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Crimes (Superannuation Benefits) Bill 1989

Date Introduced: 17 August 1989
House: House of Representatives
Portfolio: Attorney – General

Digest of Bill

Purpose

To allow courts to declare that employer superannuation contributions are not payable to, or if already paid recoverable from, federal employees, judges and parliamentarians convicted of corruption offences.

Background

A number of steps have been taken in recent years to make the returns from criminal activity, including corruption, less attractive. The *Proceeds of Crime Act 1987* allows the confiscation of property gained through more serious crimes and has counterparts in many State jurisdictions. Another major method to increase the cost of corruption is to remove the employer contributions to the convicted persons superannuation. This will be particularly effective in the Commonwealth sector as employees generally receive relatively substantial superannuation payments.

A number of bodies have been established in the various Australian jurisdictions to investigate corruption. The most notable, the Fitzgerald Inquiry, uncovered corruptions at various levels within the Queensland police and administration. Subsequently, the *Public Officers' Superannuation Benefits Recovery Act 1988* was passed to allow superannuation benefits provided by the employer to be recovered for the period during which the person committed the relevant offence. As well, a permanent body is to be created to continue the commitment against corruption. Similarly, the NSW government has established the Independent Commission Against Corruption to investigate allegations of corruption in that State.

Legislation to achieve the same effect with respect to the Australian Federal Police (AFP) has also been introduced. The *Australian Federal Police Amendment Act 1989*, in combination with the Australian Federal Police Amendment Bill introduced on 17 August 1989, will achieve the same result as this Bill in respect of the AFP.

Main Provisions

A number of definitions are contained in clause 2. Commonwealth authority is defined to include bodies, including companies, established under a Commonwealth or Territory law for a public purpose, a company established under a Commonwealth or Territory law in which the Commonwealth has a controlling interest, or a subsidiary of a company referred to above. Offence is defined to be a common law offence or an offence against Commonwealth, State or Territory law punishable by imprisonment for a period greater than 12 months.

A person will be taken to have absconded if they have been charged with an offence, an arrest warrant has been issued in respect of that offence and, six months after the warrant was issued, the person cannot be found and is not subject to extradition proceedings or extradition proceedings are under way and later end without the person being extradited (clause 4).

A person will be deemed to have been convicted of an offence if they abscond in relation to that offence (clause 6).

Employee is defined to include Members of Parliament, judges of Federal courts, members of the Defence Forces or a person who holds an office created by Commonwealth law or a prescribed office established under State or Territory law (clause 7).

For the purposes of making a restraining order against a persons property, property will be defined to include property in which the person has a beneficial interest, property transferred by gift within two years of the making of the restraining order and, where property has been transferred at less than its commercial value, the difference between the commercial value and the consideration received (clause 8).

In determining whether a person has effective control of property, regard may be had to any interest in a company that has an interest in the property, if a trust has a relationship with the property and family, business or domestic relationships in respect of the above (clause 10).

Part 2 of the Bill deals with superannuation orders. Where a person who is or was an employee is charged with an offence and the relevant police authority believes it is or may be a corruption offence, the police authority may notify the Minister of the charge (clause 15). Where such a person is convicted of the offence and the Minister is of the opinion that the offence was a corruption offence, the minister may authorise the Director of Public Prosecutions (DPP) to seek a superannuation order (clause 16). If the DPP is so authorised and the person is sentenced to imprisonment for more than 12 months, the DPP must seek a superannuation order (clause 17).

Clause 18 deals with evidence in proceedings for a superannuation order. Findings of fact in proceedings relating to the offence for which the person has been charged will be prima facie evidence that those findings occurred. Similarly, certificates from the relevant superannuation authority will be prima facie evidence that the information contained in the certificate is correct. This provision will largely remove the requirement for the prosecution to prove these matters separately.

Where an application is made and the court is satisfied that the offence was a corruption offence, the court is to declare that the person has been convicted of a corruption offence and that this Part applies. Where the person has been deemed to have been convicted under clause 6 as they absconded, the court must also be satisfied that the person has been committed for trial or that a jury could reasonably convict on that offence before making a superannuation order. When making an order the court is to specify the amount that the fund is to pay to the Commonwealth (i.e. the employer contributions plus interest on those contributions) or, where the fund has already paid the person, the amount to be paid to the Commonwealth by the person (the amount of the benefit less employee contributions and interest on those contributions) (clause 19).

Where a person has not absconded, the superannuation order will have effect from the end of the period allowed for appeal under the relevant Commonwealth, State or Territory law. If the person has appealed, the order will have effect from the day those proceedings are disposed of (clause 20).

Where a superannuation order is made, the person will cease to be a member of the scheme, will lose all rights in relation to the scheme and will only be entitled to payment of the amount calculated in accordance with clause 19. Any recoverable amount already paid will be a debt due to the Commonwealth (clause 20).

A superannuation order may be revoked when a persons conviction is quashed, the sentence is reduced to 12 months or less or, where the person has been deemed to have been convicted because they absconded, they are subsequently tried and are not convicted or are sentenced to 12 months imprisonment or less. Where this occurs, the person is to recover the amount considered by the Minister to be fair recompense, based on any amount forfeited and any other financial loss sustained as a result of the order (clause 23).

Part 3 of the Bill deals with restraining orders. An application for an order may be made against specific property of the person where the person has been convicted of an offence or has been or is about to be charged with an offence (clause 24). Where the court is satisfied that the offence is a corruption offence, that the person is a member of a superannuation fund and, if they have been sentenced, that they have been sentenced to imprisonment for more than 12 months, the court may order that property not be disposed of or

otherwise dealt with except in accordance with any conditions contained in the order. Where the order sought relates to a person who has yet to be charged, the court is not to make the order unless the person is to be charged within 48 hours (clause 25).

Restraining orders may be made subject to conditions, including that the property may be used for reasonable living expenses or legal defence costs to defend a criminal charge so long as these expenses cannot be met out of property not subject to an order (clause 26).

It will be an offence, with a maximum penalty of 5 years imprisonment, to knowingly breach a restraining order (clause 35).

The possibility that a superannuation order may be made is not to be taken into account when determining the term of imprisonment a person is to receive (clause 43).

For further information, if required, contact the Law and Government Group.

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Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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