

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

SUPERANNUATION LEGISLATION AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister  
Representing the Minister for Finance,  
the Hon Chris Hurford, M.P.)



## OUTLINE

The main purpose of this Bill is to amend the Superannuation Act 1976 (the Principal Act) in respect of the responsibilities and operations of the Superannuation Fund Investment Trust. Changes relating to the Trust are directed at:

- . placing the Trust on a more independent footing with the freedom and flexibility to manage and invest the Superannuation Fund in a commercial manner;
- . enhancing the accountability of the Trust, both to the Parliament and to contributors to the Commonwealth Superannuation Scheme; and
- . defining the role, objective and duties of the Trust.

The Bill also proposes amendments to the Principal Act that:

- . provide the Commissioner for Superannuation with the powers of a Secretary of a Department;
- . correct the anomalous situation that marriage may, in certain circumstances, disentitle a spouse and children from benefits that would otherwise have been payable to them had a relationship continued on a de facto basis;
- . clarify the intention that the test whether a benefit classification certificate should be issued in relation to a person (or an existing certificate revoked or varied) is that the Commissioner for Superannuation is of the opinion that there is (or there is not) a real risk that the person will not continue to be a contributor until maximum retiring age because of a particular physical or mental condition; and
- . enable the Act to be modified by regulations in relation to a contributor who transfers to another superannuation scheme without necessarily changing employment.

Finally, the Bill includes amendments to the Principal Act and to the Superannuation Act 1922 to permit the Minister for Finance to decide certain matters relating to the recovery from employers of the cost of providing superannuation benefits for their staff.

## FINANCIAL IMPACT

There is no direct financial impact on the Government arising out of the amendments proposed in relation to the Trust. The Superannuation Fund is comprised of contributions by eligible employees and does not include employer contributions. Costs of management and administration are borne wholly by the Fund. The Trust will be enabled to invest the Fund on a competitive independent commercial basis in pursuit of improved returns to contributors.

Provision of the powers of a Secretary of a Department to the Commissioner for Superannuation will not result in additional expenditure.

Minimal future additional costs will result from the changes correcting the anomalous disentitlement from benefits of certain spouses and children.

The cost implications of not proceeding with the proposed amendments in relation to benefit classification certificates would be very serious. As an indication of the likely impact, if benefit classification certificates had not been issued for any of those contributors who retired on invalidity grounds in 1984/85, the capitalised cost of the invalidity benefits that became payable in that year would have increased by \$35 million.

The proposed power to modify the Act by regulations in relation to contributors transferring to other superannuation schemes will not of itself have any financial implications. Additional cost (if any) will depend upon the particular arrangements adopted in specific cases.

The changes in the cost recovery arrangements will not result in additional expenditure by or revenue to the Government. They will involve the Commonwealth forgoing some moneys that might legally have been recovered from employers, however, as these employers are all Budget-dependent, any increase in revenue would have to be offset by increased expenditure.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Clauses 1 and 2

These provide for the short title and the commencement of the legislation.

Sub-clause 4(1) and clause 5 will be deemed to have come into operation on 1 July 1976, the date of commencement of the Principal Act. The amendments correct a deficiency in drafting that has the effect of unintentionally making certain spouses and children ineligible for benefits. It was intended that the legislation operate in this manner from the date of its commencement and the amendments are made to operate from that date to cover the one case that has been identified.

Sub-clause 6(1) will also be deemed to have come into operation on 1 July 1976.

The amendments restore to the provisions of section 16 a meaning that accords with their purpose and the manner in which they have been administered. It is appropriate therefore that they operate from 1 July 1976. The amendments would not, however, apply in the particular circumstances described in sub-clause 6(2).

The remaining provisions of the Bill will come into effect on Royal Assent.

### PART II - AMENDMENTS OF THE SUPERANNUATION ACT 1976

#### Clause 3: Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Superannuation Act 1976.

#### Clause 4: Interpretation

Clause 4 inserts definitions of a number of words and expressions used for the purposes of the legislation into sub-section 3(1) of the Principal Act. It also makes one deletion from that section and substitutes some phrases. Significant amendments are set out below.

Sub-clause 4(1) amends the definition of "spouse" with the effect that a person who married a deceased pensioner less than 5 years before the pensioner's death, but after the pensioner attained the age of 60 years (and after he or she became a pensioner) will be entitled to a benefit if:

- the person had previously lived in a de facto relationship with the deceased pensioner that commenced at least 5 years before the pensioner's death but after the pensioner attained the age of 60 years and after he or she became a pensioner;

- . the person had previously lived in a de facto relationship with the deceased pensioner that commenced at least 3 years before the pensioner's death and either before the pensioner attained the age of 60 years or before he or she became a pensioner; or
- . the person had previously lived in a de facto relationship with the deceased pensioner that commenced within 3 years of the pensioner's death and either before the pensioner attained the age of 60 years or before he or she became a pensioner and that person, in the opinion of the Commissioner for Superannuation, was dependent upon the deceased at the time of the pensioner's death.

The amendments are intended to make it clear that marriage does not disentitle a spouse to a benefit that would otherwise have been payable had a de facto relationship continued. The drafting of these definitions in the current legislation unintentionally has the effect of disentitling, in certain instances, a de facto spouse who subsequently marries a pensioner.

Paragraph 4(2)(a) omits the Chairman of the Trust from the definition of "eligible employee". The effect is to remove the mandatory requirement that the principal member of the Trust (the term "principal member" is to replace the term "Chairman" - see clause 9) be a contributor to the Commonwealth Superannuation Scheme. A person appointed to the office of principal member may voluntarily seek admittance to the scheme under the provisions of section 14 of the Principal Act.

Paragraph 4(2)(b) defines the word "invest" so as to include the widest sense of laying out funds for the purpose of earning a present or future financial return.

Paragraph 4(2)(d) defines the expression "relevant industrial organization" as an organization the membership of which is comprised of, or is substantially comprised of, eligible employees (ie, contributors to the Commonwealth Superannuation Scheme).

#### Clause 5: Children of deceased retirement pensioners

This clause amends sub-section 9(1) of the Principal Act in a companion amendment to that made by sub-clause 4(1). The amendments provide that a person who is either the child of a marriage between a deceased pensioner and a person defined to be that pensioner's spouse by virtue of the amendments made by sub-clause 4(1) or who is, by reason of such a marriage, a step-child of a deceased pensioner, shall be an eligible child of that deceased pensioner for the purposes of the Act.

The present drafting of sub-section 9(1) unintentionally has the effect of disentitling such children from benefits.

Clause 6: Medical examinations and benefit classification certificates

This clause seeks to amend section 16 of the Principal Act which provides for the medical examination of new contributors and the issue of benefit classification certificates to them where appropriate. The section also provides for a benefit classification certificate to be revoked, varied or confirmed as appropriate where a contributor requests in accordance with sub-section 16(6) that the certificate be revoked or varied.

Paragraphs 6(1) (a) and (b) would amend sub-section 16(4) to provide for the Commissioner for Superannuation to issue a benefit classification certificate in relation to a person where, after considering the report(s) of the medical examination(s) of the person and other relevant matters, the Commissioner is of the opinion that "there is a real risk" that, because of a particular physical or mental condition(s), the person will not continue to be a contributor until maximum retiring age. The existing sub-section provides for the issue of a benefit classification certificate where the Commissioner is of the opinion that the person is "not likely" to continue to be a contributor until maximum retiring age.

Paragraphs 6(1) (c), (d), (e), (f), (g) and (h) would amend paragraph 16(8)(a) and sub-paragraph 16(8)(b)(i) to provide for the Commissioner to revoke a benefit classification certificate where he is of the opinion that "there is not a real risk" that the person will not continue to be a contributor until maximum retiring age because of the physical or mental condition or conditions specified on the certificate. The existing provisions require the revocation of a certificate where the Commissioner is of the opinion that the person is "not likely" to cease to continue to be a contributor before maximum retiring age.

Paragraphs 6(1) (j) and (k) would amend paragraph 16(8)(b)(ii) to provide for the Commissioner to vary a benefit classification certificate where he is of the opinion that "there is a real risk" that the person will not continue to be a contributor until maximum retiring age because of some, but not all, of the physical or mental conditions specified on the certificate. The existing provisions require the certificate to be varied where the Commissioner is of the opinion that the person is "not likely" to continue to be a contributor until maximum retiring age because of some, but not all, of the conditions.

Sub-clause 6(2) is an application provision.

Sub-clause 2(1) would bring the amendments proposed by sub-clause 6(1) into effect from 1 July 1976, the date of commencement of the Principal Act. Sub-clause 6(2), however, would qualify the retrospective application of the amendments so that they would not affect a decision by the Administrative Appeals Tribunal, made before Royal Assent, setting aside a decision by the Commissioner for Superannuation to issue a benefit classification certificate pursuant to sub-section 16(4).

The purpose of the medical classification provisions of the Act is to protect the Commonwealth against the risk of premature retirement or death caused by a physical or mental condition that existed at the time the person became a contributor. The Commissioner has, therefore, administered the provisions of section 16 on the basis that "likely" means "such as might well happen" or that "there is a real risk". This approach was supported by a 1979 decision (Re Linden) of the Administrative Appeals Tribunal. In a 1985 decision (Re Bewley), however, the Tribunal adopted the approach that "likely" means "more probable than not".

The approach adopted in the recent Tribunal decision imposes a much more severe test for the issue of benefit classification certificates than is appropriate to the purpose of the medical classification provisions. Also, it has serious implications for the administration of those provisions and would render them almost unworkable in view of the difficulty in establishing a particular degree of probability as opposed to that of identifying the existence of a real risk.

The intention of the amendments is to clarify that a benefit classification certificate is:

- (a) to be issued where the Commissioner is of the opinion that there is a real risk that the person will not continue to be a contributor until maximum retiring age;
- (b) to be revoked or varied where the Commissioner is of the opinion that there is not a real risk in relation to all or some of the conditions specified on the certificate.

The amendments are made retrospective to 1 July 1976, the date of commencement of the Principal Act, to clarify that the "real risk" approach has applied since that date. The amendments, however, cannot affect the decision taken by the Tribunal in Re Bewley.



### Clause 7: Staff/Commissioner for Superannuation

The clause proposes a new section 26 to provide for the Commissioner for Superannuation to have staff appointed or employed under the Public Service Act 1922 and to confer on the Commissioner all the powers of, or exercisable by, a Secretary under the Public Service Act 1922. Staff are formally transferred from the direction of the Secretary of the Department of Finance to the Commissioner for Superannuation under the transition provisions provided.

The existing section 26, which is to be repealed, deals with the retention of rights under the now defunct Officers' Rights Declaration Act 1928 by persons appointed as Commissioner for Superannuation. Preservation of rights is now covered by the Public Service Act 1922.

### Clause 8: Objective and duties of Trust

This clause proposes insertion of a new section 29A into the Principal Act to specify the objective and duties of the Trust.

- Sub-section 29A(1) sets out the objective which enjoins the Trust to manage and invest the Superannuation Fund ("the Fund") so as to maximise the return earned. At the same time the Trust is required to have regard to the need:
  - to make provision for payments out of the Fund under the Act,
  - to ensure equity among eligible employees so that different generations of eligible employees are neither advantaged nor disadvantaged by investment decisions,
  - to exercise reasonable care and prudence to maintain the integrity of the Fund; the Trust is required to balance potential return and inherent risk so that the corpus of the Fund is not imprudently or carelessly dissipated.
- Sub-section 29A(2) sets out the duties of the Trust. The Trust will be required to operate so as to achieve its objective, to establish investment policies and strategies to this end and to provide information on the management and investment of the Fund both to eligible employees and relevant industrial organizations.
- Sub-section 29A(3) requires the Trust to develop plans and procedures to implement the strategies it has developed for investment of the Fund in accordance with the duty expressed in paragraph (a) of sub-section 29A(2).

- . Sub-section 29A(4) directs the Trust to have regard to the need to protect sensitive information in carrying out its duties to inform eligible employees and relevant industrial organizations about the management and investment of the Fund.
- . Sub-section 29A(5) requires the Trust in carrying out its duty to inform eligible employees about the management and investment of the Fund, to publish to eligible employees a summary containing relevant information at least once each financial year.
- . Sub-section 29A(6) provides that the Minister may furnish to the Trust (by way of the principal member) a statement of Government policy concerning any matter that is relevant to the performance of the functions of the Trust. The independence of the Trust is preserved by requiring that the Trust consider any policy statement furnished by the Minister, but not requiring that the policy necessarily be observed. Any statement of policy furnished to the Trust by the Minister will be required by sub-section 29A(7) to be laid before each House of the Parliament within 15 sitting days of it being furnished to the principal member.

#### Clause 9: Membership of Trust

This clause proposes to amend section 30 of the Principal Act relating to the structure and composition of the Trust.

Paragraph 9(a) proposes to remove sexist language by replacing the title "Chairman" with "principal member" in paragraph 30(1) (a) of the Principal Act.

Paragraph 9(b) removes the phrase "or a pensioner" from paragraph 30(1) (b) of the Principal Act, so as to provide that, in future, one office of part-time member of the Trust will be confined to persons who are eligible employees, ie, contributors to the Commonwealth Superannuation Scheme. Pensioners having no stake in the Fund after retirement, have no need to participate on the Trust.

Paragraph 9(c) seeks to remake sub-section 30(3) of the Principal Act to provide for the principal member to be appointed as the full-time member of the Trust. The definition of the office of Chairman as the executive member of the Trust will be continued but in respect of the principal member by virtue of the new section 30A proposed to be inserted by Clause 10.

Paragraph 9(d) proposes to omit from sub-section 30(4) of the Principal Act the description of the organizations with which the Minister is required to consult before selection of the eligible employee part-time member of the Trust because that description is being incorporated in a definition of "relevant industrial organization" in sub-section 3(1) of the Principal Act.

Paragraph 9(e) seeks to omit the present sub-section 30(5) of the Principal Act.

Paragraphs 9 (f) to (k) propose minor amendments to various sub-sections of section 30 in accordance with current drafting style requirements and consequent on other proposed amendments.

Clause 10: Principal member

Clause 10 proposes to insert a new section 30A in the Principal Act providing that the principal member is the executive member of the Trust. A similar provision in relation to the Chairman in sub-section 30(3) of the Principal Act is being omitted. In addition, the section sets out the duties of the principal member, including particular responsibility for the staff of the Trust.

Clause 11: Principal member not to engage in other work

This clause is a consequential amendment substituting the title "principal member" for "Chairman".

Clause 12: Remuneration and allowances

This clause will substitute "principal member" for "Chairman" in section 32 of the Principal Act consequent on other amendments. A minor technical correction to the citation of the Remuneration Tribunals Act 1973 will also be made.

Clause 13: Resignation

This clause will amend section 34 of the Principal Act to provide, in conformance with usual practice, that the resignation of a member of the Trust takes effect on delivery of the resignation to the Governor-General.

Clause 14: Disclosure of interests

Sub-clause 14(1) proposes to insert a new section 34A in the Principal Act covering the disclosure of interests to the Trust by Trust members. The existing limited disclosure of interests provision at sub-section 35(3) of the Principal Act is to be omitted by way of paragraph (h) of clause 15.

- Sub-sections 34A(1), (2) and (3) require Trust members to present to a meeting of the Trust a written statement of all interests that could reasonably be expected to conflict with the duties of their offices.

- Statements are required to be presented as soon as possible after appointment and the anniversary of appointment but, in any event, not later than 60 days after the relevant date. If a member comes to have or acquires interests not previously disclosed to the Trust, the member will be required to present as soon as possible a statement of those interests to the Trust. Statements of interest are to be incorporated in the minutes of the Trust.
- Sub-section 34A(4), (5), (6) and (7) require a member of the Trust who has a direct or indirect pecuniary interest in a matter coming before the Trust to disclose that interest to a meeting of the Trust as soon as possible after the facts have come to the member's knowledge. This requirement applies even though the member of the Trust may have previously disclosed the interest to the Trust.
- The member concerned is not to be present during any deliberation or to take part in any decision on the matter in which the interest exists, unless the Trust or the Minister determines otherwise. For this latter purpose, the member is not to be present during the deliberations of the Trust concerning its determination, nor to take part in the making of the determination.

Sub-clause 14(2) is a transitional provision that requires the existing members of the Trust to also declare all interests to the Trust when section 34A of the Principal Act commences and on the anniversary of their appointments thereafter.

#### Clause 15: Termination of appointment

This clause proposes to make amendments to section 35 of the Principal Act concerning the grounds for termination of the appointments of Trust members. A new sub-section 35(1) is proposed which expands the existing grounds for termination of appointment to include inefficiency or incompetence. Amendments to sub-section 35(2) and the omission of sub-sections 35(3) and (4) are proposed as a consequence of other proposed amendments. Sub-section 35(5) of the Principal Act is proposed to be omitted because the Acts Interpretation Act 1901 now makes general provision for references to persons filling statutory offices to include persons acting in those offices.

#### Clause 16: Acting appointments

Clause 16 proposes to remake the present section 36 of the Principal Act relating to the appointment of acting members of the Trust. The new section provides for minor changes but preserves the general thrust of the existing arrangements.

- . Sub-sections 36(1) and (2) provide that the Minister may appoint an acting principal member and acting part-time members of the Trust in appropriate circumstances.
- . Sub-section 36(3) provides that the Minister shall not appoint a person on an acting basis to the office of the part-time member of the Trust, required to be an eligible employee by virtue of paragraph 30(1)(b) of the Principal Act, unless the person is an eligible employee and the Minister has consulted such relevant industrial organizations as are considered appropriate.
- . Sub-section 36(4) provides that an instrument of acting appointment may specify the circumstances in which the acting appointment is to take effect. By this procedure "standing" acting arrangements can be made, if desired, to provide an immediate replacement for any Trust member and thus minimise any disruption to the functioning of the Trust.
- . Sub-section 36(5) provides that an acting Trust member appointed to act in a vacant office on the Trust shall not continue to act for more than 12 months.
- . Sub-section 36(6) provides that if an office of Trust member becomes vacant during the currency of an acting appointment to that office (ie the office was not vacant when the acting appointment was made but the actual appointee to the office subsequently vacates it) the acting appointment may be continued for a maximum period of 12 months from the date the office became vacant.
- . Sub-section 36(7) provides that a person acting in the office of a member of the Trust has and shall exercise and perform all the powers and duties of that office.
- . Sub-section 36(8) provides that the Minister may determine the terms and conditions of appointment, including the remuneration and allowances, of a person appointed as an acting member of the Trust and may terminate the appointment at any time.
- . Sub-section 36(9) provides that a person appointed to a Trust office on an acting basis may resign that appointment.
- . Sub-section 36(10) provides that the validity of the actions of acting members of the Trust will be free from questioning solely on technical grounds relating to the appointments.

Clause 17: Meetings of Trust

Paragraphs 17(a), (b), (c) and (d) seek to amend section 37 of the Principal Act to make amendments consequent on other proposed amendments substituting "principal member" for the term "Chairman".

Paragraph 17(e) seeks to omit sub-section 37(10) of the Principal Act because it is now redundant in the light of the provisions of the Acts Interpretation Act 1901.

Clause 18: Delegation by Trust

This clause proposes to amend section 38 of the Principal Act to permit the Trust to delegate its powers, except the power of delegation, to a person, including any member of the Trust.

Clause 19: Delegation by principal member

This clause seeks to repeal the existing section 39 of the Principal Act and replace it by a new section 39 permitting the principal member to delegate his or her powers, except the power of delegation, to another person, including any other Trust member. The existing section 39 of the Principal Act applies the Officers' Rights Declaration Act 1928 to a person appointed to the office of Chairman of the Trust and is redundant in the light of the present provisions of the Public Service Act 1922.

Clause 20: Fund to be managed by Trust

This clause proposes to amend section 41 of the Principal Act to provide a number of additional powers to the Trust to increase its flexibility in managing and investing the Fund.

Paragraph 20(a) proposes to insert in sub-section 41(2) of the Principal Act two additional paragraphs empowering the Trust to underwrite or sub-underwrite any form of investment and to borrow moneys. Paragraph 20(c) proposes, among other amendments, to include a sub-section 41(6) in the Principal Act to make it clear that the power to underwrite or sub-underwrite operates in relation to the issue of shares, debentures or units in a unit trust. It is proposed to include new sub-sections 41(3) and (4) in the Principal Act also by way of paragraph 20(c) to limit the Trust's borrowings to no more than 10 per cent of the market value of the assets of the Fund and to provide that the Trust may secure borrowings over the assets of the Fund.

Paragraph 20(b) proposes to empower the Trust to engage investment managers in the sense, as defined by the new sub-section 41(7) proposed to be included in the Principal Act by paragraph 20(c), of placing funds with persons for management and investment on behalf of the Trust.

Paragraph 20(c) proposes to also insert new sub-sections 41(5) and 41(8) in the Principal Act. The proposed new sub-section 41(5) will enable the Trust to take any action considered necessary to control, to manage, to enhance or protect the value of any investment and to enhance or protect the return from any investment. This provision will enable the Trust to operate flexibly in a competitive environment in the best interests of eligible employees.

The new sub-section 41(8) will ensure that nothing included in sections 41 or 42 can be taken as detracting from the duties of the Trust proposed for insertion in the Principal Act as section 29A by Clause 8.

#### Clause 21: Investment of the Fund

Clause 21 seeks to amend section 42 by widening the Trust's powers of investment to the greatest possible extent and omitting sub-section 42(6) of the Principal Act which presently contains definitions of various forms of investment. It also proposes to omit sub-section 42(4) of the Principal Act which requires the Trust to observe in its investment of the Fund an equivalent of the "30/20 rule" which was previously applicable to private sector superannuation funds seeking exemption of investment income from income tax.

#### Clause 22: Borrowing

This clause proposes to repeal section 43 of the Principal Act which presently empowers the Minister to lend moneys to the Fund. By paragraph 20(a) a power for the Trust to borrow is proposed to be included in sub-section 41(2) of the Principal Act.

#### Clause 23: Trust to keep accounts and records in respect of Fund

This clause proposes to amend section 44 of the Principal Act to insert a new sub-section 44(1A) which provides for accounts kept by the Trust in respect of the Fund to be kept consistently with any accounting policies prescribed in regulations under the Principal Act.

#### Clause 24: Staff

Clause 24 proposes to insert a new Division 3 of Part III of the Principal Act (sections 44A and 44B) to provide:

- . Power for the Trust to employ its own staff.
- . Arrangements permitting those members of the staff of the Trust not covered by the mobility provisions of Part IV of the Public Service Act 1922 to apply for and be appointed (promoted) to any advertised vacancies in the Australian Public Service ("the APS").

- . Section 44A provides that the Trust may employ such staff as is considered necessary to enable it to carry out its functions and duties and to exercise its powers. The terms and conditions of employment of Trust staff are to be determined by the Trust with the approval of the Minister.
- . Section 44B provides for Trust officers and employees to have certain rights of entry to the APS.
- . Sub-section 44B(1) provides that a member of the Trust's staff (a "relevant staff member", ie, a staff member not covered by the mobility provisions of Part IV of the Public Service Act 1922) may apply for appointment to any APS office advertised as vacant in the Commonwealth Gazette. Such relevant staff members will then be subject to normal APS selection procedures.
- . Sub-section 44B(2) empowers the Public Service Board to appoint a relevant staff member, whose appointment is requested by the Secretary of the Department concerned, to a vacant APS office.
- . Sub-section 44B(3) provides that an appointment by the Public Service Board of the relevant staff member to a vacant APS office is not subject to a probationary period, provided that the relevant staff member has been employed by the Trust for 12 months or more. The relevant staff member will be required to meet the requirements of the Public Service Act 1922 in relation to Australian citizenship, medical examination, and being a fit and proper person for appointment to the APS.
- . Sub-section 44B(4) provides that the provisions of the Public Service Act 1922 relating to the transfer and promotion of officers other than Senior Executive Service officers generally apply.
  - Paragraph 44B 4(a) applies those provisions with the exception of sections 50E, 50EA and 52 of the Public Service Act 1922. The provisions excluded deal respectively with the day on which promotion takes effect, multiple promotions, and declining a promotion or transfer. Subsequent paragraphs incorporate the required portions of the sections of the Public Service Act 1922 not already applied. The appointment of a relevant staff member is deemed to be a promotion made under either section 50DA of the Public Service Act 1922, ie, on the advice of a Joint Selection Committee, or under section 50 of that Act. Promotions under section 50DA are not subject to appeal, while appeals may be made against promotions under section 50.



- Paragraph 44B 4(a) also applies the provisions of the Merit Protection (Australian Government Employees) Act 1984. That Act establishes the Merit Protection and Review Agency and empowers the Agency to, inter alia, establish Promotion Appeal Committees to determine appeals against promotions.
- By paragraph 44B 4(b)(i)(A) the deemed promotion under section 50 of the Public Service Act 1922 of a relevant staff member takes effect on the prescribed day in circumstances where no appeals have been lodged; or appeals have been lodged but either become inoperative or are disallowed before the prescribed day. For the purposes of the Public Service Act 1922, the prescribed day is 35 days after Gazettal of a promotion.
- Paragraph 44B 4(b)(i)(B) provides that the deemed promotion takes effect on the latest day on which any appeals either become inoperative or are disallowed, when that day is later than the prescribed day.
- Paragraph 44B 4(b)(ii) provides that a deemed promotion made under section 50DA of the Public Service Act 1922 (which is not appealable) takes effect on the prescribed day.
- By paragraph 44B 4(c) a relevant staff member may decline a deemed promotion which is then taken not to have been made.
- By paragraph 44B 4(d) an appointment of a relevant staff member to a vacant APS office does not take effect until the deemed promotion takes effect. This provision forestalls any difficulties that could arise from an appointment of a relevant staff member taking effect but the deemed promotion of that relevant staff member being overturned on appeal or being declined.
- Paragraph 44B 4(e) deems a relevant staff member to be absent on leave without pay until that relevant staff member commences to perform the duties of the office to which he has been appointed. Accordingly, a relevant staff member appointed to the APS will not be eligible to be paid in respect of his new office until actually commencing work in that office.

- Paragraph 44B 4(f) permits the Public Service Board to cancel the appointment of a relevant staff member if that person does not commence work in the APS within a reasonable time after his or her appointment takes effect. This provision permits a relevant staff member some flexibility in determining the time of commencement in the APS but allows the Public Service Board to take action to cancel the appointment where the relevant staff member does not genuinely wish to take up that appointment.
- . Sub-section 44B(5) defines certain words and expressions used in section 44B as having the same meaning as they do in the Public Service Act 1922. A "relevant staff member" is defined as being a person not covered by the staff mobility provisions of the Public Service Act 1922.

Clause 25: Former contributors who become members of another superannuation scheme

This clause would introduce a new section 126A enabling the Act to be modified by regulations in relation to former eligible employees (ie contributors) who become members of another superannuation scheme.

- . Sub-section 126A(1) provides that the section applies to a person who has ceased, or is to cease, to be an eligible employee and has, or will, become a member of another superannuation scheme.
- . Sub-section 126A(2) enables regulations to be made modifying the Act in relation to persons described in sub-section 126A(1).
- . Sub-section 126A(3) provides that the modifications that may be made by regulations may include, but are not limited to, certain specified matters.
- . Sub-section 126A(4) provides that regulations made by virtue of paragraph 126A(3)(e) have effect notwithstanding any law of the Commonwealth or a State or Territory that is inconsistent with the regulations.

The intention of the new section is to provide flexibility where contributors transfer to another superannuation scheme without necessarily changing their employment and to enable such transfers to take place on terms appropriate to the circumstances. The new section would complement the existing section 126 which enables the Act to be modified in relation to persons who transfer from another superannuation scheme without changing their employment.

Clause 26: Payments to the Commonwealth by authorities in respect of eligible employees

Clause 26 amends section 159 of the Principal Act which imposes on employers, other than the Commonwealth, an obligation to reimburse the Commonwealth for the cost of superannuation benefits paid to their staff under the Principal Act. The intention is that an employer only be required to reimburse the Commonwealth for the employer-financed share of any benefit that accrued in respect of service with the employer.

Sub-clause 26(1) replaces the existing sub-section 159(2) of the Principal Act with new sub-sections (2), (2A), (2B), (2C) and (2D) and inserts a new sub-section (4):

- The new sub-section 159 (2) enables the Minister for Finance to determine the amount of an employer's liability to the Commonwealth.
- The new sub-section 159 (2A) provides that the employer's liability cannot exceed the amount of the superannuation benefit actually paid.
- The new sub-section 159 (2B) enables a determination to have retrospective effect. In the absence of this provision, an employer would be liable to reimburse the Commonwealth for the total benefits paid since 1 July 1976 not just the appropriate employer-financed part.
- The new sub-section 159 (2C) is intended to put beyond doubt that where a person has been employed by two or more employers, the cost of the benefit can be shared between those employers.
- The new sub-section 159 (2D) concerns the timing of payments by an employer to discharge its obligation under section 159. Employers are required to reimburse the Commonwealth as benefits are paid to former employees, but the former sub-section 159(2) enabled an employer to enter into an arrangement with the Minister for Finance to discharge its obligations on an accruing cost basis by a series of payments that are different from, but equivalent to, those otherwise required. Sub-section 159 (2D) remakes that provision but also adds a power for the Minister for Finance to require an employer to enter into such an arrangement. The exercise of this power would be warranted where an employer failed to make proper provision to meet its superannuation obligations.

- The new sub-section 159 (4) provides that the liability of an employer under the section for benefits paid to a former employee could be reduced to nil. This will enable those Budget-dependent employers that were treated as if exempt from any liability accruing prior to 1 July 1981, to be formally relieved of that liability.

Sub-clause 26(2) is a transitional provision enabling arrangements made between the Minister for Finance and an employer under the previous sub-section 159(2) to continue in force after the passage of this Bill.

#### Clause 27: Annual report of Trust

Clause 27 proposes to insert new sub-sections 161(4), (5), (6) and (7) in the Principal Act.

- Sub-section 161(4) requires the Trust, in circumstances where it is unable to furnish its annual report within the required period, to furnish the Minister with an interim report on its management of the Fund. The interim report will incorporate interim financial statements and is to be furnished to the Minister within 14 days of the end of the required period for submission of the Trust's annual report.
- Sub-section 161(5) requires the interim financial statements to accompany the interim report to be presented in the normal form, but it is proposed that the interim financial statements need not have been subject to audit by the Auditor-General.
- Sub-section 161(6) requires the interim report and financial statements to be laid before each House of the Parliament within 15 sitting days of their being received and for copies of both to be made available to the Australian Council of Trade Unions. On request, copies are also to be made available to relevant industrial organizations.
- Sub-section 161(7) requires that any report made under the section by the Trust, ie, an annual report or an interim report, include particulars of any statement of Government policy furnished to the principal member of the Trust by the Minister under the proposed sub-section 29A(6). Details of both the consideration given by the Trust to the matter(s) and the action taken (if any) are to be also reported.

### PART III - AMENDMENTS OF THE SUPERANNUATION ACT 1922

#### Clause 28: Principal Act

This clause defines the "Principal Act" for the purposes of this Part to be the Superannuation Act 1922.

Clause 29: Payments to the Commonwealth by approved authorities

Clause 29 repeals and remakes section 145 of the Superannuation Act 1922 which imposes on employers, other than the Commonwealth, an obligation to reimburse the Commonwealth for the cost of superannuation benefits paid to employees who retired before 1 July 1976.

Sub-clause 29(1) inserts the new section 145:

- . Sub-sections 145 (1) and (2) enable the Minister for Finance to determine the amount of an employer's liability to the Commonwealth in respect of benefits payable after 1 July 1976.
- . Sub-section 145 (3) is intended to put beyond doubt that where a person has been employed by two or more employers, the cost of the benefit can be shared between those employers.
- . Sub-section 145 (4) concerns the timing of payments by an employer to discharge its obligations under section 145 and corresponds to the new sub-section 159(2D) inserted in the Superannuation Act 1976 by sub-clause 24(1).
- . Sub-sections 145 (5) and (6) will enable those employers that were treated as if exempt from any obligation to reimburse the Commonwealth for the cost of benefits accrued before 1 July 1981 to be formally relieved of that liability.

Sub-clause 29(2) is a transitional provision enabling arrangements made between the Minister for Finance and an employer under the previous sub-section 145(2) to continue in force after the passage of this Bill.





