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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SUPERANNUATION INDUSTRY (SUPERVISION) BILL 1992
EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon John Dawkins, MP)

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SUPERANNUATION INDUSTRY (SUPERVISION) BILL 1992

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

This Bill, together with the companion Occupational Superannuation Standards Amendment Bill 1992, Superannuation (Resolution of Complaints) Bill 1992, Superannuation (Financial Assistance Funding) Levy Bill 1992, Superannuation (Rolled Over Benefits) Levy Bill 1992, Superannuation Supervisory Levy Amendment Bill 1992 and Superannuation Industry (Supervision) Consequential Amendments Bill 1992, give effect to measures to substantially increase the level of prudential protection provided to the superannuation industry, and represent a substantial strengthening of the security of superannuation savings and in protecting the rights of superannuation fund members.

These seven Bills give effect to most of the new prudential arrangements for superannuation that the Treasurer announced on 21 October 1992.

This Bill contains the most important elements of the package of Bills and provides:

- for effective supervisory arrangements involving direct enforcement powers for the Insurance and Superannuation Commission enabling effective enforcement of the prudential requirements and obligations placed on funds and trustees;
- for trustees and investment managers to be made subject to adequate legislative sanctions for the proper performance of their fiduciary responsibilities and increasing their accountability to their members;
- clear delineation of the basic duties and responsibilities of trustees, and indicating that trustees have primary responsibility for the operation of funds;
- that trustees and investment managers must be suitable to act as fund trustees and to manage fund moneys respectively;
- for financial assistance to be provided to funds that have suffered a loss due to fraudulent conduct or theft; and
- mechanisms for dealing with accrued benefits in employer-sponsored funds in respect of members that have left employment or who are lost, and unclaimed benefits.

FINANCIAL IMPACT STATEMENT

The measures for added protection for superannuation savings and promotion of a more efficient superannuation industry, together with the measures contained in the companion Occupational Superannuation Standards Amendment Bill 1992, Superannuation (Resolution of Complaints) Bill 1992, Superannuation (Financial Assistance Funding) Levy Bill 1992, Superannuation (Rolled Over Benefits) Levy Bill 1992, Superannuation Supervisory Levy Amendment Bill 1992 and Superannuation Industry (Supervision) Consequential Amendments Bill 1992, will result in additional supervisory costs being incurred by the Insurance and Superannuation Commission.

The Insurance and Superannuation Commission estimates that the additional resources needed to give effect to this package of measures will be \$4.155m in 1992-93, \$4.831m in 1993-94, \$4.591m in 1994-95 and \$4.631m in 1995-96.

These additional costs will be recovered through the superannuation supervisory levy and the imposition of a new levy on certain superannuation funds and approved deposit funds as provided in the Superannuation (Rolled Over Benefits) Levy Bill 1992.

**EXPLANATORY NOTES ON THE SUPERANNUATION INDUSTRY (SUPERVISION)
BILL 1992**

PART 1 - PRELIMINARY

DIVISION 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

1. This clause provides the mode of citation of the Bill.

CLAUSE 2 COMMENCEMENT

2. This clause provides for clause 48 to come into operation with effect from 21 October 1992, and Parts 1, 9, 14, 15, 16 and 17 of the Bill to come into operation on the day the Bill receives Royal Assent. The balance of the provisions in the Bill are to come into operation on a day to be proclaimed save that they must commence no later than 6 months after the giving of Royal Assent.

CLAUSE 3 OBJECT OF THE ACT

3. This clause sets out the object of the Act which is to make provision for the supervision by the Insurance and Superannuation Commissioner of certain superannuation funds, approved deposit funds and pooled superannuation trusts.

CLAUSE 4 GENERAL ADMINISTRATION OF THE ACT

4. This clause provides for the Insurance and Superannuation Commissioner to have responsibility for the general administration of the Act, subject to any directions from the Minister as to the performance or exercise by the Commissioner of his functions or powers.

CLAUSE 5 APPLICATION OF ACT NOT TO BE EXCLUDED OR MODIFIED

5. This clause provides for the Act to apply to all superannuation entities notwithstanding any provisions in the governing rules of the entity to the contrary.

CLAUSE 6 CROWN TO BE BOUND

6. This clause provides for binding the Crown in right of the Commonwealth, each of the States, the Australian Capital territory, the Northern Territory, and Norfolk Island. It further provides that nothing in this Act renders the Crown liable to be prosecuted for an offence.

DIVISION 2 - INTERPRETATION

CLAUSE 7 DEFINITIONS

7. This clause sets out a number of definitions and expressions for the purposes of the Act.

CLAUSE 8 APPROVALS, DETERMINATIONS ETC. BY COMMISSIONER

8. This clause provides that, notwithstanding the absence of any express provision in the Act for the Commissioner to give an approval, make a determination, or do an act or thing, the Commissioner is authorised by this clause to so do.

CLAUSE 9 APPROVALS OF ANCILLARY PURPOSES

9. This clause provides that the Commissioner may approve ancillary purposes in relation to superannuation funds with respect to a specified fund or a specified class of funds. It further provides that the first such approval given in respect of a fund or class of funds may be expressed to come into operation on a day earlier than the date of the approval, including a day prior to the commencement of this clause.

CLAUSE 10 APPROVED FORMS OF RETURNS

10. This clause provides that where the Commissioner approves a form of return for the purposes of paragraph 21(1)(a), the approval may require or permit the return to be provided in specified electronic form.

CLAUSE 11 ASSOCIATES

11. This clause provides that the question of whether a person is an associate of another is to be determined as provided by the Corporations Law.

CLAUSE 12 INDEFINITELY CONTINUING FUND - APPLICATION OF RULES AGAINST PERPETUITIES

12. This clause provides that, notwithstanding any provision in the governing rules of a fund designed to avoid a breach of a rule of law relating to perpetuities, the fund is not prevented from being treated as an indefinitely continuing fund for the purposes of the definitions of superannuation fund and approved deposit fund in clause 7.

CLAUSE 13 PAYMENTS FOR PURCHASE OF ANNUITIES

13. This clause provides that, for the purposes of the definition of approved purposes in clause 7, where a beneficiary requests payment of an amount deposited with an approved deposit fund from the fund to a life insurance company or registered organisation for the purchase of an annuity in the name of the beneficiary of the fund, that payment is taken to be repayment of the amount to the beneficiary.

CLAUSE 14 PERSONS INVOLVED IN CONTRAVENTION

14. This clause provides that, for the purposes of the Act, a person is involved in a contravention if and only if the person has done the things specified in paragraphs (a) to (d).

CLAUSE 15 REGULATED SUPERANNUATION FUND

15. This clause sets out the conditions which must be complied with by a superannuation fund to be a regulated superannuation fund for the purposes of this Act. It provides that the fund must have a trustee, that the trustee must be a body corporate or, where that is not the case, that the fund has as its sole or primary purpose the provision of old-age pensions and that the trustee of the fund must have given to the Commissioner a notice making an irrevocable election to have the provisions of the Act apply to the fund.

CLAUSE 16 RELATED BODIES CORPORATE

16. This clause provides that the question of whether a person is an associate of another is to be determined as provided by the Corporations Law.

PART 2 - OPERATING STANDARDS FOR REGULATED SUPERANNUATION ENTITIES

CLAUSE 17 OPERATING STANDARDS FOR REGULATED SUPERANNUATION FUNDS

17. This clause provides that standards applicable to the operation of regulated superannuation funds may be prescribed. Subclause (2) specifies particular matters in respect of which operating standards may be prescribed.

CLAUSE 18 OPERATING STANDARDS FOR APPROVED DEPOSIT FUNDS

18. This clause provides that standards applicable to the operation of approved deposit funds may be prescribed. Subclause (2) specifies particular matters in respect of which operating standards may be prescribed.

CLAUSE 19 OPERATING STANDARDS FOR POOLED SUPERANNUATION TRUSTS

19. This clause provides that standards applicable to the operation of pooled superannuation trusts may be prescribed. Subclause (2) specifies particular matters in respect of which operating standards may be prescribed.

CLAUSE 20 PRESCRIBED OPERATING STANDARDS MUST BE COMPLIED WITH

20. This clause provides that the trustee of a superannuation entity must take all reasonable steps to ensure that the entity complies at all times with the operating standards that are applicable to it. Subclause (2) provides that subclause (1) is a civil penalty, pursuant to Part 9 of the Act, attracting civil and criminal consequences for contravention, or being involved in a contravention.

CLAUSE 21 TRUSTEE TO MAKE ANNUAL RETURNS

21. This clause provides that the trustee of a superannuation entity, in respect of each year of income, and within the prescribed period, must provide to the Commissioner, in the approved form, a return, a certificate, and a certificate by the approved auditor. It further provides that where the return is provided other than in electronic form, the respective certificates may be endorsed on the return.

CLAUSE 22 NOTICES BY COMMISSIONER TO TRUSTEE

22. Subclause (1) provides that the Commissioner may give written notice to the trustee of a superannuation entity stating whether the entity is, in respect of a year of income, a complying or non-complying superannuation fund, a complying or non-complying approved deposit fund, or a pooled superannuation trust.

23. Subclauses (2) and (3) provide that the Commissioner may only give a notice of non-compliance to the trustee of a regulated superannuation fund or an approved deposit fund in relation to a year of income if, respectively, the superannuation fund did not comply with the sole purpose test or the approved deposit fund was not maintained solely for approved purposes.

24. Subclause (4) provides that the Commissioner must set out reasons for giving a notice of non-compliance to a fund, while subclause (5) provides that particulars of all notices given under this clause must be given to the Commissioner of Taxation.

CLAUSE 23 COMPLYING SUPERANNUATION FUND

25. This clause provides that a regulated superannuation fund is a complying superannuation fund for the purposes of Part IX of the Income Tax Assessment Act 1936 in relation to a year of income if and only if the Commissioner has given a notice of compliance in relation to that year of income pursuant to clause 22 or, having given such a notice in relation to a previous year of income, has not given a notice of non-compliance in relation to a subsequent year of income.

CLAUSE 24 COMPLYING APPROVED DEPOSIT FUND

26. This clause provides that an approved deposit fund is a complying approved deposit fund for the purposes of Part IX of the Income Tax Assessment Act 1936 in relation to a year of income if and only if the Commissioner has given a notice of compliance in relation to that year of income pursuant to clause 22 or, having given such a notice in relation to a previous year of income, has not given a notice of non-compliance in relation to a subsequent year of income.

CLAUSE 25 POOLED SUPERANNUATION TRUST

27. This clause provides that a unit trust is a pooled superannuation trust for the purposes of Part IX of the Income Tax Assessment Act 1936 in relation to a year of income if and only if the Commissioner has given a notice to that effect in relation to that year of income or a previous year of income, and has not since revoked that notice.

PART 3 - PROVISIONS RELATING TO GOVERNING RULES OF SUPERANNUATION ENTITIES**CLAUSE 26 COVENANTS TO BE INCLUDED IN GOVERNING RULES**

28. Subclause (1) provides that where the governing rules of a superannuation entity do not contain covenants binding the trustee as specified in paragraphs (2)(a) to (g), the governing rules are taken to contain covenants to that effect.

29. Subclause (3) deems the effect of any covenant prescribed by regulation to be contained in the governing rules of all superannuation entities.

30. Subclause (4) provides that paragraph (2)(e) does not preclude the trustee from engaging or authorising agents to do acts or things on the trustee's behalf.

31. Subclause (5) provides that nothing in subclause (2) limits the generality of anything else in the subclause.

32. Subclause (6) provides that the regulations may prescribe a covenant that elaborates, supplements or otherwise deals with any aspect of a matter referred to in subclause (2) or a matter to which this Act relates, while subclause (7) provides that a prescribed covenant, when contained in the governing rules, must be capable of operating concurrently with this Act and all the covenants already contained in the rules by virtue of this section.

33. Subclause (8) provides for each of the directors of a corporate trustee to be bound by the covenants in subclause (2) in the same way as the trustee itself is bound, as if the directors were party to the governing rules.

CLAUSE 27 COVENANTS TO REPAY AMOUNTS TO BENEFICIARIES IN APPROVED DEPOSIT FUNDS

34. This clause requires that the governing rules of large approved deposit funds must contain a covenant binding the trustee to redeem an interest in the fund, where written notice has been given by a beneficiary, within such period not exceeding 12 months as determined by the trustee, and that where the covenant is not expressly contained in the rules, it is deemed to be included.

35. Subclause (4) provides that redemption period determined by the trustee can only be varied where the Commissioner has consented in writing to the variation, or the requirements in clause 28 have been complied with.

CLAUSE 28 PREREQUISITES TO VARIATION OF REPAYMENT PERIOD

36. This clause sets out the requirements referred to in paragraph 27(4)(b) for varying the period set by the trustee for redeeming an interest in a large approved deposit fund.

CLAUSE 29 CONSEQUENCES OF CONTRAVENTION OF COVENANT

37. This clause provides that a person must not contravene a covenant contained in or deemed to be contained in the governing rules of a superannuation entity. However, any such contravention is not an offence.

38. Subclauses (3) and (4) provide that a person who suffers loss or damage as a result of conduct of another person that was engaged in, in contravention of subsection (1), may recover the amount of the loss or damage by action, within 6 years of the date of cause of the action, against that person or any other person engaged in the contravention.

39. Subclause (5) provides grounds for a defence to an action for loss or damage by a person as a result of the making of an investment by or on behalf of the trustee of a superannuation entity.

CLAUSE 30 INDEMNIFICATION OF TRUSTEE FROM ASSETS OF ENTITY

40. Subclause (1) renders void any provision in the governing rules of a superannuation entity that precludes the trustee from being indemnified out of the assets of the entity in respect of any liability incurred while acting as trustee.

41. Subclause (2) renders void any provision in the governing rules of a superannuation entity that exempts the trustee from or indemnifies the trustee against liability for breach of trust in the circumstances set out in paragraph (a) or liability for a monetary penalty under a civil penalty order.

42. Subclause (3) provides that nothing in the governing rules of a superannuation entity may prohibit the trustee from seeking advice in respect of the performance of the duties or the exercise of the powers of the trustee, and renders void any provision that precludes the trustee from indemnification out of the assets of the entity for the cost of obtaining such advice.

CLAUSE 31 TRUSTEE NOT SUBJECT TO DIRECTION

43. This clause provides that, except as provided in subsection (2), the governing rules of a large superannuation entity must not permit the trustee, in the exercise of any of the trustee's powers, to be subject to the direction of any other person, and renders void any provision in the governing rules that does so. This clause does not preclude the concurrent exercise or power by the trustee and the employer-sponsor in the case of an employer-sponsored fund.

CLAUSE 32 EXERCISE OF DISCRETION BY PERSON OTHER THAN TRUSTEE

44. This clause provides that the governing rules of a large superannuation entity must not permit the exercise of a discretion under those rules that is exercisable other than by the trustee to be exercised without the consent of the trustee, except as provided in paragraph (1)(b), and renders void any provision in the governing rules that does so.

CLAUSE 33 AMENDMENT OF GOVERNING RULES

45. Subclause (1) provides that the governing rules of a large superannuation entity must not permit the rules to be amended except as provided in paragraphs (1)(a), (b) or (c). Subclause (2) provides that the governing rules of a regulated superannuation fund must not permit the rules to be amended except as provided in paragraphs (2)(a) or (b). Subclause (3) renders void any provisions in the governing rules that do so.

PART 4 - PROVISIONS APPLYING ONLY TO APPROVED DEPOSIT FUNDS

CLAUSE 34 BORROWING

46. This clause provides that the trustee of an approved deposit fund must not borrow money except where there are special circumstances justifying a borrowing and the Commissioner approves the borrowing.

CLAUSE 35 INFORMATION TO BE GIVEN TO INTENDING DEPOSITORS

47. This clause provides that the trustee must not accept a deposit without first giving the intending depositor prescribed information.

PART 5 - PROVISIONS APPLYING ONLY TO POOLED SUPERANNUATION TRUSTS

CLAUSE 36 BORROWING

48. This clause provides that the trustee of a pooled superannuation trust must not borrow money except for short-term cash flow purposes to meet payments to beneficiaries required by law or by the governing rules. Such borrowings are restricted to a maximum period of ninety days and in total must not exceed ten per cent of the trust's assets.

CLAUSE 37 INVESTMENTS TO BE AT ARMS LENGTH

49. This clause provides that all investments by the trustee of a pooled superannuation trust are to be at arms length.

CLAUSE 38 LENDING TO UNIT HOLDERS PROHIBITED

50. This prohibits any lending or provision of other financial assistance by the trustee of a pooled superannuation trust to any beneficiary in the trust.

CLAUSE 39 CIVIL PENALTY PROVISIONS

51. This clause provides that subsection 36(1) and sections 37 and 38 are civil penalty provisions, pursuant to Part 9 of the Act, attracting civil and criminal consequences for contravention, or being involved in a contravention.

PART 6 - DUTIES OF TRUSTEES OF SUPERANNUATION ENTITIES

CLAUSE 40 DUTY TO ESTABLISH ARRANGEMENTS FOR DEALING WITH ENQUIRIES OR COMPLAINTS

52. This clause provides that the trustees of large regulated superannuation funds and approved deposit funds must have in force at all times arrangements for beneficiaries to make inquiries of and complaints about the operation or management of the fund, and for those inquiries and complaints to be considered and dealt with in a reasonable period of time.

CLAUSE 41 DUTY TO SEEK INFORMATION FROM INVESTMENT MANAGER

53. This clause provides that where the trustee of a superannuation entity enters into an agreement with an investment manager for the investment of the entity's money, the trustee must ensure that the agreement contains adequate provision to enable the trustee to require the investment manager to provide information as set out in paragraphs (1)(a) and (b). Further, the trustee must seek such information whenever it is necessary or desirable to so do.

54. Subclauses (2) and (3) provide that where an existing agreement does not contain such a provision, the trustee must as soon as practicable seek to amend the agreement to include such a provision, and if the investment manager will not agree to such an amendment, to terminate the agreement, notwithstanding any provision in the agreement to the contrary. The trustee is not under any liability to the investment manager because of such a termination of agreement.

CLAUSE 42 DUTY TO KEEP MINUTES AND RECORDS

55. This clause provides for the trustee(s) of a superannuation entity to keep and retain for at least ten years minutes of all meetings of the trustee(s) of the entity.

CLAUSE 43 DUTY TO KEEP RECORDS OF CHANGES OF TRUSTEES

56. This clause provides for the trustee of a superannuation entity to keep and retain for at least ten years up-to-date records of all changes of trustees and changes of directors of any corporate trustee of the entity, and of consents to appointments pursuant to clause 49.

CLAUSE 44 DUTY TO KEEP NOTICES

57. This clause provides for the trustee of a regulated superannuation fund or approved deposit fund to keep and retain for so long as is relevant, and in any event for at least ten years, copies of general notices given to all beneficiaries pursuant to this Act or the governing rules, and for those copies to be made available for inspection on request by a member of the staff of the Commissioner.

CLAUSE 45 DUTY TO NOTIFY THE COMMISSIONER OF SIGNIFICANT ADVERSE EVENTS

58. This clause provides that where the trustee of a superannuation entity becomes aware of an event that has had or may have a significant adverse effect on the financial position of the entity, the trustee must advise the Commissioner within three business days of particulars of the event.

59. Subclause (2) sets out the circumstances under which an event is taken to have had or to have a significant adverse effect on the financial position of an entity, while subclause (3) provides that subclause (1) is a civil penalty provision, pursuant to Part 9 of the Act, attracting civil and criminal consequences for contravention, or being involved in a contravention.

CLAUSE 46 DUTY OF TRUSTEE OF EMPLOYER-SPONSORED FUND TO ESTABLISH PROCEDURE FOR APPOINTING MEMBER REPRESENTATIVES

60. This clause provides that, where large employer-sponsored funds are required by law to have member representatives, the trustees of such funds must establish rules setting out the procedures for appointing member representatives, ensuring that, except as specified, member representatives so appointed can only be removed by the same procedure by which appointed, and publish those rules such that members will be aware of those procedures.

PART 7 - OTHER PROVISIONS APPLYING TO SUPERANNUATION ENTITIES

CLAUSE 47 AGREEMENT BETWEEN TRUSTEE AND INVESTMENT MANAGER

61. This clause renders void any provision of an agreement made between the trustee of a superannuation entity and an investment manager that exempts or limits the investment manager's liability for negligence, notwithstanding anything in the governing rules of the entity.

CLAUSE 48 CIRCUMSTANCES IN WHICH AMOUNTS MAY BE PAID OUT OF AN EMPLOYER-SPONSORED FUND

62. This clause provides that, except as provided by this clause, the trustee of an employer-sponsored fund must not pay amounts out of a fund to an employer-sponsor or associate of an employer-sponsor.

63. Subclause (3) sets out the rules that are required to be fulfilled before any amount of the surplus of a large employer-sponsored fund may be paid to an employer-sponsor.

64. Subclause (4) provides that, where there was not a requirement at law for equal representation in the fund, the Commissioner may waive that requirement.

65. Subclause (5) provides that a reasonable amount may be paid out of an employer-sponsored fund for services rendered in connection with the management or operation of the fund, while subclause (6) provides the Commissioner with a discretion to waive any or all of the requirements in subclause (3) during the period from 21 October 1992 to the day on which the Bill receives the Royal Assent.

66. Subclause (7) provides that subclause (2) is a civil penalty provision, pursuant to Part 9 of the Act, attracting civil and criminal consequences for contravention, or being involved in a contravention.

CLAUSE 49 CONSENTS TO APPOINTMENTS

67. This clause provides that a person must consent in writing to be eligible for appointment as a trustee of a superannuation entity or as a director of a corporate trustee of such an entity.

PART 8 - STANDARDS FOR TRUSTEES AND INVESTMENT MANAGERS OF SUPERANNUATION ENTITIES

CLAUSE 50 DISQUALIFIED PERSONS

68. Subclause (1) sets out when, for the purposes of this Part, an individual is a disqualified person.

69. Subclause (2) sets out when, for the purposes of this Part, a body corporate is a disqualified person.

70. Subclause (3) sets out the meaning of a reference to a person who has been convicted of an offence for the purposes of this clause.

CLAUSE 51 DISQUALIFIED PERSONS NOT TO BE TRUSTEES OF SUPERANNUATION ENTITIES

71. This clause provides that a disqualified person must not be or act as a trustee of a superannuation entity, and that a body corporate that is the trustee of such an entity must not permit a disqualified person to be or act as a responsible officer of the body corporate.

72. Subclause (2) provides that where a body corporate is guilty of an offence against subclause (1), certain persons who are in any way knowingly concerned in or party to the offence, are also taken to be guilty of the offence.

73. Subclause (3) provides that the corporate trustee must not permit a disqualified person to be a responsible officer of the body corporate if it knows, or has reasonable grounds to suspect, that the person is a disqualified person.

CLAUSE 52 PERSONS WHO MAY BE APPOINTED TO BE INVESTMENT MANAGERS OF SUPERANNUATION ENTITIES

74. Subclause (1) sets out eligibility requirements for appointment as an investment manager of large superannuation entities.

75. Subclauses (2) and (3) set out the circumstances under which an investment manager that is a body corporate and that has legal custody of the assets of a superannuation entity must immediately tell the trustee of a large superannuation entity, and cease acting as investment manager of the entity.

CLAUSE 53 DISQUALIFIED PERSONS NOT TO BE INVESTMENT MANAGERS OF SUPERANNUATION ENTITIES

76. This clause provides that a disqualified person must not be or act as an investment manager of a large superannuation entity, and that a body corporate that is the investment manager of such an entity must not permit a disqualified person to be or act as a responsible officer of the body corporate.

77. Subclause (2) provides that where a body corporate is guilty of an offence against subclause (1), certain persons who are in any way knowingly concerned in or party to the offence, are also taken to be guilty of the offence.

78. Subclause (3) provides that an investment manager that is a body corporate must not permit a disqualified person to be a responsible officer of the body corporate if it knows, or has reasonable grounds to suspect, that the person is a disqualified person.

CLAUSE 54 INVESTMENT MANAGER TO NOTIFY TRUSTEE IF RECEIVER OR LIQUIDATOR APPOINTED

79. This clause provides that where an investment manager that is a body corporate has a receiver, a provisional liquidator or liquidator appointed, it must immediately notify the trustee of the superannuation entity and the Commissioner of the appointment.

CLAUSE 55 NON-COMPLIANCE NOT TO INVALIDATE APPOINTMENT OR TRANSACTION

80. This clause provides that the validity of an appointment or transaction is not affected by a failure to comply with a provision of this Part.

PART 9 - CIVIL AND CRIMINAL CONSEQUENCES OF CONTRAVENING CIVIL PENALTY PROVISIONS

DIVISION 1 - PRELIMINARY

CLAUSE 56 CIVIL PENALTY PROVISIONS

81. This clause sets out the provisions of the Act that are civil penalty provisions.

CLAUSE 57 PERSON INVOLVED IN CONTRAVENING A PROVISION TAKEN TO HAVE CONTRAVENED THE PROVISION

82. Self explanatory.

CLAUSE 58 WHEN A COURT IS TAKEN TO FIND A PERSON GUILTY OF AN OFFENCE

83. This clause sets out, for the purposes of this Part, when an Australian court is taken to find a person guilty of an offence.

DIVISION 2 - CIVIL PENALTY ORDERS

CLAUSE 59 COURT MAY MAKE CIVIL PENALTY ORDERS

84. This clause, where the Court is satisfied that a person has contravened a civil penalty provision, sets out the circumstances under which the Court may make civil penalty orders, and also order payment of a monetary penalty.

CLAUSE 60 WHO MAY APPLY FOR CIVIL PENALTY ORDER

85. Self explanatory.

CLAUSE 61 TIME LIMIT FOR APPLICATION

86. Self explanatory.

CLAUSE 62 APPLICATION FOR CIVIL PENALTY ORDER IS CIVIL PROCEEDING

87. Self explanatory.

CLAUSE 63 ENFORCEMENT OF ORDER TO PAY MONETARY PENALTY

88. Self explanatory.

CLAUSE 64 COMMISSIONER MAY REQUIRE A PERSON TO GIVE ASSISTANCE IN CONNECTION WITH APPLICATION FOR CIVIL PENALTY ORDER

89. This clause, where it appears to the Commissioner that a person may have contravened a civil penalty provision, sets out the circumstances under which the Commissioner may require a person to give all reasonable assistance in connection with an application for a civil penalty order. It further sets out in subclause (3) the persons to whom subclause (2) does not apply, and in subclause (4) the remedies available to the Commissioner where a person fails to give assistance as required.

DIVISION 3 - CRIMINAL PROCEEDINGS

CLAUSE 65 WHEN CONTRAVENTION OF CIVIL PENALTY PROVISIONS IS AN OFFENCE

90. This clause sets out the circumstances under which a person contravening a civil penalty provision is guilty of an offence.

CLAUSE 66 APPLICATION FOR CIVIL PENALTY ORDER PRECLUDES LATER CRIMINAL PROCEEDINGS

91. Self explanatory.

DIVISION 4 - EFFECT OF CRIMINAL PROCEEDINGS ON APPLICATION FOR CIVIL PENALTY ORDER

CLAUSE 67 WHEN DIVISION APPLIES

92. Self explanatory.

CLAUSE 68 EFFECT DURING CRIMINAL PROCEEDINGS

93. This clause provides that an application may be made for a civil penalty order against a person in relation to the same contravention in respect of which criminal proceedings have begun. However, such an application is stayed until the circumstances set out in subclause (2) have been finally determined or otherwise disposed of.

CLAUSE 69 FINAL OUTCOME PRECLUDING APPLICATIONS FOR CIVIL PENALTY ORDER

94. This clause provides that when criminal proceedings, appeals and applications for review are finally determined or otherwise disposed of, and the result of those proceedings, etc. is as set out in paragraphs (c) to (h), an application for a civil penalty order in relation to the same contravention cannot be made, and such an application that was stayed pursuant to subclause 68(2) is dismissed.

CLAUSE 70 FINAL OUTCOME NOT PRECLUDING APPLICATION FOR CIVIL PENALTY ORDER

95. This clause provides that where the result of criminal proceedings, etc. being finally determined or otherwise disposed of under the circumstances specified in paragraphs (a), (b), (c) or otherwise, an application for a civil penalty order in relation to a contravention may be made and or may proceed as if the criminal proceedings had never begun.

CLAUSE 71 AFTER UNSUCCESSFUL COMMITTAL PROCEEDING, COURT MAY PRECLUDE APPLICATION FOR CIVIL PENALTY ORDER

96. This clause provides, subject to appeal or review, the circumstances in which a court may preclude an application for a civil penalty order.

CLAUSE 72 APPLICATION FOR CIVIL PENALTY ORDER BASED ON ALTERNATIVE VERDICT AT JURY TRIAL

97. This clause sets out provisions in relation to a finding by a jury that a person has committed a contravention but is not satisfied beyond reasonable doubt that the person committed an offence as provided in subclause 65(1).

CLAUSE 73 APPLICATION FOR CIVIL PENALTY ORDER BASED ON
ALTERNATIVE FINDING BY COURT OF SUMMARY JURISDICTION

98. This clause sets out provisions in relation to a finding by a court of summary jurisdiction that a person has committed a contravention but is not satisfied beyond reasonable doubt that the person committed an offence as provided in subclause 65(1).

CLAUSE 74 APPLICATION FOR CIVIL PENALTY ORDER BASED ON
ALTERNATIVE FINDING BY APPEAL COURT

99. This clause sets out provisions in relation to a finding by a court that the person is guilty of an offence, and, on appeal or review, a court makes an order determining the criminal proceedings for the offence in such a way that does not involve convicting the person, but the court is satisfied beyond reasonable doubt that the person committed the contravention.

CLAUSE 75 AFTER SETTING ASIDE DECLARATION, COURT MAY PRECLUDE
APPLICATION FOR CIVIL PENALTY ORDER

100. Self explanatory.

CLAUSE 76 ON UNSUCCESSFUL APPEAL AGAINST DECLARATION, COURT MAY
MAKE CIVIL PENALTY ORDERS

101. This clause sets out the circumstances under which the Court may, on application of a prosecutor or the Commissioner, make an order for a monetary penalty under subclause 59(3).

CLAUSE 77 APPEALS UNDER THIS DIVISION

102. Self explanatory.

DIVISION 5 - COMPENSATION FOR LOSS SUFFERED BY SUPERANNUATION
ENTITY

CLAUSE 78 ON APPLICATION FOR CIVIL PENALTY ORDER, COURT MAY
ORDER COMPENSATION

103. This clause sets out, on application for a civil penalty order against a person in relation to a contravention, the circumstances under which the Court may order the person to pay compensation in respect of loss or damaged suffered by the superannuation entity in relation to which the contravention was committed. This clause also sets out the circumstances under which a trustee may intervene in a proceeding for a civil penalty order, and the conditions under which that trustee is entitled to be heard.

CLAUSE 79 CRIMINAL COURT MAY ORDER COMPENSATION

104. This clause sets out the circumstances under which a court may order a person to pay compensation in relation to the person having been found guilty of an offence constituted by contravention of a civil penalty order.

CLAUSE 80 ENFORCEMENT OF ORDER UNDER SECTION 78 OR 79

105. Self explanatory.

CLAUSE 81 RECOVERY OF PROFITS, AND COMPENSATION FOR LOSS,
RESULTING FROM CONTRAVENTION

106. This clause sets out the circumstances under which a trustee of a superannuation entity, in respect to a contravention by a person of a civil penalty provision in relation to the entity, may institute proceedings in a court to recover from the person any profits, and compensation for loss, resulting from the contravention.

CLAUSE 82 EFFECT OF SECTIONS 78, 79 AND 81

107. self explanatory.

CLAUSE 83 CERTIFICATES EVIDENCING CONTRAVENTION

108. Self explanatory.

DIVISION 6 - MISCELLANEOUS

CLAUSE 84 RELIEF FROM LIABILITY FOR CONTRAVENTION OF CIVIL
PENALTY PROVISION

109. This clause sets out the circumstances under which the Court may relieve a person either wholly or partly from liability to which the person would otherwise have been subject for contravention of a civil penalty provision. It further sets out the circumstances under which a person may apply to the Court for relief.

CLAUSE 85 PART DOES NOT LIMIT POWER TO AWARD PUNITIVE DAMAGES

110. Self explanatory.

PART 10 - UNCLAIMED MONEY

CLAUSE 86 DEFINITION

111. This clause defines the term "fund" for the purposes of this Part.

CLAUSE 87 TRUSTEE TO PAY UNCLAIMED MONEY TO THE COMMISSIONER

112. Subclause (1) sets out in paragraphs (a), (b), (c) and (d) the circumstances under which an amount payable to the beneficiary in a regulated superannuation fund or an approved deposit fund is taken to be unclaimed money.

113. Subclauses (2), (3) and (4) set out the requirements relating to the payment of unclaimed money to the Commissioner.

114. Subclause (5) sets out the circumstances under which payment may be made to a person of unclaimed money previously paid to the Commissioner, subclause (6) provides for the repayment to the trustee of a fund of overpaid unclaimed money, and subclause (8) provides for the appropriation of the Consolidated Revenue Fund for the purposes of this clause.

115. Subclause (7) discharges the trustee of a fund from further liability in respect of unclaimed money once payment has been made to the Commissioner, while subclause (9) provides a penalty for a contravention of this section by the trustee of a fund.

CLAUSE 88 REGISTER OF UNCLAIMED MONEY

116. This clause provides for the Commissioner to keep a register of particulars of unclaimed money and persons to whom such moneys would otherwise have been payable, which may include the tax file numbers of those persons.

PART 11- FINANCIAL ASSISTANCE TO CERTAIN FUNDS

DIVISION 1 - PRELIMINARY

CLAUSE 89 DEFINITIONS

117. This clause sets out definitions of a number of words for the purposes of this Part.

CLAUSE 90 APPLICATION FOR ASSISTANCE

118. This clause sets out the circumstances under which a large regulated superannuation fund or approved deposit fund that has suffered a loss as a result of fraudulent conduct or theft may apply to the Minister for a grant of financial assistance for the fund.

CLAUSE 91 MINISTER MAY REQUEST ADDITIONAL INFORMATION

119. Self explanatory.

DIVISION 2 - DETERMINATION OF APPLICATIONS FOR FINANCIAL ASSISTANCE

CLAUSE 92 MINISTER MAY GRANT FINANCIAL ASSISTANCE

120. This clause provides for the Minister to determine, on public interest grounds, whether a grant of financial assistance should be made to the trustee for the purposes of the fund and, if so, the amount of such assistance, and the manner and times in which it is to be paid.

CLAUSE 93 MAXIMUM AMOUNT OF FINANCIAL ASSISTANCE

121. Self explanatory.

CLAUSE 94 FINANCIAL ASSISTANCE TO BE SUBJECT TO CONDITIONS

122. This clause provides that the payment of a grant of financial assistance to the trustee of a fund is to be subject to the conditions set out in paragraphs (a) to (d).

DIVISION 3 - HOW FINANCIAL ASSISTANCE IS TO BE PAID

CLAUSE 95 SUPERANNUATION PROTECTION ACCOUNT

123. This clause establishes a Superannuation Protection Account which is a trust account for the purposes of section 62A of the Audit Act 1901, and makes provision for the investment of money in the account.

CLAUSE 96 MINISTER TO DECIDE THE SOURCE FROM WHICH FINANCIAL ASSISTANCE IS TO BE PAID

124. This Clause provides for the Minister, in determining that a grant of assistance is to be made, to also determine whether the assistance is to be paid out of the Consolidated Revenue Fund or out of the Superannuation Protection Account, and if the former, appropriates the Consolidated Revenue Fund accordingly.

CLAUSE 97 PURPOSES OF ACCOUNT

125. Self explanatory.

CLAUSE 98 SEPARATE NOTIONAL ACCOUNTS TO BE KEPT WITHIN THE ACCOUNT

126. Sub-clause (1) provides for a separate notional account to be kept within the Superannuation Protection Account in respect of each levy imposed.

127. Subclause (2) provides that where the total of amounts paid into the Superannuation Protection Account in respect of a levy imposed by the Minister in relation to a grant financial assistance is greater than the amount of the financial assistance paid to the fund, the excess is to be applied as the Minister determines.

CLAUSE 99 FINANCIAL ASSISTANCE TO BE REPAYED IN CERTAIN CIRCUMSTANCES

128. This clause sets out the circumstances under which the trustee of a fund that has received a grant of financial assistance is liable to repay the whole of the amount of the grant, or such part thereof as the Minister determines, that the Minister may determine the manner in which repayments of financial assistance are to be made, and that any such amount payable is a debt due to the Commonwealth.

CLAUSE 100 MINISTER MAY REMIT LIABILITY

129. Self explanatory.

CLAUSE 101 REPAYABLE GRANT TO HAVE PRIORITY OVER OTHER DEBTS

130. This clause provides that, despite any laws to the contrary, an amount payable to the Commonwealth under clause 99 has priority over all other debts except amounts payable to the Commissioner of Taxation under the Income tax Assessment Act 1936.

PART 12 - ROLLOVER OF CERTAIN BENEFITS BETWEEN FUNDS

CLAUSE 102 DEFINITIONS

131. This clause sets out definitions of a number of words and expressions for the purposes of this Part.

CLAUSE 103 DECLARATION OF ELIGIBLE FUNDS

132. Self explanatory.

CLAUSE 104 ROLLOVER OF BENEFITS FROM SUPERANNUATION FUND

133. Subclause (1) sets out the circumstances under which the trustee of an employer-sponsored superannuation fund may pay a benefit that is payable to an eligible rollover fund.

134. Subclause (2) sets out sets out the circumstances under which the trustee of an employer-sponsored superannuation fund must pay a benefit that is payable to an eligible rollover fund.

CLAUSE 105 ROLLOVER OF BENEFITS FROM APPROVED DEPOSIT FUND

135. This clause sets out sets out the circumstances under which the trustee of an approved deposit fund must pay a beneficiary's accrued benefits to an eligible rollover fund.

CLAUSE 106 TRUSTEE TO GIVE INFORMATION TO ELIGIBLE ROLLOVER FUND

136. Self explanatory.

CLAUSE 107 REPORTS TO INCLUDE REPORTS SENT BEFORE COMMENCEMENT
OF PART

137. Self explanatory.

CLAUSE 108 NOTICE TO BENEFICIARIES OF CIRCUMSTANCES IN WHICH
BENEFITS MAY BE ROLLED OVER

138. Subclause (1) sets out requirements relating to the provision by trustees of employer-sponsored funds of notices to members setting out the circumstances under which the member's benefits may be paid to an eligible rollover fund or otherwise dealt with under this Part.

139. Subclause (2) sets out requirements relating to the provision by trustees of approved deposit funds of notices to beneficiaries setting out the circumstances under which the beneficiary's accrued benefits may be paid to an eligible rollover fund or otherwise dealt with under this Part.

140. Subclause (3) provides that the trustee may by written notice to the member or beneficiary as the case may be vary the eligible rollover fund to which it proposes to pay benefits under this Part, while subclause (4) provides that a failure by the trustee to provide such a notice does not affect the trustee's rights and obligations pursuant to clauses 104 and 105.

CLAUSE 109 WHAT HAPPENS IF BENEFITS ARE BELOW MINIMUM AMOUNT

141. This clause provides that where the amount of the benefit that would otherwise be paid to an eligible rollover fund under this Part is less than the prescribed minimum preservation amount (currently \$500), the trustee may instead deal with the amount under Part 10 as if it were unclaimed money.

CLAUSE 110 TRUSTEE OF ELIGIBLE ROLLOVER FUND TO NOTIFY COMMISSIONER OF RECEIPT OF PAYMENTS

142. This clause sets out requirements relating to notification to the Commissioner by eligible rollover funds of amounts received from another fund pursuant to this Part.

CLAUSE 111 REGISTER OF ROLLED-OVER BENEFITS

143. This clause provides for the Commissioner to keep a register of particulars of rolled-over benefits and may require a person to quote his or her tax file number for the purpose of answering requests as to whether the register contains any particulars relating to that person.

CLAUSE 112 RIGHTS OF BENEFICIARY TO ROLLED-OVER BENEFITS

144. This clause provides that on a fund paying benefits to an eligible rollover fund pursuant to this Part, a member of, or beneficiary in, the first fund ceases to have rights against that first fund, but has corresponding rights against the eligible rollover fund.

CLAUSE 113 CLAIMS TO ROLLED-OVER BENEFITS

145. Self explanatory.

PART 13 - MONITORING AND INVESTIGATING SUPERANNUATION ENTITIES**DIVISION 1 - MONITORING SUPERANNUATION ENTITIES****CLAUSE 114 INFORMATION TO BE GIVEN TO COMMISSIONER**

146. Subclause (1) provides for a new superannuation entity to provide such information to the Commissioner as is prescribed, while subclause (3) provides that the Commissioner or an authorised person must give written acknowledgment of the receipt of such information.

147. Subclause (2) provides that the Commissioner or an authorised person may by notice in writing to the trustee of a superannuation entity require the trustee to give to the Commissioner or the authorised person such information, or a report on such matters, as are set out in the notice.

CLAUSE 115 COMMISSIONER MAY REQUIRE PRODUCTION OF BOOKS

148. Subclause (1) provides that the Commissioner or an authorised person may by notice in writing to the trustee of a superannuation entity require a relevant person to produce to the Commissioner or an authorised person any books of the entity, while subclause (3) provides that the Commissioner or an authorised person may inspect, take extracts from and make copies of any book produced pursuant to this section.

149. Subclause (2) provides that where any book produced pursuant to subclause (1) is not in English, the Commissioner or an authorised person may require the trustee to produce a version of the book that is in English.

CLAUSE 116 ACCESS TO PREMISES

150. This clause provides that the Commissioner or an authorised person may access any premises relating to a superannuation entity, with the permission of the occupier, to inspect any books kept on the premises or to make copies of, or take extracts from, any such books.

DIVISION 2 - INVESTIGATIONS**CLAUSE 117 INVESTIGATION OF SUPERANNUATION ENTITY**

151. This clause provides that the Commissioner give a notice to the trustee of a superannuation entity that he proposes to conduct an investigation into the whole or a part of the affairs of the entity where it appears to the Commissioner that a contravention of this Act may have occurred or be occurring, or the financial position of the entity may be unsatisfactory.

152. Subclause (2) provides that where such a notice is given the succeeding provisions relating to investigations apply.

CLAUSE 118 POWER OF COMMISSIONER TO OBTAIN INFORMATION OR FREEZE ASSETS

153. This clause provides that, where it appears to the Commissioner that the trustee or an investment manager of a superannuation entity has been or is engaged in conduct that is likely to affect adversely the values of the interests of beneficiaries, the Commissioner may:

- (a) by written notice direct the trustee or investment manager to provide within the stated period such information about the affairs of the entity as is stated in the notice;
- (b) by written notice direct the trustee or investment manager not to dispose of or remove from Australia any assets, any assets included in a specified class of assets, or a specified asset or assets of the entity, in Australia during the period specified in the notice; or
- (c) by written notice direct a person (other than the trustee or investment manager) having possession, custody or control of an asset or assets of an entity not to dispose of or remove from Australia the asset or assets from Australia during the period specified in the notice.

CLAUSE 119 INSPECTORS

154. This clause provides for the Commissioner to appoint a member of his staff as an inspector to conduct an investigation of the whole or a part of the affairs of a superannuation entity. The inspector is to be issued with an identity card and must return it on the cessation of the appointment.

CLAUSE 120 DELEGATION BY INSPECTOR

155. This clause provides that an inspector may delegate to a member of the Commissioner's staff any of his powers as an inspector, and that an such delegate must, pursuant to a request, produce the instrument of delegation or a copy for inspection.

CLAUSE 121 COMMISSIONER MAY EXERCISE POWERS OF INSPECTOR

156. Self explanatory.

CLAUSE 122 INSPECTOR MAY ENTER PREMISES FOR PURPOSES OF AN INVESTIGATION

157. This clause empowers an inspector, while conducting an investigation, to enter any premises relating to the superannuation entity and inspect any books kept on the premises relating to the affairs of the entity, and make copies, or take extracts from, any such books.

CLAUSE 123 INSPECTOR MAY REQUIRE PRODUCTION OF BOOKS

158. This clause provides that an inspector, by written notice, may require a relevant person, or any other person who the inspector believes has custody or control of books, to produce all or any of the books relating to the affairs of the entity that is under investigation.

CLAUSE 124 POWERS OF INSPECTOR TO REQUIRE ASSISTANCE FROM, AND EXAMINE, RELEVANT PERSONS

159. This clause provides that an inspector, by written notice to a relevant person, may require that person to give all reasonable assistance in connection with an investigation, and to require the person to appear for examination in connection with the investigation.

CLAUSE 125 APPLICATION FOR WARRANT TO SEIZE BOOKS NOT PRODUCED

160. This clause provides that an inspector may apply to a magistrate for the issue of a warrant to search premises for books that have not been produced pursuant to a requirement under this Part.

CLAUSE 126 GRANT OF WARRANT

161. This clause sets out provisions relating to the grant of a warrant pursuant to an application made under clause 125, including the things or acts the warrant may authorise and the justification for issue of the warrant.

CLAUSE 127 POWERS IF BOOKS PRODUCED OR SEIZED

162. This clause sets out things or acts a person may do in relation to books produced to the person pursuant to a requirement under this Part or seized pursuant to a warrant issued under clause 126. This clause permits retention of the books for the purposes of the investigation, inspection of the books by another person who would otherwise be entitled to inspect them, and prevents a lien being claimed on any of the books.

CLAUSE 128 POWERS IF BOOKS NOT PRODUCED

163. This clause provides that where a person fails to produce particular books in compliance with a requirement made under this Part, that person may be required to say where the books may be found or who last had possession or control of the books and where that person may be found.

CLAUSE 129 POWER TO REQUIRE PERSON TO IDENTIFY PROPERTY OF
SUPERANNUATION ENTITY

164. This clause provides that a person who has power under this Part to require another person to produce books relating to an entity may also require that other person to identify property of the entity and to explain how the trustee or an investment manager of the entity has kept account of that property.

DIVISION 3 - EXAMINATIONS

CLAUSE 130 APPLICATION OF DIVISION

165. Self explanatory.

CLAUSE 131 REQUIREMENTS MADE OF EXAMINEE

166. This clause provides that the inspector may examine an examinee on oath or affirmation, may require the examinee either to take an oath or make an affirmation, may administer an oath or affirmation, and may require the examinee to answer questions put to the examinee at the examination.

CLAUSE 132 EXAMINATION TO BE IN PRIVATE

167. This clause provides that an examination is to be in private, and sets out the persons who may be present during an examination.

CLAUSE 133 EXAMINEE'S LAWYER MAY ATTEND

168. This clause provides that the examinee's lawyer may be present at the examination and may address the inspector and examine the examinee about matters which are the subject of the examination. It further provides that the inspector may require the examinee's lawyer to stop addressing the inspector or examining the examinee if he is of the opinion that such action is intended to obstruct the examination.

CLAUSE 134 RECORD OF EXAMINATION

169. This clause provides that the inspector shall cause a record on an examination to be made, and may require the examinee to read it and to sign it. It further provides that where requested by the examinee, the inspector shall provide to the examinee a written copy of the record of examination.

CLAUSE 135 GIVING COPIES OF RECORD TO OTHER PERSONS

170. This clause provides that the Commissioner may give a copy of a record of examination to a person's lawyer where the Commissioner is satisfied that the person is carrying on, or is contemplating, a proceeding in respect of a matter to which the examination related. It also limits the use to which a copy of a record of examination so provided can be put.

CLAUSE 136 COPIES GIVEN SUBJECT TO CONDITIONS

171. Self explanatory.

CLAUSE 137 RECORD TO ACCOMPANY REPORT

172. This clause sets out the circumstances under which a record of an examination is to accompany a report about an investigation prepared pursuant to clause 138.

DIVISION 4 - REPORTS

CLAUSE 138 REPORT OF INSPECTOR

173. This clause provides that an inspector must prepare a report in respect of an investigation undertaken, and sets out the particulars that must be included in the report.

174. Subclause (3) sets out the things the Commissioner must do in respect of an inspector's report, and specifies the organisations to which a copy of the report may be given if it relates to a contravention of the law.

DIVISION 5 - OFFENCES

CLAUSE 139 PERSONS TO COMPLY WITH REQUIREMENTS MADE UNDER ACT

175. This clause provides that it is an offence for a person, without reasonable excuse, to refuse or fail to comply with a requirement under this Act, to give information or make a statement that is known to be false or misleading, or to make a statement that is known to be false or misleading when appearing before an inspector for examination.

CLAUSE 140 CONCEALING BOOKS RELEVANT TO INVESTIGATION

176. This clause provides that it is an offence for a person to conceal, etc. a book relating to a matter the Commissioner is investigating or is about to investigate, or to take or send a book relating to such a matter out of the State or Territory in which it is located, or out of Australia.

177. Subclause (2) provides grounds for a defence to a prosecution for contravention of subclause (1).

CLAUSE 141 SELF-INCRIMINATION

178. Subclause (1) provides that it is not a reasonable excuse for a person to refuse or fail to do the things or acts specified in paragraphs (a) to (c) that the thing or act might incriminate the person or make the person liable to a penalty.

179. Subclauses (2) and (3) provide that where before making an oral statement, signing a record or producing a book pursuant to a requirement under this part, a person claims the statement, etc. might tend to incriminate them or make them liable to a penalty, and the statement, etc. might in fact tend to incriminate them or make them liable to a penalty, the statement, etc. is not admissible in evidence against the person in the circumstances set out in paragraphs (3)(a) and (b) except as provided in paragraphs (3)(c) and (d).

CLAUSE 142 LEGAL PROFESSIONAL PRIVILEGE

180. This clause provides that, in the circumstances set out in subclause (1), a lawyer is entitled to refuse to comply with a requirement unless the persons specified in paragraphs (2)(a) and (b) consent to the lawyer complying with the requirement.

181. Subclause (3) provides that where a lawyer refuses to comply with a requirement, he or she must as soon as practicable give to the person making the requirement a notice setting the particulars required by paragraphs (a) to (c).

CLAUSE 143 POWERS OF COURT WHEN NON-COMPLIANCE WITH ACT

182. This clause provides that where the Commissioner is satisfied that a person has, without reasonable excuse, failed to comply with a requirement, the Commissioner may certify the failure to the Court, and the Court may inquire into the case and order the person to comply with the requirement.

DIVISION 6 - EVIDENTIARY USE OF CERTAIN MATERIAL

CLAUSE 144 STATEMENTS MADE AT AN EXAMINATION: PROCEEDINGS AGAINST EXAMINEE

183. This clause provides that a statement that a person makes at an examination is admissible in evidence against the person in a proceeding unless the requirements set out in paragraphs (1)(a) to (d) are met.

CLAUSE 145 STATEMENTS MADE AT AN EXAMINATION: OTHER PROCEEDINGS

184. This clause provides that if direct evidence by an absent witness of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination and that tends to establish that matter is admissible in the proceeding as evidence of that matter in the circumstances set out in paragraphs (a) and (b).

CLAUSE 146 WEIGHT OF EVIDENCE ADMITTED UNDER SECTION 145

185. This clause sets out how much weight (if any) is to be given to a statement made by a person at an examination as evidence of a matter. Subclause (3) makes provision in relation to the admissibility of evidence where the person is not called as a witness in the proceeding, while subclause (4) sets out circumstances when evidence of a matter is not admissible.

CLAUSE 147 OBJECTION TO ADMISSION OF STATEMENTS MADE AT EXAMINATION

186. This clause sets out requirements relating to a party giving notice to another concerning the making of an application to have admitted in evidence in a proceeding specified statements made at an examination, and that other party giving notice of objection to admission of those statements.

CLAUSE 148 COPIES OF, OR EXTRACTS FROM, CERTAIN BOOKS

187. This clause sets out requirements relating to the admissibility in evidence in a proceeding of a copy of, or an extract from, a book relating to the affairs of a superannuation entity.

CLAUSE 149 REPORT UNDER DIVISION 4

188. Self explanatory.

CLAUSE 150 EXCEPTIONS TO ADMISSIBILITY OF REPORT

189. This clause sets out requirements relating to a party to a proceeding tendering a copy of a report as evidence against another party, and when that copy may or may not be admitted as evidence pursuant to clause 149.

CLAUSE 151 MATERIAL OTHERWISE ADMISSIBLE

190. Self explanatory.

DIVISION 7 - MISCELLANEOUS

CLAUSE 152 COMMISSIONER MAY CAUSE CIVIL PROCEEDINGS TO BE BEGUN

191. This clause provides that, where as a result of an investigation or from a record of an examination it appears to the Commissioner to be in the public interest for a person to begin or carry on a proceeding as set out in paragraphs (a) and (b), the Commissioner may begin or carry on a proceeding in the name of that person.

CLAUSE 153 PERSON COMPLYING WITH REQUIREMENT NOT TO INCUR LIABILITY TO ANOTHER PERSON

192. Self explanatory.

PART 14 - POWERS OF THE COURT

CLAUSE 154 POWER TO GRANT RELIEF

193. This clause provides that a person may apply to a Court for relief against liability in certain circumstances and sets out the Court's power to relieve the person from that liability.

CLAUSE 155 POWER OF COURT TO GIVE DIRECTIONS WITH RESPECT TO MEETINGS ORDERED BY THE COURT

194. This clause provides that where a Court orders a meeting to be convened it may, subject to this Act, give directions with respect to the convening, holding and conduct of the meeting.

CLAUSE 156 IRREGULARITIES

195. This clause provides that a Court may make orders in certain circumstances to prevent proceedings or meetings under this Act from being invalidated on account of procedural irregularities. Subclause (6) provides that the Court must not make an order pursuant to this section unless it is satisfied as to the matters specified in paragraphs (a) to (c).

CLAUSE 157 POWER OF COURT TO PROHIBIT PAYMENT OR TRANSFER OF MONEY OR PROPERTY

196. This clause provides that a Court may make orders in the circumstances as set out in paragraphs (1)(a) to (k) to prohibit the payment or transfer of money or property by a person that is or may become liable to pay money or account for property to another person under this Act.

CLAUSE 158 INJUNCTIONS

197. This clause provides that a Court may in certain circumstances grant an injunction for the purposes of this Act on the application of the Commissioner or of a person who would be affected by the conduct against which the injunction is ordered.

CLAUSE 159 EFFECT OF SECTIONS 157 AND 158

198. Self explanatory.

CLAUSE 160 POWER OF COURT TO PUNISH FOR CONTEMPT OF COURT

199. This clause provides that a Court is not precluded by any provision under this Act from punishing a person for contempt of Court.

CLAUSE 161 COURT MAY RESOLVE TRANSITIONAL DIFFICULTIES

200. This clause provides that, subject to the Constitution, a Court may make orders to resolve difficulties arising from the interaction of a provision of another law with the provisions of this Act.

PART 15 - PROCEEDINGS**CLAUSE 162 POWER OF COMMISSIONER TO INTERVENE IN PROCEEDINGS**

201. This clause provides that the Commissioner may intervene in any court proceedings relating to a matter arising under this Act. The Commissioner may be represented by a member of his staff, by a delegate or by a solicitor or counsel.

CLAUSE 163 CIVIL PROCEEDINGS NOT TO BE STAYED

202. Self explanatory.

CLAUSE 164 STANDARD OF PROOF

203. This clause provides that in proceedings in relation to matters arising under this Act, other than those relating to an offence, the standard of proof for the Court is establishment of the matter or satisfaction on the balance of probabilities.

CLAUSE 165 EVIDENCE OF CONTRAVENTION

204. This clause provides that in the absence of proof to the contrary, a certificate that purports to be signed by the Registrar or other proper officer of an Australian Court will be proof that a person was convicted of the offence on that day, or that the person contravened the relevant provision, as appropriate.

CLAUSE 166 VESTING OF PROPERTY

205. This clause sets out the implications under the Act of a court order that property is to vest in a person.

PART 16 - MISCELLANEOUS**CLAUSE 167 CONDUCT BY DIRECTORS, SERVANTS AND AGENTS**

206. This clause sets out the considerations a court may take into account in proceedings for an offence in determining the state of mind of directors, servants and agents in relation to any conduct engaged in by or on behalf of a body corporate.

CLAUSE 168 LIABILITY FOR DAMAGES

207. This clause exempts the persons specified in paragraphs (a) to (e) from liability for bona fide acts or omissions in respect of the performance of powers or functions conferred by the Act or the regulations.

CLAUSE 169 PRE-1 JULY 88 FUNDING CREDITS AND DEBITS

208. This clause provides for the administration of pre-1 July 1988 funding credits and debits.

209. Subclause (1) provides that a trustee of a fund may apply to the Commissioner for a pre-1 July 1988 funding credit.

210. Subclause (2) provides that upon receipt of an application under subclause (1) the Insurance and Superannuation Commissioner must give a written notice to the applicant granting a pre-1 July 1988 funding credit where certain prescribed conditions are satisfied.

211. Subclause (3) sets out requirements relating to applications for pre-1 July 1988 funding credit, while subclauses (4), (5) and (6) set out the obligations of the Insurance and Superannuation Commissioner in respect of prescribed events and the circumstances in which the Commissioner may grant the trustee of a fund a pre-1 July 1988 debit.

212. Subclauses (7) and (8) provide for the transfer of pre-1 July 1988 funding credits between funds in certain circumstances. Subclause (9) empowers the Commissioner to revoke a notice in certain circumstances, while subclause (10) provides that the Commissioner must give written notice of a decision to refuse to grant a pre-1 July 1988 funding credit. Subclause (11) provides that the Commissioner must set out reasons for refusing to grant a notice, or revoking a notice given, in respect of the transfer of pre-1 July 1988 credits between funds.

213. Subclause (12) provides that the Commissioner of Taxation must be given details of all notices in relation to the transfer of pre-1 July 1988 funding credits.

CLAUSE 170 RULES AGAINST PERPETUITIES NOT TO APPLY TO EMPLOYER-SPONSORED FUND

214. This clause provides that the rules of law relating to perpetuities do not apply, and are taken never to have applied, to the trusts of any employer-sponsored fund, irrespective of when the fund was established. The clause also provides that a director of a company is taken to be an employee of that company for the purpose of determining whether a superannuation fund is an employer-sponsored fund.

CLAUSE 171 PROXY VOTING AT MEETINGS OF BENEFICIARIES

215. This clause sets out the circumstances under which proxy voting may be undertaken at meetings of beneficiaries of superannuation entities convened under this Act, and the rights of the proxy in those circumstances.

CLAUSE 172 CONDUCT OF MEETINGS OF BENEFICIARIES

216. This clause sets out who is to preside at meetings of beneficiaries of superannuation entities convened for the purposes of this Act. The clause also provides that such a meeting of beneficiaries is to be conducted in accordance with the governing rules of the entity or, where the governing rules make no provision for the conduct of meetings of this nature, in accordance with the directions of the person presiding at the meeting.

CLAUSE 173 NOTICES TO JOINT BENEFICIARIES

217. This clause establishes requirements for sending notices by post to the last known address of two or more joint beneficiaries.

CLAUSE 174 REVIEW OF CERTAIN DECISIONS

218. This clause provides that the trustees of a superannuation entity that is affected by a decision that is a "reviewable decision" may, by written notice given to the Commissioner within a period of 21 days after the date on which the fund first receives notice of the decision, or such longer period as the Commissioner allows, request the Commissioner to reconsider the decision.

219. Where the Commissioner does not confirm, revoke or vary a decision within 60 days after receipt of a request to reconsider the decision, the decision is deemed to have been confirmed by the Commissioner. Where the Commissioner confirms, revokes or varies a decision before the expiration of 60 days after receipt of the request, the Commissioner must inform the trustees of the fund of the reasons for confirming, revoking or varying the decision, as the case may be.

220. Application may be made to the Administrative Appeals Tribunal for a review of a decision that has been confirmed or varied by the Commissioner.

CLAUSE 175 STATEMENTS TO ACCOMPANY NOTIFICATION OF DECISIONS

221. This clause provides for notification of appeal rights to the trustees of a superannuation entity affected by a reviewable decision of the Commissioner.

CLAUSE 176 SECRECY

222. This clause provides for protection, subject to the provisions of the Freedom of Information Act 1982, of any information or documents concerning the affairs of any superannuation entity acquired under or for the purposes of this Act.

223. Subclause (3) sets out certain types of information the Commissioner is not prohibited from disclosing.

224. Subclause (4) sets out particular persons to whom the Commissioner may disclose information.

CLAUSE 177 HOW INFORMATION MAY BE GIVEN TO THE COMMISSIONER OF TAXATION

225. This clause provides that information required or authorised to be given by the Commissioner to the Commissioner of Taxation under this Act can be conveyed by means of a data processing device.

CLAUSE 178 COMMISSIONER MAY PUBLISH STATISTICAL INFORMATION

226. This clause provides that the Commissioner may publish statistical information relating to superannuation entities or the payment of benefits to persons. However, such information may not be published in such a way as to identify particulars furnished in respect of a person or an individual fund.

CLAUSE 179 DELEGATION

227. This clause provides that the Commissioner may delegate all his or her powers under the Act to a member of his or her staff, other than the power of delegation, and the obligation imposed upon the Commissioner under clause 180 to prepare and give to the Minister an annual report.

CLAUSE 180 ANNUAL REPORTS

228. This clause requires the Commissioner to prepare and give to the Minister within 3 months after each year ending on 30 June a report on the working, during the year, of the Act. The Minister has to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after the day of receipt of the report.

CLAUSE 181 REGULATIONS

229. This clause permits the Governor-General to make regulations not inconsistent with the Act, in respect of matters required or permitted by the Act to be prescribed or for the carrying out of or for giving effect to the Act. In particular, regulations may be made in respect of the payment of fees, and the payment to the Commonwealth of prescribed penalties by persons alleged to have contravened particular sections of the Act, as an alternative to prosecution.

PART 17 - SAVING AND TRANSITIONAL PROVISIONS

CLAUSE 182 EXISTING REGULATIONS TO CONTINUE IN FORCE

230. This clause provides for the continuation of any regulations made for the purposes of a provision of the Superannuation Entities (Taxation) Act 1987 that is repealed, where there is a corresponding provision in this Act.

CLAUSE 183 EXISTING APPROVALS ETC. BY COMMISSIONER TO CONTINUE
IN FORCE

231. This clause provides for the continuation of any approvals, directions, notices, requirements or decisions given under a provision of the Superannuation Entities (Taxation) Act 1987 that is repealed, where there is a corresponding provision in this Act.

CLAUSE 184 EXISTING APPLICATIONS ETC. TO COMMISSIONER TO CONTINUE
IN FORCE

232. This clause provides for the continuation of any application or request duly made, or return, certificate or other document lodged with or given to the Commissioner under a provision of the Superannuation Entities (Taxation) Act 1987 that is repealed, where there is a corresponding provision in this Act.

CLAUSE 185 EXISTING DELEGATIONS TO CONTINUE IN FORCE

233. This clause provides for the continuation of any delegations given by the Commissioner under the Superannuation Entities (Taxation) Act 1987 that is repealed, where there is a corresponding provision in this Act.

CLAUSE 186 EXISTING PROCEEDINGS BEFORE ADMINISTRATIVE APPEALS
TRIBUNAL

234. This Act provides that the Administrative Appeals Tribunal can continue to hear and may determine an application made under the Superannuation Entities (Taxation) Act 1987 in relation to a decision of the Commissioner under a provision of that Act, where there is a corresponding provision in this Act.

