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**THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA**

**SENATE**

**SUPERANNUATION LEGISLATION (COMMONWEALTH  
EMPLOYMENT) REPEAL AND AMENDMENT BILL 2002**

**ADDITIONAL EXPLANATORY MEMORANDUM**

(Circulated by the authority of the Minister for Finance and Administration, Senator  
the Hon Nick Minchin)

## **SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 2002**

The *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002* (the Bill) was introduced into Parliament to make amendments to various Acts including the *Superannuation Act 1976* (the 1976 Act) and the *Superannuation Act 1990* (the 1990 Act). These Acts respectively provide the rules for the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS) which provide superannuation for Commonwealth civilian employees.

Some of the amendments to the 1976 and 1990 Acts contained in the Bill are required to ensure the compliance of the CSS and the PSS with the *Superannuation Industry (Supervision) Act 1993* and its regulations (SIS) or relate to that compliance. SIS provides the national regulatory system for superannuation schemes.

### **ADDITIONAL INFORMATION ON AMENDMENTS INCLUDED IN THE BILL**

A number of the amendments in the Bill are proposed to have retrospective effect. This Additional Explanatory Memorandum provides supplementary information about the requirement for retrospectivity for certain provisions in the Bill and confirms that the amendments do not detrimentally affect the rights of any person.

#### **Schedule 1 - items 175, 183, 186 and 187 - Retrospective commencement**

All of these items clarify or correct provisions of the 1976 Act that were inserted into the Act, or amended, with effect from 1 July 1995 by the *Superannuation Legislation Amendment Act 1995* (the 1995 amending Act).

**Item 175 of Schedule 1** ensures that members of the CSS Board can only be indemnified in circumstances permitted by SIS. No action has been required under this section since 1995 but the retrospective amendment is necessary to ensure that the CSS has continued to comply with SIS since that time.

**Items 183 and 187 of Schedule 1** correct provisions relating to the release of benefits as permitted by SIS. Following the amendments made by the 1995 amending Act it was realised that the provisions were more restrictive than necessary to comply with SIS. As a result, regulations were made under section 155C of the 1976 Act, which allows regulations to be made to modify the Act where necessary to comply with SIS, to ensure that the provisions read as if they had been amended to comply with SIS and not to apply a more restrictive regime in the CSS. These items amend the 1976 Act in line with the modifications made by the regulations. The date of effect is the same as the date of effect of those regulations.

The amendments in items 183 and 187 ensure the SIS rules for the release of benefits are reflected in the 1976 Act. The Act has been administered in accordance with those rules because of the operation of the regulations under section 155C. The amendments are beneficial to the persons concerned as they allow for the earlier payment of benefits.

**Item 186 of Schedule 1** corrects an error of drafting relating to the date on which deferred benefits become payable. The error occurred when section 138 was redrafted in 1995 and instead of providing, as had been done by the provision since 1976, that benefits become payable after a particular event, eg, death, it inadvertently

provided that benefits should be payable from the day before the event. This creates a situation where a benefit appears to become payable from a day before the person was eligible for the benefit. As it was not intended that the provision be changed in this way, it has been administered since 1995 as if the error had not been made.

#### **Schedule 1, items 176, 182 and 194 - Retrospective commencement**

These amendments relate to changes to the 1976 Act to formally implement changes to the CSS announced on 27 June 1997.

**Items 176 and 194 of Schedule 1** amend the 1976 Act to remove existing restrictions on the payment of certain benefits from the CSS to persons who are involuntarily retired as a result of a sale of an asset or the transfer of a function. **Item 182 of Schedule 1** further amends the 1976 Act to provide a new benefit option for CSS members who cease CSS membership in those circumstances but who are not involuntarily retired. This can occur where a CSS member resigns from Commonwealth employment in some cases to work for the new owner of the asset or provider of the function.

The relevant benefit options have been available on an administrative basis since 27 June 1997 and the amendments are beneficial to the members concerned.

#### **Schedule 1, item 193 - Retrospective commencement**

**Item 193 of Schedule 1** clarifies the original intention of section 155B of the 1976 Act in relation to its application to all CSS members who cease membership through the sale of an asset or the transfer of a function. Legal advice has been received that the section as currently drafted would only apply to a person whose position ceases to exist in those circumstances. However, some persons may continue in their position but cease their CSS membership because an organisation is sold as a going concern to the private sector.

Regulations made under section 155B allow for the making of declarations which provide for the early payment of benefits where a person is made redundant within three years of the sale or transfer. The item amends section 155B to clarify the original intention that actions taken under that section can apply where to a person who ceases CSS membership because a body by which they are employed is sold as a going concern as well as to a person whose position ceases to exist.

The provision has been administered as originally intended and is beneficial to the persons concerned as it provides an additional benefit option.

#### **Schedule 2, items 8 and 14 – Retrospective commencement**

**Item 8 of Schedule 2** amends the definition of Trust Deed included in the 1990 Act to ensure changes made to the Trust Deed through an Act of Parliament are included in the definition. The definition as currently drafted only includes amendments made under an Amending Deed. The definition is being retrospectively changed from 1 July 1995 in order to ensure that amendments made by item 17 of Schedule 2 (which take effect from that date) can be encompassed in the definition of Trust Deed. (Amendments made by item 17 of Schedule 2 are being made as a result of a request made by the Senate Standing Committee on Regulations and Ordinances in 1995.) This is a technical amendment that will not detrimentally affect the rights of any person.

**Item 14 of Schedule 2** ensures that members of PSS Board can only be indemnified in circumstances permitted by SIS. This item clarifies a provision of the 1990 Act that was amended with effect from 1 July 1995 by the 1995 amending Act. No action has been required under this section since 1995 but the retrospective amendment is necessary to ensure that the PSS has continued to comply with SIS since that time.

### **Schedule 3 – Retrospective commencement**

These amendments relate to changes to the PSS Trust Deed under the 1990 Act to formally implement changes to the PSS announced on 27 June 1997.

**Schedule 3** amends the Trust Deed to remove existing restrictions on the payment of certain benefits from the PSS to persons who are involuntarily retired as a result of a sale of an asset or the transfer of a function. The Schedule further amends the Trust Deed to provide a new benefit option for PSS members who cease PSS membership in those circumstances but who are not involuntarily retired. This can occur where a PSS member resigns from Commonwealth employment in some cases to work for the new owner of the asset or provider of the function.

The relevant benefit options have been available on an administrative basis since 27 June 1997 and are beneficial to the members concerned.