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**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

SENATE

**SUPERANNUATION LEGISLATION (COMMONWEALTH
EMPLOYMENT) REPEAL AND AMENDMENT BILL 1998**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

(Circulated by the authority of the Minister for Finance and Administration, the Hon
John J Fahey, MP)

AMENDMENTS OF THE SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 1998

OUTLINE OF AMENDMENTS

Current provisions in the Bill

The *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998* was introduced into Parliament in a package of Bills to make amendments to the various Acts which provide, amongst other things, for superannuation schemes for employees of the Commonwealth and agencies.

The major purpose of the package is to enable choice of superannuation funds for new Commonwealth employees from 1 July 1999 and for existing Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) members from 1 July 2000. The Bills provide for the PSS to be closed to new members from 1 July 1999.

Other significant changes include new administration arrangements for the Commonwealth's superannuation schemes for its civilian employees. The Commonwealth Superannuation Board (the CS Board) will be established to take over responsibility for the management of the CSS and the PSS from the current CSS and PSS Boards while continuing to administer the CSS and PSS Funds as separate entities. The CS Board will also have responsibility for the administration of two other schemes that were closed at an earlier date.

The package will repeal the *Superannuation Act 1976* (the 1976 Act), the *Superannuation Act 1990* (the 1990 Act), the *Superannuation Act 1922* (the 1922 Act) and the relevant provisions of the *Papua New Guinea (Staffing Assistance) Act 1973*. However, the repealed legislation will be saved to have effect only in relation to existing members and any other persons who may have had entitlements under those Acts in the future, for example, reversionary beneficiaries.

Proposed amendments

These amendments, along with the amendments proposed to the other Bills in the package, are intended to change the date of effect of the new superannuation arrangements for Commonwealth civilian employees from 1 July 1999 to 1 July 2003 including:

- closing the PSS to new employees;
- allowing existing CSS and PSS members to choose to leave their scheme;
- amalgamating the CSS and PSS Boards into the CS Board;
- repealing the legislation with savings provisions;
- technical amendments to ensure the provisions work as intended;
- further technical amendments to comply with other changes relating to the New Tax Arrangements and the Criminal Code; and

- removing provisions which restricted access to cash lump sums for CSS and PSS members who were retrenched between 1 July 1999 and 30 June 2000.

Financial Implications

The original Bill provided for closure of the PSS to new members from 1 July 1999, and for choice to apply to existing CSS and PSS members from 1 July 2000. Under the proposed amendments to the Bill, the closure of the PSS to new members and choice for existing members of the CSS and PSS will apply from 1 July 2003.

With a 1 July 2003 start date, the funding of future superannuation accruals for new employees and for existing CSS and PSS members who elect to join another complying superannuation fund or Retirement Savings Account will have the following negative impact on the underlying cash balance: \$220 million in 2003-04, \$260 million in 2004-05. This compares with the estimates based on the original start date of \$12 million in 1999-00, \$265 million in 2000-01 and \$295 million in 2001-02.

The fiscal balance impact of superannuation for new employees and existing CSS and PSS members who elect to join another complying superannuation fund or Retirement Savings Account will be offset by the reduction in expenses for the CSS and the PSS.

TERMS USED IN EXPLANATORY NOTES

"1976 Act" means the *Superannuation Act 1976*;

"1990 Act" means the *Superannuation Act 1990*;

"CSS" means the Commonwealth Superannuation Scheme;

"Parliamentary Contributory Act" means the *Parliamentary Contributory Superannuation Act 1948*

"PB Act" means the *Superannuation (Productivity Benefit) Act 1988*;

"PSS" means the Public Sector Superannuation Scheme;

"Repeal and Amendment Bill" means the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998*;

"Savings and Transitional Bill" means the *Superannuation Legislation (Commonwealth Employment – Saving and Transitional Provisions) Bill 1998*;

"Supervisory Mechanisms Act" means the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

NOTES ON AMENDMENTS TO THE SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 1998

Amendments 1 to 4 - Commencement

These four amendments all provide for the new commencement date of 1 July 2003.

2. **Amendments 1 to 4** apply the changed date to the parts of the Bill that provide for new superannuation arrangements for Commonwealth civilian employees including:

- closing the PSS to new members;
- providing for existing CSS and PSS members to choose to leave the schemes;
- changing the arrangements for the administration of the CSS the PSS and the PB Act;
- simplifying some of the CSS and PSS provisions to allow the closed schemes to be administered in a more cost-effective way;
- repealing the 1922, 1976, 1990 and PB Acts.

Amendment 5 – Commencement provision

3. Items 4A, 7A and 13A of Schedule 12 amend provisions inserted into the Parliamentary Contributory Act by the proposed *Superannuation Legislation Amendment (Post-retirement Commutations) Act 2001* to allow the Parliamentary Retiring Allowances Trust to consult with any actuary in relation to certain matters.

4. **Amendment 5** provides that if that Act has not commenced before Royal Assent those amendments are taken to have commenced immediately after the commencement of that Act.

Amendment 6 – Consequential Amendment

5. **Amendment 6** amends item 14 of Schedule 1 as a consequence of the enactment of the *Corporations Act 2001*.

Amendments 7 and 8 – Change of application date

6. Item 15 of Schedule 1 to the Repeal and Amendment Bill makes certain provisions in relation to dates of effect of declarations made for the purposes of paragraph (g) of the definition of "eligible employee".

7. **Amendments 7 and 8** replace 1 July 1999 with 1 July 2003.

Amendment 9 – Change of application date

8. Item 18 of Schedule 1 of the Repeal and Amendment Bill inserts a number of new provisions in the 1976 Act including section 3E to allow CSS members to choose to leave the CSS without ceasing to be employed.

9. **Amendment 9** ensures that CSS members will have that choice from 1 July 2003 rather than 1 July 2000 as presently drafted.

Amendments 10 to 30 – Change of application date

10. **Amendments 10 to 30** change the dates of application of a number of provisions providing for the new arrangements from 1 July 1999 to 1 July 2003.

Amendments 31 to 34 – Benefits available to a person who has elected to leave the scheme under section 3E

11. Item 82 of Schedule 1 to the Repeal and Amendment Bill inserts new Part VIC to provide for choice benefits for persons who make an election to cease membership of the CSS under section 3E.

12. No benefit becomes payable to the person at the time of exercising choice. In general, benefits will become payable when the person reaches at least minimum retiring age and ceases to be employed. However, certain benefits may become payable when the person resigns, or is involuntarily retired from the employment during which their CSS membership could have continued if they had not chosen to leave the scheme.

Benefits available on involuntary retirement

13. Subdivision C of Part VIC provides for the benefits that may be available to such a person if he or she is involuntarily retired from employment after ceasing membership. Subsection 110TQ(1) provides that a person may elect to receive alternative choice benefits rather than leave their benefits preserved in the scheme. Subsection (3) provides that a person must choose between two options, either to roll over the full amount of their benefit to another scheme for preservation (subsection (4)) or to take the available amount in cash and rollover the rest of the benefit for preservation (subsection (5)).

14. **Amendment 31** inserts new subsection (5A) to provide that, if the person does not make a choice under subsection (3) the default option is that provided for under subsection (5).

Benefits applying on resignation because of sale or outsourcing

15. Subdivision D of Part VIC provides for the benefits that may be available to such a person if he or she resigns from employment as a result of sale, transfer or outsourcing. Part VID as inserted by item 251 of Part 6 of schedule 1 to this Bill provides for the benefits that will be available to members of the scheme who resign from employment as a result of sale, transfer or outsourcing.

16. **Amendment 32** makes a technical change to new subsection 110TR(1). This will ensure that the benefit available under subdivision d of Part VIC are only available to a person who would have been entitled to a benefit under Part VID if he or she had continued to be a member of the scheme until resignation as intended.

17. **Amendment 33** makes a correction to new subsection 110TR(2). This ensures that the benefits available to a person under subdivision D use the adjusted factor that applies to the new choice benefit rather than the factor applicable to a person who had remained in the scheme until resignation.

Choice Benefits available to a person over minimum retiring age

18. Division 4 of new Part VIC provides for benefits that that will be available to a person who makes an election under section 3C after attaining minimum retiring age. The benefit is generally similar to the benefit payable after postponement under Part VIB of the 1976 Act.

19. Benefits under Part VIB are based, among other things, on salary as updated by AWOTE between the time of cessation of membership and the payment of benefit.

20. **Amendment 34** corrects new section 110TT to ensure that the period during which salary is to be updated ends at the time when the benefit becomes payable rather than when the person's employment ceased.

Amendments 35 to 42 – Change of application date

21. **Amendments 35 to 42** change the dates of application of a number of provisions providing for the new arrangements from 1 July 1999 to 1 July 2003.

Amendment 43 – Delegations by the CSS Board

22. Section 27Q of the 1976 Act provides for the CSS Board to be able to delegate its power to a number of persons.

23. **Amendment 43** amends the section to allow a person to whom the Board has delegated its power to sub delegate that power to one of the other persons to whom the power may be delegated. Generally a delegated power may be sub delegated to a person referred to by the same or a later paragraph of the section.

Amendments 44 and 45 –Availability of cash lump sums on retrenchment - CSS

24. **Amendments 44 and 45** provide that items 249 and 250 of Schedule 1 to the Repeal and Amendment Bill are to be opposed. These items were to amend the 1976 Act to bring forward the date of restriction on cash lump sums on retrenchment from 1 July 2000 to 1 July 1999. As that date is now past the amendments would have had no effect.

Amendments 46 to 48 – Actuarial advice

25. **Amendments 46 and 47** amend subsections 62AC(1), 62A(5), 110SB(1), 110SB(5) of the 1976 Act to allow any actuary rather than only the Australian Government Actuary to make a determination in relation to a person's **notional accumulated SG contributions**.

26. **Amendment 48** amends subsection 110SE(6) of the 1976 Act to allow any actuary rather than only the Australian Government Actuary to certify that the value of a person's benefits meet the superannuation guarantee requirements.

Amendment 49 – Benefits on ceasing to be a members because of sale or outsourcing

27. Item 251 of Part 7 of Schedule 1 to the Repeal and Amendment Bill inserts new Part VID into the 1976 Act to provide for benefits where a person ceases to be a CSS member because of the sale of an asset or the transfer of a function (outsourcing).

28. Subsection 110TV(3) provides that a person must choose between two options, either to roll over the full amount of their benefit to another scheme for preservation (subsection (4)) or to take the available amount in cash and rollover the rest of the benefit for preservation (subsection (5)).

29. **Amendment 49** inserts new subsection (5A) to provide that, if the person does not make a choice under subsection (3) the default option is that provided for under subsection (5).

Amendment 50 – Judgment orders

30. **Amendment 50** amends item 253 of Schedule 1 as a consequence of amendments made to section 119 of the 1976 Act by the *Financial Sector Reform (Consequential Amendments) Act 1998*.

Amendments 51 to 53 – Technical Amendments

31. **Amendments 51 to 53** make a number of minor technical amendments to ensure item 267 of Schedule 1 works correctly.

Amendment 54 – Consequential Amendment

32. **Amendment 54** amends item 9 of Schedule 3 as a consequence of the enactment of the *Corporations Act 2001*.

Amendments 55 to 61 – Change of application date

33. **Amendments 55 to 61** change the dates of application of a number of provisions included in schedule 3 of the Repeal and Amendment Bill to amend the 1990 Act. These amendments ensure that the new arrangements will apply from 1 July 2003 rather than 1 July 1999.

Amendment 62 – Change of application date

34. Item 16 of Schedule 3 of the Repeal and Amendment Bill inserts section 6AA in the 1990 Act to allow PSS members to chose to leave the PSS without ceasing to be employed.

35. **Amendment 62** ensures that PSS members will have that choice from 1 July 2003 rather than 1 July 2000 as presently drafted.

Amendments 63 – Change of application date

36. **Amendment 63** changes the date of item 29 of schedule 3 of the Repeal and Amendment Bill from 1 July 1999 to 1 July 2003 to ensure that new membership arrangements will apply from 1 July 2003 rather than 1 July 1999.

Amendment 64 – Delegations by the PSS Board

37. Section 28A of the 1990 Act provides for the PSS Board to be able to delegate its power to a number of persons.

38. **Amendment 64** amends the section to allow a person to whom the Board has delegated its power to sub delegate that power to one of the other persons to whom

the power may be delegated. Generally a delegated power may be sub delegated to a person referred to by the same or a later paragraph of the section.

Amendments 65 to 80 – Availability of cash lump sums on retrenchment – PSS

39. Schedule 5 to the Repeal and Amendment Bill makes a number of amendments to the Rules for the Administration of the Public Sector Superannuation Scheme contained in the Schedule to the Trust Deed (within the meaning of the 1990 Act). The amendments provide for the benefits available on retrenchment generally, and on retrenchment or resignation in the circumstances of the sale of an asset or the transfer or outsourcing of a function.

40. The amendments in the schedule were originally drafted to provide, among other things, for the availability of cash lump sums on retrenchment to be restricted from 1 July 1999 rather than 1 July 2000 as the PSS rules currently provide.

41. **Amendments 65 to 80** amends Schedule 5 to retain the existing restriction on cash lump sums on retrenchment of 1 July 2000.

Amendments 81 and 82 – Change of application date

42. **Amendments 81 and 82** change the date of item 1 of schedule 7 of the Repeal and Amendment Bill from 1 July 1999 to 1 July 2003.

Amendments 83 and 84 – Provision of superannuation for people employed under the Public Service Act 1999

43. **Amendments 83 and 84** insert provisions into the Supervisory Mechanisms Act to put beyond doubt the capacity of certain employers to pay superannuation for their employees other than under the existing legislation. Included in the relevant employers are those who employ under the *Public Service Act 1999*.

Amendment 85 and 86 – Actuarial advice

44. **Amendment 85** amends item 4 of Schedule 12 to allow the Parliamentary Retiring Allowances Trust to consult with any actuary in relation to the commutation of certain pro-rata reversionary benefits resulting from post-retirement marital relationships.

45. **Amendment 86** inserts item 4A to amend subsection 19AAA(6) to allow the Parliamentary Retiring Allowances Trust to consult with any actuary in relation to the commutation of a spouse's annuity to meet a surcharge liability.

Amendment 87 – Technical correction

46. **Amendment 87** makes a technical correction to item 6.

Amendment 88 – Actuarial advice

47. **Amendment 88** inserts item 7A to amend subsection 19ABA(6) to allow the Parliamentary Retiring Allowances Trust to consult with any actuary in relation to the commutation of a child's annuity to meet a surcharge liability.

Amendment 89 to 93 – Apportioning reversionary benefits

48. Section 21AA of the Parliamentary Contributory Act is intended to enable the Parliamentary Retiring Allowances Trust to apportion benefits on a needs basis where there is more than one reversionary beneficiary. Items 9 to 12 of Schedule 12 to the Repeal and Amendment Bill correct a drafting error affecting the intended application of section 21AA.

49. **Amendments 89 to 93** insert revised amendments to section 21AA to correct a drafting error relating to apportioning reversionary benefits so as to accommodate the amendments to section 21AA made by the proposed *Superannuation Legislation Amendment (Post-retirement Commutations) Act 2001*. These revised amendments maintain the character of the original amendments.

Amendment 94 – Actuarial advice

50. **Amendment 94** inserts item 13A to amend subsection 22B(1) to allow the Parliamentary Retiring Allowances Trust to consult with any actuary in relation to the determination of factors for the conversion of a surcharge commutation amount to a pension.