

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL
AMENDMENTS 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)

SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL AMENDMENTS BILL 1993

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, 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 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 benefits in employer-sponsored funds in respect of members that have left employment or who are lost, and unclaimed benefits
- for equal member and employer representation;
- certain disclosure obligations in respect of auditors and actuaries of funds; and
- rules relating to invitations and offers to subscribe for interests in, and disclosures by, public offer superannuation funds, approved deposit funds and pooled superannuation trusts.

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 Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, 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.m 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 1993.

**SUPPLEMENTARY EXPLANATORY NOTES ON SUPERANNUATION INDUSTRY
(SUPERVISION) CONSEQUENTIAL AMENDMENTS BILL 1993**

PART 1 - PRELIMINARY

CLAUSE 2 COMMENCEMENT

1. Paragraph 2 (aa) is to be inserted to give effect to the new Part 2A - Amendment of the Bankruptcy Act 1966.

PART 2A AMENDMENT OF THE BANKRUPTCY ACT 1966

CLAUSE 4A PRINCIPAL ACT

2. Self explanatory.

CLAUSE 4B INTERPRETATION

3. Self explanatory.

CLAUSE 4C PROPERTY DIVISIBLE AMONG CREDITORS

4. This clause amends section 116 of the Principal Act by omitting paragraphs (2)(d), (e), (f) and (fa). New paragraph (2)(d) is inserted to extend the limitation on divisible property to include superannuation policies, the interest of the bankrupt in, or payment from, a regulated superannuation fund or approved deposit fund.

5. New subsections 116(5) and (6) provide the formula and an example of the exceptions to paragraph (2)(d).

6. Subsection 116(8) allows the rules to provide for the trustee of a regulated superannuation fund or approved deposit fund to provide written certification as evidence of the value of the bankrupt's interest in the fund.

CLAUSE 4D MEANING OF INCOME

7. This clause amends section 139L(a) of the Principal Act by specifying that payment of a pension or annuity is included in the definition of "income" and that pension includes a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

CLAUSE 4E VESTING OF PROPERTY ON MAKING AN ORDER

8. Section 249 of the Principal Act is amended by omitting the existing subparagraph 6(a)(ii) and substituting a new subparagraph that provides that where the administration of the estate of a deceased person commenced before death the divisible property includes the proceeds of superannuation payments and payments from a regulated superannuation fund or approved deposit fund that would not have been divisible among the creditors if the person had not died, the sequestration order had been made before death and the amount concerned had been paid immediately before the persons death.

9. New subparagraphs 7(a)(ii) and 8(a)(ii) make similar amendments where the administration commenced at the time of death or after death.

CLAUSE 4F INSERTION OF NEW SECTION

10. The insertion of the section will act to void any provision in the governing rules of a superannuation fund or approved deposit fund where the effect of the rules is to cancel, forfeit, reduce or qualify the interest of a person in such a fund or to allow another person to exercise a discretion relating to the member's interest, if the member has become bankrupt, commits an act of bankruptcy or executes a deed of assignment or arrangement under this Act. This provision applies to all governing rules, irrespective of whether they were made before the commencement of this provision.

CLAUSE 4G APPLICATION OF AMENDMENTS

11. This clause provides that the amendments made to the Principal Act will apply to a bankruptcy, if the date of the bankruptcy is on or after the date of commencement of this section and in the case of a deceased debtor where the date of death occurs after the date of commencement of this section.

AMENDMENTS TO THE SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992

CLAUSE 49 CERTAIN BENEFIT CERTIFICATES PRESUMED TO BE CERTIFICATES IN RELATION TO COMPLYING SUPERANNUATION SCHEME

12. This clause is amended to provide that under the provisions of subparagraphs 24(1)(a)(i), (ii) and (iii) of the Principal Act, where a benefit certificate is being issued, a trustee may issue a statement to the effect that, amongst other things, a fund is a regulated fund within the meaning of the Superannuation Industry (Supervision) Act and that the fund has not received a direction in accordance with section 59 of that

Act nor has it been subject to such a direction at any time since the benefit certificate took effect.

13. Subsection 24(4A) is inserted in the Principal Act so that section 38A of the Superannuation Industry (Supervision) Act applies to a breach of the Act or regulations for the purposes of subsection 24(4) in the same way in which it does for the purposes of Division 2 of Part 5 of that Act, that is, a contravention of the Act or regulations is to be ignored unless it is an offence or the contravention of a civil penalty provision.

CLAUSE 50 CERTAIN CONTRIBUTIONS PRESUMED TO BE CONTRIBUTIONS TO COMPLYING SUPERANNUATION FUND

14. Clause 50 amends paragraph 25(1)(b) of the Principal Act so that a superannuation fund is conclusively presumed to be a complying superannuation fund if at the time the contribution is made the employer obtains from the trustee of the fund a written statement that the fund is a regulated fund within the meaning of the Superannuation Industry (Supervision) Act and that a direction has not been given in respect of the fund under section 59 of that Act.

15. Subsection 25(3) is inserted in the Principal Act so that section 38A of the Superannuation Industry (Supervision) Act applies to a breach of the Act or regulations for the purposes of subsection 25(2) in the same way in which it does for the purposes of Division 2 of Part 5 of that Act, that is, a contravention of the Act or regulations is to be ignored unless it is an offence or the contravention of a civil penalty provision.

CLAUSE 51 PAYMENT OF SHORTFALL COMPONENT

16. Section 65 of the Principal Act is amended so that the trustee's written statement must make reference to the fact that the fund has not received a direction under section 59 of the Superannuation Industry (Supervision) Act.

