision of superannuation benefits, do not apply to any superannuation arrangement in operation in a company or body at the time it becomes a "relevant body".

21. **Subclause (9)** provides that subclause (8), which protects pre-existing arrangements, does not apply to any arrangement which at the time it was established or put into effect contravened the provisions of this Bill or its precursors (section 167A or Part XA of the Superannuation Act 1976). But for this provision, subclause (8) could operate to protect a superannuation arrangement established without the Minister's approval for persons employed under a "relevant law", where the employer subsequently became a "relevant body".

22. **Subclause (10)** provides that, notwithstanding subclauses (7) and (8), the Minister's approval is required where a pre-existing scheme which applies only to Commonwealth sector employees is amended after superannuation arrangements for those employees become subject to the Minister's approval. (Consistent with the approach adopted in subclause (4), provision is not made

for the Minister to approve amendments of pre-existing arrangements which provide benefits to persons other than Commonwealth sector employees.)

23. **Subclause (11)** expands upon the meaning of the term "no force or effect" used in subclauses (4), (5), (6) and (10). The subclause provides that superannuation benefits are not to be provided under an arrangement, or an amendment to an arrangement, that has no force or effect because of those subclauses. This subclause is intended to be inclusive rather than exhaustive on the meaning of "no force or effect".

24. **Subclause (12)** limits the effect of subclause 5(5) by providing that where, under subclause 6(5), the Minister gives special approval to an aspect of a superannuation arrangement which would otherwise be contrary to guidelines issued under Clause 6, that aspect will, for the purposes of subclause 5(5), not be taken to be inconsistent with the guidelines and will, therefore, have force and effect.

Clause 6 - Provision of superannuation in accordance with Ministerial guidelines

25. This clause allows for the provision of superannuation benefits in accordance with guidelines approved by the Minister. Superannuation benefits may be provided in accordance with approved guidelines without further reference to the Minister. Subclause 5(5) provides that where benefits are provided outside the guidelines a superannuation arrangement or a subsequent amendment to an arrangement which purports to provide those benefits has no force or effect to the extent that it is inconsistent with the guidelines or approvals given under Clause 6. Where an employer seeks to provide benefits outside existing guidelines, the Minister may, either:

- (a) alter the guidelines;
- (b) give a special approval under subclause 6(5); or
- (c) require the proposal to be dealt with under Clause 5.

This clause corresponds to section 153AC in Part XA of the Superannuation Act 1976.

26. **Subclause (1)** allows the provision of superannuation benefits to persons employed under an "applicable law". This will include employees of statutory authorities as well as individual statutory office-holders. An "applicable law" is a law of the Commonwealth (other than a law providing for the self-government of the two internal Territories) that is declared by the Minister in the Gazette to be an "applicable law". Accordingly, the guidelines will only apply to persons employed under specified laws (or by specified bodies, as provided for in subclause (2)). Benefits may be provided under the applicable law in question or under terms and conditions of employment determined under any other Commonwealth law, but must be in

accordance with guidelines determined under subclause (3). Where no guidelines are in place, no benefits may be provided unless approved under Clause 5. If the Minister, under subclause (5), approves an aspect of the provision of superannuation benefits for persons employed under an applicable law which is not in accordance with the guidelines then the employer of those persons must comply with the Minister's approval in respect of that aspect and with the guidelines in all other respects.

27. **Subclause (2)** allows the provision of superannuation benefits to persons employed by an "eligible body". The Minister may declare a "relevant body" (described in paragraph 13, above) to be an "eligible body" for the purposes of the Bill by a notice published in the Gazette. Accordingly, the guidelines will only apply to the employees of certain specified bodies (or persons employed under specified laws, as provided for in subclause (1)). Eligible bodies may provide superannuation benefits for their employees provided those benefits are in accordance with guidelines determined by the Minister under subclause (3). Where no guidelines are in place, no benefits may be provided unless approved under Clause 5. If the Minister, under subclause (5), approves an aspect of the provision of superannuation benefits for employees of an eligible body which is not in accordance with the guidelines then the eligible body must comply with the Minister's approval in respect of that aspect and with the guidelines in all other respects.

28. **Subclause (3)** allows the Minister to determine guidelines for the provision of superannuation benefits for the purposes of subclauses (1) and (2). These guidelines may be made for one or more specified eligible bodies or applicable laws, or for specified persons employed under one or more applicable laws or by one or more eligible bodies, as the case may be. The Minister is required by this subclause to serve a copy of the guidelines on the employer of the persons to whom the guidelines are to apply, either personally or by post, as soon as practicable after the guidelines have been determined.

29. **Subclause (4)** ensures that determinations made under subclause (3) may relate in part to persons employed under an applicable law, and in part to persons employed by an eligible body; that is, a single determination may cover both groups.

30. **Subclause (5)** allows the Minister to give written approval to an aspect of the provision of superannuation benefits which, if it were to be implemented, would be inconsistent with the guidelines determined by the Minister. This provides a mechanism for prospective approvals by the Minister of aspects which would otherwise be contraventions of the guidelines and thereby void under Clause 7.

31. **Subclause (6)** requires that any guidelines determined by the Minister under subclause (3) and any approval by the Minister under subclause (5) must be consistent with regulations made under the Occupational Superannuation Standards Act 1987. This

will ensure that the tax concessions available to a superannuation arrangement cannot be jeopardized by compliance with any valid Ministerial guidelines.

32. **Subclause (7)** makes provision for the transmission of a copy of the guidelines to an employer by any electronic means whatsoever. This includes, for example, transmission by way of a facsimile machine or telex message. This subclause does not remove the requirement, imposed by subclause (3), for the Minister to serve a copy of the guidelines upon an employer. It will, however, give to the Minister the ability to deal with urgent requests for approval of guidelines.

33. **Subclause (8)** makes provision for the guidelines taking force. It envisages two possibilities. If a copy of the guidelines has been communicated to the employer in accordance with subclause (7) then, unless a later date is specified, the guidelines will come into force on the day on which they are communicated. Alternatively, if subclause (7) does not apply, then the guidelines come into force on the day they are served on the employer (within the meaning given to that term by the Acts Interpretation Act 1901), or on a later day if the guidelines so provide. The subclause also provides that guidelines are "disallowable instruments" for the purposes of Section 46A of the Acts Interpretation Act 1901. Accordingly, guidelines must be tabled in both Houses of Parliament and are subject to disallowance by either House.

34. **Subclause (9)** provides that guidelines determined by the Minister may relate to any matter connected with the provision of superannuation benefits or the administration of a superannuation arrangement for the provision of those benefits. Guidelines may, in particular, limit who can contribute to or benefit from a particular superannuation arrangement.

Clause 7 - Effect of Contravention of Section 5

35. Clause 7 contains provisions for dealing with contraventions of the other clauses of the Bill. In particular, the clause gives to the Minister a range of powers to validate contraventions and to insist upon the recovery of monies paid outside the Minister's various approvals. The clause corresponds to section 153AD in Part XA of the Superannuation Act 1976.

36. **Subclause (1)** makes any contravention of Clause 5 void to the extent of that contravention. A reference in the subclause to acts done includes failure to take action and omitting to act. Void in this subclause has its full legal meaning. Because of the construction of Clauses 5 and 6, an act that contravenes Clause 6 also contravenes Clause 5 and is, therefore, void by virtue of the operation of this subclause. Whether a particular act constitutes a contravention is a matter of fact to be determined in each circumstance. Disputes could, however, in the last instance, be settled in a court of competent jurisdiction.

37. **Subclause (2)** provides that where the Minister has approved a superannuation arrangement for the provision of superannuation benefits under Clause 5, any act done in relation to the provision of those benefits which contravenes the terms and conditions of the arrangement as so approved will be void to the extent of contravention.

38. **Subclause (3)** provides that where the operation of subclauses (1) or (2) makes the payment of money by a person or body to another person or body void then that money is recoverable as a debt due to the person or body who paid it. This subclause avoids the possibility of monies being made non-recoverable by reason of the fact that their payment was an act which was made void by the provisions of subclauses (1) or (2). The subclause gives the Minister the power to declare, by writing, that the subclause does not apply, in which case monies paid will remain the property of the person who has received them; in the case of monies held on trust, this will allow the intended beneficiaries eventually to receive their benefits. The subclause also allows the Minister to direct an employer who paid money made recoverable by the subclause to take action to recover it. Upon being given notice in writing by the Minister the employer shall take action to recover any monies which have been paid. If an employer acted to recover from a trustee any monies wrongfully paid to a beneficiary then, by reliance upon the provisions of this subclause, the trustee could, in turn, institute proceedings to recover those monies from the beneficiary. The Minister cannot, however, direct trustees to recover monies.

39. **Subclause (4)** allows the Minister to validate superannuation arrangements or amendments to superannuation arrangements that **only** apply to Commonwealth sector employees which would otherwise have no force or effect under subclause 5(4), (5), (6) or (10) and would therefore be void. Where the Minister makes a determination under this subclause, an arrangement or an amendment of an arrangement, together with all or any actions associated with the operation or establishment of the arrangement, or the operation or making of the amendment, which would otherwise have no force or effect will have the same force and effect as if the arrangement or amendment had been properly made in accordance with Clause 5 or 6. The Minister can only make such a determination after having regard to the consequences upon those persons receiving or likely to receive benefits under the arrangement or amendment. This subclause also allows the Minister to make his determination conditional upon the employer taking such action as, in the Minister's opinion, will most effectively either:

- (a) modify the arrangement's or amendment's operation so that its effect will be more in line with the operation which would have resulted if the arrangement had been established in accordance with the requirements of the Bill; or
- (b) if such modifications cannot be made, restrict the arrangement's operation.

If the Minister declines to take action under this subclause, then, by virtue of subclauses (1) or (2), the arrangement or amendment in question will continue to be void and the only action that can be taken under the arrangement is the recovery of monies under subclause (3).

40. **Subclause (5)** makes provision for the validation of void superannuation arrangements, or amendments to superannuation arrangements, that include persons who are **not** Commonwealth sector employees. The subclause operates in the same manner as subclause (4), apart from certain drafting changes which recognise that, firstly, such an arrangement or amendment is only rendered void in its application to those persons to whom this Bill applies; and secondly, that subclause 5(10) does not apply to amendments of such an arrangement.

41. **Subclause (6)** requires that the Minister must cause copies of determinations made by the Minister under subclause (4) or (5) to be given to the employer concerned and also to be laid before each House of Parliament within 5 sitting days of that House after the determination has been made.

42. **Subclause (7)** provides for the disallowance by either House of the Parliament of a determination made by the Minister under either subclause (4) or (5). Disallowance is effected by the passing of a resolution in pursuance of a motion upon notice disallowing the determination within 5 sitting days of that House after a copy of the determination was laid before it.

43. **Subclause (8)** provides that a determination shall be taken to have been disallowed where a motion upon notice is given to disallow a determination and at the expiration of the period for disallowance, the motion has not been defeated, withdrawn or otherwise disposed of by the House in question.

44. **Subclause (9)** provides that, unless a determination is disallowed in accordance with subclause (7) or (8), the determination takes effect on the day immediately following the last day on which a resolution disallowing the determination could have been passed, unless the determination is expressed to be conditional upon the employer taking specified action within a specified time. If the determination is conditional, it will take effect either on the day which the Minister, by notice in writing given to the employer, declares himself or herself to be satisfied that the specified action has been taken, or on the day immediately following the last day on which a resolution disallowing the determination could have been passed, if this is a later day.

45. **Subclause (10)** provides for the circumstance in which the House of Representatives is dissolved or expires or the Parliament is prorogued before the provisions of subclauses (7), (8) or (9) have been completed, but after a notice of a motion to disallow the determination has been given. In such a circumstance, the copy of the determination shall be taken to have been laid before each House on the first sitting day of that

House after the dissolution, expiry or prorogation, as the case may be, and subclauses (7), (8) and (9) will then apply accordingly.

46. Subclause (11) expands upon the meaning of the term "provision of superannuation benefits" by making it clear that a reference in this clause to the provision of superannuation benefits includes any action done in relation to the establishment or administration of a superannuation arrangement for the provision of those benefits and will include the receipt by any person of contributions under the arrangement.

Clause 8 - Delegation by Minister

47. This clause provides that the Minister may delegate his or her powers and functions in relation to the provision of superannuation:

- (a) under this Bill or any other law of the Commonwealth;
- (b) under any trust deed or rules establishing superannuation arrangements to which this Bill or any other law of the Commonwealth applies.

In many cases, no provision for delegation of these powers is made in the law, deed or rules in question.

48. The clause is not, of course, intended to interfere with powers of delegation contained in the Superannuation Act 1922, the Superannuation Act 1976, the Superannuation Act 1990, and the Superannuation (Productivity Benefit) Act 1988.

Clause 9 - Consequential amendments and transitional provisions

49. This clause provides for consequential amendments to the Superannuation Act 1976, and for transitional arrangements. The broad intention of the transitional arrangements is to continue in force declarations, approvals, determinations, and directions made under Part XA before its repeal, and to ensure that action can be taken in respect of contraventions of Part XA which occurred before that Part was repealed, but in respect of which action had not been taken at the time Part XA was repealed. (This may occur because the contravention has not yet come to light, or for other reasons, including delays in establishing the exact legal position.)

50. Subclause (1) repeals Part XA of the Superannuation Act 1976.

51. Subclause (2) continues in force, after the repeal of Part XA, all declarations and approvals by the Minister under Sections 153AA and 153AB of the Superannuation Act 1976 which were in force immediately before the repeal of those sections, as if they were declarations or approvals under the corresponding provisions of Clauses 3 and 5 of this Bill.

52. **Subclause (3)** continues in force, after the repeal of Part XA, all guidelines determinations made by the Minister under subsection 153AC(3) of the Superannuation Act 1976 which were in force immediately before the repeal of that subsection, as if they were determinations made under subclause 6(3) of this Bill, and (where appropriate) as if the determination had been tabled in accordance with the requirements of Clause 6 of this Bill on the day on which it was actually tabled. The subclause also makes appropriate adjustments to references contained in those determinations.

53. **Subclause (4)** continues in force, after the repeal of Part XA, an approval given by the Minister under subsection 153AC(4) of the Superannuation Act 1976 (which allows the Minister to approve an aspect of the provision of superannuation benefits which would otherwise be inconsistent with guidelines), as if that approval was given under subclause 6(5) of this Bill.

54. **Subclause (5)** provides that where an act is void by operation of subsection 153AD(1) or (2) of the Superannuation Act 1976, this Bill has effect as if the act were void by operation of subclause 7(1) or (2) of this Bill. This removes any doubt that might arise as to the status of the act as a result of the re-enactment of the provisions of Part XA in this Bill. It will also ensure that action can be taken under subclause 7(3) of this Bill to recover payments made before this Bill comes into operation which are void.

55. **Subclause (6)** provides that where a scheme or amendment is of no force or effect by operation of subsection 153AB(4), (5), (6) or (9) of the Superannuation Act 1976, this Bill has effect as if the scheme or amendment were an arrangement or amendment which is of no force or effect by operation of the corresponding provisions of this Bill (subclauses 5(4), (5), (6) or (10)). This removes any doubt that might arise as to the status of the scheme or amendment as a result of the re-enactment of the provisions of Part XA in this Bill. It also ensures that the Minister can act under subclause 7(4) or (5) of this Bill to validate a superannuation scheme established or an amendment made before this Bill came into operation.

56. **Subclause (7)** continues in force, after the repeal of Part XA, a declaration given by the Minister under subsection 153AD(3) of the Superannuation Act 1976, that payments which are void will not be recovered under that subsection, as if the declaration were given under subclause 7(3) of this Bill.

57. **Subclause (8)** continues in force, after the repeal of Part XA, a direction given by the Minister under subsection 153AD(3) of the Superannuation Act 1976, that payments which are void be recovered, as if the direction were given under subclause 7(3) of this Bill. This subclause applies in cases where, at the time Part XA is repealed, legal proceedings have not yet been instituted to recover the money.

58. **Subclause (9)** provides that where, before the repeal of Part XA, legal proceedings have been instituted under subsection 153AD(3) of the Superannuation Act 1976 to recover monies, those proceedings may continue as if Part XA had not been repealed.

59. **Subclause (10)** continues in force, after the repeal of Part XA, a determination made by the Minister under subsection 153AD(4) or (5) of the Superannuation Act 1976 (to validate otherwise void arrangements), which is in force immediately before the repeal of those subsections, as if the determination were made under the corresponding provisions of this Bill (subclauses 7(4) and (5) respectively).

60. **Subclause (11)** ensures that where, at the time Part XA is repealed, a determination has been made under subsection 153AD(4) or (5) of the Superannuation Act 1976, but the determination has not been tabled in Parliament, or if tabled has not yet come into operation, or been disallowed, it will be treated as if it had been made in accordance with subclause 7(4) or (5) of this Bill and (where appropriate) tabled in accordance with subclause 7(6) of this Bill on the day on which it was actually tabled. (Such determinations do not come into operation until the later of the day immediately following the last day on which a motion of disallowance could be moved, and the day on which the Minister declares that he or she is satisfied with action taken by the employer to meet conditions in the determination.)



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