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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1992
EXPLANATORY MEMORANDUM

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



SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1992

GENERAL OUTLINE AND MAIN PURPOSE OF BILL

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1992, Occupational Superannuation Standards Amendment Bill 1992, Superannuation Supervisory Levy Amendment Bill 1992, Superannuation (Rolled Over Benefits) Levy Bill 1992, Superannuation Industry (Supervision) Consequential Amendments Bill 1992 and Superannuation (Financial Assistance Funding) Levy Bill 1992, 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 most of the new prudential arrangements for superannuation that the Treasurer announced on 21 October 1992.

This Bill will establish arrangements for the resolution of complaints made by members and beneficiaries of superannuation funds and approved deposit funds about decisions or trustees.

The Bill gives effect to the Government's decision to develop a low-cost, disputes resolution mechanism for the superannuation industry. Provisions in the Superannuation Industry (Supervision) Bill 1992 require superannuation funds and approved deposit funds to have appropriate internal arrangements for the handling and consideration of beneficiaries' complaints and enquiries in a timely manner. This Bill will establish a independent statutory mechanism for resolving certain complaints that are not settled through a fund's internal arrangements.

The Bill provides for:

- . establishment of a Superannuation Complaints Tribunal to resolve complaints through conciliation or if this is not practicable, to review the decision of the trustee to which the complaint relates;
- . appointment of a Tribunal Chairperson as a full-time statutory officeholder; and
- . appointment of members to the Tribunal by the Minister, with two of those persons to be appointed in consultation with the Minister for Consumer Affairs.

The disputes resolution arrangements will apply to all superannuation funds and approved deposit funds regulated by the Insurance and Superannuation Commission under the Superannuation Industry (Supervision) Bill 1992. Accordingly, they will cover superannuation products offered by life offices as these are provided through a trust structure and are subject to supervision by the Insurance and Superannuation Commission. Subject to certain rights of appeal, trustees of superannuation funds and ADFs will be bound by the determinations of the Tribunal.

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 Occupational Superannuation Standards Amendment Bill 1992, Superannuation (Financial Assistance Funding) Levy Bill 1992, Superannuation (Rolled Over Benefits) Levy Bill 1992, Superannuation Supervisory Levy Amendment Bill 1992, Superannuation Industry (Supervision) Consequential Amendments Bill 1992 and the Superannuation Industry (Supervision) Bill 1992, 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 \$4.155m in 1992-93, \$4.831m 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 1992.

**EXPLANATORY NOTES ON SUPERANNUATION (RESOLUTION OF COMPLAINTS)
BILL 1992**

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

1. This clause provides a mode of citation of the Bill.

CLAUSE 2 COMMENCEMENT

2. This clause provides for the Bill to come into operation on a day to be proclaimed, save that it must commence no later than 6 months after the giving of Royal Assent.

CLAUSE 3 INTERPRETATION

3. This clause sets out definitions of a number of words and expressions for the purposes of the Bill. Subclause (2) provides that an action by a trustee of a fund includes an action by an agent or other person acting on behalf of the trustee.

**PART 2 - ESTABLISHMENT AND CONSTITUTION OF THE SUPERANNUATION
COMPLAINTS TRIBUNAL**

CLAUSE 4 ESTABLISHMENT

4. Self explanatory.

CLAUSE 5 MEMBERSHIP

5. This clause provides that the Tribunal is to comprise not less than 5 but not more than 8 members, that the Tribunal Chairperson is to be appointed by the Governor-General and holds office on a full-time basis, and that the other members of the Tribunal are to be appointed by the Minister and hold office on a part-time basis.

CLAUSE 6 ELIGIBILITY FOR APPOINTMENT

6. This clause sets out the conditions under which a person will be eligible for appointment as Tribunal Chairperson or as a Tribunal member.

7. Subclause (4) provides that a person may only be appointed as a member of the Tribunal on the basis of their knowledge or experience.

8. Subclause (5) provides that two of the Tribunal members, other than the Tribunal Chairperson, are to be appointed by the Minister after consultation with the Minister for Consumer Affairs.

CLAUSE 7 CONSTITUTION OF TRIBUNAL IN RELATION TO PARTICULAR COMPLAINTS

9. This clause provides that for the purpose of consideration of particular complaints the Tribunal Chairperson and two other Tribunal members, selected by the Chairperson on the basis of their experience, qualifications and suitability in relation to the particular complaint concerned, are to constitute the Tribunal.

10. The Tribunal Chairperson is to chair meetings of the Tribunal which is to follow such procedures at those meetings as he determines. A decision of the Tribunal in relation to any particular complaint is to be the decision of the majority.

CLAUSE 8 DISCLOSURE OF INTERESTS

11. This clause provides for disclosure of financial interests by Tribunal members, and ensures that no member of a Tribunal constituted by the Tribunal Chairperson to consider a particular complaint has a financial interest in that matter.

DIVISION 3 - FUNCTIONS OF THE TRIBUNAL

CLAUSE 9 FUNCTIONS

12. This clause sets out the functions of the Tribunal. Subclause (1) provides that its functions are to try to resolve complaints by conciliation and, where it is not practicable to resolve a complaint in this way, to review the decision of the trustee to which the complaint relates. In this regard a complaint must relate specifically to a decision of the trustees of the fund in relation to the complainant.

13. Subclauses (2), (3) and (4) set out the circumstances in which the Tribunal does not have power to deal with a complaint, including where the complainant has not first utilised his or her fund's internal arrangements for dealing with complaints before referring the matter to the Tribunal.

CLAUSE 10 TRIBUNAL TO ISSUE A MEMORANDUM EXPLAINING HOW COMPLAINTS ARE TO BE DEALT WITH

14. This clause provides that the Tribunal must prepare and make available to members of superannuation funds and beneficiaries in approved deposit funds, a memorandum setting out the procedural matters specified in paragraphs (a), (b) and (c) of subclause (1).

CLAUSE 11 POWER TO OBTAIN INFORMATION AND DOCUMENTS

15. This clause provides that the Tribunal, by notice in writing signed by the Chairperson, may require a person to provide information or documents relevant to a complaint made under this Act, and make take and retain possession of any documents produced, and make copies and take extracts as appropriate.

16. Subclause (3) provides that the Tribunal must allow a person who would be entitled to inspect the documents if they were not in the Tribunal's possession to inspect those documents.

CLAUSE 12 REVIEW OF DECISIONS

17. This clause provides that for the purpose of reviewing a decision of a trustee of a fund, the Tribunal has all the powers and discretions conferred on the trustee by law or by the governing rules of the fund, and is to make a determination in writing as provided in paragraphs (1)(a) to (d). The Tribunal reviews the merits of the trustee's decision and must affirm the decision unless it is satisfied that the decision was clearly unfair or unreasonable. The Tribunal cannot vary a decision, substitute a decision or give a direction to the trustee, where such action would be contrary to law or the governing rules of the fund.

18. This clause also provides that a determination of the Tribunal is to be accompanied by reasons and sets out the persons to whom the determination is to be made available, and when a determination is taken to have effect.

19. Subclause (9) provides that a determination of the Tribunal which varies or replaces a decision of the trustee of a fund is taken to be the decision of the trustee and, unless the Tribunal otherwise orders, to have come into effect on the day the trustee's decision has or had effect.

PART 4 - APPEALS

CLAUSE 13 APPEALS TO FEDERAL COURT OF AUSTRALIA FROM DETERMINATIONS OF THE TRIBUNAL

20. This clause provides for the making by a trustee or complainant affected by a determination of the Tribunal of an appeal to the Federal Court on a question of law. The clause sets out the powers of the Federal Court in relation to appeals, including that it may make such orders in relation to its decision on the appeal as it thinks appropriate.

CLAUSE 14 OPERATION AND IMPLEMENTATION OF A DETERMINATION THAT IS SUBJECT TO APPEAL

21. This clause sets out the status of a determination of the Tribunal that is the subject of an appeal to the Federal Court. Subclause (1) provides that the institution of an appeal to the Federal Court does not affect the operation of the determination or prevent its implementation.

22. Subclause (2) provides that the Federal Court may make an order staying or otherwise affecting the implementation of the determination in whole or in part, and/or, staying the decision of the trustee to which the complaint of the Tribunal related.

23. Subclauses (3) and (4) set out the requirements governing the status of orders referred to in subclause (2) in certain circumstances.

CLAUSE 24 SENDING OF DOCUMENTS TO, AND DISCLOSURE OF DOCUMENTS BY, THE FEDERAL COURT

24. This clause provides that where a complainant or trustee appeals against a determination of the Tribunal to the Federal Court, the Tribunal must refer all documents relating to the matter that were before the Tribunal to the Federal Court. The clause also provides that upon completion of the proceedings, the documents are to be returned to the Tribunal.

PART 5 - ADMINISTRATIVE PROVISIONS

DIVISION 1 - ADMINISTRATIVE PROVISIONS RELATING TO THE TRIBUNAL CHAIRPERSON

CLAUSE 16 TERMS AND CONDITIONS OF APPOINTMENT

25. Self explanatory.

CLAUSE 17 REMUNERATION AND ALLOWANCES

26. Self explanatory.

CLAUSE 18 LEAVE OF ABSENCE

27. Self explanatory.

CLAUSE 19 RESIGNATION

28. Self explanatory.

CLAUSE 20 TERMINATION OF APPOINTMENT

29. This clause provides for the termination by the Governor-General of the appointment of the Tribunal Chairperson in the circumstances specified.

CLAUSE 21 ACTING TRIBUNAL CHAIRPERSON

30. This clause provides for the appointment by the Minister of an Acting Tribunal Chairperson in certain circumstances.

DIVISION 2 - ADMINISTRATIVE PROVISIONS RELATING TO THE TRIBUNAL

CLAUSE 22 TERMS AND CONDITIONS OF APPOINTMENT

31. Self explanatory.

CLAUSE 23 REMUNERATION AND ALLOWANCES

32. Self explanatory.

CLAUSE 24 RESIGNATION

33. Self explanatory.

CLAUSE 25 TERMINATION OF APPOINTMENT

34. This clause provides for termination by the Minister of the appointment of a Tribunal member other than the Chairperson in the circumstances specified.

PART 6 - MISCELLANEOUS

CLAUSE 26 CERTAIN POWERS OF THE TRIBUNAL TO BE EXERCISED BY TRIBUNAL CHAIRPERSON OR STAFF MEMBER

35. This clause provides that the powers of the Tribunal pursuant to paragraph 9(1)(a) and section (10) are to be exercised on behalf of the Tribunal by the Tribunal Chairperson or by a duly authorised member of the Tribunal's staff.

CLAUSE 27 LIABILITY FOR DAMAGES

36. Self explanatory.

CLAUSE 28 STAFF AND FACILITIES

37. This clause provides that the Insurance and Superannuation Commissioner must provide to the Tribunal for the performance of its functions such staff and facilities as are necessary or desirable.

CLAUSE 29 SECRECY

38. This clause provides for protection of any information or documents acquired under or for the purposes of this Act. However, the clause does not prevent communication of information to the Insurance and Superannuation Commissioner, if requested to do so, or, where the complainant consents, to the trustee of the fund to whose decision the complaint related.

CLAUSE 30 TRIBUNAL CHAIRPERSON TO REFER CONTRAVENTIONS OF THE LAW OR OF THE GOVERNING RULES OF A FUND TO THE COMMISSIONER

39. This clause provides for notification to the Insurance and Superannuation Commissioner of any contraventions of any Act or the governing rules of a fund of which a member of the Tribunal may become aware.

CLAUSE 31 FAILURE OF A TRUSTEE TO COMPLY WITH A DETERMINATION OR DIRECTION BY THE TRIBUNAL

40. Subclause (1) provides for notification to the Insurance and Superannuation Commissioner of a failure by a trustee to give effect to a determination of the Tribunal of which a member of the Tribunal may become aware.

41. Subclause (2) provides that a trustee must reconsider as soon as practicable a matter remitted by the Tribunal for reconsideration.

CLAUSE 32 ANNUAL REPORT

42. This clause requires the Chairperson, on behalf of the Tribunal, to give to the Minister within 3 months after each year ending on 30 June a report on the working, during the year, of the Act. The Minister has to cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the day of receipt of the report.

CLAUSE 33 REGULATIONS

43. This clause permits the Governor-General to make regulations in respect of matters required or permitted by the Act to be prescribed or for carrying out or giving effect to the Act.

