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## Occupational Superannuation Standards Bill 1987

**Date Introduced:** 14 May 1987

**House:** House of Representatives

**Presented by:** Hon. Chris Hurford, M.P., Minister Assisting the Treasurer

### Digest of Bill

#### Purpose

To allow regulations to be made to govern the operating standards of superannuation funds and approved deposit funds; and to define the functions of the proposed Insurance and Superannuation Commissioner.

#### Background

Draft operational standards for superannuation funds were released for comment by the Treasurer and the Minister for Employment and Industrial Relations in December 1985. Following comments from interested groups, the proposed standards were released by the Treasurer in a press release dated 11 June 1986. Superannuation and approved deposit funds are required to meet the standards to be eligible for taxation concessions available to exempt funds. The standards were released against the background of the productivity case before the Conciliation and Arbitration Commission which sought to have increased productivity payments in the form of employer superannuation contributions rather than increased wages. On 26 June 1986 the Commission handed down its decision, which provided for agreements for employer contributions of 3% of ordinary time earnings to superannuation funds. This will greatly increase the amount of funds controlled by superannuation funds and also approved deposit funds (ADFs) when funds are 'parked' in the ADFs pending retirement.

The proposed guidelines were contained in an attachment to the Treasurer's press release of 11 June 1986 and concentrate on vesting, preservation, the composition of trustee boards and investment standards. Funds established after 30 June 1986 will be bound by the standards from their establishment, while funds established before that date will have until 1 July 1987 (this latter date was announced in a press release dated 30 July 1986) to meet the standards.

#### *Vesting*

An interest is taken to be fully vested where the member owns that interest, though the right to receive the interest may be postponed. Under the rules announced by the Treasurer, all employee contributions and the net earnings on those funds from 1 July 1986 are to fully vest in the employee. In addition, employer productivity contributions are to fully vest with the employee, though the cost of fund management may be deducted from any payments.

### *Preservation*

Employer contributions relating to productivity will be subject to compulsory preservation rules. The benefits will only be payable where the person has reached the age of 55 and has retired from the workforce; has retired on the grounds of permanent incapacity or invalidity; or on permanent departure for overseas. In the press release, the Treasurer recognises that there may be isolated and exceptional circumstances where exemption from these rules may be sought and that such cases will be considered on their merits. The preservation rules will not apply to sums of less than \$50. Where an employee is leaving the industry, the benefits are to be preserved by remaining in the fund if the fund is prepared to hold them; in another fund where that fund's rules prohibit payment except as outlined above; in an exempt fund (which are bound by the same rules); in an ADF that will preserve the funds until age 55; or in a deferred annuity that will not pay benefits, or be capable of being surrendered, before that age.

On 30 July 1986 the Treasurer announced that the 3% employer contribution relating to the Conciliation and Arbitration Commission decision would be subject to these rules. Further, on 22 December 1986 the Treasurer announced that, from that date, the preservation rules would apply to all employer contributions.

### *Composition of Trustee Boards*

Funds commencing on or after 16 December 1985 and with 200 or more members will be required to have equal numbers of members nominated by employees (or their unions) and employers (or employer organisations). Unequal representation will only be allowed in exceptional circumstances and only with the approval of the Occupational Superannuation Commissioner (OSC).

### *Investment Standards*

The Government has not fixed any performance indicator that must be met. Instead, funds are to be directed to achieve the maximum return for members. Loans to members will be prohibited unless the arrangement existed prior to 16 December 1986. In addition, the taxation rules relating to 'in-house' investments (i.e. the investment in, or loans to, an employer who employs people entitled to benefit under the scheme), which generally prohibit such investments beyond 10% of the assets of the fund, will apply. The Treasurer also announced that a limit of investment in a company (5% was mentioned) was to be given further consideration.

In the press release, the Treasurer also outlined the reporting requirements for such funds and announced that the preservation standards would also apply to public sector funds.

The proposal to establish the OSC was also announced in the press release of 11 June. The proposed OSC was to be responsible for overseeing compliance with the operational standards, gathering basic information and trust deeds from the funds and advising on the composition of the Trustee Boards. However, it was subsequently announced that the OSC would not be created and an office of Insurance and Superannuation Commissioner (the Commissioner) will take the place of the proposed OSC and to perform other functions.

Also refer to the Digest for the Insurance and Superannuation Commissioner Bill 1987.

## **Main Provisions**

Superannuation fund is defined in clause 3 to be an indefinitely continuing fund that is maintained to provide benefits for members on retirement and/or to provide benefits to dependants on the death of the member.

The Bill will be deemed to have operated from 1 July 1986 and regulations may specify that they have operated from that date (clause 4).

A superannuation fund will be taken to have satisfied the necessary conditions if, during a year of income, it remained a superannuation fund for the whole of the year, complied with the regulations made under proposed section 7 and the trustees-complied with the requirement in proposed section 10 relating to the giving of information. Where the year of income ended before the proclamation of the Bill, the fund will have to have been an exempt fund (clause 5).

An ADF will be taken to have satisfied the conditions if it was an ADF for the entire year of income, satisfied the regulations made under proposed section 8 and the proposed section 10 requirements have been met (clause 6).

Clause 7 will allow regulations to be made to prescribe standards for superannuation funds and, without limiting the general power, lists areas that the regulations may cover. These include who may contribute, vesting requirements, portability of benefits, the payment of benefits, investment of assets and the composition of trustee boards. Clause 8 performs the same function in respect of ADFs.

Part III of the Bill (clauses 9 to 15) deals with the functions of the Commissioner. Subject to Ministerial direction, the Commissioner is to administer this Bill (clause 9) and to collect information from funds (clause 10). Clause 11 will allow the Commissioner to require the production of documents of a fund. In addition, the Commissioner is, if so satisfied, to issue notices stating that the fund has met the superannuation fund conditions (clause 12). Clause 14 provides for similar notices in respect of ADFs.

Parties may request that the Commissioner review certain decisions and may apply to the Administrative Appeals Tribunal for review if still not satisfied (clause 16).

It will be an offence to disclose information gained under the Bill, other than to the Commissioner of Taxation, the Secretary, Minister or authorised officer of the Department administering the Act, a Court, or a person whom the Minister considers is in the public interest to have access to the information (clause 18). This will not prevent the publication of statistical information (clause 19).

The Commissioner is to prepare an annual report on the operation of the Bill (clause 21).

**For further information, if required, contact the Economics and Commerce Group.**

**5 August 1987**

**Bills Digest Service  
Legislative Research Service**

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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