

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**SUPERANNUATION INDUSTRY (SUPERVISION) LEGISLATION
AMENDMENT BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments, new headings, new clauses and new Divisions to be moved
on behalf of the Government

(Circulated by authority of the Treasurer,
the Hon. Ralph Willis, MP)



9 780644 308588

GENERAL OUTLINE AND MAIN PURPOSE OF THE AMENDMENTS

There are two main issues covered by these amendments and they are outlined below.

Allowing the ISC to provide protected information to the Superannuation Complaints Tribunal

The amendments amend section 346 of the Superannuation Industry (Supervision) Act 1993 (the 'SIS Act') to allow officers of the Insurance and Superannuation Commission (ISC) to provide protected information to the Superannuation Complaints Tribunal. Protected information is information relating to the affairs of a fund which the ISC has obtained in the course of carrying out its supervisory duties.

While the ISC is allowed to provide such information to bodies such as the Australian Securities Commission and the Australian Taxation Office there is no allowance to provide such information to the Superannuation Complaints Tribunal. The Complaints Tribunal commenced operation on 1 July 1994 and provides a quick and fair mechanism, which previously did not exist, for dealing with member complaints regarding superannuation. The restriction on the provision of protected information, where that information is directly relevant to a particular complaint, is hampering the effective operation of the Complaints Tribunal. The amendment allows the ISC to provide such relevant information to the Complaints Tribunal.

Allowing exempt public sector superannuation schemes to become subject to the Superannuation (Resolution of Complaints) Act 1993

The amendments amend the Superannuation (Resolution of Complaints) Act 1993 (the 'SRC Act'), to allow 'exempt public sector superannuation schemes' to become subject to that Act.

Currently only regulated superannuation funds and approved deposit funds are subject to the SRC Act and thus only members of those funds can make use of the Superannuation Complaints Tribunal. Many public sector superannuation schemes will not be regulated funds (instead they will be 'exempt public sector superannuation schemes') and members of such schemes will not therefore be able to use the Complaints Tribunal.

In some cases this is acceptable as there are other appropriate complaints mechanisms available for members of such schemes. However, some schemes believe their members should have or need access to the Complaints Tribunal. The amendment enables such schemes to become subject to the SRC Act.

A consequential amendment is also made to the SIS Act to require exempt public sector superannuation schemes that do become subject to the SRC Act to also establish their own internal complaints handling system. This is necessary because the Complaints Tribunal cannot deal with complaints unless they have first been through a fund's internal complaints system. While the SIS Act requires superannuation funds and approved deposit fund to develop such an internal system it does not currently require exempt public sector superannuation schemes to do the same.

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) LEGISLATION AMENDMENT BILL 1994

PART 1 - PRELIMINARY

CLAUSE 2 - COMMENCEMENT

1. A number of amendments are made to the commencement clauses to reflect the facts that:

- certain subclauses that dealt with the possibility that the Bill may have received Royal Assent prior to 1 July 1994 are no longer relevant; and
- a new Division has been inserted into Part 3 of the Bill.

2. The amendments involve:

- the removal of subclauses 2(4) and 2(5);
- a consequential amendment to subclause 2(3);
- an amendment to subclause 2(6) so that Divisions 1 and 2 of Part 3, which make a technical correction to the Superannuation (Resolution of Complaints) Act 1993 (the 'SRC Act'), commence immediately after the commencement of that Act while Division 3 of Part 3 (which provides for exempt public sector superannuation schemes to be covered by that Act) commences on Royal Assent of the Bill.

PART 2 - AMENDMENT OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

DIVISION 6 - AMENDMENTS TO MAKE TECHNICAL CORRECTIONS TO THE DEFINITION OF 'REVIEWABLE DECISION'

CLAUSE 16 - APPLICATION

3. Clause 16 is amended to correct a technical error in the original Bill where 'Part' was referred to instead of 'Division'.

DIVISION 14 - AMENDMENTS RELATING TO THE DISCLOSURE OF INFORMATION

CLAUSE 34 - OBJECTS

4. Clause 34 is amended so that the objects of Division 14 include the object of authorising the disclosure of protected information or protected documents to the Superannuation Complaints Tribunal.

CLAUSE 35 - SECRECY

5. Clause 35 is amended with the effect of allowing officers of the Insurance and Superannuation Commission to provide protected information or protected documents to the Superannuation Complaints Tribunal. This would only be allowed where the information or document would be used by the Tribunal in the performance of any of its functions or the exercise of any of its powers. If the protected information or document contained information relating to the personal affairs of an individual the ISC would not provide that information to the Complaints Tribunal unless it was reasonable to do so in the circumstances.

DIVISION 18A - AMENDMENT RELATING TO ARRANGEMENTS FOR DEALING WITH INQUIRIES OF COMPLAINTS

6. New Division 18A is inserted. The effect of the new division is to require an exempt public sector superannuation scheme that is subject to the SRC Act to establish a system for dealing with inquiries and complaints. This is necessary because the Complaints Tribunal cannot deal with complaints unless they have first been through a fund's internal complaints system. The Superannuation Industry (Supervision) Act 1993 (the 'SIS Act') requires funds, but not exempt public sector superannuation schemes, to develop such an internal system. Therefore, as a consequence of allowing exempt public sector superannuation schemes to become subject to the SRC Act, it is also necessary to make a consequential amendment to the SIS Act to require such schemes to have internal complaints systems.

CLAUSE 45A - OBJECT

7. New clause 45A is inserted to provide that the object of Division 18A is to require the trustee of an exempt public sector superannuation scheme that is subject to the SRC Act to set up arrangements for dealing with inquiries or complaints.

CLAUSE 45B - DUTY TO ESTABLISH ARRANGEMENTS FOR DEALING WITH INQUIRIES OR COMPLAINTS

8. New clause 45B is inserted to provide that in section 101 of the SIS Act 'regulated superannuation fund' includes an exempt public sector superannuation scheme that is a regulated superannuation fund for the purposes of the SRC Act.

PART 3 - AMENDMENT OF THE SUPERANNUATION (RESOLUTION OF COMPLAINTS) ACT 1993

9. Part 3 is amended and restructured with the aim of inserting a new Division (Division 3). Division 3 allows for regulations to be made subjecting specified exempt public sector superannuation schemes to the SRC Act and also allows for the Superannuation Complaints Tribunal to perform functions conferred on it by a law of a State or Territory, where those functions relate to exempt public sector superannuation schemes.

CLAUSE 47 - OBJECT

10. Clause 47 is deleted as part of the restructuring of Part 3. In effect it is replaced by new clause 48A.

DIVISION 1 - PRINCIPAL ACT

11. A new Division heading is inserted. The new Division (Division 1) states that the Principal Act is the SRC Act.

DIVISION 2 - TECHNICAL CORRECTION

CLAUSE 48A - OBJECT

12. A new clause 48A is inserted which provides that the object of Division 2 is to make a technical correction to the definition of 'excluded subject matter' in subsection 3(2) of the SRC Act.

DIVISION 3 - AMENDMENT RELATING TO EXEMPT PUBLIC SECTOR SUPERANNUATION SCHEMES

13. The effect of the new division is to allow 'exempt public sector superannuation schemes' to become subject to the SRC Act.

14. Currently only regulated superannuation funds and approved deposit funds are subject to the SRC Act and thus only members of those funds can make use of the Superannuation Complaints Tribunal. Many public sector superannuation schemes will not be regulated funds (instead they will be 'exempt public sector superannuation schemes') and members of such schemes will not therefore be able to use the Complaints Tribunal.

15. This amendment allows such schemes to become subject to the SRC Act if that is appropriate.

CLAUSE 50 - OBJECTS

16. A new clause 50 is inserted which provides that the objects of the new Division 3 are:

- to enable regulations to be made subjecting specified exempt public sector superannuation schemes to the SRC Act; and
- to allow the Superannuation Complaints Tribunal to perform functions conferred on it by a law of a State or Territory, where the functions relate to exempt public sector superannuation schemes.

CLAUSE 51 - INSERTION OF NEW SECTION

17. A new clause 51 is inserted with the effect of inserting a new section 4A into the SRC Act.

18. The new section 4A provides that regulations may provide that a specified exempt public sector superannuation scheme is taken to be a regulated superannuation fund for the purposes of the SRC Act. As a consequence any such scheme would become subject to the SRC Act. To ensure the constitutional power for this amendment is sound the section also provides that the scheme must be a superannuation fund that complies with subsections 19(2) and (3) of the SIS Act or it must be a scheme established by or under a law of the Commonwealth or the authority of the Commonwealth.

CLAUSE 52 - FUNCTIONS

19. A new clause 52 is inserted with the effect of amending section 12 of the SRC Act to provide that the functions of the Superannuation Complaints Tribunal may include functions conferred on the Tribunal by a law of a State or Territory, where the functions relate to one or more exempt public sector superannuation schemes (provided those schemes are not already covered by the SRC Act by virtue of being listed in regulations made for the purposes of new section 4A).

20. This allows the Complaints Tribunal to undertake functions conferred on the Tribunal by State law. It allows State schemes to subject themselves to the Complaints Tribunal by the passing of a State law to that effect. This is effectively an alternative option to being listed under the regulations made under the new section 4A.