

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
SENATE

SUPERANNUATION (RESOLUTION OF COMPLAINTS) BILL 1993
EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE
OF REPRESENTATIVES TO THE BILL AS INTRODUCED



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.

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

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, 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

3. This clause sets out definitions of a number of words and expressions for the purposes of the Bill.

4. The effect of the Acts Interpretation Act is that the definition of an excluded complaint means:

- (a) a complaint about a decision of the trustee of a fund that is declared by the regulations to be a fund or is included in a class of funds that are declared by the regulations to be funds, to which the Act does not apply; or
- (b) a complaint about a matter included in a class of matters declared by the regulations to be matters about which complaints may not be made under the Act.

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

CLAUSE 4 DEFINITION OF "DECISION" MADE BY A TRUSTEE

6. This clause provides that the making of a decision by a trustee of a fund includes an action by any other person acting on behalf of the trustee and the engaging in any other conduct by those people in relation to the making of a decision.

CLAUSE 5 ACT DOES NOT APPLY TO AN EXCLUDED FUND

7. This clause provides that the Act does not apply to an 'excluded fund', as defined by the Superannuation Industry (Supervision) Act 1993.

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

CLAUSE 6 ESTABLISHMENT

8. Self explanatory.

CLAUSE 7 MEMBERSHIP

9. This clause provides that the Tribunal is to comprise not less than 5 but not more than 8 other 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 to hold office on a part-time basis.

CLAUSE 8 ELIGIBILITY FOR APPOINTMENT

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

11. Subclause (2) provides that a person may only be appointed as the Tribunal Chairperson if that person is not a trustee of a superannuation fund or approved deposit fund.

12. Subclause (3) provides that a person may only be appointed as a member of the Tribunal on the basis of their knowledge or experience.

13. Subclause (4) 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 9 CONSTITUTION OF TRIBUNAL

14. 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.

15. The Tribunal Chairperson is to chair all meetings of the Tribunal and 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 10 DISCLOSURE OF INTERESTS

16. This clause provides for the 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.

17. Subclause (2) provides that the Tribunal Chairperson must stand down in relation to a particular complaint if the Tribunal Chairperson has a financial interest in the complaint.

PART 3 - OBJECTIVES AND FUNCTIONS OF THE TRIBUNAL

CLAUSE 11 TRIBUNAL OBJECTIVES

18. This clause provides that the Tribunal's objectives are to provide mechanisms for conciliation and review that are fair, economical, informal and quick.

CLAUSE 12 FUNCTIONS

19. This clause provides that the functions of the Tribunal are to try to resolve complaints by conciliation and, where the complaint cannot be resolved in this way, to review the decision of the trustee to which the complaint relates.

CLAUSE 13 TRIBUNAL TO ISSUE A MEMORANDUM EXPLAINING HOW COMPLAINTS ARE TO BE DEALT WITH

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

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

CLAUSE 14 COMPLAINTS

21. 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 decision of the trustee of the fund in relation to the complainant and not to the management of the fund as a whole.

22. 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.

23. 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.

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

CLAUSE 15 WHO MAY MAKE A COMPLAINT

25. Self explanatory.

CLAUSE 16 TRIBUNAL TO HELP COMPLAINANTS TO MAKE COMPLAINTS

26. This clause provides that it is a duty of the Tribunal to take reasonable steps to provide appropriate assistance to a complainant who wishes to make a complaint but requires assistance to do so and to reduce the complaint to writing if required.

CLAUSE 17 PROCEDURE ON RECEIPT OF COMPLAINT

27. This clause provides that when the Tribunal receives a complaint it must write to both the complainant and the trustee advising of the complaint. The advice to the trustee must also provide details of the complaint and advise of the trustee's obligations under section 24.

CLAUSE 18 PARTIES TO A COMPLAINT

28. This clause sets out who is a party in relation to a complaint and hence whose views are to be sought on the complaint.

CLAUSE 19 TRIBUNAL NOT TO DEAL WITH COMPLAINT UNLESS COMPLAINT NOT SETTLED WITHIN 90 DAYS OR SUCH LONGER PERIOD AS TRIBUNAL ALLOWS

29. This clause provides that before the Tribunal deals with a complaint an attempt must have been made to have it considered by the trustee under the arrangements set out in section 96 of the Superannuation Industry (Supervision) Act 1993.

CLAUSE 20 TRIBUNAL NOT TO DEAL WITH COMPLAINT IF SUBJECT MATTER OF COMPLAINT IS SUBJECT OF COURT PROCEEDINGS

30. This clause provides that the Tribunal cannot deal with a complaint, or deal further with it, if there is a proceeding in a court about the subject matter of the complaint. In such circumstances, the Tribunal's involvement can only commence or continue when the proceeding is discontinued or an order of the court has become final in relation to the proceedings.

CLAUSE 21 WITHDRAWAL OF COMPLAINT

31. This clause provides that a complaint may be withdrawn at any time.

CLAUSE 22 POWER TO TREAT A COMPLAINT AS HAVING BEEN WITHDRAWN

32. This clause provides that where the Tribunal is satisfied that the person does not intend to proceed with the complaint, the complaint is trivial, or that the complaint has or will be adequately dealt with through alternative arrangements, it must deal with the complaint as if it has been withdrawn by the complainant. The Tribunal must notify both the complainant and the trustee if a complaint has been withdrawn and the reason for the withdrawal.

CLAUSE 23 RIGHT TO REPRESENTATION IN RELATION TO A COMPLAINT

33. This clause provides that a party in relation to a complaint must act on his or her own behalf unless the person has a disability, in which case the person may be represented by an agent, or if the person is a body corporate or unincorporated, in which case the body may be represented by an officer or agent. The Tribunal has discretion to allow representation in these cases if it considers it necessary in all the circumstances.

CLAUSE 24 LODGING OF MATERIAL DOCUMENTS WITH TRIBUNAL

34. This clause provides that following notification by the Tribunal to the trustee of a complaint, the trustee has 28 days or such longer period as the Tribunal allows, to lodge a copy or summary of any relevant material documents relating to the complaint with the Tribunal.

35. Subclause (4) provides that an intentional or reckless contravention of subclauses (1) or (2) is an offence. This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 25 POWER TO OBTAIN INFORMATION AND DOCUMENTS

36. 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 may take and retain possession of any documents produced, and make copies and take extracts as appropriate.

37. Subclause (4) 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.

38. Subclause (5) provides that it is an offence if a person, without reasonable excuse, refuses or fails to comply with a requirement made by the Tribunal under subclauses (1), (2) or (3). This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 26 OPERATION AND IMPLEMENTATION OF A DECISION THAT IS SUBJECT TO A COMPLAINT

39. This clause sets out the impact the lodging of a complaint can have on the operation of the decision of the trustees to which the complaint relates.

40. Subclause (2) provides that the Tribunal can make an order staying or otherwise affecting the operation or implementation of the decision to which the complaint relates on application from the complainant, if it is of the opinion that it is desirable to do so.

41. In making such an order, the Tribunal must take into account the interest of any persons affected by the request. The Tribunal must also have given the trustee a reasonable opportunity to make a submission to it on the matter.

42. Subclause (3) provides that the Tribunal can make an order varying or revoking an order in force under subclause (2). Again, the Tribunal must give other parties a reasonable opportunity to make a submission to it before making such an order.

PART 5 - CONCILIATION OF COMPLAINTS

CLAUSE 27 INQUIRIES BY TRIBUNAL

43. This clause provides that unless the complaint has not been considered by the trustee within 90 days or such longer period as the Tribunal allows, is the subject of court proceedings or has been withdrawn, the Tribunal must inquire into the complaint and endeavour to settle it by conciliation.

CLAUSE 28 REQUESTS TO ATTEND CONCILIATION CONFERENCES

44. This clause sets out the circumstances under which the Tribunal may hold a conference of the parties to a complaint to conciliate the complaint.

CLAUSE 29 CONFERENCES MAY BE CONDUCTED BY TELEPHONE OR OTHER MEANS OF COMMUNICATION

45. Self explanatory.

CLAUSE 30 STATEMENTS AT CONFERENCE TO BE PRIVILEGED

46. This clause provides that statements made at the conciliation conference cannot be used in evidence at a review meeting unless the parties otherwise agree.

CLAUSE 31 TRIBUNAL TO IMPLEMENT SETTLEMENTS

47. This clause provides that if agreement is reached between the parties at a conciliation conference and the terms of that agreement are reduced to writing signed by the parties and lodged with the Tribunal, the Tribunal must decide to treat the complaint as withdrawn by the complainant.

48. Subclause (2) provides that the Tribunal may give details to the Commissioner of a settlement if the Tribunal considers that the settlement may require investigation.

PART 6 - REVIEW OF DECISIONS**DIVISION 1 - PRELIMINARY PROCEDURES****CLAUSE 32 ARRANGEMENTS FOR REVIEW MEETINGS**

49. This clause requires the Tribunal Chairperson to organise the time, date and place for the Tribunal to review the decision of a trustee, if the complaint was not settled or withdrawn at the conciliation stage. The Chairperson must also write to the parties to the complaint and invite written submissions to the Tribunal.

DIVISION 2 - HOW THE TRIBUNAL INFORMS ITSELF ABOUT THE DECISION UNDER REVIEW**CLAUSE 33 SUBMISSIONS TO TRIBUNAL**

50. Self explanatory.

CLAUSE 34 TRIBUNAL MEETINGS

51. This clause provides that a meeting to review the decision of a trustee will primarily involve the Tribunal's review of submissions and material lodged with the Tribunal. The Tribunal will only invite parties to make an oral submission to the Tribunal if the Tribunal considers it necessary to do so. If a person is required to make an oral submission, then the Tribunal must notify that person of the details of the meeting. The Tribunal may, however, proceed with their review even if the oral submission is not given.

CLAUSE 35 TRIBUNAL MAY ALLOW TELEPHONE AND OTHER SUBMISSIONS

52. Self explanatory.

DIVISION 3 - THE REVIEW MEETING**CLAUSE 36 MEETING PROCEDURE**

53. This clause provides that the Tribunal may consider any matter relevant to the decision under review and that in reviewing the decision of the trustee the Tribunal is not bound by precedent. The procedure of the Tribunal must, however, be consistent with the objectives outlined in section 11 and take account of the interests of all members of the fund to which the complaint relates.

CLAUSE 37 REVIEW OF DECISIONS BY TRIBUNAL

54. This clause provides that for the purpose of reviewing a decision of the 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 may 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 if it is satisfied that the decision was fair and reasonable in all the circumstances. 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.

CLAUSE 38 MEETING TO BE PRIVATE

55. This clause provides that the proceedings and documents or information relating to a review are to be private.

56. Subclause (6) provides that an intentional or reckless contravention of the clause is an offence. This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 39 REFERENCE OF QUESTIONS OF LAW TO FEDERAL COURT

57. This clause provides that the Tribunal may seek the Federal Court's opinion regarding a question of law. In making its determination in relation to the complaint concerned, the Tribunal must not then do anything which is inconsistent with the relevant opinion of the Federal Court.

CLAUSE 40 TRIBUNAL TO GIVE REASONS

58. This clause provides that the Tribunal must give written reasons for its determination. The effect of the Acts Interpretation Act is that the Tribunal must include, in its written reasons, its findings on material questions of fact and reference to the material on which those findings are based.

CLAUSE 41 OPERATION OF DETERMINATION

59. This clause provides that a determination of the Tribunal is to take effect immediately upon making the determination or at a later date specified by the Tribunal.

60. Subclause (3) provides that a determination of the Tribunal which varies or replaces a decision of the trustee of the fund is taken to be the decision of the trustee and, unless the Tribunal otherwise orders, is to have effect on the day of the trustee's decision has or had effect.

DIVISION 4 - OTHER PROCEDURAL MATTERS

CLAUSE 42 ADJOURNMENT OF REVIEW MEETINGS

61. Self-explanatory.

CLAUSE 43 EVIDENCE OF DETERMINATION

62. This clause provides that a copy of a Tribunal determination, certified by the Chairperson, will be accepted as evidence of the determination.

DIVISION 5 - NOTIFICATION OF DETERMINATION AND APPEAL RIGHTS

CLAUSE 44 NOTIFICATION OF DETERMINATION

63. This clause provides that a copy of a determination by the Tribunal and reasons for the determination are to be given to the complainant, the relevant trustee and any other person who may be a party to the complaint.

64. Subclause (2) provides that the Tribunal may direct the trustee to inform any member, previous member, beneficiaries or previous beneficiaries of the Tribunal's determination. This may arise where other members or beneficiaries may be similarly affected.

65. Subclause (3) provides that an intentional or reckless contravention of subclause (2) is an offence. This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 45 NOTIFICATION OF APPEAL RIGHTS

66. This clause provides for the Tribunal to give written notice, to each person who is a party to a complaint, that if the party is dissatisfied with the decision of the Tribunal on a question of law then the party may appeal to the Federal Court.

PART 7 - APPEALS

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

67. This clause provides for the making, by the trustee, complainant or any other party to the complaint 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.

68. This clause also provides that an appeal to the Federal Court must be made no later than 28 days after a copy of the determination has been given to the relevant party, or within such a period as the Federal Court allows.

69. 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.

CLAUSE 47 OPERATION AND IMPLEMENTATION OF A DETERMINATION THAT
IS SUBJECT TO APPEAL

70. This clause sets out the status of a determination of the Tribunal that is the subject of an appeal to the Federal Court.

71. 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.

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

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

CLAUSE 48 SENDING OF DOCUMENTS TO, AND DISCLOSURE OF DOCUMENTS
BY, THE FEDERAL COURT

74. This clause provides that in the event of an appeal to the Federal Court against the determination of the Tribunal, the Tribunal must refer all documents to the Court that relate to the matter under appeal. This clause also requires the Federal Court to return the documents to the Tribunal upon the completion of the proceedings.

PART 8 - ADMINISTRATIVE PROVISIONS

DIVISION 1 - ADMINISTRATIVE PROVISIONS RELATING TO TRIBUNAL
CHAIRPERSON

CLAUSE 49 TERMS AND CONDITIONS OF APPOINTMENT

75. Self explanatory.

CLAUSE 50 REMUNERATION AND ALLOWANCES

76. Self explanatory.

CLAUSE 51 LEAVE OF ABSENCE

77. Self explanatory.

CLAUSE 52 RESIGNATION

78. Self explanatory.

CLAUSE 53 TERMINATION OF APPOINTMENT

79. This clause provides for the Governor-General to terminate the appointment of the Tribunal Chairperson in circumstances specified in the clause.

CLAUSE 54 ACTING TRIBUNAL CHAIRPERSON

80. This provision provides for the Minister to appoint an Acting Chairperson under circumstances specified in the clause.

DIVISION 2 - ADMINISTRATIVE PROVISIONS RELATING TO OTHER TRIBUNAL MEMBERS

CLAUSE 55 TERMS AND CONDITIONS OF APPOINTMENT

81. Self-explanatory.

CLAUSE 56 REMUNERATION AND ALLOWANCES

82. Self explanatory.

CLAUSE 57 RESIGNATION

83. Self explanatory.

CLAUSE 58 TERMINATION OF APPOINTMENT

84. This clause provides for the Minister to terminate the appointment of a Tribunal member, other than the Chairperson, in the circumstances specified in the clause.

PART 9 - MISCELLANEOUS

CLAUSE 59 CERTAIN POWERS OF THE TRIBUNAL TO BE EXERCISED BY TRIBUNAL CHAIRPERSON OR STAFF MEMBER

85. Subclause (1) sets out the powers of the Tribunal that are to be exercised by the Tribunal Chairperson or staff of the Tribunal on behalf of the Tribunal.

86. Subclause (2) sets out the powers of the Tribunal that are to be exercised by the Tribunal Chairperson on behalf of the Tribunal.

CLAUSE 60 LEGAL PROFESSIONAL PRIVILEGE

87. This clause provides that, in the circumstances set out in subclause(1), a lawyer is entitled to refuse to comply with a requirement unless the persons specified in paragraphs 2(a) and (b) consent to the lawyer complying with the requirement.

88. Subclause (3) provides that where a lawyer refuses to comply with a requirement, he or she must as soon as practicable give to the person making the requirement a notice setting out the particulars required by paragraphs (a) to (c).

89. Subsection (4) provides that an intentional or reckless contravention of subclause (3) is an offence. This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 61 LIABILITY FOR DAMAGES

90. This clause exempts a Tribunal member or a member of the staff of the Commission made available to the Tribunal under subsection 62(2) from liability for bonafide acts or omissions in respect of the performance of powers or functions conferred by the Act.

CLAUSE 62 STAFF AND FACILITIES

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

CLAUSE 63 SECRECY

92. This clause provides for the protection of any information or documents acquired under or for the purposes of this Act. This clause does not, however, prohibit the 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. It also does not prohibit the Tribunal from disclosing information in a manner that does not enable the identification of the parties in relation to a complaint.

93. An offence against subclause (2) is one of strict liability. This provision is only intended to apply to this Bill and not any other legislation.

CLAUSE 64 TRIBUNAL CHAIRPERSON TO REFER CONTRAVENTIONS OF THE LAW OR OF THE GOVERNING RULES OF A FUND TO THE COMMISSIONER

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

CLAUSE 65 FAILURE OF A TRUSTEE TO COMPLY WITH A DETERMINATION OR DIRECTION BY THE TRIBUNAL

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

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

CLAUSE 66 CONDUCT BY DIRECTORS, SERVANTS AND AGENTS

97. This clause sets out the considerations a court may take into account in proceedings for an offence in determining the state of mind of directors, servants and agents in relation to any conduct engaged in, by, or on behalf of, a body corporate.

CLAUSE 67 ANNUAL REPORT

98. This clause requires the Tribunal 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 68 REGULATIONS

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