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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH SUPERANNUATION BOARD BILL 1997

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Finance and Administration
the Hon John Fahey, MP)

COMMONWEALTH SUPERANNUATION BOARD BILL 1997

GENERAL OUTLINE

This Bill establishes a new body corporate to be called the Commonwealth Superannuation Board to administer certain Commonwealth superannuation schemes for civilian employees and manage the Funds of those schemes.

From 1 July 1998 the Commonwealth Superannuation Board will take over responsibility from the CSS Board and PSS Board for the administration of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) respectively and for the management of the CSS Fund and PSS Fund. The Commonwealth Superannuation Board will have responsibility also for administering the *Superannuation Act 1922*, the closed Papua New Guinea schemes provided under the *Papua New Guinea (Staffing and Assistance) Act 1973* and some of the residual functions under the repealed *Superannuation (Productivity Benefit) Act 1988*. There will also be provision for the Commonwealth Superannuation Board to administer, if declared by the Minister, any other superannuation scheme or fund for Commonwealth employees.

The Bill provides that no taxation, stamp duty, fees, or charges are to be payable because of the Commonwealth Superannuation Board assuming responsibility for the Commonwealth's civilian superannuation schemes.

The Commonwealth Superannuation Board will comprise an equal number of member and employer representatives and will have an independent chairman appointed by the Minister after consultation with other Board members. Member representatives will be elected by members of the various schemes administered by the Board.

The Commonwealth Superannuation Board will be given greater responsibility for administering and maintaining the rules of the various closed schemes. The Board, as well as the Minister, will be able to make determinations to vary the operation of those rules. The Board will be able to perform this function where the purpose is to comply with Government policy, comply with the requirements of any Commonwealth law or to simplify the operation of the legislation. These determinations will be disallowable instruments.

The Commonwealth Superannuation Board will be responsible for the administration of the various schemes and will receive money from employing agencies to cover the costs of the provision of the administration services.

FINANCIAL IMPACT STATEMENT

The proposed Bill does not involve any additional Budget outlays.

TERMS USED IN THE NOTES ON CLAUSES

"1922 Act" means the *Superannuation Act 1922*;

"1976 Act" means the *Superannuation Act 1976*;

"1990 Act" means the *Superannuation Act 1990*;

"CRF" means the Consolidated Revenue Fund;

"CSS" is the Commonwealth Superannuation Scheme provided for in the 1976 Act;

"PSS" is the Public Sector Superannuation Scheme provided for under the 1990 Act;

"Savings and Transitional Bill" means the Superannuation Legislation (Commonwealth Employment – Saving and Transitional Provisions) Bill 1997

"SIS" means the *Superannuation Industry (Supervision) Act 1993* including the regulations;

"SIS Act" means the *Superannuation Industry (Supervision) Act 1993*

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

Clause 1 provides for the short title of the Act to be the Commonwealth Superannuation Board Act 1997.

Clause 2 - Commencement

2. **Subclause 2(1)** provides for Part 1, Part 2 (establishment of the Board), Part 4 (administrative provisions relating to the Board such as membership), section 33 (exercise of powers by the Minister and Board) and section 35 (regulations) to commence on Royal Assent. These commencement dates will enable the new Commonwealth Superannuation Board to be established and appointments made to it before it becomes responsible for the closed and any other declared superannuation schemes covering Commonwealth civilian employees on 1 July 1998.

3. **Subclause 2(2)** provides for the remaining provisions of the Act to commence on 1 July 1998.

Clause 3 - Object

4. **Clause 3** provides that the object of the Act is to establish a Commonwealth Superannuation Board that would be responsible for administering certain superannuation schemes that cover current and former Commonwealth employees.

Clause 4 - Definitions

5. **Clause 4** defines terms used in the Bill including:

- (a) 'money of the Board' which is intended to cover money paid to the Board under sections 23 and 24 of the Act to cover the administration costs of the various schemes that come under their responsibility; and
- (b) 'declared non-statutory superannuation instrument' means a non-statutory superannuation instrument declared by the Minister to be a non-statutory superannuation instrument to which the Act applies.

PART 2 – ESTABLISHMENT OF THE BOARD

6. **Part 2** of the Bill commences on Royal Assent and provides for the establishment and incorporation of the new Commonwealth Superannuation Board.

Clause 5 – Establishment

7. **Clause 5** establishes a new Board to be known as the Commonwealth Superannuation Board (the Board).

Clause 6 – Incorporation etc.

8. **Subclause 6(1)** provides for the Board to be a body corporate with the usual features of a statutory body corporate.

9. **Subclauses 6(2) and (3)** contain provisions in relation to the Board's common seal.

PART 3 – FUNCTIONS AND POWERS OF THE BOARD

10. **Part 3** of the Bill commences on 1 July 1998 and sets out the functions and powers and responsibilities of the new Board.

Clause 7 – Functions and powers

11. This clause sets out the functions and powers of the Board. It is intended that the Board will be responsible for the Commonwealth's closed civilian superannuation schemes and other Commonwealth schemes declared by the Minister. Under this clause the Board in limited circumstances will be able to vary the operation of the superannuation legislation or declared superannuation instruments relating to the determination of a benefit or the payment of a benefit in respect of an individual.

12. The Board is to have:

- (a) those functions and powers conferred on the Board under this Act and under the superannuation legislation. The superannuation legislation includes the repealed superannuation Acts these being the *Superannuation Act 1976*, *Superannuation Act 1990*, the *Superannuation Act 1922*, and relevant provisions of the *Papua New Guinea (Staffing and Assistance) Act 1973* that all continue to apply under the Savings and Transitional Bill (**subclause 7(1)**). As an example, the Board will be responsible for the management of the CSS Fund and PSS Fund; and
- (b) those functions, powers and responsibilities in relation to declared non-statutory superannuation instruments, that is, a trust deed or other instrument establishing a superannuation scheme for Commonwealth employees as the Minister determines (**subclause 7(3)**).

13. **Subclause 7(2)** provides that the Board is also to be responsible for the general administration of the superannuation legislation. The subclause also allows the Minister to give the Board responsibility for other matters related to the superannuation legislation.

14. **Subclause 7(4)** provides that a determination by the Minister, that the Board is to be responsible for a Commonwealth superannuation scheme established by trust deed or other instrument will have effect despite anything in the trust deed or other instrument.

15. **Subclause 7(5)** makes it clear that the Board is able to enter into contracts for or in connection with its functions including contracts for the engagement of employees and consultants.

16. **Subclause 7(6)** enables the Board to vary in unusual or exceptional cases, and subject to prescribed principles, components or factors relating to the determination of a benefit or the payment of a benefit under the superannuation legislation or a declared non-statutory instrument. The subclause provides that the Board will be able to do this where the operation of the legislation or instrument in relation to an individual would produce a result not in the spirit of the legislation or instrument.

Clause 8 – Minister or Board may make certain variations to superannuation legislation or declared non-statutory superannuation instruments

17. Whereas subclause 7(6) provides for the Board to vary the operation of the schemes in relation to an individual, **clause 8** enables the Minister and the Board, in limited circumstances and where permitted by SIS to vary the operation of the schemes

generally. For example, this clause would enable the Board to vary the operation of the schemes to comply with a requirement of other Commonwealth law.

18. **Subclause 8(1)** provides that the Minister, where permitted by SIS can make a determination to vary provisions of the superannuation legislation or declared non-statutory superannuation instrument (ie, a trust deed or other instrument establishing a superannuation scheme).

19. Under **subclause 8(2)** the Minister may give to the Board a statement setting out Government policy relevant to the operation or administration of the superannuation legislation or instruments governing the superannuation schemes under its responsibility.

20. **Subclause 8(3)** provides that the Board, where permitted by SIS, is able to make a determination to vary provisions (other than those prescribed in **subclause 8(4)**) of the superannuation legislation, trust deed or other instruments that it has responsibility for administering. A determination can only be made where the purpose is to give effect to Government policy, to comply with the requirement of any law of the Commonwealth or to simplify or facilitate the operation of the legislation, trust deed or other instruments.

21. **Subclauses 8(4) and 8(5)** ensure that the Board may not make amendments under subsection 8(3) that would relate to membership of the Commonwealth Superannuation Scheme or Public Sector Superannuation Scheme or a scheme established under a declared non-statutory instrument. Membership of these schemes is a matter for the Minister.

22. **Subclause 8(6)** sets out the matters that the Board must take into account when making a determination under subsection 8(3) including the purpose of the policy advised by the Minister under subsection 8(2), the interests of beneficiaries affected and the interests of the Commonwealth.

23. To ensure that the employer costs of the schemes cannot be increased without the agreement of the employer, ie the Commonwealth, **subclause 8(7)** provides that the Board is not to make a determination under subsection 8(3) that would increase the costs of the relevant scheme without the agreement of the Minister.

24. **Subclause 8(8)** provides for a determination made under the section to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Acts 1901*.

25. **Subclause 8(9)** provides that subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to a determination made under section 8. This will ensure that an instrument can be made with retrospective effect. SIS provides that benefits cannot be reduced except in particular circumstances and both the Board and the Minister would have to comply with the requirements of SIS in amending the governing rules of the various schemes.

Clause 9 – Relationship between superannuation legislation and the SIS Act.

26. **Clause 9** is intended to cover cases where the requirements or the powers conferred on the Board under the SIS Act change. The SIS Act sets out matters that trustees must do, matters that trustees may do and matters that trustees cannot do. This clause provides for 'must do' and 'cannot do' requirements of the SIS Act to override any

inconsistent provisions in the superannuation legislation. In the cases of 'may do' matters the clause provides that the superannuation legislation where inconsistent, takes precedence.

27. In relation to a matter that the SIS Act provides that:

- (a) the Board must do, **subclause 9(1)** provides that the Board must do that matter notwithstanding to do so may be inconsistent with a provision of the superannuation legislation;
- (b) the Board may do, **subclause 9(2)** provides that the Board cannot do that matter unless the superannuation legislation expressly authorises the Board to do so; and
- (c) the Board cannot do, **subclause 9(3)** provides that the Board is prohibited from doing that matter, notwithstanding that the superannuation legislation would allow the Board to do the particular matter.

PART 4 – ADMINISTRATIVE PROVISIONS

28. **Part 4** of the Bill commences on Royal Assent and provides for administrative matters related to the operation of the Board, such as appointment of Board members, remuneration of Board members, frequency of Board meetings and delegation of Board responsibilities to other persons.

Clause 10 – Membership of Board

29. **Subclauses 10(1) and (5)** provide that the Commonwealth Superannuation Board (the Board) is to consist of 7 members:

- (a) 3 persons who are qualified because of their knowledge of, or experience in, law, public administration, public policy or the investment of money;
- (b) 3 persons chosen through elections by the membership of the schemes managed by the Board; and
- (c) a Chairman.

30. All members are to be appointed by the Minister, with the Chairman being appointed after consultation with the other Board members.

31. **Subclause 10(2)** provides that the election process to choose elected members and persons that can act under subsection 12(2) for those elected members is to be determined by the Minister.

32. **Subclause 10(3)** sets out those persons who are eligible to vote in the electoral process. The persons eligible to vote are:

- (a) members of, and contributors to, the superannuation schemes to be managed by the Board;
- (b) persons who have deferred or preserved benefits in these superannuation schemes; and
- (c) persons in receipt of a pension or other payment of a continuing nature under a scheme fund managed by the Board or the Public Sector Superannuation Scheme, the *Superannuation Act 1976*, *Superannuation Act 1922*, or the *Papua New Guinea (Staffing Assistance) Act 1973*.

33. **Subclause 10(4)** provides that a person who is a disqualified person for the purposes of SIS is not eligible for appointment to the Commonwealth Superannuation Board. A

person is a disqualified person for the purposes of SIS if the person is an insolvent under administration or, at any time, has:

- (a) been convicted of an offence in respect of dishonest conduct; or
- (b) had a civil penalty order made in relation to him or her.

34. **Subclauses 10(6), 10(7) and 10(8)** provide that the Chairman and the other non-elected members are to hold office on a part-time basis for a period not exceeding 3 years. The elected Board members are to hold office on a part-time basis for 3 years.

35. **Subclause 10(9)** provides that all Board members are eligible for re-appointment if they continue to satisfy the qualifications applied to membership, and if not a disqualified person.

36. **Subclause 10(10)** provides that in respect of matters not provided for under the Act, Board members are to hold office on such terms and conditions as determined by the Minister.

Clause 11 – Acting Chairman

37. This clause contains provisions relating to the appointment of an acting Chairman. Specifically;

- (a) a person (other than a disqualified person) may be appointed to act as Chairman for a period not longer than 12 months where there is a vacancy in the office of Chairman or where the occupant is absent from Australia or for any other reason is unable to perform his or her duties (**subclause 11(1)**);
- (b) appointments of an acting Chairman may be expressed to have effect only in such circumstances as are specified in the instrument of appointment (**subclause 11(2)**);
- (c) the Minister may determine the terms and conditions of appointment including remuneration and allowances of an acting Chairman and may terminate the appointment at any time (**subclause 11(3)**);
- (d) where no remuneration is payable to the person in accordance with the Act a person is not to be paid any remuneration or allowances but the person or his or her employer is to be reimbursed for any relevant expenses (**subclause 11(4)**);
- (e) a person acting as Chairman where the usual occupant is absent from Australia or for any other reason unable to perform his or her duties and the office of Chairman becomes vacant, the person acting may continue to act until the earlier of either the Minister directing otherwise, the vacancy being filled or a period of 12 months elapsing from the date of the vacancy (**subclause 11(5)**);
- (f) a person acting as Chairman may resign in writing to the Minister (**subclause 11(6)**); and
- (g) a person who is acting as Chairman may exercise all the powers of, and perform the duties, of the person for whom he or she is acting (**subclause 11(7)**).

Clause 12 – Acting member

38. This clause contains provisions relating to the appointment of an acting Board member other than an acting Chairman. Specifically:

- (a) a person (other than a person who is not eligible for appointment, such as a disqualified person) may be appointed to act as a Board member other than an acting

Chairman for a period not longer than 12 months where there is a vacancy in the office of Board member or where the occupant is absent from Australia or for any other reason is unable to perform his or her duties (**subclauses 12(1) and (2)**);

- (b) where a person is to act for an elected Board member, the person is to be a person that was selected through an election held pursuant to subsection 10(2) (**subclause 12(3)**);
- (c) appointments of an acting Board member may be expressed to have effect only in such circumstances as are specified in the instrument of appointment (**subclause 12(4)**);
- (d) the Minister may determine the terms and conditions of appointment of an acting Board member and may terminate the appointment at any time (**subclause 12(5)**);
- (e) where no remuneration is payable in accordance with this Act, a person is not to be paid any remuneration or allowances, but the person or his or her employer is to be reimbursed for any relevant expenses (**subclause 12(6)**);
- (f) a person acting as a Board member where the usual occupant is absent from Australia or for any other reason unable to perform his or her duties and the office of a Board member becomes vacant, the person acting may continue to act until the earlier of either the Minister directing otherwise, the vacancy is filled or where a period of 12 months elapses from the date of the vacancy (**subclause 12(7)**);
- (g) a person acting as a Board member may resign in writing to the Minister (**subclause 12(8)**); and
- (h) a person who is acting may exercise all the powers of, and perform the duties of the person for whom he or she is acting (**subclause 12(9)**).

Clause 13 – Remuneration

39. **Clause 13** makes provision in relation to the remuneration and allowances in relation to Board members including the Chairman. A member is to be paid such remuneration and allowances as determined by the Remuneration Tribunal or the Minister. Where no determination is in operation, the member or his or her employer is to be reimbursed for expenses incurred by the member in connection with the performance of his or her duties as a member.

Clause 14 - Source of payment of remuneration and allowances or reimbursement of expenses

40. **Clause 14** specifies the payment source of the remuneration and allowances or expenses that are to be paid to Board members including the Chairman.

41. **Subclause 14(1)** provides that the remuneration and allowances of a Chairman or acting Chairman are to be paid partly from the CSS Fund, the PSS Fund and where applicable a superannuation fund established by a non-statutory superannuation instrument as determined by the Minister. As the Commonwealth is an employer-sponsor of these schemes, this will ensure that the Chairman is an independent director within the terms of the definition in section 10 of the SIS Act.

42. **Subclause 14(2)** provides that the remuneration and allowances of other members of the Board may be paid out of the CSS Fund, the PSS Fund, the CRF or partly out of each of these. The Minister is to determine the source from which these costs are to be met.

43. **Subclause 14(3)** provides for the appropriation of CRF for the purposes of paragraphs (2)(b) and (c).

44. **Subclause 14(4)** provides that where a member (including acting member) or the member's employer is to be reimbursed for his or her expenses, the expenses are to be paid out of money of the Board, ie, money held by the Board other than money forming part of a superannuation fund vested in or managed by the Board.

Clause 15 – Leave of absence

45. **Clause 15** provides that a Board member may be granted leave of absence according to such terms and conditions as to remuneration or otherwise as the Minister determines.

Clause 16 – Resignation of member

46. **Clause 16** provides that a Board member may resign in writing to the Minister.

Clause 17 – Termination of appointment of members

47. **Subclause 17(1)** provides that a Board member's appointment can be terminated for misbehaviour, inefficiency, incompetence, and physical or mental incapacity.

48. **Subclause 17(2)** sets out other circumstances where the Minister may terminate a Board member's appointment. These include where the person becomes a bankrupt, does not disclose their interest under section 19 or is absent without leave from 3 consecutive meetings of the Board.

49. **Subclause 17(3)** provides that a person's appointment as a Board member is automatically terminated if he or she becomes a disqualified person for the purposes of SIS.

Clause 18 – Meetings

50. This clause provides:

- (a) for the Board to hold such meetings as are necessary for the performance of its functions and for the Chairman to convene a meeting at any time or within 30 days of receiving a written request from another Board member (**subclauses 18(1) and (2)**);
- (b) that the Chairman is to preside at all meetings at which he or she is present and, for, in his or her absence, one of the other Board members to preside on the nomination of the Chairman or, in the absence of a nomination, on election by the other Board members (**subclauses 18(3) and (4)**);
- (c) that 5 members constitute a quorum and for decisions to require a majority of 5 members present and voting (**subclauses 18(5) and (6)**);
- (d) that the Board is to keep accurate minutes of all meetings (**subclause 18(7)**); and
- (e) that references in section 18 to the Chairman and a member to include persons acting as a Chairman or a member (**subclause 18(8)**).

Clause 19 – Disclosure of interests

51. **Subclause 19(1)** provides for each Board member, within prescribed periods, to provide a statement in writing setting out particulars of any interests, pecuniary or otherwise, direct or indirect, that could reasonably be expected to conflict with the proper performance of their duties as a Board member. **Subclause 19(2)** requires a Board member who acquires an interest of a kind referred to in subsection (1) to, as

soon as possible after acquiring the interest, present a statement of particulars of the interest to a Board meeting. In accordance with **subclause 19(3)** any such statements under subsections 19(1) or (2) are to be incorporated in the minutes of the relevant Board meeting.

52. **Subclause 19(4)** requires a Board member who has a direct pecuniary interest in a matter being considered by the Board to disclose that interest to the Board meeting.

53. **Subclause 19(5)** provides that the disclosure is to be recorded in the minutes of the meeting and the Board member is not to be present or take part in any decision on the matter unless the Board or the Minister determines otherwise. **Subclause 19(6)** also provides that the Board member is not to be present or take part in matters related to the making by the Board of this determination.

54. **Subclause 19(7)** provides that the fact that a Board member has made a statement under subsections (1) or (2) in relation to a particular interest does not relieve the Board member of his or her obligation under subsection (4).

Clause 20 – Delegation by Board

55. **Subclause 20(1)** enables the Board to delegate all or any of its powers (other than the power to review its own decisions) under this Act, the superannuation legislation or a declared non-statutory superannuation instrument to certain specified persons including another Board member or a person providing administrative services to the Board. *The Acts Interpretation Act 1901* would also provide that the Board cannot delegate its power of delegation. However the power to delegate its reconsideration powers is covered in **subclause 20(2)**.

56. **Subclause 20(2)** provides that the Board may delegate its power to reconsider its own decisions or decisions made by its delegates to the Reconsideration Advisory Committees established under the repealed *Superannuation Act 1976* or the PSS Trust Deed.

Clause 21 – Vacancies not to invalidate actions of Board

57. **Clause 21** provides that a vacancy or vacancies in the membership of the Board does not invalidate an act done by the Board.

Clause 22 – Defective appointment not invalid etc.

58. **Subclause 22(1)** provides that the appointment of a person as a Board member or as Chairman, or to act as a Board member or Chairman is not to be invalid because of a defect or irregularity in connection with the appointment.

59. **Subclause 22(2)** provides that subsection (1) does not apply in relation to an election to choose an elected member or people who may be appointed to act as elected members.

60. **Subclause 22(3)** provides that the actions of a person purporting to act as a Board member including Chairman are not invalid on certain specified grounds.

PART 5 – MISCELLANEOUS

61. **Part 5** of the Bill other than **sections 33 and 35** commences on 1 July 1998 and provides for other matters related to the administration of the schemes managed by the Board. The Part amongst other matters covers the source of monies for payment of fund

management fees and administration expenses, accounting and records that the Board are required to keep and Board reporting requirements.

Clause 23 – Costs of management of CSS Fund and administration of repealed Superannuation Act 1976, repealed Superannuation Act 1922 and Papua New Guinea (Staffing Assistance) Act 1973

Clause 24 – Costs of management of PSS Fund and administration of repealed Superannuation Act 1990 and Trust Deed

62. **Clauses 23 and 24** specify the source from which the costs related to the management and administration of the various Funds are to be met. As currently is the case in relation to the CSS and PSS, those costs relating to the management of the CSS Fund and PSS Fund are to be paid out of the respective Fund.

63. Costs related to the administration of the various schemes are to be paid by the Board out of the money that it receives from employing agencies or other bodies in relation to its administrative costs.

64. **Subclauses 23(1) and 24(1)** provide that costs associated with the management of the CSS Fund or PSS Fund are to be paid out of the relevant Fund.

65. **Subclauses 23(2) and 24(2)** provide that costs associated with the administration of the various schemes are to be paid by the Board out of its money. Under **subclauses 23(3) and 24(3)** the administration costs are to include, for example, the cost of any medical examination and test that a person is required to undergo for the purpose of joining a relevant superannuation scheme.

66. The Board will be able to charge agencies that employ scheme members for the administration costs of running the schemes. **Subclauses 23(4) and 24(4)** provide for the Board to prepare an estimate of the costs of administration of the various schemes in respect of a financial year. **Subclauses 23(5) and 24(5)** then provide that the Minister may require an agency (as defined in **subclauses 23(7) and 24(7)**) to pay to the Board such part of those estimated costs as the Minister considers to be appropriate

67. **Subclauses 23(6) and 24(6)** require an agency to comply with a direction of the Minister and provide that it may apply any money under its control for the purpose of making the required payment.

68. **Subclauses 23(7) and 24(7)** define the term 'agency' as having the same meaning as in the *Public Service Act 1997* and also including a body or authority that has been declared by the Minister to be an approved authority for the purposes of the repealed *Superannuation Act 1976* or *Superannuation Act 1990*.

Clause 25 – Indemnification

69. **Subclause 25 (1)** provides an indemnification of individual members of the Board, an employee of the Board, delegates of the Board, a member of the Reconsideration Advisory Committee and other persons who assist the Board in the performance of its functions or perform administration duties against any action, liability, claim or demand in respect of any matter or thing done, or omitted to be done, in good faith. **Subclause 25(2)** provides that the Board itself is not so exempt from any action, liability, claim or demand.

Clause 26 – Certain liabilities of Board to be satisfied out of relevant Fund

70. SIS provides that the governing rules of a regulated superannuation fund must not preclude the trustee of the fund from being indemnified out of the assets of the fund. Any such provision would be void.

71. **Subclause 26(1)** specifies the relevant Fund from which any money payable by Board in respect of an action, liability, claim or demand is to be paid. The relevant Fund is determined by reference to which superannuation legislation or non-statutory superannuation instrument the action, liability, claim or demand concerns. In the case of the *Superannuation Act 1976* the money is to be paid out of the CSS Fund, in the case of the *Superannuation Act 1990* or the Trust Deed, the money is to be paid out of the PSS Fund and in the case of a declared non-statutory superannuation instrument, it is to be paid out of the superannuation fund established by that instrument.

72. To ensure that members of the particular fund are not disadvantaged by actions against the Board, **subclause 26(2)** provides that where an amount is paid out of a particular fund under subsection 26(1), an equivalent amount is to be paid to the particular Fund out of CRF.

73. **Subclause 26(3)** provides that any money payable by Board in respect of an action, liability, claim or demand that arises from other superannuation legislation, such as the repealed *Superannuation Act 1922* and the relevant provisions of the *Papua New Guinea (Staffing Assistance) Act 1973* is to be paid out of CRF.

74. **Subclause 26(4)** provides for CRF to be appropriated for the purposes of subsections (2) and (3).

Clause 27 – Exemption from taxation

75. The current CSS Board, CSS Fund, PSS Board and PSS Fund are not subject (except where otherwise provided in regulations) to taxation:

(a) under a law of the Commonwealth other than the *Income Tax Assessment Act 1936*;
or

(b) a law of a State or Territory to which the Commonwealth is not subject.

76. Also, the current income derived by the CSS Board or PSS Board from its management and investment of the CSS Fund or PSS Fund is not taxable under a State or Territory law.

77. **Subclauses 27(1), (2) and (4)** ensure that this current application of taxation to the CSS Board, CSS Fund, PSS Board and PSS Fund remains unchanged after the new Commonwealth Superannuation Board has assumed responsibility for the CSS Fund and PSS Fund.

78. Under **subclause 27(1)** the new Board, the CSS Fund and the PSS Fund are not to be subject to taxation under a law of the Commonwealth other than the Income Tax Assessment Acts 1936 and 1997 or the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*. The subclause also provides that the new Board, the CSS Fund and the PSS Fund are not to be subject to taxation under a law of a State or Territory to which the Commonwealth is not subject.

79. **Subclause 27(2)** enables regulations to be made that provide for subsection (1) not to apply in relation to taxation under a specified law.

80. **Subclause 27(4)** provides that (as is the case now) income derived by the Board from its management and investment of the CSS Fund or the PSS Fund is not taxable under a State or Territory law.

81. **Subclause 27(3)** provides that anything done in relation to the Board assuming responsibility for the superannuation legislation, declared non-statutory superannuation instruments or the vesting of the PSS Fund in the Board is not to be subject to any tax or charge. This will ensure that a single Commonwealth established Board assuming the responsibilities of, for example, the current CSS Board, the PSS Board, and the CSS Fund and PSS Fund does not financially disadvantage members of these Funds.

Clause 28 - Board to give information to Minister

82. Under **clause 28** the Board is required to furnish to the Minister such information as he or she might require relating to the performance of its functions including in relation to its general administration and investment responsibilities.

Clause 29 – Commonwealth Authorities and Companies Act 1997 not to apply

83. The current CSS and PSS Boards are not Commonwealth authorities for the purposes of the *Commonwealth Authorities and Companies Act 1997*. **Clause 29** provides that the Commonwealth Superannuation Board is also not to be Commonwealth authority for the purposes of that Act.

Clause 30 - Banking and investment

84. **Subclause 30(1)** provides for the Board to open and maintain a bank account into which money received by it is to be paid. For example, this subclause would require the administration monies the Board receives from agencies under sections 23 and 24 to be paid into a bank account.

85. **Subclause 30(2)** restricts the investment of any surplus money of the Board. Surplus money of the Board can only be invested in bank deposits, Government securities, Government guaranteed securities or in a manner approved by the Treasurer.

Clause 31 - Accounting and other records

86. **Subclauses 31(1) and (2)** provide that the Board is to keep proper accounts and records in relation to its transactions and affairs and that it must ensure that all payments of their money, ie, 'money of the Board' are correctly made and authorised and that adequate control is maintained over any assets of the Board or the incurring of liabilities by the Board.

87. **Subclause 31(3)** provides that section 31 does not impose obligations on the Board in relation to the transactions and affairs of the relevant superannuation funds for which it is responsible, and the assets and liabilities of such funds. Section 42 of the repealed *Superannuation Act 1976* and section 27A of the *Superannuation Act 1990* provide for the Board to keep accounts and records in relation to the CSS Fund and PSS Fund respectively.

88. **Subclause 31(4)** provides that where a requirement of section 31 is contravened each member who intentionally caused the contravention or failed to take reasonable steps to comply with or secure compliance with the requirement is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

Clause 32 - Audit

89. **Subclauses 32(1) and (3)** provide for the Auditor-General to annually inspect and audit the accounts and records of the Board and to provide the Minister with a report in relation to that inspection and audit. **Subclause 32(2)** makes it clear that the accounts and records of the Board to be inspected by the Auditor-General under this section do not include the accounts and records in relation to the particular superannuation funds that the Board manages.

90. Where the inspection and audit by the Auditor-General discloses an important irregularity, **subclause 32(4)** provides that the Auditor-General must as soon as practicable report the irregularity to the Minister.

Clause 33 – Exercise of powers by the Minister or Board

91. **Clause 33** provides that where the Act refers to a determination or declaration made or other act done by the Minister or the Board, that is not expressly authorised or allowed by any other provision of the Act, the Minister and the Board is, by this section, expressly authorised or allowed to make such determination, declaration or do such other act.

Clause 34 – Annual report and financial statements

92. **Subclause 34(1)** requires the Board, as soon as practicable after the end of the financial year beginning on 1 July 1998 and each financial year thereafter to give to the Minister a report on the performance of its functions during that year, financial statements in relation to the Funds it manages, and financial statements in relation to the management of the 'money of the Board'.

93. **Subclause 34(2)** requires the financial statement to be submitted to the Auditor-General before being given to the Minister. The Auditor-General is required to report to the Minister on a number of specified matters in relation to the financial statements.

94. **Subclause 34(3)** requires the Minister to table copies of the report and financial statements and Auditor-General's report in each House of Parliament within 15 sitting days after receiving the last of them.

95. **Subclause 34(4)** provides that where the Board has not complied with subsection 34(1) within 6 months after the end of the particular financial year, it must, within 14 days after the end of the 6 month period, give to the Minister a report on the performance of its functions during the financial year and interim financial statements for the financial year.

96. Under **subclause 34(5)**, the interim financial statements are to be in a form approved by the Minister but need not be accompanied by a report by the Auditor-General.

97. **Subclause 34(6)** requires the Minister to table copies of a report and financial statements under subsection 34(5) in both Houses of Parliament with 15 sitting days of receiving them.

Clause 35 - Regulations

98. **Clause 35** enables regulations to be made under the Act. It provides for the Governor-General to make regulations that cover matters required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act.



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