



Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007

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Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007

Date introduced: 28 February 2007

House: Representatives

Portfolio: Finance and Administration

Commencement: Schedules 1 to 3 will commence on Royal Assent; Schedule 4 commences on 1 July 2008.

Purpose

The main purposes of this Bill are to make consequential amendments to 30 current Acts arising from:

- the introduction of the Public Sector Superannuation Accumulation Plan (PSSAP) on 1 July 2005
- the introduction of a single entity to administer the Commonwealth's civilian superannuation schemes from 1 July 2006
- the introduction of the new regime for managing legislative instruments under the *Legislative Instruments Act 2003* (LIA), and
- changes to the earnings base for the Superannuation Guarantee regime (SG) from 1 July 2008.¹

Attachment 1 contains a list of the Acts amended by this Bill.

Background

Commonwealth Civilian Superannuation Schemes

There are three main Commonwealth civilian superannuation schemes, the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) and the Public Sector Superannuation Scheme – Accumulation Plan (PSSAP).² The first two are now closed to new members while the PSSAP commenced operation from 1 July 2005. This latter scheme is the main Commonwealth superannuation scheme for those first entering the Commonwealth public service from the above date.³

The management of all three schemes is under taken by the Australian Reward Investment Alliance (ARIA). This body replaces the former CSS and PSS boards.⁴

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Legislative Instruments Act

From 1 January 2005, the *Legislative Instruments Act 2003* (LIA) established a regime to reform and manage procedures for the making, scrutiny and publication of Commonwealth legislative instruments by:

- establishing a Federal Register of Legislative Instruments
- encouraging rule-makers to undertake appropriate consultation
- encouraging high standards in drafting legislative instruments to promote their legal effectiveness, clarity and their intelligibility to users
- providing public access to legislative instruments
- establishing improved mechanisms for Parliamentary scrutiny of legislative instruments, and
- establishing ‘sunsetting’ mechanisms to ensure periodic review of legislative instruments and if they no longer have a continuing purpose, to repeal them.⁵

Superannuation Guarantee Earnings Base

Under the Provisions of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) and employer must contribute an amount equal to 9 per cent of an employee’s wages to a superannuation fund on their behalf. The concept of an ‘earning base’ defines the minimum amount that can be taken as the employee’s earnings for Superannuation Guarantee purposes.

The minimum level of employer superannuation support required is calculated as a percentage of an employee's notional earnings base. The relevant earnings base is usually specified in the superannuation fund trust deed, a law of the Commonwealth, a state or territory, an industrial award or a workplace agreement. If there is otherwise no acceptable earnings base, the ordinary time earnings of the employee is used as the notional earnings base.

The *Superannuation Laws Amendment (2004 Measures No 2) Act 2004* (no. 93 of 2004), simplifies the earnings base of an employee for SG purposes. The SG amendments, already enacted but to apply from 1 July 2008, will have the effect that all employers will calculate their SG liability against an employee’s ordinary time earnings. Various provisions will be removed from 1 July 2008 so that the simpler ordinary time earnings will be the basis of calculation in all cases. Amongst the provisions which will be repealed are:

- provisions which currently allow the use of pre-21 August 1991 earnings bases (SGAA s 13), and

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- provisions which allow earnings bases specified in industrial awards, superannuation schemes, occupational superannuation arrangements or a law of the Commonwealth, state or territory (SGAA s 14).

From 1 July 2008, employers will still be able to use notional earnings bases specified in legislation or industrial agreements as the basis of their SG contributions where these are above an employee's ordinary time earnings, but SG liability will only be assessed against ordinary time earnings.⁶

Basis of policy commitment

As this Bill contains consequential measures arising from the passing of other legislation no separate policy commitment was required.

Position of significant interest groups/press commentary

To date, neither the press, or other significant interest groups, have provided comment on this Bill.

Pros and cons

The Bill makes many amendments in response to recent changes in superannuation policy and practice.

Financial implications

The Explanatory Memorandum notes that there are no material budget impacts arising from this Bill.⁷ Further, there are no standing appropriations arising from this Bill.

Main provisions

Schedule 1

Generally, **Schedule 1** of this Bill amends various Acts to take account of:

- the introduction of the ARIA as the sole body managing the Commonwealth's main civilian superannuation schemes, and
- the introduction of the PSSAP from 1 July 2005.

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These amendments generally ensure that ARIA is the appropriate body to issue an invalidity certificate for members of various Commonwealth Commissions and Authorities when employees of such bodies are to be retired on the grounds of physical or mental incapacity. These certificates were previously issued by ARIA's predecessors, the PSS or CSS Boards, as appropriate.

Schedule 2

In his second reading speech the Special Minister of State, the Hon. Garry Nairn, noted that amendments to the legislation governing the PSS, CSS and PSSAP may, after the passage of this Bill, be made by legislative instrument, rather than by an Act of Parliament.⁸

At first sight this is an alarming initiative, suggesting that the ordinary processes of Parliamentary examination of a Bill may be truncated by making such changes by way of legislative instrument. However, the amendments proposed in **items 5 to 28 of Schedule 2** in respect of the CSS generally update existing provisions in the *Superannuation Act 1976* governing existing Commonwealth superannuation schemes for the making of administrative orders under the new LIA and expressly provide that all such legislative instruments are disallowable instruments. Such instruments are available to Parliament for 15 sitting days before coming into force.

Items 19 and 20 remove the need for ARIA to publish the periodic determination of the rate of return for the CSS in the Commonwealth Gazette. It is arguable that few CSS members read the Gazette to obtain this information, instead relying on ARIA's publication of these rates of return on the CSS website.

Item 29 of Schedule 2 amends **subsection 5A(2)** of the *Superannuation Act 1990*. The amendment requires that **subsection 5A(2)** omits **subsection 48(2)** of the *Acts Interpretation Act 1901* and refers instead to **subsection 12(2)** of the LIA. Similar changes are made by **item 32 to subsection 45(6)** of the *Superannuation Act 1990*.

Subsection 48(2) of the *Acts Interpretation Act 1901* was deleted by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* Act. It allows legislative orders to have retrospective effect. The proposed amendments insert a reference to subsection 12(2) of the LI Act into the *Superannuation Act 1990*. This latter subsection has equivalent wording to the now repealed subsection 48(2) of the *Acts Interpretation Act 1901*. Thus, these amendments can be seen as continuing current policy.

Schedule 3

The effect of **Schedule 3** of this Bill is to remove the original version of the PSS trust Deed from the *Superannuation Act 1990*. The Explanatory Memorandum to the Bill notes that this Deed has been amended on 27 occasions since the *Superannuation Act 1990* was enacted. The removal of the original trust deed from this Act will ensure that the original trust deed is not mistaken for the current form of the deed.⁹

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Schedule 4

Schedule 4 amends legislation governing the CSS and the payment of the productivity benefit to Commonwealth public servants to conform with the requirements of the SGAA.

The productivity benefit is an extra 3 per cent of wages paid into the superannuation accounts of Commonwealth public servants from 1988.

The Explanatory Memorandum notes that the amendments in **items 1 & 2** will enable regulations to be made to change the *Superannuation Act 1976* to ensure that the CSS provides benefits sufficient to enable individual Commonwealth employers to not be subject to the SG shortfall.

What is the SG Shortfall?

The SG shortfall is difference between the actual level of contributions made by the employer and the required level of support under the provision of the SGAA. Generally, the required level of support is 9 per cent of the employee's ordinary time earnings (i.e. earnings not including overtime). If the employer does not meet this required level of support, the shortfall calculation can be based on the employee's total income for the period (SG is paid on a quarterly basis). This can include any overtime earned by the employee. Thus, the payment of the SG shortfall by an employer can include a penalty component in that the total amount paid is more than would otherwise be paid if the employer had met their SG obligations in the first place.¹⁰

Items 3 to 7 amend the *Superannuation (Productivity Benefits) Act 1988* so that the payment of the productivity benefit is in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*.

Concluding comments

The provisions of this Bill introduce little new policy. Generally, these changes simply update existing legislation to take account of prior and future changes in general superannuation law, the Commonwealth's administration of its civilian superannuation schemes and the introduction of the new PSSAP. As noted above, the majority of the changes in this Bill are overdue.

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Endnotes

1. The Hon. Senator Mick Minchin, Minister for Finance and Administration, *Explanatory Memorandum to the Superannuation Legislation Amendment (Trustee Board and Other Measures)(Consequential Amendments) Bill 2007*, 28 February 2007, p. 1. Hereafter noted as the Explanatory Memorandum.
2. The other Commonwealth civilian superannuation schemes are the Australian Government Employees Superannuation Trust (also open to the public) and the schemes covering Federal and High Court Judges and the Governor General.
3. Further background on the establishment of the PSSAP can be found in Leslie Nielson, 'Superannuation Bill 2005', *Bills Digest*, No. 162, Department of Parliamentary Services, Canberra, 2004–05.
4. For further information on the establishment of the AIRA see Leslie Nielson, 'Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006', *Bills Digest*, No. 112, Department of Parliamentary Services, Canberra, 2005–06.
5. Legislative Instruments Bill 2003 s.3 Object. For further background on the LI Bill see Moira Coombs, 'Legislative Instruments Bill 2003', *Bills Digest*, No. 26, Department of Parliamentary Services, Canberra, 2003–04.
6. CCH, Australian Master Superannuation Guide, CCH Australia Limited, North Ryde, 2006/07, Topic 12-200.
7. Explanatory Memorandum, p. 3.
8. The Hon. Garry Nairn, Special Minister of State. 'Second reading speech: Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007', House of Representatives, *Debates*, 28 February 2007, p. 3.
9. Explanatory Memorandum, p. 32.
10. Section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

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Attachment 1

Acts Amended by this Bill

The following Acts are amended by **Schedule 1** of this Bill:

Administrative Appeals Tribunal Act 1975

Auditor-General Act 1997

Australian Crime Commission Act 2002

Australian Federal Police Act 1979

Australian Film Commission Act 1975

Australian Prudential Regulation Authority Act 1998

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Securities and Investments Commission Act 2001

Building and Construction Industry Improvement Act 2005

Classification (Publications, Films and Computer Games) Act 1995

Crimes (Superannuation Benefits) Act 1989

Defence Forces Retirement and Death Benefits Act 1973

Director of Public Prosecutions Act 1983

Family Law Act 1975

Federal Court of Australia Act 1976

Gene Technology Act 2000

Inspector-General of Taxation Act 2003

Intelligence Services Act 2001

Law Officers Act 1964

National Blood Authority Act 2003

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Native Title Act 1993

Ombudsman Act 1976

Parliamentary Contributory Superannuation Act 1948

Productivity Commission Act 1998

Renewable Energy (Electricity) Act 2000

Resources Assessment Commission Act 1989

Social Security (Administration) Act 1999

Superannuation (Consequential Amendments) Act 2005

Veterans Entitlements Act 1986

Workplace Relations Act 1996

The following Acts amended by **Schedule 2** of this Bill.

Parliamentary Contributory Superannuation Act 1948

Superannuation Act 1922

Superannuation Act 1976

Superannuation Act 1990

Superannuation (Productivity Benefit) Act 1988

Schedule 3 of the Bill amends the *Superannuation Act 1990*.

Schedule 4 of the Bill amends the following Acts.

Superannuation Act 1976

Superannuation (Productivity Benefit) Act 1988

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