

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

OCCUPATIONAL SUPERANNUATION STANDARDS AMENDMENT BILL 1993
EXPLANATORY MEMORANDUM

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

OCCUPATIONAL SUPERANNUATION STANDARDS AMENDMENT BILL 1993

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

This Bill, together with the companion Superannuation Industry (Supervision) Bill 1993, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993, Superannuation Supervisory Levy Amendment Bill 1993 and Superannuation Industry (Supervision) Consequential Amendments 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 Occupational Superannuation Standards Act 1987 as a consequence of the commencement of the Superannuation Industry (Supervision) Bill 1993. As the remaining provisions of the Occupational Superannuation Standards Act 1987 will all relate to matters concerning taxation arrangements applicable to the superannuation industry, this Act is also being renamed the "Superannuation Entities (Taxation) Act 1987".

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, Superannuation (Resolution of Complaints) Bill 1993, Superannuation (Financial Assistance Funding) Levy Bill 1993, Superannuation (Rolled-Over Benefits) Levy Bill 1993, Superannuation Supervisory Levy Amendment Bill 1993 and Superannuation Industry (Supervision) Consequential Amendments 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.

**EXPLANATORY NOTES ON THE OCCUPATIONAL SUPERANNUATION STANDARDS
AMENDMENT BILL 1993**

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE ETC.

1. This clause provides the mode of citation of the Bill, and that a reference to the "Principal Act" is a reference to the Occupational Superannuation Standards Act 1987.

CLAUSE 2 COMMENCEMENT

2. This clause provides for Parts 1 and 2 to come into operation immediately after the commencement of the amendments made by Division 2 of Part 3 of the Taxation Laws Amendment (Superannuation) Act 1992, and for Parts 3 and 4 to come into operation immediately after the commencement of the amendments made by Part 2 of this Bill.

**PART 2 - TERMINATION OF THE OSS SYSTEM OF OPERATING STANDARDS FOR
SUPERANNUATION ENTITIES**

CLAUSE 3 TITLE

3. This clause provides for the title of the Principal Act to be amended to read "An Act relating to taxation in respect of certain superannuation funds, approved deposit funds and pooled superannuation trusts, and for related purposes".

CLAUSE 4 SHORT TITLE

4. This clause amends the short title of the Principal Act from the Occupational Superannuation Standards Act 1987 to the Superannuation Entities (Taxation) Act 1987.

CLAUSE 5 INTERPRETATION

5. This clause amends section 3 of the Principal Act by omitting certain definitions, omitting certain paragraphs from the definition of "reviewable decision", replacing the definition of "trustee", and omitting subsections (2) to (7) inclusive.

CLAUSE 6 REPEAL OF SECTIONS 4, 5, 6 AND 6A

6. Self explanatory.

CLAUSE 7 REPEAL OF PART II

7. Self explanatory.

CLAUSE 8 REPEAL OF SECTIONS 10 TO 15CA (INCLUSIVE)

8. Self explanatory.

CLAUSE 9 INSERTION OF NEW SECTION

9. This clause inserts a new section 15DAA (Definitions) in Part IIIAA (Collection of Superannuation Supervisory Levy) of the Principal Act. The new section provides for the insertion of definitions of a number of terms and expressions for the purposes of the Part.

CLAUSE 10 LIABILITY TO LEVY

10. This clause repeals the current section 15DA of the Principal Act, and substitutes a new section 15DA which provides for the payment of a levy in respect of a return lodged pursuant to section 36 of the Superannuation Industry (Supervision) Act 1993.

CLAUSE 11 REVIEW OF CERTAIN DECISIONS

11. This clause amends section 16 of the Principal Act by omitting certain redundant references from subsection (1) and omitting subsection (5A).

CLAUSE 12 REPEAL OF SECTIONS 18, 18A AND 19

12. Self explanatory.

CLAUSE 13 DELEGATION

13. This clause amends section 20 of the Principal Act by omitting paragraphs (a) to (d) inclusive from subsection (1) and omitting subsections (2) and (3).

CLAUSE 14 REPEAL OF SECTION 21

14. Self explanatory.

CLAUSE 15 REGULATIONS

15. This clause amends section 22 of the Principal Act by omitting paragraph (c) and by inserting a new subsection (2) which defines the term "levy" for the purposes of that section. The insertion of this subsection makes it clear that Regulations may be made in respect of levies imposed by or under the Superannuation Supervisory Levy Act 1991, the Superannuation (Financial Assistance Funding) Levy Act 1993 and the Superannuation (Rolled-Over Benefits) Levy Act 1993.

CLAUSE 16 APPLICATION OF AMENDMENTS

16. This clause provides for the continued application of the compliance system provisions of the Principal Act (which are defined in subclause (3)) - subject to the changes set out in subclause (2) - as if the amendments made by this Part had not been made, and the repeals effected by this Part had not been effected.

PART 3 - AMENDMENTS RELATING TO THE COLLECTION OF FINANCIAL ASSISTANCE FUNDING LEVY AND ROLLED-OVER BENEFITS LEVY

CLAUSE 17 INTERPRETATION

17. This clause amends section 3 of the Principal Act by adding two new paragraphs to the definition of "reviewable decision".

CLAUSE 18 INSERTION OF NEW PART

18. This clause inserts two new Parts. Part IIIAB (Collection of Levy Under The Superannuation (Financial Assistance Funding) Levy Act 1993) will provide for the collection and application of levies imposed by regulations under the Superannuation (Financial Assistance Funding) Levy Act 1993. Part IIIAC (Collection of Levy Under Superannuation (Rolled-Over Benefits) Levy Act 1993) will provide for the collection of levies imposed by regulations under the Superannuation (Rolled-Over Benefits) Levy Act 1993.

PART IIIAB - COLLECTION OF LEVY UNDER THE SUPERANNUATION (FINANCIAL ASSISTANCE FUNDING) LEVY ACT 1993

19. New section 15DI (Definitions) sets out definitions of a number of words and expressions for the purposes of the Part IIIAB.

20. New section 15DJ (Fund's accounts to be *prima facie* evidence of value of its assets) provides that the accounts of a fund prepared in respect of a financial year shall be *prima facie* evidence of the value of the assets of the fund at the end of that financial year.

21. New section 15DK (Liability to levy) provides that liability to pay a levy imposed on a fund is with the trustee.

22. New section 15DL (When levy due for payment) specifies when a levy payable by the trustee of a fund is due and payable.

23. New section 15DM (Penalty for non-payment of levy) provides for a penalty for non-payment of any levy payable by the trustee of a fund. The penalty for late payment is payable monthly.

24. New section 15DN (Recovery of levy and late payment penalty) provides for recovery by the Commonwealth as debts due any levy and late payment penalty that is due and payable.

25. New section 15DO (Payment of levy and late payment penalty) provides for any levy and late payment penalty to be paid to the Minister.

26. New section 15DP (How payments of levy and late payment penalty and repayments of financial assistance are to be applied) sets out in subsection (1) when payments of levy and late payment penalty and repayments of financial assistance are to be paid into the Consolidated Revenue Fund. Subsection (2) sets out when payments of levy and late payment penalty and repayments of financial assistance are to be paid into the Superannuation Protection Account.

27. New section 15DQ (Remission of late payment penalty) provides for remission by the Minister of late payment penalty.

28. New section 15DR (Exempting laws ineffective) provides that nothing in a law passed before this section comes into operation exempts a person from liability to levy. It further provides that a law passed after commencement of this section can only exempt a person from liability to pay taxes under laws that include levy where that law expressly exempts a person from liability to pay levy.

29. New section 15DS (Delegation) provides that the Minister may delegate his powers under Part IIIAB to the Insurance and Superannuation Commissioner.

PART IIIAC - COLLECTION OF LEVY UNDER THE SUPERANNUATION
(ROLLED-OVER BENEFITS) LEVY ACT 1993

30. New section 15DT (Definitions) sets out definitions of a number of words and expressions for the purposes of Part IIIAC.

31. New section 15DU (Fund's accounts to be *prima facie* evidence of value of its assets) provides that the accounts of an eligible rollover fund prepared in respect of a financial year shall be *prima facie* evidence of the value of the assets of the fund at the end of that financial year.

32. New section 15DV (Liability to levy) provides that liability to pay a levy imposed on an eligible rollover fund is with the trustee.

33. New section 15DW (When levy due for payment) specifies when a levy payable by the trustee of an eligible rollover fund is due and payable.

34. New section 15DX (Penalty for non-payment of levy) provides for a penalty for non-payment of any levy payable by the trustee of a fund. The penalty for late payment is payable monthly.

35. New section 15DY (Recovery of penalty and late payment penalty) provides for recovery by the Commonwealth as debts due any levy and late payment penalty that is due and payable.

36. New section 15DZ (Payment of levy and late payment penalty) provides for any levy and late payment penalty to be paid to the Commissioner, and for the Commissioner to pay any such amounts received into the Consolidated Revenue Fund.

37. New section 15DZA (Remission of late payment penalty) provides for remission by the Commissioner of late payment penalty.

38. New section 15DZB (Exempting laws ineffective) provides that nothing in a law passed before this section comes into operation exempts a person from liability to levy. It further provides that a law passed after commencement of this section can only exempt a person from liability to pay taxes under laws that include levy where that law expressly exempts a person from liability to pay levy.

CLAUSE 19 REVIEW OF CERTAIN DECISIONS

39. This clause amends section 16 of the Principal Act by adding a new subsection (1AA) which provides for the provisions of section 16 to also apply to a decision of the Minister under section 15DQ of the Principal Act.

CLAUSE 20 STATEMENTS TO ACCOMPANY NOTIFICATION OF DECISIONS

40. This clause amends section 17 of the Principal Act to enable application of its provisions to a decision of the Minister under section 15DQ of the Principal Act.

PART 4 - REPEAL OF SECTION 15D

CLAUSE 21 INTERPRETATION

41. This clause amends section 3 of the Principal Act by omitting certain paragraphs from the definition of "reviewable decision".

CLAUSE 22 REPEAL OF SECTION 15D

42. Self explanatory.

CLAUSE 23 APPLICATION OF AMENDMENTS

43. This clause provides for the continued application of the pre-1 July 1988 funding credit provisions of the Principal Act (which are defined in subclause (3)) - subject to the changes set out in subclause (2) - as if the amendment made by this Part had not been made, and the repeal effected by this Part had not been effected.

