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Superannuation Legislation (Commonwealth
Employment) Repeal and Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Superannuation Legislation (Commonwealth Employment)
Repeal and Amendment Bill 2002

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Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

Date Introduced: 21 February 2002

House: House of Representatives

Portfolio: Finance and Administration

Commencement: The formal provisions of the Bill commence on Royal Assent, while the amendments described in this Digest have various commencement dates which are listed in the Main Provisions section of this Digest after the measures are described.

Purpose

The Bill makes a number of largely technical amendments to the legislation and rules governing superannuation schemes applying to the Commonwealth public sector, including:

- changes to the definitions of ‘approved authority’, employees of which may be members of the public sector superannuation schemes
- a relaxation of the rules regarding who may receive a surviving spouse benefit
- allowing a retired member to receive a reduced pension in exchange for higher survivor benefits after the member’s death, and
- providing for members who cease to be eligible to remain members of the scheme due to their employer being sold or their function ‘outsourced’ to receive benefits similar to those available on involuntary retirement.

Background

This Bill follows one of the same name introduced in 1998 which, with other Bills in the choice of fund package, lapsed when Parliament was prorogued for the 1998 election. While most of the technical measures contained in this and the earlier Bill are substantially the same, the 1998 Bill also contained provisions relating to the choice of fund rules for

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Commonwealth employees and would have closed the Public Sector Superannuation scheme (PSS) to new employees. New employees would have been offered a range of private sector schemes to choose from in accordance with the general choice of fund rules.

There are two schemes covering the vast majority of direct Commonwealth employees, the Commonwealth Superannuation Scheme (CSS) (closed to new members from 1 July 1990) and the PSS. Both schemes are defined benefit schemes where the amount of benefit payable is based on final average salary and length of service, although both also have components based on member's contributions and their earnings, and the employer component of the benefit is largely unfunded (ie this component is principally paid from the consolidated revenue fund as the liability becomes due, rather than from employer contributions and their earnings made to the fund during the period of employment). Both schemes are compulsory for employees eligible to be covered by either of the schemes. Which particular scheme members belong to is largely dependant on the period during which they commenced employment for the Commonwealth (although CSS members were offered the opportunity to transfer to the PSS scheme).

The membership of the schemes and the number of retired members each supports reflects the history of the schemes. As at 30 June 2001 the CSS had 43 557 members (48 552 in 2000) and 110 045 pensioners (109 045 in 2000). The average salary payable to retired members was \$19 468, compared to \$20 497 in 2000. The newer PSS had 121 078 members on 30 June 2001 (an increase from 112 436 in 2000), while the number of members who left PSS were principally related to involuntary retirement (4209 as at 30 June 2001), with age retirement being significantly lower at 1162.¹

As the CSS and PSS have been established for some time, there has generally been little controversy regarding the schemes. However, the indexation of pensions under the CSS scheme was recently reviewed by the Senate Select Committee on Superannuation and Financial Services. The practice was for pensions to be increased in accordance with changes in the Consumer Price Index (CPI) once each year to reflect the changes occurring during the previous year. While arguing for more frequent indexation increases, submissions to the Committee also argued that the indexation of pensions should be linked to another index, principally the change in average weekly earnings (AWE).² The AWE index has generally increased at a greater rate than the CPI, so that indexation to this rate would result in a greater increase in pension than an increase related to the CPI. The Committee recommended that indexation to the CPI be increased to a twice yearly procedure as an interim measure and that the appropriate measure for indexation be examined.³ The twice yearly indexation to the CPI was introduced by the *Superannuation Legislation Amendment (Indexation) Act 2001*, while the argument regarding the appropriate indexation measure continues.

Those in favour of a change from the use of the CPI to index pensions point out that the use of the CPI has resulted in the value of Commonwealth superannuation pensions falling relative to wage earners and certain other pensioners where indexation is to AWE. This has been particularly evident during the 1990s, where evidence given to the Committee

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showed that during the period 1990-2000 Commonwealth superannuation pensions increased by 24 per cent while AWE increased by between 37% and 47 per cent, public service wages increased by 40 per cent and parliamentary pensions increased by 50 per cent.⁴

In the past, Governments occasionally increased age pensions over and above the CPI indexation rate in recognition of pensions falling too far below 25 per cent of AWE.⁵ Since February 1998, age pensions have, through legislation, been tied to AWE: after indexation by the CPI, which is done biannually, the single rate of age pensions is compared with AWE and adjusted, if necessary, to ensure it does not fall below 25 per cent of AWE.

There have been a number of measures of AWE used in combination with or instead of CPI to calculate increases in pensions, wages etc. In its deliberations, the Remuneration Tribunal considers general economic indicators and specific indicators; it now uses as one of its specific indicators the Wage Cost Index (WCI). The WCI is a fairly new statistic published by the Australian Bureau of Statistics.⁶

Main Provisions

Schedule 1 of the Bill will amend the *Superannuation Act 1976* (the 1976 Act), which establishes CSS. To be covered by the 1976 Act, a person must be an eligible employee as defined under section 3 of the Act. The definition includes permanent employees and certain temporary employees and statutory office holders. The definition will be altered to exclude people in a class determined by the Minister not to be an eligible employee (**item 6**).

Item 12 will introduce a definition of 'approved authority'. This will basically be an authority that is already an approved authority under the 1976 Act; or a body established for a public purpose where the body has agreed to make payments to the Commonwealth in respect of the benefits due under the 1976 Act. Specifically excluded from the definition of an approved authority is a corporation in which any of the voting shares are owned by an entity other than the Commonwealth, which is established for the purpose of competing with other businesses or people or which received 70 per cent or more of its finances from a source other than the Commonwealth. However, the Minister will have power to overrule the legislation by declaring that a body is, or is not, an approved authority (which raises the question of the relevance of the statutory definition when it can be overridden by a Ministerial declaration) (**proposed subsections 3D(8) and (9)**).

Section 5 of the 1976 Act deals with the calculation of the annual rate of salary which is used to calculate payments. **Item 17** will amend section 5 to provide that an employer and employee may agree that the annual rate of salary is that agreed between the parties.

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Item 48 inserts **proposed subdivision B of Division 2 of Part IX** which will provide for the transfer of amounts to the CSS where the employee remains eligible to be a member of CSS. The proposed rules will apply to amounts transferred from another superannuation entity, other than amounts received for physical or mental incapacity, and eligible termination payments paid after 30 June 2002. Such amounts may be transferred to CSS and will give rise to an additional benefit based on the amount transferred and interest less any tax payable on the amount. If the person dies before the benefit is paid it will be payable to a surviving spouse, eligible children or the person's personal representative.

Commencement: The above amendments commence on 1 July 2002 (**clause 2**).

Currently, to receive a spouse benefit on the death of a person receiving a retirement pension the spouse must be a surviving spouse as defined in section 8B of the 1976 Act. The definition excludes people who form a marital relationship with a retired pensioner who is aged 60 or more unless the relationship has existed for at least 5 years. **Part 2 of Schedule 1** introduces the concept of a 'late short term marital relationship'. This will occur where:

- there is a marital relationship between a deceased retired pensioner (including a de-facto relationship)
- that began less than 3 years before the death of the pensioner, and
- also began after the pensioner had retired and reached the age of 60.

In such a case, the rate of pension for the surviving spouse will be determined under **proposed section 96AB**, which provides for the pension to be reduced to reflect the proportion of the 5 year period that couple were in a marital relationship.

If there is a child or children of the relationship, the rate of pension is to be an amount between the full spouse pension and the amount calculated above and 'as the Board determines to be fair and equitable in all the circumstances of the case'. Similarly, if the spouse would be entitled to an extra amount of pension due to partially dependent children, this amount will also be reduced to reflect the length of the relationship. Similarly, if an orphan benefit is payable in respect of a child of the deceased pensioner it will be reduced if the child was the result of a late short term marital relationship. Similar rules will also apply where other forms of pension are payable, such as where there is a surviving child and spouse who is not in the custody, care and control of the child, where the rate of pension is to be determined by the Board. However, **item 101** provides that the amendments are not to reduce any other benefits payable under the 1976 Act .

Part 3 of Schedule 1 offers those who are eligible for age retirement benefits or early retirement benefits to elect to receive a lower rate of pension in exchange for higher spouse benefits on the death of the retiree. The reduced pension will be payable at the rate of 93 per cent of the rate that the retiree would be eligible to had they not made the election, and an amount up to 20 per cent of final salary if they are entitled to additional

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aged pension. The higher rate of the spouse benefit is detailed in Part 3 and depends on the number of variables. Without detailing all the possible increased rates, it can be said that while all the applicable rates are higher if such a choice is made the rates vary depending on the nature of the pension payable, the number of eligible children and/or spouses and the category of the deceased pensioner. Individual circumstances will therefore dictate the rate of the increased pension payable (**items 102 – 153**).

Commencement: The above amendments commence on Royal Assent (**clause 2**).

Item 53 inserts **proposed Part VIAB** and deals with contributions made to funds other than CSS or PSS when a proportion of performance pay could be directed to funds other than CSS and PSS as superannuation contributions. Performance pay is no longer generally available (except to members of the senior executive service) and the proposed Part deals with generally minor amounts contained in those other funds. The proposed Part will enable such amounts to be transferred to CSS and oblige the funds currently holding the funds to pay such money to CSS when requested to do so. Other rules similar to those to be inserted by item 48 will also apply.

Commencement: The day after the Bill receives Royal Assent (**clause 2**).

Item 182 in Schedule 1 Part 6 inserts **proposed section 110TV** which deals with situations where an employee ceases to be an eligible member of CSS as the organisation that employs them has been sold or their function has been transferred to an outside body. From 27 June 1997, the date the measure was announced, such people will be entitled to receive the same benefits as if they received involuntary redundancy, even though they have not technically been made redundant. They will be able to receive an amount equal to their accumulated benefits plus interest while the remainder of the benefit must be preserved in accordance with the normal preservation rules.

Commencement: The above amendments are deemed to have commenced on 26 June 1997 (**clause 2**).

PSS

The PSS is established under the *Superannuation Act 1990* (the 1990 Act). This Act differs substantially from the 1976 Act in that the rules of the fund are contained in the Trust Deed of the scheme, which is contained in the 1990 Act, which provides greater flexibility than the 1976 Act where benefits are prescribed in the legislation. This aspect of the 1976 Act resulted in the need for many of the amendments described above while the amendments required to the 1990 Act are considerably less, which is also helped by PSS being a more up to date scheme.

The major change to the 1990 Act will be to increase the circumstances under which an authority will cease to be an approved authority (contributions can only be made to PSS by employees of approved authorities). An approved authority before the commencement of the amendments will cease to be such a body if:

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- it is a corporation with share capital and any of the share capital owned by the Commonwealth ceases to be so owned after the commencement of the provisions in the Bill, or
- the financial accounts of the authority show that the percentage of revenue from sources other than the Commonwealth exceeds 70 per cent of the authorities revenue and exceeds the percentage from those sources in the previous year.

If a corporation has been established or incorporated for a public purpose under a law of a Territory and the chief executive officer of the corporation has made arrangements for contributions to be made to PSS, the corporation will be an authorised authority. However, it will lose this status if:

- it is a body with share capital and any of those shares are owned by a person other than the Commonwealth
- the purpose for which it was established or incorporated involves competition with anyone else, or
- the financial accounts of the authority show that the percentage of revenue from sources other than the Commonwealth exceeds 70 per cent of the authorities revenue and exceeds the percentage from those sources in the previous year.

However, as with amendments to the 1976 Act the Minister will retain power to include or exclude a body from being an authorised authority regardless of whether it meets these tests (**item 3 of Schedule 2** which will insert a **new section 3AAA** into the 1990 Act).

The Minister's power to approve a body as an authorised authority will have effect even if the authorisation was made before the commencement of the proposed section (**item 7**).

Commencement: The above amendments commence on 1 July 2002 (**clause 2**).

Schedule 3 of the Bill will amend the Rules for the Administration of the Public Sector Trust Deed to grant similar rights to involuntary retirements benefits under the PSS scheme to employees who cease to be eligible to be members of PSS as the organisation that employs them has been sold or their function has been transferred to an outside body. The amendments have the same effect as those to CSS but reflect the differing benefits available under the schemes.

Commencement: The above amendments are deemed to have commenced on 27 June 1997 (**clause 2**).

The Parliamentary Superannuation scheme will be amended by **Schedule 4**. The main change will be to allow a late short term spouse to be eligible to receive benefits in respect of a short term marital relationship in the same manner as described above for CSS.

Commencement: The above amendments commence on Royal Assent (**clause 2**).

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Endnotes

- 1 http://www.pss.gov.au/pss/Annual_Reports/parliament/pss00_01/pss00_01.pdf
http://www.css.gov.au/css/Annual_Reports/parliament/css0001/css_0001_parl.pdf
- 2 The statistical measure is for Average Weekly Ordinary Times Earnings (AWOTE).
- 3 Senate Select Committee on Superannuation and Financial Services, A 'Reasonable and Secure' Retirement?, April 2001, vii.
- 4 Ibid., p. 27.
- 5 The statistical measure is for Male Total Average Weekly Earnings (MTAWE).
- 6 Australian Bureau of Statistics, Wage Cost Index, Australia, catalogue number 6345.0. This quarterly index is relatively new and has published data only from December quarter 1997.

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