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Financial Services Reform (Consequential Provisions) Bill 2002

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Financial Services Reform (Consequential Provisions) Bill 2002

Date Introduced: 14 February 2002

House: Senate

Portfolio: Treasury

Commencement: The amendments in schedule 1 relating to retirement savings accounts will commence at the same time as *Family Law Legislation Amendment (Superannuation) Act 2001*. The Attorney-General has indicated that this will be in the second half of 2002. The schedule 2 amendments to the *Corporations Act 2001* commence on the same day as the substantive provisions of the *Financial Services Reform Act 2001*, that is March 11 2002.

Purpose

To allow an interest in a retirement savings account to be divided between couples following a marriage breakdown. This Bill also amends the *Corporations Act 2001* to reinstate the definitions of solvency and insolvency that were deleted as a result of a drafting error in the *Financial Services Reform Act 2001*.

Background

As this Bill has no central theme the background to the various measures is included in the discussion of the main provisions.

Main Provisions

Amendment to facilitate the splitting of Retirement Savings Accounts (RSAs)

Under section 79 of the *Family Law Act 1975* the Family Court has the power to make such property orders as it considers just and equitable following a separation or divorce. The Court has, however, given the word 'property' a narrow construction. While superannuation may be a significant asset of a party, the Court has taken the view that it is not property because it is not vested in the holder of the superannuation policy. The Court has taken superannuation interests into account in determining property settlements but has not been prepared to divide an interest in a superannuation policy.

The Parliament has sought to address this issue through the enactment of the *Family Law Legislation Amendment (Superannuation) Act 2001*. When the Act commences later this year divorcing or separating couples will be able to split their superannuation in the same way as other assets. Superannuation may be divided by agreement or by Court order. For further background on this issue, see *Bills Digest No. 55, 2000-01.*[1]

This Bill seeks to give effect to the policy of permitting separating or divorcing couples to split superannuation assets by facilitating the splitting of retirement savings accounts.

RSA's are a low risk superannuation product that is offered by banks, building societies credit unions and life insurance companies. Investments placed in RSAs are 'capital guaranteed' meaning that negative investment returns or interest may not be credited to accounts. Unlike other superannuation products, RSA's are not issued under a trust structure which requires a trustee to be responsible for the actions of the trust and to observe various prudential and other regulations. The provision of RSAs is regulated by the *Retirement Savings Account Act 1997* (RSA Act).[2]

Section 41 of the RSA Act makes it an offence for an RSA provider (ie a bank, building society etc.) to recognise a charge over or an assignment of a person's interest in an RSA. **Items 1 and 2** will amend section 41 to permit RSA providers to split an account and create a separate RSA in accordance with regulations made under the Act.

Amendment to the *Corporations Act 2001*

The *Financial Service Reform Act 2001* aims to harmonise the regulatory regime for the financial services industry. For further background on financial services reform, see *Bills Digest No. 26, 2001-02.*[3] Item 329 of the Act repeals section 95A of the *Corporations Act 2001* which defines solvency and insolvency. This was a drafting error, the Government only intended that subsection 95A(3), which defines insolvency for the purposes of the National Guarantee Fund, should be deleted. The National Guarantee Fund (NGF) is a compensation fund that is available to meet claims arising from dealings with stockbrokers including where a stockbroker becomes insolvent and fails to meet obligations to clients. This definition of insolvency for the purposes of the NGF will now be dealt with by regulation.

Item 1 of schedule 2 restores the definition of insolvency that has applied generally under corporations legislation since 1993.

Endnotes

1 Chris Field and Jennifer Norberry, Bills Digest No. 55, 2000–2001, Family Law Legislation Amendment (Superannuation) Bill 2000.

2 For more information on the purpose and regulation of RSAs see Chris Field, Bills Digest No.80, 1996–1997, Retirement Savings Account Bill 1996.

3 Mark Tapley, Bills Digest No. 26, 2001–2002, Financial Services Reform Bill 2001.