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Superannuation (Consequential Amendments) Bill 2005

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Contents

Superannuation (Consequential Amendments) Bill 2005

Date Introduced: 12 May 2005

House: House of Representatives

Portfolio: Finance and Administration

Commencement: Royal Assent or the same time as various parts of the Superannuation Bill 2005 receive Royal Assent, or 1 July 2005, or other dates as specified in Clause 2.

Note: this Bill Digest should be read in conjunction with the Bill Digest on the Superannuation Bill 2005 (the 2005 Bill) currently before the House of Representatives.

Purpose

The Superannuation (Consequential Amendments) Bill 2005 (the Consequentials Bill) makes consequential amendments to implement the measures contained in the Superannuation Bill 2005 (the 2005 Bill).

In particular this Bill will amend:

- *Superannuation Act 1990* (the 1990 Act)
- *Superannuation Guarantee (Administration) Act 1992* (SG Act)
- *Superannuation (Productivity Benefit) Act 1998* (Productivity Act)
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Governor-General Act 1974*
- *Judges' Pensions Act 1968*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*, and
- Trust Deed under the *Superannuation Act 1990*.

Background

See 'Background' in the Bills Digest for the Superannuation Bill 2005.

Basis of policy commitment

See 'Basis of policy commitment' in Bills Digest for the Superannuation Bill 2005.

Position of significant interest groups/press commentary

No particular position has been expressed on the changes contained in this Bill. However, in relation to the establishment of the Public Sector Superannuation Accumulation Plan (PSSAP) the Community and Public Sector Union has welcomed the creation of a' 'modern' superannuation scheme for public servants.[1]

Any consequences of failure to pass

The relevant Second Reading Speech notes that these changes are necessary for the smooth introduction of the Choice of Funds regime for Commonwealth employees on 1 July 2005.[2] Further, these amendments contain technical changes necessary for the establishment of the PSSAP as a separate accumulation scheme on the same date.

Main Provisions

Part 1 of Schedule 1 and **Schedule 8** of the Consequentials Bill amend the *Superannuation Act 1990* and the PSS Trust Deed respectively to clarify that the provisions referring to the functions and powers of the PSS Board in the 1990 Act and the PSS Trust Deed are limited to its responsibilities in respect of the PSS established under the 1990 Act.

The functions of the PSS Board in relation to the PSSAP are set out in the 2005 Bill and the PSSAP Trust Deed.

Item 15 in **Schedule 1** of the Consequentials Bill effectively closes membership of the PSS to new Commonwealth employees from 1 July 2005.

However, this item also allows for former Commonwealth employees, who have preserved their superannuation benefits in the PSS, to resume active membership of this scheme should they re-enter Commonwealth employment at a later date. Certain temporary Commonwealth employees as at 1 July 2005, if they have decided to join the PSS during the time they were so employed, also have the right to remain PSS members after 1 July 2005.

Schedule 2 of the Consequentials Act inserts **sub-sections 6(1)** and **32C(4)** into the *Superannuation Guarantee (Administration) Act 1992* (SG Act). This ensures that contributions to the PSSAP, made by employers on behalf of employees, are contributions made in compliance with the Superannuation Choice of Fund regime.

The practical effect of this amendment is that Government employers who make contributions to the PSSAP on or after 1 July 2005, but before 1 July 2006, will not be required to offer those employees a choice of superannuation fund. However, nothing prevents them from doing so at any point after 1 July 2005.

These sub-sections will cease to have effect from 1 July 2006. From 1 July 2006 all Australian Government employers will be required to comply with the choice requirements in the SG Act and hence will have to offer their post 1 July 2005 employees a choice of superannuation fund on or before 1 July 2006. [3]

Item 3 of Schedule 3 of the Consequentials Bill amends the *Superannuation (Productivity Benefit) Act 1988.*

The productivity benefit is an amount paid to Commonwealth employees not covered by the main Commonwealth superannuation schemes (such as the PSS or CSS). It is equal to the amount they would have been paid under the SG Act (i.e. 9% of ordinary time earnings). Generally, government employees who receive the full productivity benefit are members of the Australian Government Employees Superannuation Trust (AGEST). The Productivity Benefit will continue to be paid to Commonwealth employees who were 'qualified employees' for the purposes of the Productivity Act on 30 June 2005.

Proposals

Item 3 of Schedule 3 of the Consquentials Bill inserts **new sections 3AA** and **3AB** into the Productivity Act. New section 3AB prevents the payment of superannuation benefits available under the Productivity Act to a person who first enters Commonwealth employment on or after 1 July 2006.

New section 3AB ensures that a member of the PSSAP, who elects to have their superannuation contributions sent to another superannuation fund before 1 July 2006, will not be eligible to receive the productivity benefit.

Comment

At first sight these provision appear to restrict the amount of benefits a member can be paid. However, those members of AGEST who are able to join the PSSAP will see an increase in their superannuation contributions from 9 to 15.4 per cent of wages.

Further, those who elect to have their contributions sent to a fund other than the PSSAP after 1 July 2005 (if their employer is able to offer them the Choice of Fund) will still receive 15.4 per cent of wages as contributions.

The effect of **new section 3AB** of the Productivity Act is to allow a government employer to offer their post 1 July 2005 employees a choice of superannuation fund, without having to pay the productivity benefit to the new fund. This change prevents double payment of both the 15.4 per cent superannuation contribution and the productivity benefit to the new fund.

Schedule 5 of the Consequentials Bill ensures that the personal representative of a current or former Governor-General who dies on or after 1 July 2006, where no pension is otherwise payable, is paid the minimum level of superannuation in respect of that office. The minimum level is the amount that they would have been entitled to if the Productivity Act had continued operation in respect of those employed as Governor General after 1 July 2006. These changes are necessary due to the closure of the Productivity Benefit Scheme from 1 July 2006 (see schedule 3).

Likewise, **Schedule 6** of the Consequentials Bill ensures that the minimum level of superannuation benefits are paid to the personal representative of a Judge or former Judge, if they die on or after 1 July 2006, where no pension is otherwise payable. Again, these changes are necessary due to the closure of the Productivity Benefit Scheme from 1 July 2006. The minimum level is the amount that they would have been entitled to if the scheme had continued in operation in respect of those becoming Judges on or after 1 July 2006.

Endnotes

1 Marcus Priest, Government stems super scheme drain, *Australian Financial Review*, 25 March 2004. p. 4.

2 Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, Second Reading Speech, Superannuation (Consequential Amendments) Bill 2005, House of Representatives, *Debates*, 12 May 2005, p. 3.

3 Dr Sharman Stone MP, Parliamentary Secretary to the Minister for Finance and Administration, Second Reading Speech, Superannuation Bill 2005, House of Representatives, *Debates*, 12 May 2005, p. 2.

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