

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUPERANNUATION INDUSTRY (SUPERVISION) BILL 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

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

GENERAL OUTLINE AND MAIN PURPOSES OF THE AMENDMENTS

The majority of these amendments to the Superannuation Industry (Supervision) Bill 1993 (SIS) give effect to recommendations made by the Senate Select Committee on Superannuation in its Ninth Report.

These amendments essentially represent technical refinements to the legislation.

The main changes are, firstly, to extend the time by which complying funds may lodge an election with the Insurance and Superannuation Commission (ISC) to be regulated under the SIS regime. These amendments will give more time to funds who need it, without disrupting the overall start-up date for the new regime, that is, the beginning of a fund or trust's 1994-95 year of income.

Secondly, there are amendments to the exemption and modification powers in Part 29 of the Bill to provide that full details of how the Commissioner exercises those powers are disclosed each year in the ISC's Annual Report, which is tabled in Parliament. These temporary exemption and modification powers, which cover all the operational provisions in the Bill, will also be extended by two years to 30 June 1996.

Thirdly, a number of amendments relate to reviewable decisions and ensure that a number of key prudential decisions made by the Commissioner, but with the Treasurer's concurrence, will not be subject to review by the Administrative Appeals Tribunal.

FINANCIAL IMPACT STATEMENT

There is no financial impact as a result of these amendments.

EXPLANATORY NOTES ON THE CLAUSES OF THE AMENDMENTS TO THE SUPERANNUATION INDUSTRY (SUPERVISION) BILL 1993

PART 1 - PRELIMINARY

DIVISION 1 - PRELIMINARY

CLAUSE 2 COMMENCEMENT

1. Subclause (1) is amended to omit 'and 31', and substitute ', 31 and 32'.

DIVISION 2 - INTERPRETATION

CLAUSE 10 DEFINITIONS

2. Definition of '**custodian**' is amended so that it is defined as a person (other than the trustee of the entity) who, under a contract with the trustee or an investment manager of the entity, performs custodial functions in relation to any of the assets of the entity.
3. Definition of '**exempt public sector superannuation scheme**' is inserted.
4. The definition of '**market value**' is inserted to reflect the concepts of the definition used by the International Assets Valuation Standards Committee.
5. Definition of '**public sector superannuation scheme**' is amended to omit lines 17 and 18.
6. Definition of '**reviewable decision**' is amended to omit paragraphs (e), (v), (w), (zc).

CLAUSE 19 REGULATED SUPERANNUATION FUND

7. This clause is amended to insert paragraph (ba) which is another condition that must be satisfied and provides that if the fund is not a public sector superannuation scheme, it is subject to the best endeavours requirement of subclause (7).

PART 2 - APPROVAL OF TRUSTEES

CLAUSE 28 REVOCATION OF APPROVAL

8. This clause is amended to insert subclause (3) which provides that the Commissioner must not make a decision under subsection (1) without the written consent of the Minister.

PART 5 - NOTICES ABOUT COMPLYING FUND STATUS

DIVISION 3 - COMPLYING FUND STATUS FOR TAX PURPOSES

CLAUSE 45 COMPLYING SUPERANNUATION FUND

9. Subclause (6) is inserted to provide that if the fund was or was part of, an exempt public sector superannuation scheme, the fund is a complying superannuation fund for the year of income for the purposes of Part IX of the Income Tax Assessment Act.

CLAUSE 45A COMPLYING SUPERANNUATION SCHEME - SUPERANNUATION GUARANTEE CHARGE

10. Clause 45A is inserted to clarify that an exempt public sector superannuation scheme is taken to be a complying superannuation scheme for the purposes of the Superannuation Guarantee (Administration) Act 1992.

CLAUSE 48A TRANSITIONAL - LATE LODGMENT OF ELECTIONS BY TRUSTEES OF SUPERANNUATION FUNDS

11. This clause will allow funds which elect to become regulated funds after the commencement of their 1994/95 year of income to be eligible for taxation concessions for that year of income, provided they meet certain conditions. The conditions that need to be met are set out in the subclauses.

12. Subclause (1) provides that superannuation funds may elect to become a regulated fund after the end of the fund's 1993-94 year of income and before 29 July 1994, provided the fund has satisfied the transitional superannuation fund conditions specified in the regulations at all times during the period beginning at the beginning of that year of income and ending at the end of the lodgment day. If these conditions are satisfied that fund will be taken to be a regulated superannuation fund at all times during the pre-lodgment period of the fund's 1994/95 year of income.

13. Subclause (2) provides that excluded superannuation funds who lodge an election after the end of their 1993-94 year of income and before either 1 January 1995 or the beginning of their 1995-96 year of income, whichever is the earlier, and under the regulations the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period beginning at the beginning of the 1994-95 year of income and ending at the end of the lodgment day, then the fund will be taken to be a regulated superannuation fund at all times during the pre-lodgment period of the fund's 1994/95 year of income.

14. Subclause (3) provides that public sector superannuation schemes who lodge an election after the end of their 1993-94 year of income and before 1 July 1995 or such later date as the Commissioner allows, and under the regulations the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period beginning at the beginning of the 1994-95 year of income and ending at the end of the lodgment day, then the fund will be taken to be a regulated superannuation fund at all times during the pre-lodgment period of the fund's 1994/95 year of income, or such later year of income as the Commissioner allows.

15. Subclause (4) applies to any superannuation fund which does not fall within the terms of subclause (1), (2) or (3), but has lodged an election after 28 July 1994 and before 1 July 1995 or the beginning of the fund's 1995-96 year of income, whichever is the earlier, and the Commissioner is satisfied that the lodgment is late because of special circumstances, and under the regulations the fund is treated as if it had satisfied the transitional superannuation fund conditions at all times during the period beginning at the beginning of the 1994-95 year of income and ending at the end of the lodgment day, and the fund has satisfied any requirements in the regulations relating to notifying members of the fund about the delay in lodging the election and the reasons for the delay, then the fund is taken to be a regulated superannuation fund at all times during the pre-lodgment period of the fund's 1994/95 year of income.

16. Subclause (5) provides that regulations may confer functions or powers on the Commissioner and apply provisions of the Occupational Superannuation Standards Act 1987. This subclause does not limit the application of section 49A of the Acts Interpretation Act 1901 to regulations made for the purposes of clause 48A.

PART 7 - PROVISIONS APPLYING ONLY TO REGULATED SUPERANNUATION FUNDS

CLAUSE 65 BORROWING

17. Subparagraph (3)(b)(i) is amended to omit "the need for the borrowing was not reasonably foreseeable" and substitute "it was likely that the borrowing would not be needed". This amendment recognises the possibility of settlement failures occurring, particularly in international transactions, the possibility of which may have been reasonably foreseeable but unlikely.

PART 10 - PROVISIONS APPLYING ONLY TO APPROVED DEPOSIT FUNDS

CLAUSE 93 BORROWING

18. Subparagraph (3)(b)(i) is amended to omit "the need for the borrowing was not reasonably foreseeable" and substitute "it was likely that the borrowing would not be needed". This amendment recognises the possibility of settlement failures occurring, particularly in international transactions, the possibility of which may have been reasonably foreseeable but unlikely.

PART 11 - PROVISIONS APPLYING ONLY TO POOLED SUPERANNUATION TRUSTS

CLAUSE 95 BORROWING

19. Subparagraph (3)(b)(i) is amended to omit "the need for the borrowing was not reasonably foreseeable" and substitute "it was likely that the borrowing would not be needed". This amendment recognises the possibility of settlement failures occurring, particularly in international transactions, the possibility of which may have been reasonably foreseeable but unlikely.

PART 15 - STANDARDS FOR TRUSTEES, CUSTODIANS AND INVESTMENT MANAGERS OF SUPERANNUATION ENTITIES

CLAUSE 118 DISQUALIFIED PERSONS

20. Paragraph (2)(a) is omitted and substituted with a paragraph that provides that if both a responsible officer of the body is a disqualified person and the responsible officer has been a disqualified person at all times during the immediately preceding period of 28 days, then that body corporate is a disqualified person for the purposes of the Bill.

CLAUSE 119 DISQUALIFIED PERSONS NOT TO BE TRUSTEES OF SUPERANNUATION ENTITIES

21. Subclause (2) is amended by omitting "that the person is a disqualified person" and substituting words that provide that the person is a disqualified person and the person has been a disqualified person at all times during the immediately preceding period of 28 days.

CLAUSE 119A INVESTMENT MANAGER MUST NOT APPOINT OR ENGAGE CUSTODIAN WITHOUT THE TRUSTEE'S CONSENT

22. This clause is inserted to provide that an investment manager must not appoint or engage a custodian of a superannuation entity without the written consent of the trustee of the entity. Intentional or reckless contravention of this provision will result in an offence.

PART 16 - ACTUARIES AND AUDITORS OF SUPERANNUATION ENTITIES

CLAUSE 126 OBLIGATIONS OF ACTUARIES AND AUDITORS - COMPLIANCE

23. This clause is amended to insert subclause (1A) which provides that the clause will not apply to the actuary or auditor if they have an honest belief that the opinion they have formed is not relevant to the performance of actuarial or audit functions.

PART 17 - SUSPENSION OR REMOVAL OF TRUSTEE OF SUPERANNUATION ENTITY

CLAUSE 130 SUSPENSION OR REMOVAL OF TRUSTEE OF SUPERANNUATION ENTITY

24. This clause is amended to insert subclause (5) which provides that the Commissioner must not make either a decision to suspend or remove a trustee or a decision to extend the suspension of a trustee, without the written consent of the Minister.

PART 18 - PROHIBITED CONDUCT IN RELATION TO SUPERANNUATION INTERESTS

CLAUSE 142 FRAUDULENTLY INDUCING A PERSON TO ENGAGE IN A REGULATED ACT - CRIMINAL LIABILITY

25. Subclause (2) is omitted.

PART 22 - UNCLAIMED MONEY

CLAUSE 222 TRUSTEE TO PAY UNCLAIMED MONEY TO THE COMMISSIONER

26. Subclause (4) is amended to provide that a beneficiary will be taken to have quoted the beneficiary's tax file number to the trustee under this subclause if the beneficiary has already quoted that number to the trustee under Part 24 of this Act, a provision of the Income Tax Assessment Act 1936 or a provision of the repealed Part IIIA of the Occupational Superannuation Standards Act 1987 (including a provision as it continues to apply because of the Taxation Laws Amendment (Superannuation) Act 1992).

PART 24 - ROLLOVER OF CERTAIN BENEFITS BETWEEN FUNDS

CLAUSE 241 ROLLOVER OF BENEFITS FROM SUPERANNUATION FUND

27. Paragraph (1)(a) is amended to omit "in respect of a member, and" and substitute a subparagraph which provides that the benefit is immediately payable to a member, or the trustee of another fund in respect of a member or another person in respect of a member.

28. Paragraph (1)(b) is amended to omit "fund" and substitute "first-mentioned fund".

CLAUSE 242 TRUSTEE TO GIVE INFORMATION TO ELIGIBLE ROLLOVER FUND

29. Subclause (2) is amended to insert the presumption that a beneficiary will be taken to have quoted the beneficiary's tax file number to the trustee under this subclause if the beneficiary has already quoted that number to the trustee under Part 22 of this Act, a provision of the Income Tax Assessment Act 1936 or a provision of the repealed Part IIIA of the Occupational Superannuation Standards Act 1987 (including a provision as it continues to apply because of the Taxation Laws Amendment (Superannuation) Act 1992).

CLAUSE 246 TRUSTEE OF ELIGIBLE ROLLOVER FUND TO NOTIFY COMMISSIONER OF RECEIPT OF PAYMENTS

30. Self-explanatory.

PART 25 - MONITORING AND INVESTIGATING SUPERANNUATION ENTITIES

CLAUSE 261 POWER OF COMMISSIONER TO OBTAIN INFORMATION OR FREEZE ASSETS

31. This clause is amended to insert subclause (6) which provides that the Commissioner must not give a notice under this clause without the written consent of the Minister.

PART 29 - EXEMPTIONS AND MODIFICATIONS

CLAUSE 323 OBJECT OF PART

32. Self-explanatory.

CLAUSE 326 COMMISSIONER'S POWERS OF EXEMPTION - TEMPORARILY MODIFIABLE PROVISIONS

33. Self-explanatory.

CLAUSE 330 COMMISSIONER'S POWERS OF MODIFICATION - TEMPORARILY MODIFIABLE PROVISIONS

34. Self-explanatory.

PART 30 - MISCELLANEOUS

CLAUSE 341 REVIEW OF CERTAIN DECISIONS

35. Self-explanatory.

CLAUSE 349 ANNUAL REPORTS

36. Subclause (1A) is inserted to provide that information relating to the use of the Commissioner's powers under Part 29 must be set out in the Annual Report.

PART 32 ADDITIONAL TRANSITIONAL PROVISIONS - TAX FILE NUMBERS

CLAUSE 378 OBJECT OF PART

37. Self-explanatory.

CLAUSE 379 QUOTATION OF TAX FILE NUMBER

38. This clause provides that beneficiaries or members of a fund may quote their tax file number to the trustee for the purpose of its use in connection with section 222, unclaimed money, and/or Part 24, the rollover of certain benefits between funds. However, this provision ceases to have effect on 1 July 1994.

CLAUSE 380 PRE- 1 JULY 1994 QUOTATION OF TAX FILE NUMBER TO BE TREATED AS IF MADE UNDER PROVISIONS COMMENCING ON 1 JULY 1994

39. This clause provides that where a beneficiary or member has quoted their tax file number under clause 379, the Act will continue to operate after 30 June 1994 as if the beneficiary or member had quoted their tax file number to the trustee under subsections 222(4) and 242(2) immediately after the beginning of 1 July 1994.

CLAUSE 381 PRE-1 JULY 1994 QUOTATION OF TAX FILE NUMBER - REQUEST FOR QUOTATION, OR RECORDING, OF NUMBER NOT PROHIBITED BY THE TAXATION ADMINISTRATION ACT 1953

40. This clause provides that a request for quotation, recording or use of a person's tax file number to connect it with the identity of the beneficiary or member, is not prohibited before 1 July 1994, by sections 8WA and 8WB of the Taxation Administration Act 1953.

CLAUSE 382 PRE-1 JULY 1994 QUOTATION OF TAX FILE NUMBER -
OBJECTS OF TAX FILE NUMBER SYSTEM

41. This clause provides that the facilitation of the future administration of Parts 22 and 24 of this Act is included within the objects of Part VA of the Income Tax Assessment Act 1936 as set out in section 202 of that Act. This subclause ceases to have effect on 1 July 1994.



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