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BILLS DIGEST

17 March 2008, no. 87, 2007–08, ISSN 1328-8091

Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2008

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Law and Bills Digest Section

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Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2008

Date introduced: 13 March 2008

House: Senate

Portfolio: Treasury

Commencement: Royal Assent for part of Schedules 1, 4 and 7 and Schedules 2 and 3. 1 July 2008 of Items 3 to 7 of Schedule 4.

Items 29 to 31 of **Schedule 1** also take effect on the date of Royal Assent unless Schedule 1 to the *Screen Australia and National Film and Sound Archive (Consequential and Transitional Provisions Act 2008)* commences on a day before this Bills' provisions received Royal Assent. If this is the case these particular items do not commence at all.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The main purposes of this Bill are to make consequential amendments to over 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

1. Senator, the Hon. Nick Sherry, Minister Superannuation and Corporate Law, *Explanatory Memorandum to the Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2008*, 13 March 2008, p. 1. Hereafter noted as the Explanatory Memorandum.

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

Background

The measures in this Bill were first introduced into Parliament in the Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007, which lapsed with the calling of the Federal election in October 2007. This Bill was, however, passed by the 67th House of Representatives in August 2007 with the support of the (then) opposition.

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 replaced the former CSS and PSS boards.⁴

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

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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.

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- 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 ‘sun-setting’ mechanisms to ensure periodic review of legislative instruments and if they no longer have a continuing purpose, to repeal them.⁵

The Bill, as mentioned in the purposes section, introduces a new regime for the management of legislative instruments in the superannuation field. It removes outdated references to the *Acts Interpretation Act 1901* but continues on the same arrangements with respect to disallowable instruments.

Superannuation Guarantee Earnings Base

Under the Provisions of the *Superannuation Guarantee (Administration) Act 1994* (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 (SG) 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 SGAA amendments, already enacted, but applying 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.

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

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.

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above an employee's ordinary time earnings, but an employer's SG liability will only be assessed against the employee's ordinary time earnings.⁶

Basis of policy commitment

As noted above, most, if not all, of the provisions in this Bill were first introduced to Parliament in the Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2007 on 28 February 2007 in the House of Representatives.

Otherwise, as this Bill contains only consequential measures arising from the passing of other legislation no separate policy commitment was required.

Committee consideration

The Bill has yet to be referred to any particular Committee.

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:

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6. CCH, Australian Master Superannuation Guide, CCH Australia Limited, North Ryde, 2006/07, Topic 12-200.
 7. Explanatory Memorandum, p. 4.

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- changes in the management of the Commonwealth's superannuation arrangements, specifically the replacement of the former Commonwealth Superannuation Board of Trustees No.1 by the former CSS and PSS Boards
 - the Commonwealth Superannuation Board of Trustees No.1 was responsible for the management of the Commonwealth's superannuation arrangements before being replaced by the former CSS and PSS Boards.
- the introduction of the ARIA as the sole body managing the Commonwealth's main civilian superannuation schemes from 1 July 2006, and
- the introduction of the PSSAP from 1 July 2005.

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

Items 1 to 28 and items 35 to 38 amend various acts to ensure that legislative instruments made under those particular Acts are instruments under the LIA.

Items 12 and 13 amend the *Superannuation Act 1976* to enable ARIA to make declarations in relation to the table of productivity benefits in section 110C as well as under section 110D of that Act, instead of the Minister for Finance and Administration.

Since the late 1980s' Commonwealth public servants have been receiving an additional 2 to 3 per cent of their wages paid into their superannuation fund as a 'productivity contribution. These 'productivity contributions' were paid on a before tax basis and do not affect a superannuation fund member's salary.

Items 19 and 20 remove the requirement in the *Superannuation Act 1976* for the CSS interest rate determinations to be published in the Commonwealth Gazette.

These interest rate determinations are in fact the investment rates of return for the CSS investment funds. They are now published at regular intervals on the CSS web site. In former years they were determined one year after the close of the financial year. 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*.

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Former **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*. This Deed has been amended on more than 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.

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.

As noted above, the ‘productivity benefit’ is an extra 2-3 per cent of wages paid into the superannuation accounts of Commonwealth public servants from 1988.

What is the SG Shortfall?

The SG shortfall is the 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 that is more than would otherwise be paid if the employer had met their SG obligations in the first place.⁸

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 SGAA.

8. Section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

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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. The majority of the changes in this Bill are overdue.

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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

Native Title Act 1993

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Ombudsman Act 1976

Parliamentary Contributory Superannuation Act 1948

Productivity Commission Act 1998

Renewable Energy (Electricity) Act 2000

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 repeals parts of 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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