

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1993
SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

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



SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1993

GENERAL OUTLINE AND MAIN PURPOSE OF BILL

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation Supervisory Levy Amendment Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993, Superannuation Industry (Supervision) Consequential Amendments Bill 1993 and the Superannuation (Financial Assistance Funding) Levy 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 the protection of 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 will establish arrangements for the resolution of complaints made by members and beneficiaries of superannuation funds and approved deposit funds about decisions of 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 1993 require superannuation funds and approved deposit funds to have appropriate internal arrangements for the handling and consideration of beneficiaries' complaints and inquiries in a timely manner. This Bill will establish an 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 and 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 1993. 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 rights of appeal to the courts, trustees that fail to comply with a determination of the Tribunal will be subject to investigation at the instigation of the Insurance and Superannuation Commission.

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 (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993, Superannuation Supervisory Levy Amendment Bill 1993 and the Superannuation Industry (Supervision) Consequential Amendments 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 \$4.831m 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 for in the Superannuation (Rolled-Over Benefits) Levy Bill 1993.

SUPPLEMENTARY EXPLANATORY NOTES ON SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1993

PART 1 - PRELIMINARY

CLAUSE 2 COMMENCEMENT

1. This clause provides for the Bill to come into operation on a day to be proclaimed, but at the latest on 1 July 1994. The commencement date will coincide with the commencement of the main provisions incorporated in the Superannuation Industry (Supervision) Bill 1993, in particular, the commencement of internal dispute arrangements for superannuation funds.

CLAUSE 3 INTERPRETATION

2. The definition of 'excluded subject matter' for the purpose of the Bill has been inserted in sub-clause 3(2).

PART 4 - COMPLAINTS, PROCEDURAL MATTERS RELATING TO COMPLAINTS AND COMPLAINTS THE TRIBUNAL CANNOT DEAL WITH

CLAUSE 14 COMPLAINTS

3. This clause provides that a complaint must relate to a decision of the trustee which is unfair or unreasonable, is an improper use of the trustee's powers or is in excess of the trustee's powers. In this regard a complaint must relate specifically to a decision of the trustee of the fund in relation to the complainant and not to the management of the fund as a whole.

4. Subclause (3) and (4) provides that if the trustee informs a person of the trustee's decision in relation to an objection to the payment of a benefit and at the same time notifies that person of the period (prescribed by regulations) within which that person will be permitted to lodge a complaint with the Tribunal then that person cannot make a complaint about that decision after the prescribed period has lapsed.

5. The amendment to this subclause 14(1) makes it clear that the Tribunal is able to consider complaints relating to a trustee's decision made before and after the commencement of the Act.

6. Subclause 14(5) provides that regulations may be made which preclude the Tribunal from dealing with an aspect of a complaint made to the Tribunal.

CLAUSE 15 WHO MAY MAKE A COMPLAINT

7. Self explanatory.

PART 7 - APPEALS

CLAUSE 46 APPEALS TO THE FEDERAL COURT OF AUSTRALIA FROM DETERMINATIONS OF THE TRIBUNAL

8. Subclause 46(5) provides that the Federal Court cannot award costs against a complainant if the complainant does not defend an appeal by another party to the complaint.

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