

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

OCCUPATIONAL SUPERANNUATION STANDARDS BILL 1987
EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon P.J. Keating, MP)

OCCUPATIONAL SUPERANNUATION STANDARDS BILL 1987

GENERAL OUTLINE AND MAIN PURPOSES OF THE BILL

The Bill contains provisions concerned with operating standards and other relevant conditions with which superannuation funds and approved deposit funds will be required to comply in order to be eligible to receive relevant taxation concessions applicable to them under the Income Tax Assessment Act 1936.

The main provisions of the Bill provide for:

- . the prescribing by means of regulations of operating standards for compliance by superannuation funds and approved deposit funds in order to be eligible to receive relevant taxation concessions under the Income Tax Assessment Act 1936;

- . oversighting by the Insurance and Superannuation Commissioner, established under the Insurance and Superannuation Commissioner Act 1987, of compliance by superannuation funds and approved deposit funds with the operating standards and other relevant conditions;

the Commissioner to determine compliance by superannuation funds and approved deposit funds with operating standards and other relevant conditions by reference to a return, a trustees' certificate and an auditor's certificate (the return to be in a form approved by the Commissioner and the certificates to be in a form to be prescribed) to be submitted to the Commissioner by each superannuation fund and approved deposit fund after the end of a year of income;

an annual fee of such amount as may be prescribed from time to time to be paid by all superannuation funds and approved deposit funds.

FINANCIAL IMPACT STATEMENT

The purpose of the proposed annual fee of such amount as may be prescribed from time to time to be paid by all superannuation funds and approved deposit funds is to recover the costs of administering the supervisory arrangements introduced by this Bill. It is, therefore, anticipated that generally there will be no net cost to the Commonwealth.

EXPLANATORY NOTES ON THE OCCUPATIONAL SUPERANNUATION
STANDARDS BILL 1987

PART I - PRELIMINARY

CLAUSE 1 SHORT TITLE

Self explanatory.

CLAUSE 2 COMMENCEMENT

This clause provides for the provisions of the Bill to come into operation on a day to be fixed by Proclamation.

CLAUSE 3 INTERPRETATION

This clause sets out definitions of a number of words and expressions for the purposes of the Bill.

CLAUSE 4 APPLICATION OF ACT IN RELATION TO PERIODS BEFORE
 COMMENCEMENT ETC

This clause provides for the Act to apply from 1 July 1986 in relation to a year of income of a superannuation fund or approved deposit fund the whole or part of which occurred

before the commencement of the Act, and for some of the operating standards prescribed in regulations for purposes of subsections 7(1) and 8(1) to also apply from a date specified (but not before 1 July 1986) before the date of commencement of the Act.

CLAUSE 5 SATISFACTION OF SUPERANNUATION FUND CONDITIONS

This clause provides that a reference in the Bill to a superannuation fund satisfying the superannuation fund conditions in relation to a year of income is a reference to the superannuation fund satisfying the following conditions in relation to the year of income:

- (a) that it was a superannuation fund at all times during the year of income when it was in existence;
- (b) that it complied with the operating standards prescribed in regulations in force for purposes of subsection 7(1);
- (c) that its trustees complied with any requirements made by the Commissioner during the year of income under section 10 for provision of information or under section 11 for production of any document of the superannuation fund; and

- (d) that, as an interim measure (pending the relocation of the existing provisions in respect of superannuation funds in the Income Tax Assessment Act 1936 in the Occupational Superannuation Standards Act 1987 or the regulations made thereunder, on a date to be proclaimed) it complied with the requirements of the provisions of paragraph 23(ja) of section 23 or of the provisions of section 23F or 23FB, as the case may be, of the Income Tax Assessment Act 1936 and thus would be exempt from income tax under those provisions and the provisions of section 121C of that Act do not apply to reduce or deny that exemption.

CLAUSE 6 SATISFACTION OF APPROVED DEPOSIT FUND CONDITIONS

This clause provides that a reference in the Bill to an approved deposit fund complying with relevant provisions in relation to a year of income is a reference to the approved deposit fund satisfying the following conditions in relation to the year of income:

- (a) that it was an approved deposit fund at all times during the year of income when it was in existence;
- (b) that it complied with operating standards prescribed in regulations in force for purposes of subsection 8(1);
- and

(c) that its trustees complied with any requirements made by the Commissioner during the year of income under section 10 for provision of information or under section 11 for production of any documents of the approved deposit fund.

PART II - OPERATING STANDARDS FOR SUPERANNUATION FUNDS AND
APPROVED DEPOSIT FUNDS

CLAUSE 7 OPERATING STANDARDS FOR SUPERANNUATION FUNDS

This clause provides for the prescribing by means of regulations made under the Act of standards applicable to the operation of superannuation funds. Matters in respect of which standards may be prescribed include the persons who may contribute to funds, the vesting in members of funds of benefits, the preservation and portability of benefits, the payment by funds of benefits, the composition of boards or committees of trustees of funds, the levels of benefits that may be provided by funds and the levels of assets that may be held by funds, the application by funds of forfeited benefits, the investment of assets of funds, the disclosure of information to members of funds, the financial and actuarial reports to be prepared in relation to funds, and the matters to be included in the trust deeds of funds.

CLAUSE 8 OPERATING STANDARDS FOR APPROVED DEPOSIT FUNDS

This clause provides for the prescribing by means of regulations made under the Act of standards applicable to the operation of approved deposit funds. Matters in respect of which standards may be prescribed include the kinds of amounts which may be deposited with funds and the payment of those amounts and of earnings thereon by a fund, the preservation and portability of amounts deposited with funds and earnings thereon, the investment of assets of funds, the financial reports to be prepared in relation to funds, the disclosure of information to depositors with funds, and the matters to be included in the trust deeds of funds.

PART III - FUNCTIONS OF COMMISSIONER

CLAUSE 9 GENERAL ADMINISTRATION OF ACT

Self explanatory.

CLAUSE 10 INFORMATION TO BE GIVEN TO COMMISSIONER

This clause requires the trustees of a superannuation fund or approved deposit fund established after the commencement of the legislation to supply the Commissioner with prescribed information within the prescribed period after

establishment. It also empowers the Commissioner by notice in writing to the trustees of such funds to require from them such information or report as the Commissioner may specify in the notice.

CLAUSE 11 COMMISSIONER MAY REQUIRE PRODUCTION OF DOCUMENTS

This clause permits the Commissioner to require the trustees of a superannuation fund or approved deposit fund by notice in writing to them to produce to the Commissioner or to any person authorised in writing by the Commissioner, at such reasonable time and such reasonable place as are specified in the notice, any documents of the fund. Where a document produced in compliance with a formal requirement by the Commissioner is not in English, and the Commissioner or any authorised person so requires, the trustees of the fund must supply an English language version of the document within a reasonable time. The Commissioner or any authorised person may inspect and take extracts and copies of any document produced.

CLAUSE 13 DISCRETION TO TREAT FUNDS AS SATISFYING THE
SUPERANNUATION FUND CONDITIONS

This clause allows the Commissioner discretion to treat a superannuation fund which he considers has not satisfied the superannuation fund conditions in some instances, as having satisfied the superannuation fund conditions and to issue a notice accordingly. The instances are where the trustees of the fund satisfy the Commissioner that because of special circumstances that existed in relation to the fund during the year of income it would be reasonable for the fund to be treated as if it had satisfied the superannuation fund conditions. The clause also authorises the Commissioner to revoke, on the basis of information not previously considered, a notice given under the section. The clause requires the Commissioner to advise the Commissioner of Taxation of the particulars of all notices given under the section.

CLAUSE 14 NOTICES AS TO SATISFACTION OF APPROVED DEPOSIT
FUND CONDITIONS

This clause requires the Commissioner to issue a notice in writing to the trustees of an approved deposit fund stating whether or not the fund complied with the approved deposit fund conditions in relation to a year of income where, after

the end of the fund's year of income, the trustees have provided to the Commissioner a return in a form approved by him, a trustee's certificate in the prescribed form, an auditor's certificate in the prescribed form, the prescribed application fee, and where applicable the prescribed late lodgement fee. It also authorises the Commissioner to revoke on the basis of information not previously considered, a notice given earlier. Where a notice is issued to the trustees of a fund stating that the Commissioner is not satisfied that the fund complied with the approved deposit fund conditions, the notice is to include a statement of the reasons why the Commissioner is not so satisfied. The clause requires the Commissioner to advise the Commissioner of Taxation of the particulars of all notices given under the section.

CLAUSE 15 DISCRETION TO TREAT FUNDS AS SATISFYING THE
 APPROVED DEPOSIT FUND CONDITIONS

This clause allows the Commissioner discretion to treat an approved deposit fund which he considers has not satisfied the approved deposit fund conditions in some instances, as having satisfied the approved deposit fund conditions, and to issue a notice accordingly. The instances are where the trustees of the fund satisfy the Commissioner that because of special circumstances that existed in relation to the fund

during the year of income it would be reasonable for the fund to be treated as if it had satisfied the approved deposit fund conditions. The clause does not, however, allow the Commissioner such discretion if at any time during the year of income the approved deposit fund was not maintained by an approved trustee or approved trustees.

The clause also authorises the Commissioner to revoke, on the basis of information not previously considered, a notice given under the section. The clause requires the Commissioner to advise the Commissioner of Taxation of the particulars of all notices given under the section.

PART IV - MISCELLANEOUS

CLAUSE 16 REVIEW OF CERTAIN DECISIONS

This clause provides that the trustees of a superannuation fund or approved deposit fund which is affected by a decision by the Commissioner to give a notice under sections 12, 13, 14 or 15 stating that the Commissioner is not satisfied that the fund complied with the relevant provisions in relation to a year of income, may, by notice given to the Commissioner within a period of 21 days after the date on which the fund first receives notice of the decision, or such longer period as the Commissioner allows, request the Commissioner to

reconsider the decision. Where the Commissioner does not confirm, revoke or vary a decision within 21 days after receipt of the request to reconsider the decision, the decision is to be deemed as having been confirmed by the Commissioner. Where the Commissioner confirms, revokes or varies a decision before the expiration of 21 days after receipt of the request, the Commissioner must inform the trustees of the fund of the reasons for confirming, revoking or varying the decision, as the case may be. Application may be made to the Administrative Appeals Tribunal for a review of a decision that has been confirmed or varied by the Commissioner.

CLAUSE 17 STATEMENTS TO ACCOMPANY NOTIFICATION OF DECISIONS

This clause provides for notification of appeal rights to the trustees of a superannuation fund or approved deposit fund affected by a decision of the Commissioner.

CLAUSE 18 SECRECY

This clause provides for protection, subject to the provisions of the Freedom of Information Act 1982, of any information or documents concerning the affairs of any superannuation fund or approved deposit fund given, produced, disclosed or obtained under or for the purposes of the Act.

This clause does not prevent, however, communication of information to:

- (a) the Commissioner of Taxation or an authorised officer;
- (b) the Secretary of the Department or an authorised officer for the purpose of advising the Minister on the administration of the Act;
- (c) the Minister;
- (d) a court for the purposes of the Act; and
- (e) another person where the Minister considers that it would be in the public interest for the information to be communicated to that person.

A penalty of \$1,000 or 6 months imprisonment or both is provided for contravention of this clause.

CLAUSE 19 COMMISSIONER MAY PUBLISH STATISTICAL INFORMATION

This clause enables the Commissioner to publish statistical information relating to superannuation funds and approved deposit funds provided, however, that such information may not be published in such a way as to identify particulars furnished in respect of an individual fund.

CLAUSE 20 DELEGATION

This clause enables the Commissioner to delegate all the Commissioner's powers under the Act other than the power of delegation, and the obligation imposed upon the Commissioner by section ~~30~~²¹ to prepare and give to the Minister an annual report.

CLAUSE 21 ANNUAL REPORTS

This clause requires the Commissioner to prepare and give to the Minister within 3 months after each year ending on 30 June a report on the working, during the year, of the Act. The Minister has to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after the day of receipt of the report.

CLAUSE 22 REGULATIONS

This clause permits the Governor-General to make regulations not inconsistent with the Act, in respect of matters required or permitted by the Act to be prescribed or for carrying out or for giving effect to the Act, including in particular in respect of fees payable.



