

HOUSE OF REPRESENTATIVES

**SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL  
AMENDMENTS BILL 1993**

(Circulated by authority of the Treasurer,  
the Hon. John P. Doherty, M.P.)

(Circulated by authority of the Treasurer,  
the Hon John Dawkins, MP)

## **SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL AMENDMENTS BILL 1993**

### **GENERAL OUTLINE AND MAIN PURPOSE OF THE BILL**

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, give effect to measures to substantially increase the level of prudential protection provided to the superannuation industry, and represent a substantial strengthening of the security of superannuation savings and in protecting the rights of superannuation fund members.

These seven Bills give effect to the new prudential arrangements for superannuation that the Treasurer announced on 21 October 1992.

This Bill amends the Australian Capital Territory (Self-Government) Act 1988, the Corporations Law, the Income Tax Assessment Act 1936, the Insurance and Superannuation Commissioner Act 1987, the Military Superannuation and Benefits Act 1991, the Superannuation Act 1976, the Superannuation Act 1990, the Superannuation Benefits (Supervisory Mechanisms) Act 1990, the Superannuation Guarantee (Administration) Act 1992, the Superannuation (Productivity Benefit) Act 1988, the Taxation Administration Act 1953 and the Taxation Laws Amendment (Superannuation) Act 1992 as a consequence of amendments to be made to the Occupational Superannuation Standards Act 1987 and the commencement of the Superannuation Industry (Supervision) Bill 1993.

The provisions of the Bill generally replace references in the Principal Acts to the Occupational Superannuation Standards Act 1987 with references to the Superannuation Industry (Supervision) Act 1993 or the Superannuation Entities (Taxation) Act 1987 as appropriate.

### **FINANCIAL IMPACT STATEMENT**

The measures contained in this Bill for added protection for superannuation savings and promotion of a more efficient superannuation industry, together with the measures contained in the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled Over-Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, will result in additional supervisory costs being incurred by the Insurance and Superannuation Commission.

The Insurance and Superannuation Commission estimates that the additional resources needed to give effect to this package of measures will be \$4.831m in 1993-94, \$4.591m in 1994-95 and \$4.631m in 1995-96.

These additional costs will be recovered through the superannuation supervisory levy and the imposition of a new levy on certain superannuation funds and approved deposit funds as provided in the Superannuation (Rolled-Over Benefits) Levy Bill 1993.

Bill 1993, Superannuation (Financial Assistance Fund) Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, give effect to measures to substantially increase the level of prudential protection provided to the superannuation industry and represent a substantial strengthening of the security of superannuation savings and in protecting the rights of superannuation fund members.

These seven Bills give effect to the new prudential arrangements for superannuation that the Treasurer announced on 11 October 1992.

This Bill amends the Australian Capital Territory (Government) Act 1985, the Corporations Law, the Income Tax Assessment Act 1936, the Insurance and Superannuation Commissioner Act 1985, the Military Superannuation and Benefits Act 1981, the Superannuation Act 1976, the Superannuation Act 1991, the Superannuation Benefits (Superannuation Mechanism) Act 1990, the Superannuation Benefits (Administration) Act 1993, the Superannuation Guarantee (Administration) Act 1992, the Superannuation (Productivity Benefits) Act 1988, the Taxation Administration Act 1953 and the Taxation Laws Amendment (Superannuation) Act 1992 as a consequence of amendments made to the Occupational Superannuation Standards Act 1991 and the amendments of the Superannuation Industry (Supervision) Bill 1993.

The provisions of the Bill generally replace references in the Principal Acts to the Occupational Superannuation Standards Act 1991 with references to the Superannuation Industry (Supervision) Act 1993 or the Superannuation Benefits (Taxation) Act 1993 as appropriate.

#### FINANCIAL IMPACT STATEMENT

The measures contained in this Bill for added protection for superannuation savings and promotion of a more efficient superannuation industry, together with the measures contained in the Superannuation (Financial Assistance Fund) Bill 1993, the Superannuation (Rolled-Over Benefits) Levy Bill 1993, the Occupational Superannuation Standards Amendment Bill 1993, the Superannuation (Administration) Bill 1993, the Superannuation (Financial Assistance Fund) Levy Bill 1993, the Superannuation (Rolled-Over Benefits) Levy Bill 1993 and the Superannuation Supervisory Levy Amendment Bill 1993, will result in additional supervisory costs being incurred by the Insurance and Superannuation Commission.

**EXPLANATORY NOTES ON THE SUPERANNUATION INDUSTRY (SUPERVISION)  
CONSEQUENTIAL AMENDMENTS BILL 1993**

**PART 1 - PRELIMINARY**

**CLAUSE 1 SHORT TITLE**

1. This clause provides the mode of citation of the Bill.

**CLAUSE 2 COMMENCEMENT**

2. Subclause (1) provides for the Bill to come into operation on 1 December 1993 except in relation to the provisions listed in paragraphs (a) to (s) of subclause (2), which come into operation on 1 July 1994.

**PART 2 - AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988**

**CLAUSE 3 PRINCIPAL ACT**

3. Self explanatory.

**CLAUSE 4 DISQUALIFICATION OF MEMBER**

4. This clause amends section 14 of the Principal Act to omit the current definition of "dependant", and substitute a new definition.

**PART 3 - AMENDMENT OF THE CORPORATIONS LAW**

**CLAUSE 5 CORPORATIONS LAW**

5. Self explanatory.

**CLAUSE 6 INTERPRETATION**

6. This clause provides for replacement of a reference in section 1076A of the Principal Act to the Occupational Superannuation Standards Act 1987 with a reference to the Superannuation Industry (Supervision) Act 1993.

**PART 4 - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936**

**CLAUSE 7 PRINCIPAL ACT**

7. Self explanatory.

**CLAUSE 8 INTERPRETATION**

8. This clause amends section 6 of the Principal Act to replace a reference in the definition of "proclaimed superannuation standards day" to the day fixed by Proclamation for the purposes of section 5 of the Occupational Superannuation Standards Act 1987 with a reference to the actual day of 1 July 1990.

# CLAUSE 9 OFFICERS TO OBSERVE SECRECY

9. Subclause (1) amends section 16 of the Principal Act to allow for the change in the citation of the Occupational Superannuation Standards Act 1987 to the Superannuation Entities (Taxation) Act 1987.

10. Subclause (2) adds new paragraph (hca) to subsection 16(4) to extend the circumstances in which information covered by the secrecy provisions of the Principal Act may be communicated to other parties by taxation officers.

# CLAUSE 10 ASSESSABLE INCOME TO INCLUDE VALUE OF BENEFITS RECEIVED FROM OR IN CONNECTION WITH FUNDS THAT HAVE OBTAINED TAX BENEFITS UNDER PART IX OR FORMER SECTION 23FC

11. This clause amends paragraphs 26AFB(2)(b) and (3)(b) of the Principal Act to replace references to the Occupational Superannuation Standards Act 1987 with references to the Superannuation Industry (Supervision) Act 1993.

12. Subclause (2) also amends paragraph 26AFB(3)(b) to extend the meaning of a superannuation fund to not only take into account the definition of a regulated superannuation fund in the Superannuation Industry (Supervision) Act 1993 but also the provisions of section 58 of that Act consistent with the meaning of a superannuation fund in the Occupational Superannuation Standards Act 1987.

# CLAUSE 11 INTERPRETATION

13. Subclauses (1) and (2) provide for amendment of certain definitions in section 27A of the Principal Act to substitute references to the Occupational Superannuation Standards Act 1987 with references to the Superannuation Industry (Supervision) Act 1993.

14. Subclause (3) omits the definition of "approved trustee" from section 27A of the Principal Act as it is no longer required.

15. Subclause (4) inserts new subsections 27A(3B) and (3C) into the Principal Act. They treat the payment of unclaimed money from the Insurance and Superannuation Commissioner to a taxpayer under subsection 219(6) of the Superannuation Industry (Supervision) Act 1993 as an eligible termination payment (ETP).

# CLAUSE 12 INSERTION OF NEW SECTION

16. This clause inserts a new section 27CC (Exemption from tax - payment of unclaimed money to Insurance and Superannuation Commissioner by superannuation fund or approved deposit fund) before section 27D of the Principal Act.

17. New section 27CC will treat the payment of unclaimed money from a superannuation fund or approved deposit fund to the Insurance and Superannuation Commissioner under subsection 219(5) of the Superannuation Industry (Supervision) Act 1993 as not being assessable income.

#### CLAUSE 13 INTERPRETATION

18. This clause amends section 82AAA of the Principal Act to omit the current definition of "dependant", and substitute a new definition, so that the term has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 14 INTERPRETATION

19. This clause amends section 82AAS of the Principal Act to omit the current definition of "dependant", and substitute a new definition, so that the term has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 15 INTERPRETATION

20. This clause amends subsection 110(1) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definition of "annuity" with a reference to the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 16 INTERPRETATION

21. This clause amends subsection 116E(1) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definition of "annuity" with a reference to the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 17 INTERPRETATION

22. This clause amends subsection 159GP(1) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definition of "annuity" with a reference to the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 18 INTERPRETATION

23. This clause amends section 140C of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definitions of "annuity" and "pension" with a reference to the Superannuation Industry (Supervision) Act 1993.

#### CLAUSE 19 REBATE FOR PERSONAL SUPERANNUATION CONTRIBUTIONS

24. This clause amends subsection 159SZ(2) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definition of "dependant" with a reference to the Superannuation Industry (Supervision) Act 1993.

## CLAUSE 20 OBJECTS OF THIS PART

25. This clause adds a new paragraph (i) to the end of section 202 of the Principal Act which sets out the objects of the tax file number system. This clause amends section 202 to extend the objects to cover the administration of Parts 22 and 24 of the Superannuation Industry (Supervision) Act 1993 which deal with, respectively, unclaimed money and the rollover of certain benefits between funds.

## CLAUSE 21 INTERPRETATION

26. This clause amends subsection 221A(1) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 in the definitions of "annuity" and "pension" with a reference to the Superannuation Industry (Supervision) Act 1993.

## CLAUSE 22 INTERPRETATION

27. Subclause (1) provides for omission of certain definitions in section 267 of the Principal Act as they are no longer required.

28. Subclause (2) provides for replacement of certain definitions in section 267 of the Principal Act with new definitions giving them the same meaning as in the Superannuation Industry (Supervision) Act 1993. This subclause also inserts a new definition of "complying superannuation fund" as only a fund can be a complying superannuation fund for the purposes of Part IX of the Principal Act.

29. Subclause (3) inserts into section 267 of the Principal Act a definition of "SIS Act".

30. Subclause (4) provides for replacement of references to the "OSS Act" and to the "Occupational Superannuation Standards Act 1987" in section 267 of the Principal Act with references to the "SIS Act" and to the "Superannuation Industry (Supervision) Act 1993".

31. Subclause (5) inserts new subsection 267(4) in to the Principal Act. The purpose of this new subsection is to ensure that a reference to section 336 of the Superannuation Industry (Supervision) Act 1993 is taken to include a reference to repealed section 15D of the Occupational Superannuation Standards Act 1987.

## CLAUSE 23 ISSUE, REVOCATION ETC. OF SIS NOTICES

32. This clause amends section 269 of the Principal Act to omit subsection (1) which is no longer required, and to replace references to section 15D of the Occupational Superannuation Standards Act 1987 with references to section 336 of the Superannuation Industry (Supervision) Act 1993.

CLAUSE 24 PRE-1 JULY 88 FUNDING CREDIT BALANCE

33. This clause amends section 275A of the Principal Act to replace references to subsections in the OSS Act with references to corresponding subsections in the SIS Act.

CLAUSE 25 ASSESSMENT AS IF ENTITY WERE A COMPLYING SUPERANNUATION FUND, COMPLYING ADF OR PST

34. This clause amends section 300A of the Principal Act to provide that the Commissioner of Taxation may make an assessment of a superannuation entity as if it were a complying entity under the Superannuation Industry (Supervision) Act 1993, even though the entity has not, at the time of making the assessment, been given a notice of compliance under that Act. It also provides for replacement of references to the OSS Act with corresponding references to the SIS Act.

CLAUSE 26 ASSESSMENT ON BASIS OF ANTICIPATED PRE-1 JULY 88 FUNDING CREDIT BALANCE

35. This clause provides for replacement of references in section 300B of the Principal Act to pre-1 July 88 funding credit notices under the "OSS Act" with references to pre-1 July 88 funding credit notices under section 336 of the "SIS Act"

CLAUSE 27 INSERTION OF NEW DIVISION

36. This clause inserts a new Division 11 (Tax treatment of matters relating to superannuation (financial assistance funding) levies) into Part IX of the Principal Act to deal with the tax treatment of matters relating to the Superannuation (Financial Assistance Funding) Levy Act 1993.

37. New section 315A (Definition) defines a term for the purposes of Division 11.

38. New section 315B (Deduction for financial assistance funding levy) provides that financial assistance funding levy imposed on a taxpayer is an allowable deduction.

39. New section 315C (Financial assistance exempt from income tax) provides that a grant of financial assistance under Part 23 of the Superannuation Industry (Supervision) Act 1993 is exempt from income tax.

40. New section 315D (Repayment of financial assistance not an allowable deduction) provides that a repayment of financial assistance under Part 23 of the Superannuation Industry (Supervision) Act 1993 is not an allowable deduction.

41. New section 315E (Amendment of assessments - remission or refund of financial assistance funding levy) provides that amendment of an assessment for the purposes of giving effect to section 315B or 315C is not prevented by section 170. New subsection (2) sets out some examples of situations that could result in an amendment being made.

42. New section 315F (This Division to be primary code for tax treatment of matters relating to financial assistance funding levy) provides that Division 11 is to be the primary code for determining the taxation treatment of matters relating to financial assistance funding levy imposed pursuant to the Superannuation (Financial Assistance Funding) Act 1993.

#### CLAUSE 28 APPLICATION OF AMENDMENTS

43. The amendments made by this Part to the Principal Act will, apart from the exceptions set out in this section (and section 7 and the amendment made by subsection 9(2)), apply from 1 July 1994.

44. Subclause (1) provides that the amendments to the definitions of "annuity" and "pension" in the subsections and sections specified apply in relation to pensions or annuities where the first day of the period to which the first payment of the pension or annuity relates occurs on or after 1 July 1994.

45. Subclause (2) provides that the removal of the redundant definition of "approved trustee" applies in relation to ETPs made on or after 1 July 1994.

46. Subclause (3) provides that the amendments of the sections specified apply in relation to contributions made on or after 1 July 1994.

47. Subclause (4) provides that the amendments of section 26AFB and Part IX (other than the exceptions specified) apply in relation to a fund's 1994-95 and subsequent years of income.

#### PART 5 - AMENDMENT OF THE INSURANCE AND SUPERANNUATION COMMISSIONER ACT 1987

##### CLAUSE 29 PRINCIPAL ACT

48. Self explanatory.

##### CLAUSE 30 INTERPRETATION

49. This clause amends section 3 of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 with a reference to the Superannuation Industry (Supervision) Act 1993.

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**PART 6 - AMENDMENT OF THE MILITARY SUPERANNUATION AND BENEFITS ACT 1991**

**CLAUSE 31 PRINCIPAL ACT**

50. Self explanatory.

**CLAUSE 32 AMENDMENT OF TRUST DEED**

51. This clause amends section 5 of the Principal Act to omit subsection (2) and substitute a new subsection which refers to the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 33 APPLICATION OF AMENDMENT**

52. This clause provides that the first year of income to which the amendment made by this Part applies is the 1994-95 year of income.

**PART 7 - AMENDMENT OF THE SUPERANNUATION ACT 1976**

**CLAUSE 34 PRINCIPAL ACT**

53. Self explanatory.

**CLAUSE 35 INTERPRETATION**

54. This clause amends the definition of "deferred annuity" in subsection 3(1) of the Principal Act to omit a reference to the Occupational Superannuation Standards Act 1987. It also amends the definition of "preservation fund" to replace a reference to the Occupational Superannuation Standards Act 1987 with a reference to the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 36 FUND TO BE MANAGED BY BOARD**

55. This clause amends subsection 41(3) of the Principal Act to replace a reference to the Occupational Superannuation Standards Act 1987 with a reference to the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 37 REPEAL OF SECTION 80A**

56. Self explanatory.

**CLAUSE 38 INTERPRETATION**

57. This clause amends the definition of "preservation fund" in section 110A of the Principal Act to include reference to not only application of the Occupational Superannuation Standards Act 1987 in relation to years of income earlier than the 1994-95 year of income, but also to the Superannuation Industry (Supervision) Act 1993.

# CLAUSE 39 PAYMENT OF TRANSFER VALUES TO COMMISSIONER

58. This clause amends subsection 128(4C) of the Principal Act to include reference to not only application of the Occupational Superannuation Standards Act 1987 in relation to years of income earlier than the 1994-95 year of income, but also to the Superannuation Industry (Supervision) Act 1993.

# CLAUSE 40 REGULATIONS RELATING TO THE OPERATION OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 AND CERTAIN OTHER LAWS

59. This clause amends subsection 155C(1) of the Principal Act to substitute reference to the Occupational Superannuation Standards Act 1987 with reference to the term "an eligible regulatory law" which is defined to mean the Acts specified in the new subsection (3).

# CLAUSE 41 APPLICATION OF AMENDMENTS

60. Subclause (1) provides that the amendment made by paragraph 23(b) of the Principal Act applies to the 1994-95 year of income and subsequent years of income.

61. Subclause (2) provides for the continued application of section 80A of the Principal Act, in relation to repealed Part IIIA of the Occupational Superannuation Standards Act 1987, as if the repeal of that section had not been effected. Subclause (3) provides that reference to repealed Part IIIA in subclause (2) includes a reference to that Part as it continues to apply because of the Taxation Laws Amendment (Superannuation) Act 1992.

# PART 8 - AMENDMENT OF THE SUPERANNUATION ACT 1990

# CLAUSE 42 PRINCIPAL ACT

62. Self explanatory.

# CLAUSE 43 AMENDMENT OF TRUST DEED

63. This clause amends section 5 of the Principal Act by omitting subsection (2) and inserting a new subsection (2) which refers to the Superannuation Industry (Supervision) Act 1993.

# CLAUSE 44 APPLICATION OF AMENDMENT

64. This clause provides that the first year of income to which the amendment made by this Part applies is the 1994-95 year of income.

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**PART 9 - AMENDMENT OF THE SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) ACT 1990**

**CLAUSE 45 PRINCIPAL ACT**

65. Self explanatory.

**CLAUSE 46 PROVISION OF SUPERANNUATION IN ACCORDANCE WITH MINISTERIAL GUIDELINES**

66. This clause amends section 6 of the Principal Act by omitting part of subsection (6) and substituting new paragraphs which include reference to not only application of the Occupational Superannuation Standards Act 1987 in relation to years of income earlier than the 1994-95 year of income, but also to the Superannuation Industry (Supervision) Act 1993, the Superannuation Entities (Taxation) Act 1987 and Division 14 of Part III of the Income Tax Assessment Act 1936.

**PART 10 - AMENDMENT OF THE SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992**

**CLAUSE 47 PRINCIPAL ACT**

67. Self explanatory.

**CLAUSE 48 INTERPRETATION: GENERAL**

68. This clause amends section 6 of the Principal Act to omit the current definition of "superannuation fund", and substitute a new definition having the same meaning as in the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 49 CERTAIN BENEFIT CERTIFICATES PRESUMED TO BE CERTIFICATES IN RELATION TO COMPLYING SUPERANNUATION SCHEME**

69. Section 24 of the Principal Act allows an employer to presume that a benefit certificate in relation to a defined benefit superannuation scheme has effect in relation to a complying superannuation scheme where the scheme expects to receive a notice of compliance, even though the scheme may later be found to be non-complying. This clause amends section 24 of the Principal Act to take account of the compliance provisions specified in section 41 of the Superannuation Industry (Supervision) Act 1993.

70. This clause amends section 24 of the Principal Act so that a trustee may issue a statement to the effect that the scheme is a regulated superannuation fund for the purposes of the Superannuation Industry (Supervision) Act 1993, and that it is operated in accordance with the requirements of that Act and its associated regulations. An employer will not be able to presume compliance if the employer has reasonable grounds for believing that the scheme is not a regulated superannuation fund or is operating in breach of the Superannuation Industry (Supervision) Act 1993 and its associated regulations.

CLAUSE 50 CERTAIN CONTRIBUTIONS PRESUMED TO BE CONTRIBUTIONS TO  
COMPLYING SUPERANNUATION FUND

71. Section 25 of the Principal Act allows an employer to presume that a contribution to a defined benefit superannuation scheme has been made to a complying superannuation scheme where the scheme expects to receive a notice of compliance, even though the scheme may later be found to be non-complying. This clause amends section 25 of the Principal Act to take account of the compliance provisions specified in section 41 of the Superannuation Industry (Supervision) Act 1993.

72. This clause amends section 25 of the Principal Act so that a trustee may issue a statement to the effect that the scheme is a regulated superannuation fund for the purposes of the Superannuation Industry (Supervision) Act 1993, and that it is operated in accordance with the requirements of that Act and its associated regulations. An employer will not be able to presume compliance if the employer has reasonable grounds for believing that the scheme is not a regulated superannuation fund or is operating in breach of the Superannuation Industry (Supervision) Act 1993 and its associated regulations.

CLAUSE 51 PAYMENT OF SHORTFALL COMPONENT

73. This clause amends section 65 of the Principal Act so that a trustee may issue a statement to the effect that the scheme is a regulated superannuation fund for the purposes of the Superannuation Industry (Supervision) Act 1993, and that it is operated in accordance with the requirements of that Act and its associated regulations.

CLAUSE 52 APPLICATION OF AMENDMENTS

74. Subclause (1) provides that the amendment made by section 48 applies to a fund for the 1994-95 year of income and subsequent years of income.

75. Subclause (2) provides that the amendments made by section 49 apply to so much of a contribution period occurring after the commencement of the scheme's 1994-95 year of income.

76. Subclause (3) provides that the amendment made by section 50 applies to contributions made on or after the commencement of the fund's 1994-95 year of income.

77. Subclause (4) provides that the amendment made by section 51 applies to payments made on or after the commencement of the fund's 1994-95 year of income.

**PART 11- AMENDMENT OF THE SUPERANNUATION (PRODUCTIVITY BENEFIT)  
ACT 1988**

CLAUSE 53 PRINCIPAL ACT

78. Self explanatory.

**CLAUSE 54 INTERPRETATION**

79. This clause amends subsection 3(1) of the Principal Act by omitting the definition of "Standards Act". It also omits the definitions of "approved deposit fund" and "superannuation fund", and substitutes new definitions.

**CLAUSE 55 WHEN BENEFIT PAYABLE**

80. This clause amends subparagraph 6(7)(a)(i) of the Principal Act to replace a reference to the Standards Act with a reference to the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 56 MINISTER TO COMPLY WITH THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

81. This clause amends section 9D of the Principal Act to replace a reference to the Standards Act with a reference to the Superannuation Industry (Supervision) Act 1993.

**CLAUSE 57 APPLICATION OF AMENDMENTS**

82. This clause provides that the amendments made by this Part apply to the 1994-95 year of income and subsequent years of income.

**PART 12 - AMENDMENTS OF THE TAXATION ADMINISTRATION ACT 1953****CLAUSE 58 PRINCIPAL ACT**

83. Self explanatory.

**CLAUSE 59 ANNUAL REPORT**

84. Self explanatory.

**CLAUSE 60 SECRECY**

85. Self explanatory.

**CLAUSE 61 REPEAL OF SECTION 8AA**

86. Self explanatory.

**CLAUSE 62 INTERPRETATION**

87. Self explanatory.

**CLAUSE 63 COURT MAY ORDER PAYMENT OF AMOUNT IN ADDITION TO PENALTY**

88. Self explanatory.



CLAUSE 64 UNAUTHORISED REQUIREMENT ETC. THAT TAX FILE NUMBER BE QUOTED

89. Self explanatory.

CLAUSE 65 UNAUTHORISED RECORDING ETC. OF TAX FILE NUMBER

90. Self explanatory.

CLAUSE 66 PROVISION OF COMMONWEALTH TAXATION INFORMATION TO STATE TAXATION AUTHORITIES

91. Self explanatory.

CLAUSE 67 CERTIFICATION BY STATE TAXATION OFFICER OF COPIES OF, AND EXTRACTS FROM, DOCUMENTS

92. Self explanatory.

CLAUSE 68 APPEARANCE BY COMMISSIONER ETC.

93. Self explanatory.

CLAUSE 69 CERTIFICATION BY COMMISSIONER OF COPIES OF, AND EXTRACTS FROM, DOCUMENTS

94. Self explanatory.

CLAUSE 70 APPLICATION OF AMENDMENTS

95. This clause provides for the continued application of the Principal Act, in relation to any matter arising out of the specified repealed provisions of the Occupational Superannuation Standards Act 1987, as if the amendments made by, and the repeals effected by, this Part (other than sections 64 and 65) had not been made or effected.

# **PART 13 - AMENDMENT OF THE TAXATION LAWS AMENDMENT (SUPERANNUATION) ACT 1992**

CLAUSE 71 PRINCIPAL ACT

96. Self explanatory.

CLAUSE 72 APPLICATION

97. This clause amends section 69 of the Principal Act to make it clear that the continued operation of the Occupational Superannuation Standards Act 1987 is limited to the RBL provisions which are defined in the new subsection (4).

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**SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL  
AMENDMENTS BILL 1993**

**1993**

**GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL**

The Bill, together with the accompanying Superannuation Industry (Supervision) Bill 1993, Consolidated Superannuation Supervision Amendments Bill 1993, Superannuation (Restrictions of Credit) Bill 1993, Superannuation (Restrictions of Credit) Bill 1993, and Superannuation (Restrictions of Credit) Bill 1993, is intended to amend the Superannuation Industry (Supervision) Act 1993, and to provide for the regulation of the superannuation industry, and to provide for the regulation of the industry of superannuation funds and to provide for the regulation of the industry of superannuation funds.

These seven Bills were introduced to the House of Representatives by the Treasurer on 21 October 1993.

The Bill contains the main provisions of the Bill and provides for the regulation of the industry of superannuation funds and to provide for the regulation of the industry of superannuation funds.

**SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL  
AMENDMENTS BILL 1993**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

For further and detailed information by the House of Representatives in relation to the Bill, the following amendments and new clauses to be moved on behalf of the Government

These amendments of the Bill are intended to provide for the regulation of the industry of superannuation funds and to provide for the regulation of the industry of superannuation funds.

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### **GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL**

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, give effect to measures to substantially increase the level of prudential protection provided to the superannuation industry, and represent a substantial strengthening of the security of superannuation savings and in protecting the rights of superannuation fund members.

These seven Bills give effect to the new prudential arrangements for superannuation that the Treasurer announced on 21 October 1992.

This Bill contains the most important elements of the package of Bills and provides:

- for effective supervisory arrangements involving direct enforcement powers for the Insurance and Superannuation Commission enabling effective enforcement of the prudential requirements and obligations placed on funds and trustees;
- for trustees and investment managers to be made subject to adequate legislative sanctions for the proper performance of their fiduciary responsibilities and increasing their accountability to their members;
- clear delineation of the basic duties and responsibilities of trustees, and indicating that trustees have primary responsibility for the operation of funds;
- that trustees and investment managers must be suitable to act as fund trustees and to manage fund moneys respectively;
- for financial assistance to be provided to funds that have suffered a loss due to fraudulent conduct or theft; and
- mechanisms for dealing with benefits in employer-sponsored funds in respect of members that have left employment or who are lost, and unclaimed benefits
- for equal member and employer representation;
- certain disclosure obligations in respect of auditors and actuaries of funds; and
- rules relating to invitations and offers to subscribe for interests in, and disclosures by, public offer superannuation funds, approved deposit funds and pooled superannuation trusts.

## FINANCIAL IMPACT STATEMENT

The measures for added protection for superannuation savings and promotion of a more efficient superannuation industry, together with the measures contained in the companion Superannuation Industry (Supervision) Bill 1993, Occupational Superannuation Standards Amendment Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993 and Superannuation Supervisory Levy Amendment Bill 1993, will result in additional supervisory costs being incurred by the Insurance and Superannuation Commission.

The Insurance and Superannuation Commission estimates that the additional resources needed to give effect to this package of measures will be \$4.m in 1993/94, \$4.591m in 1994/95 and \$4.631m in 1995/96.

These additional costs will be recovered through the superannuation supervisory levy and the imposition of a new levy on certain superannuation funds and approved deposit funds as provided in the Superannuation (Rolled-Over Benefits) Levy Bill 1993.

# **SUPPLEMENTARY EXPLANATORY NOTES ON SUPERANNUATION INDUSTRY (SUPERVISION) CONSEQUENTIAL AMENDMENTS BILL 1993**

## **PART 1 - PRELIMINARY**

### **CLAUSE 2 COMMENCEMENT**

1. Paragraph 2 (aa) is to be inserted to give effect to the new Part 2A - Amendment of the Bankruptcy Act 1966.

## **PART 2A AMENDMENT OF THE BANKRUPTCY ACT 1966**

### **CLAUSE 4A PRINCIPAL ACT**

2. Self explanatory.

### **CLAUSE 4B INTERPRETATION**

3. Self explanatory.

### **CLAUSE 4C PROPERTY DIVISIBLE AMONG CREDITORS**

4. This clause amends section 116 of the Principal Act by omitting paragraphs (2)(d), (e), (f) and (fa). New paragraph (2)(d) is inserted to extend the limitation on divisible property to include superannuation policies, the interest of the bankrupt in, or payment from, a regulated superannuation fund or approved deposit fund.

5. New subsections 116(5) and (6) provide the formula and an example of the exceptions to paragraph (2)(d).

6. Subsection 116(8) allows the rules to provide for the trustee of a regulated superannuation fund or approved deposit fund to provide written certification as evidence of the value of the bankrupt's interest in the fund.

### **CLAUSE 4D MEANING OF INCOME**

7. This clause amends section 139L(a) of the Principal Act by specifying that payment of a pension or annuity is included in the definition of "income" and that pension includes a pension within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

#### CLAUSE 4E VESTING OF PROPERTY ON MAKING AN ORDER

8. Section 249 of the Principal Act is amended by omitting the existing subparagraph 6(a)(ii) and substituting a new subparagraph that provides that where the administration of the estate of a deceased person commenced before death the divisible property includes the proceeds of superannuation payments and payments from a regulated superannuation fund or approved deposit fund that would not have been divisible among the creditors if the person had not died, the sequestration order had been made before death and the amount concerned had been paid immediately before the persons death.

9. New subparagraphs 7(a)(ii) and 8(a)(ii) make similar amendments where the administration commenced at the time of death or after death.

#### CLAUSE 4F INSERTION OF NEW SECTION

10. The insertion of the section will act to void any provision in the governing rules of a superannuation fund or approved deposit fund where the effect of the rules is to cancel, forfeit, reduce or qualify the interest of a person in such a fund or to allow another person to exercise a discretion relating to the member's interest, if the member has become bankrupt, commits an act of bankruptcy or executes a deed of assignment or arrangement under this Act. This provision applies to all governing rules, irrespective of whether they were made before the commencement of this provision.

#### CLAUSE 4G APPLICATION OF AMENDMENTS

11. This clause provides that the amendments made to the Principal Act will apply to a bankruptcy, if the date of the bankruptcy is on or after the date of commencement of this section and in the case of a deceased debtor where the date of death occurs after the date of commencement of this section.

#### AMENDMENTS TO THE SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992

#### CLAUSE 49 CERTAIN BENEFIT CERTIFICATES PRESUMED TO BE CERTIFICATES IN RELATION TO COMPLYING SUPERANNUATION SCHEME

12. This clause is amended to provide that under the provisions of subparagraphs 24(1)(a)(i), (ii) and (iii) of the Principal Act, where a benefit certificate is being issued, a trustee may issue a statement to the effect that, amongst other things, a fund is a regulated fund within the meaning of the Superannuation Industry (Supervision) Act and that the fund has not received a direction in accordance with section 59 of that

13. Subsection 24(4A) is inserted in the Principal Act so that section 38A of the Superannuation Industry (Supervision) Act applies to a breach of the Act or regulations for the purposes of subsection 24(4) in the same way in which it does for the purposes of Division 2 of Part 5 of that Act, that is, a contravention of the Act or regulations is to be ignored unless it is an offence or the contravention of a civil penalty provision.

14. Clause 50 amends paragraph 25(1)(b) of the Principal Act so that a superannuation fund is conclusively presumed to be a complying superannuation fund if at the time the contribution is made the employer obtains from the trustee of the fund a written statement that the fund is a regulated fund within the meaning of the Superannuation Industry (Supervision) Act and that a direction has not been given in respect of the fund under section 59 of that Act.

15. Subsection 25(3) is inserted in the Principal Act so that section 38A of the Superannuation Industry (Supervision) Act applies to a breach of the Act or regulations for the purposes of subsection 25(2) in the same way in which it does for the purposes of Division 2 of Part 5 of that Act, that is, a contravention of the Act or regulations is to be ignored unless it is an offence or the contravention of a civil penalty provision.

16. Section 65 of the Principal Act is amended so that the trustee's written statement must make reference to the fact that the fund has not received a direction under section 59 of the Superannuation Industry (Supervision) Act.