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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

OCCUPATIONAL SUPERANNUATION LAWS AMENDMENT BILL 1991
EXPLANATORY MEMORANDUM

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



OCCUPATIONAL SUPERANNUATION LAWS AMENDMENT ACT 1991

GENERAL OUTLINE

This Bill proposes to amend the Occupational Superannuation Standards Act 1987 (OSS Act) to enable collection of the superannuation supervisory levy, to make a number of other changes concerning the use of data processing devices to provide information to the Commissioner and to provide for a fee to apply to requests to the Commissioner under section 15Q.

More specifically, the provisions of the Bill will effect the following:

- . trustees of funds or trusts who lodge an annual return with the Commissioner are liable to pay the levy imposed by the Superannuation Supervisory Levy Act 1991 on that lodgment and the levy is due and payable at the time of lodgment;
- . it will no longer be a requirement for the amount of an application fee (now levy) to accompany a return lodged with the Commissioner before the Commissioner is able to issue a notice concerning the fund's or trust's satisfaction of the fund or trust conditions and compliance with the relevant operational standards of the OSS legislation;
- . the Commissioner may refuse to issue a notice concerning a fund's or trust's satisfaction of the fund or trust conditions if an amount of levy payable remains unpaid (the Commissioner's decision to do so is a reviewable decision);
- . a late payment penalty applies if any levy payable remains unpaid at the commencement of the month after it became due and payable;
- . the late payment penalty, subject to a minimum amount, is 20 per cent per annum of the unpaid amount of the basic levy imposed by the Superannuation Supervisory Levy Act 1991 for the particular fund for the year of income to which the return refers, calculated monthly and rounded up to the next whole dollar; the minimum monthly amount is 12.5 per cent per annum of the smallest basic levy imposed by the Superannuation Supervisory Levy Act 1991 for the year of income to which the return refers. The amount of the late payment penalty is the sum of the monthly amounts calculated for the month which commences after the date the levy became payable and each subsequent month or part month before the amount is paid;
- . the levy and late payment penalty are payable to the Commissioner and may be recovered by the Commonwealth as debts due to the Commonwealth;

- . the Commissioner may remit the whole or part of the amount of the levy as represents a late lodgment amount imposed by the Superannuation Supervisory Levy Act 1991 and the whole or part of a late payment penalty and the Commissioner's decision to do so is a reviewable decision;
- . the Commissioner is entitled to apply a payment in partial discharge of the sum of amounts due and payable if there are two or more such amounts;
- . annual returns to the Commissioner by funds and trusts, and notices to the Commissioner required by the reasonable benefit limits provisions of sections 15F and 15G of the Occupational Superannuation Standards Act 1987 may, with the Commissioner's approval and within the Commissioner's specifications, be supplied on a data processing device such as a diskette;
- . a request by a person under section 15Q of the Occupational Superannuation Standards Act 1987 for a copy of a previous reasonable benefit limit determination must be accompanied by a fee if such a fee is prescribed in the Occupational Superannuation Standards Regulations; and
- . the Governor General may make regulations providing for exemptions from the levy, remissions of levy, the manner of payment for the levy and other amounts payable under the Occupational Superannuation Standards Act 1987, and for the refund or other application of overpayments.

The amendments will come into effect on the Act receiving the Royal Assent, and, to the extent that they affect returns to be lodged by funds and trusts, will apply to returns for the year of income commencing on 1 July 1990 and subsequent years of income lodged after the Act receives the Royal Assent.

The Bill also proposes to effect amendments to the Insurance and Superannuation Commissioner Act 1987 (ISC Act) and to the Income Tax Assessment Act 1936 (ITAA). The amendments to the ISC Act insert references in the Act to pooled superannuation trusts. This corrects a technical oversight which arose when the PST provisions were inserted (in the OSS Act) in 1989. The amendment to the ITAA inserts a provision that the late lodgment amount of the levy is not tax deductible.

FINANCIAL IMPACT STATEMENT

OCCUPATIONAL SUPERANNUATION LAWS AMENDMENT BILL 1991

This Bill provides the collection mechanism for the levy imposed by the Superannuation Supervisory Levy Bill 1991 (SSL Bill). The provisions of the SSL Bill impose a levy which is designed to fully recoup the costs of the superannuation aspects of ISC supervisory operations.

It is estimated that in the first year or so of operation and based on the current functions of the ISC, total revenue raised by the basic levy will be of the order of \$6m to \$8m. If the current flat \$40 fee were continued, it is estimated that revenue would be of the order of \$3.6m.

The above revenue estimates do not include estimates of any late payment penalty.

EXPLANATORY NOTES

OCCUPATIONAL SUPERANNUATION LAWS AMENDMENT BILL 1991

PART 1 - PRELIMINARY

CLAUSE 1 SHORT TITLE

Provides for the Act to be cited as the Occupational Superannuation Laws Amendment Act 1991.

CLAUSE 2 COMMENCEMENT

Provides that the Act shall come into operation on the day it receives Royal Assent.

PART 2 - AMENDMENT OF THE INCOME TAX ASSESSMENT ACT 1936

CLAUSE 3 PRINCIPAL ACT

Reference to Principal Act in this Part relates to the Income Tax Assessment Act 1936.

CLAUSE 4 LOSSES AND OUTGOINGS

Provides that the late lodgment amount of the levy imposed by the Superannuation Supervisory Levy Act 1991 will not be tax deductible.

PART 3 - AMENDMENT OF THE INSURANCE AND SUPERANNUATION COMMISSIONER ACT 1987

CLAUSE 5 PRINCIPAL ACT

Reference to Principal Act in this Part relates to the Insurance and Superannuation Commissioner Act 1987.

CLAUSE 6 INTERPRETATION

Provides for the definition of pooled superannuation trust to have the same meaning as in the Occupational Superannuation Standards Act 1987.

CLAUSE 7 INSURANCE AND SUPERANNUATION COMMISSIONER

Provides for inclusion of pooled superannuation trust after the reference to superannuation fund (wherever occurring) in section 4 of the Principal Act.

CLAUSE 8 DISCLOSURE OF INTERESTS

Provides for the insertion in the Principal Act of paragraph 8(aa) which includes a provision concerning pooled superannuation trusts and their trustee.

CLAUSE 9 TERMINATION OF APPOINTMENT

Provides for inclusion of pooled superannuation trust after the reference to superannuation fund in Section 11 of the Principal Act.

PART 4 - AMENDMENT OF THE OCCUPATIONAL SUPERANNUATION STANDARDS ACT 1987**CLAUSE 10 PRINCIPAL ACT**

Reference to Principal Act relates to the Occupational Superannuation Standards Act 1987.

CLAUSE 11 INTERPRETATION

Provides for the definition of a number of words and expressions for the purpose of the Bill.

CLAUSE 12 CROWN TO BE BOUND

Makes provision for the Australian Capital Territory to be bound by the Crown in the right of the Commonwealth.

CLAUSE 13 NOTICES AS TO SATISFACTION OF THE SUPERANNUATION FUND CONDITIONS

Amends Section 12 of the Principal Act.

Paragraph (a) substitutes subsections 12(1) and 12(2) of the Principal Act.

New subsection (1) provides that the trustees may give to the Commissioner a return providing information on the fund's satisfaction of conditions during the year as well as the prescribed certificates by the trustee and the auditor.

Subsection (2) provides that where a return is provided by other than electronic means, the prescribed certificates by the trustee and the auditor may be endorsed on the return.

Paragraph (c) inserts new subsections (6A) and (6B) and provides that the Commissioner may refuse to issue a notice in respect of a year of income if an amount of levy payable on lodgment of the return remains unpaid. If the Commissioner does refuse to issue a notice he must notify the fund in writing of that decision.

CLAUSE 14 DISCRETION TO TREAT FUNDS AS SATISFYING THE SUPERANNUATION FUND CONDITIONS

Section 13 of the Principal Act is amended to replace the reference to "certificates and fee or fees" with "certificates". Also included is a provision where trustees must satisfy the Commissioner that the failure of trustees to lodge was not due to a levy avoidance scheme.

**CLAUSE 15 NOTICES AS TO SATISFACTION OF THE APPROVED DEPOSIT
FUND CONDITIONS**

Amends section 14 of the Principal Act.

New subsection (1) provides that the trustee may give to the Commissioner a return providing information on the fund's satisfaction of conditions during the year as well as the prescribed certificates by the trustee and the auditor.

New subsection (2) provides that where a return is provided by other than electronic means the prescribed certificates by the trustee and the auditor may be endorsed on the return.

Paragraph (c) inserts new subsections (6A) and (6B) and provides that the Commissioner may refuse to issue a notice in respect of a year of income if an amount of levy payable on lodgment of the return remains unpaid. If the Commissioner does refuse to issue a notice he must notify the fund in writing of that decision.

**CLAUSE 16 DISCRETION TO TREAT FUNDS AS SATISFYING THE
APPROVED DEPOSIT FUND CONDITIONS**

Section 15 of the Principal Act is amended to replace the reference to "certificates and fee or fees" with "certificates". Also included is a provision where trustees must satisfy the Commissioner that the failure of a trustee to lodge was not due to a levy avoidance scheme.

**CLAUSE 17 NOTICES AS TO SATISFACTION OF THE POOLED
SUPERANNUATION TRUST CONDITIONS**

Amends section 15B of the Principal Act.

New subsection (1) provides that the trustees may give to the Commissioner a return providing information on the trust's satisfaction of conditions during the year as well as the prescribed certificates by the trustee and the auditor.

New subsection (2) provides that where a return is provided by other than electronic means the prescribed certificates by the trustee and the auditor may be endorsed on the form.

Paragraph (c) inserts new subsections (6A) and (6B) and provides that the Commissioner may refuse to issue a notice in respect of a year of income if an amount of levy payable on lodgment of the return remains unpaid. If the Commissioner does refuse to issue a notice he must notify the trust in writing of that decision.

CLAUSE 18 DISCRETION TO TREAT UNIT TRUSTS AS SATISFYING THE POOLED SUPERANNUATION TRUST CONDITIONS

Section 15C of the Principal Act is amended to replace the reference to "certificates and fee or fees" with "certificates". Also included is a provision where trustees must satisfy the Commissioner that the failure of trustees to lodge was not due to a levy avoidance scheme.

CLAUSE 19 RETURNS

This clause inserts a new section 15CA in the Principal Act and relates to Returns.

Subsection (1) - provides that a reference to an approved form of return in subsections 12(1), 14(1) and 15B(1) is a reference to a form approved by the Commissioner, for the purposes of those subsections.

Subsection (2) - provides that the Commissioner's approval may require or permit a return to be made on a specified kind of data processing device in accordance with specified software requirements.

CLAUSE 20 PART 111AA - COLLECTION OF SUPERANNUATION SUPERVISORY LEVY

This clause inserts in the Principal Act a new Part IIIAA - Collection of Superannuation Supervisory Levy.

New section 15DA - Liability to levy - provides that the trustees who lodge a return to the Insurance and Superannuation Commissioner are liable to pay a levy on that lodgment.

New section 15DB - When levy due for payment - provides that the levy payable is due at the time of lodgment.

New section 15DC - Penalty for non-payment of levy - provides for a penalty for non-payment of levy.

Subsection (1) provides that if the levy payable by a person remains unpaid there is provision for the person to be liable to pay to the Commonwealth in respect of the levy month, by way of penalty, an amount as defined in subsection (2).

Subsection (2) provides for the calculations which are to be used to assess the monthly amount for a levy month. The effect of the non-payment penalty on most funds, with a minimum levy, of say, \$40, will be a liability to pay \$5 per month penalty, this being the minimum basic levy amount, because the greater amount resulting from the calculations is to be the penalty. A few larger funds will be liable to a penalty of 20 percent per annum.

Subsection (3) provides that if, following these calculations, both amounts are equal, the first mentioned amount is taken to be the greater.

Subsection (4) provides that the late payment penalty is due at the end of the levy month.

New section 15DD - Recovery of Levy etc - provides that the levy payable and the late payment penalty is classed as a debt to the Commonwealth and may be recovered as such.

New section 15DE - Payment of Levy and Late Payment Penalty - provides that the levy and late payment penalty are payable to the Commissioner.

New section 15DF - Remission of Levy and Penalties - provides that the Commissioner may remit an amount of late lodgment amount or late payment penalty in whole or part.

New section 15DG - Application of Payments - provides that where two or more amounts are due and payable and the amount received is less than the sum of the amounts due and payable, the Commissioner may apply the amount received in partial discharge of the sum of the amounts due. Any difference may still be recovered as a debt.

New section 15DH - Exempting Laws Ineffective - provides by subsection (1) that a person will not be exempt from levy by virtue of any existing law.

Subsection (2) provides that later laws will not exempt liability to pay the levy except if expressly stated.

CLAUSE 21 APPROVED DEPOSIT FUNDS, LIFE ASSURANCE COMPANIES AND REGISTERED ORGANISATIONS TO PROVIDE CERTAIN INFORMATION

This clause inserts a new subsection 15F(1A) which provides that a notice may be provided on a specified kind of data processing device in accordance with specified software requirements as approved by the Commissioner.

CLAUSE 22 PAYERS TO PROVIDE CERTAIN INFORMATION

This clause inserts a new subsection 15G(1A) which provides that a notice may be provided on a specified kind of data processing device in accordance with specified software requirements as approved by the Commissioner.

CLAUSE 23 PERSONS MAY REQUEST COPIES OF PREVIOUS DETERMINATIONS

This clause provides that section 15Q of the Principal Act is amended to provide that any requests for previous determinations must be accompanied by the prescribed fee (if any).

CLAUSE 24 REVIEW OF CERTAIN DECISIONS

Provides for an amendment of section 16 of the Principal Act relating to the review of certain decisions to take account of the amendment to the definition of reviewable decisions.

CLAUSE 25 REGULATIONS

Provides for an amendment of section 22 of the Principal Act to allow for the inclusion of a provision to provide for the making of regulations in respect of exemptions from the levy and remissions of levy as well as stipulating the amounts payable and providing for refunds for overpayments.

CLAUSE 26 APPLICATION OF AMENDMENTS

The amendments in this Part (other than those to sections 15F, 15G and 15Q of the Principal Act) apply in relation to returns, for the year of income commencing 1 July 1990 or a subsequent year of income and lodged after the commencement of this section.

CLAUSE 27 TRANSITIONAL - PRESCRIBED FORMS

Subclause (1) provides that the reference to the amended Act in subclause (2) means the Occupational Superannuation Standards Act 1987 as amended by this Act.

Subclause (2) provides that for the purposes of the amended Act, a form prescribed for subsections 12(1), 14(1) or 15B(1) of the Principal Act relating to the provision of a certificate to the Commissioner is to have effect as if it had been prescribed for the purposes of the amended Act.

CLAUSE 28 TRANSITIONAL - PRIOR YEAR RETURNS IN ELECTRONIC FORM

Subclause (1) provides that returns for years prior to 1 July 1990 may also be provided in electronic form.

Subclause (2) provides that returns may be supplied on specified data processing devices in accordance with specified software requirements with the written approval of the Commissioner.

Subclause (3) provides that where returns are supplied on a data processing device in the manner approved, the information is taken to be a return in the approved form.

CLAUSE 29 TRANSITIONAL - NOTICES IN ELECTRONIC FORM GIVEN UNDER SUBSECTION 15F(1) OR 15G(1) OR (7) OF THE PRINCIPAL ACT

Subclause (1) provides a discretion for the Commissioner to treat information, provided on a data processing device before the commencement of this section, as if it were a notice under subsection 15F(1) or 15G(1) or (7) of the Principal Act.

Subclause (2) amends the Principal Act to make a decision by the Commissioner under subclause (1) a reviewable decision under subsection 16(1A) of the Principal Act.

CLAUSE 30 TRANSITIONAL - DISCRETION TO ACCEPT PART PAYMENT OF CERTAIN FEES AS FULL PAYMENT

Subclause (1) provides that this transitional arrangement applies to returns relating to a year of income before the one commencing on 1 July 1990, or returns for that year which are lodged before the commencement of this clause.

Subclause (2) provides that the Commissioner has the discretion to treat part payment of certain fees for these returns as full payment.

Subclause (3) provides that a decision under subclause (2) is reviewable under section 16 of the Principal Act.

CLAUSE 31 TRANSITIONAL - DELEGATION OF POWERS UNDER TRANSITIONAL PROVISIONS

Provides that the powers delegated to the Commissioner under Clauses 28, 29 and 30 are in addition to the powers delegated to the Commissioner under Section 20 of the Principal Act.