



Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006

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Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006

Date introduced: 29 March 2006

House: Senate

Portfolio: Finance and Administration

Commencement: Royal Assent or 1 July 2006 or 1 July 2003 (depending on the particular Schedule)

Purpose

This Bill will consolidate and revise the governance arrangements for the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) and the Public Sector Superannuation Accumulation Plan (PSSAP) with effect from 1 July 2006.

Acts Amended

This Bill amends the following Acts with a view to establish a single board overseeing the CSS, PSS and the PSSAP:

- the *Superannuation Act 1976* (the 1976 Act)
- the *Superannuation Act 1990* (the 1990 Act)
- the *Superannuation Act 2005* (the 2005 Act), and
- the Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Bill 2006 (the Safety Bill).

Note that the Safety Act has not yet passed the Senate (see commentary on items 64 and 65 of schedule 1)

Background

Basis of policy commitment

The proposed changes follow the '[Review of the Corporate Governance of Statutory Authorities and Office Holders](#)' (Uhrig Review) which reported in mid 2003.¹ In his press release of 12 August 2004, Senator Minchin, the Minister for Finance and Administration (the Minister), noted the Government's endorsement of most of the Uhrig Review's

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recommendations.² The proposed changes were announced in the Minister's press release of 29 March 2006.³

The Uhrig Review

The Coalition had flagged its intention to examine statutory authorities and office holders in its 2001 election platform.⁴ On 14 November 2002, the Prime Minister the Hon. John Howard MP appointed Mr John Uhrig AC to review the governance practices of statutory authorities and office holders. Of particular interest to the review were those agencies which impact on the business community. The objective of the review was to identify issues concerning existing governance arrangements and to provide policy options for Government to gain the best from statutory authorities and office holders and their accountability frameworks.⁵

As part of the review process, Mr Uhrig found there was no universally agreed definition of corporate governance. The 2003 report provides the following definition:

In general terms, corporate governance encompasses the arrangements by which the powers of those who implement the strategy and the direction of an organisation are delegated and limited to ensure the organisation's success, taking into account the environment in which the organisation is operating.⁶

The Prime Minister was provided with the Uhrig Review in June 2003.⁷ It was released by the Minister for Finance and Administration on 12 August 2004. The Review recommended two templates be applied to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.⁸

Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority:⁹

- the *Financial Management and Accountability Act 1997* (FMA Act) should be applied to statutory authorities where it is appropriate that they be legally and financially part of the Commonwealth and do not need to own assets. This includes Budget-funded authorities. Uhrig recommended that these organisations should be governed by a CEO, and
- the *Commonwealth Authorities and Companies Act 1997* (CAC Act) should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth. Uhrig recommended that these organisations should be governed by a board.

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In general, agencies which exclusively manage Commonwealth appropriations should be represented and governed by a CEO. A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental.

The FMA Act applies to budget-funded authorities managed by a Chief Executive Officer (CEO). The FMA Act establishes various management and reporting responsibilities for the CEO (ss 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (s 64).¹⁰ Furthermore, the FMA Act provides an accountability framework for CEOs to manage agency resources.

The CAC Act applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (ss 15-16), and to ensure that the authority's activities comply with government policies (s 28).¹¹

The main recommendation from the review that forms a background to the proposed changes was its recommendation on the optimal size of a statutory authority's board.

A feature of the proposed merger of the boards currently overseeing the Commonwealth's superannuation schemes is that the boards of the PSS and the PSSAP, and the CSS, are of different sizes:

- the CSS Board currently has 7 members.¹² Its membership consists of the current members of the PSS Board and two part-time members¹³
- the PSS Board currently has 5 members (all of whom are CSS Board members).¹⁴ Under the 1990 Act it has 1 full-time member (the Chairperson) and 4 part-time members,¹⁵ and
- the PSS Board is responsible for the operation of the PSSAP.¹⁶

The Uhrig Review generally recommended a public sector board size of between 6 and 9 members.¹⁷

Implementation of the Uhrig Review

Following the release of the Uhrig Review in August 2004, the Department of Finance and Administration assessed more than 160 government bodies against the governance principles put forward by the Review.¹⁸ Amongst these bodies were the CSS and PSS boards.¹⁹ This assessment recommended that membership of the PSS board be increased from 5 to 7 and consideration be given to the establishment of a single board for the CSS, the PSS and the PSSAP.²⁰

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Current asset allocation – CSS and PSS

The following table gives the current asset allocations for the CSS and PSS.

Table 1: Commonwealth superannuation fund asset allocations – as at end January 2006

Asset Class	CSS Asset Allocation - Percentage of Portfolio	PSS Asset Allocation – Percentage of Portfolio
Australian Shares	29	29
International Shares	23	27
Long/Short Equities	5	5
Property	13	11
Australian Bonds	0	0
International Bonds	12	12
Market Neutral Strategies	10	10
Cash	8	6

Source: CSS and PSS web sites.

The important point to note is that the differences in how the two portfolios are managed are less important than the similarities. If any significant difference exists, it is that the CSS is more conservatively managed because of its higher holdings of cash and comparatively lower exposure to international shares.

Position of significant interest groups/press commentary

There has been no press commentary to date on the proposed changes. The Commonwealth Public Sector Union (CPSU) has taken note of the proposed changes, but has not taken a position on them.²¹ The CSS and PSS boards have issued a statement supporting the proposed merger.²²

Pros and cons

The proposed merger of the CSS and PSS boards has several advantages, including:

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- reduced complexity
- simplified administration, and
- it brings the governance of the Commonwealth's superannuation investments into line with the best practice principals identified in the Uhring Review.

However, it leaves the governance of the Commonwealth's military superannuation and smaller civilian superannuation schemes unaltered.²³

There may be some concern that the assets of the three schemes will be joined together and managed as one trust. However, CPSU has received assurances that this will not occur as a result of the proposed changes.²⁴

It is very important that the investment management of the three schemes are separately managed as the different age profiles, and rates at which the members of the schemes retire, impose different requirements on these schemes.

For example, the CSS was closed in 1990 and can expect to experience a large number of members taking their benefits and leaving the scheme in the coming years. Generally, this would require a more conservative approach to investment management and a comparatively higher holding of assets in cash to meet immediate demands for withdrawals. In contrast the PSSAP commenced operation in 2005. Accordingly its membership is comparatively young and, generally, is unlikely to withdraw their benefits in the near future. These circumstances would require its investment management to maximise returns over the longer term, with comparatively higher percentage of its resources in assets that show the best returns over the longer term, and comparatively less of its assets in cash or bonds which show more stable returns over a shorter time frame.

ALP/Australian Democrat/Greens/Family First policy position/commitments

To date neither the ALP, the Australian Democrats, Australian Greens or Family First has expressed a view on the proposed changes.

Financial implications

This Bill has no financial implications for the Commonwealth.²⁵

However, the CPSU has noted that the costs of establishing a single trustee entity will be paid out of employer contributions.²⁶ The reduction in member's superannuation balances will be very slight, if at all noticeable.

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Main provisions

Proposed Amendments in Schedule 1

Part 1 of Schedule 1

Item 1 of Schedule 1 repeals the definition of the term ‘Board’ in **section 3** of the 1976 Act and replaces it with the definition of the same term in the 1990 Act. The definition in the 1990 Act is itself altered by **item 37 in Schedule 1**.

Effectively, this combines the boards of the CSS and PSS into one entity.

Item 10 repeals **sections 27A** and **27B** of the 1976 Act. These sections currently provide for the establishment and operation of the CSS board. The repeal of these sections abolishes the CSS board.

Item 38 changes the definition of the term ‘Board’ in **section 3** of the 1990 Act. Instead of ‘PSS Board’, the term ‘Board’ in 1990 Act would now mean the ‘Australian Reward Investment Alliance’.

Item 44 inserts new **subsection 5(1AA)** into the 1990 Act. This amendment ensures that the relevant Minister (in this case the Minister for Finance and Administration) can amend the PSS Trust Deed to ensure that the ‘Australian Reward Investment Alliance’ can exercise its powers in relation to the CSS, PSSAP as well as the PSS.

Item 47 amends **section 20** of the 1990 Act and effectively allows for the establishment of a body called the ‘Australian Reward Investment Alliance’. This body will act as the board overseeing the operation of the CSS, PSS and PSSAP.

Comment

As noted above, currently the CSS and PSS investment funds appear to be managed in a similar manner. The new Australian Reward Investment Alliance will need to manage the PSS, PSSAP and CSS investment funds in order to reflect with the different characteristics of each fund, particularly the age of the majority of each schemes’ membership.

Item 50 amends **section 23** of the 1990 Act so that the total membership of the new ‘Australian Reward Investment Alliance’ is 7 – in accordance with the overall recommendation of the Uhrig Review on the size of statutory authority boards.

Comment

All save the chairperson of the new entity are part-time members.

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Item 54 inserts **section 33H** into the 1990 Act to ensure that as a result of consolidating the governance arrangements of the CSS, the PSS and the PSSAP into a single board there is no merger of the legal and equitable interests in trust property held by the Australian Investment Reward Alliance in trust for the members of these schemes.²⁷

Comment

The wording of this proposed amendment is ambiguous, so that the above interpretation was drawn from the relevant Explanatory Memorandum.²⁸ However, its intended effect is vital in ensuring that the actual investment management of the three schemes is carried out separately.

Part 2 of Schedule 1

Part 2 of **Schedule 1** deals with the potential conflict between the provisions of this Bill and the provisions of the proposed Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Bill 2006 (Safety Bill). The Bill proposing the Safety Bill was introduced into the Senate on 18 August 2005. It has not yet passed through Parliament.

Because both, the Bill and the proposed Safety Bill will make amendments to the 1976 Act, the Bill is required to implement two strategies:

- if the Bill is passed into law prior to the Safety Act coming into force – in this instance, **item 64** of Schedule 1 will repeal items 1 to 14 and item 25 of Schedule 1 of the Safety Act respectively, or
- if the Safety Act is passed into law prior to the Bill being passed – then, item 15 of Schedule 1 will repeal ss 27E, 27F, 27H, 27M, 27N and 27P of the 1976 Act (as amended by the Safety Act).

Item 25 of the Safety Act amends paragraph 43(1)(d) of the 1990 Act. **Item 57** of **Schedule 1** of this Bill repeals paragraph 43(1)(d) of the 1990 act and substitutes a new provision.

Item 2 at the beginning of this Bill (dates of commencement) allows for **Part 2** of **Schedule 1** of this Bill to take effect immediately before Schedule 1 of the Safety Act. This would cancel the above provisions of the Safety Act, should it receive Royal Assent before 1 July 2006.

However, should Schedule 1 of the Safety Act commence before 1 July 2006 **Part 2** of **Schedule 1** discussed above does not commence at all.

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Comment

Given that the provisions of this Bill repeal the sections amended by the Safety Act it seems unlikely that the Safety Act itself will commence operation before the provisions of this Bill take effect. Otherwise the intent of this Bill would be defeated.

Part 3 of Schedule 1

Items 67 to 70 of Schedule 1 deal with the vesting (or transfer of legal title) of the assets and liabilities of PSS, CSS and PSSAP boards in the new Australian Investment Reward Alliance. This is necessary to give the new entity the legal power to deal with the assets and liabilities of the three schemes.

Item 74 transfers the members of the CSS board, immediately prior to the commencement of this Bill to the Australian Reward Investment Alliance, on the same terms and conditions under which they served as members of the CSS board.

Given the common membership of the CSS and PSS boards there will be very little, if any, disruption to the governance functions in relation to the Commonwealth's civilian superannuation schemes caused by these board members transferring to the Australian Reward Investment Alliance.

Proposed amendments in Schedule 2

Schedule 2 makes a number of technical corrections to the 1976 Act. The amendments in Schedule 2 of this Bill correct mistaken or misdirected amendments made to the 1976 Act in the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003*. These amendments take effect immediately after the commencement of this particular Act on 1 July 2003. Apart for the date on which they take effect the amendments themselves are minor.

Concluding comments

The main provisions of the bill will lead to streamlined administration of the Commonwealth's civilian superannuation schemes. As the intention of the bill is for these scheme's assets continue to be managed separately, in the light of the unique characteristics of each scheme, there will be little impact upon the member's account balances.

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Endnotes

1. J. Uhrig AO, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Canberra, June 2003.
2. Senator N Minchin (Minister for Finance and Administration), *Australian Government Response to the Uhrig Report, Media Release, 57/04*, 12 August 2004.
3. Senator N. Minchin (Minister for Finance and Administration), Merger of the CSS and PSS Boards, *Media Release, 17/2006*, 29 March 2006.
4. R. Grant, 'The Uhrig Review and the future of statutory authorities', *Research Note, No. 50*, Department of Parliamentary Services, Canberra, 2004-05, p. 2.
5. *Review of the Corporate Governance*, op. cit.
6. *ibid.*, p. 17.
7. *ibid.*
8. *Australian Government Response to Uhrig Report*, op. cit.
9. *ibid.*, p. 12, point 6.
10. The Uhrig Review and the future of statutory authorities, op. cit.
11. *ibid.*
12. CSS web site, <http://www.css.gov.au/css/super/cssteam.html#board> (accessed 3rd April 2006).
13. Section 27F, *Superannuation Act 1976*.
14. PSS web site, <http://www.pss.gov.au/pss/super/pssteam.html#board> (accessed 3rd April 2006).
15. Section 23, *Superannuation Act 1990*.
16. Section 4, *Superannuation Act 2005*.
17. Review of the corporate Governance of Statutory Authorities and Office Holders, op. cit., p. 96.
18. Senator N. Minchin (Minister for Finance and Administration), 'Uhrig Review: progress with implementation', *Media Release, 01/2006*, 5 January 2006.
19. Senator N. Minchin (Minister for Finance and Administration), Second Reading Speech: Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006, Senate, *Debates*, 29 March 2006, p. 1.
20. *ibid.*
21. Commonwealth Public Sector Union, 'All CPSU members: Changes to the CSS and PSS Boards', Website Information sheet at http://www.cpsu.org.au/news/1143692275_8320.html (accessed 3rd April 2006).
22. CSS web site, 'CSS and PSS Boards support Australian Government super merger', *CSS member information statement*, 29 March 2006, at <http://www.css.gov.au/css/news/merger.html> (accessed 3rd April 2006).

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23. The Commonwealth's military superannuation schemes are the 'Defence Force Retirement and Death Benefits Scheme' (now closed to new members) and the 'Military Superannuation and Benefits Scheme' (still open to new members). The smaller civilian schemes provide retirement benefits for Federal Court Judges and Governors General respectively.
24. *All CPSU members: Changes to the CSS and PSS Boards*', op. cit. The author has since confirmed this point by personal contact with CSS staff.
25. Explanatory Memorandum, Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006, 29 March 2006, p. 2.
26. *All CPSU members: Changes to the CSS and PSS Boards*', op. cit.
27. Explanatory Memorandum Op. Cit., p. 9.
28. *ibid.*

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