



Superannuation Bill 2005

Leslie Nielson
Economics, Commerce & Industrial Relations Section

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Superannuation Bill 2005

Date Introduced: 12 May 2005

House: House of Representatives

Portfolio: Finance and Administration

Commencement: Sections 1 and 2 of the Bill commence on Royal Assent. However, sections 3 to 46 only commence once Royal Assent has been received for both this Bill and the Superannuation (Consequential Amendments) Bill 2005. Sections 3 to 46 will not commence at all if the later Bill does not receive Royal Assent.

Purpose

This Bill provides for:

- the establishment of the Public Sector Superannuation Accumulation Plan (PSSAP) as a separate superannuation scheme from the Public Sector Superannuation Scheme (PSS)
- those entering Australian Government employment on or after 1 July 2005 to participate in the Choice of Funds regime under the provisions of the *Superannuation Guarantee (Administration) Act 1992* (SG Act)
- the PSSAP to be the employer (default) fund for the purposes of the Choice of Funds regime under the SG Act for persons employed under the *Public Service Act 1999* and other persons prescribed by the Minister for Finance and Administration, and
- PSSAP membership arrangements that are consistent with the arrangements in place before the commencement of this Bill.

This Bill should be considered in conjunction with the Superannuation (Consequential Amendments) Bill 2005 (the Consequential Bill). The latter Bill is the subject of a separate Bills digest due to the complex set of amendments with which it deals.

Background

This initiative has its origin in the Government's long campaign to introduce the Choice of Superannuation Fund regime. Since 1996 the Government has sought to give all employees the right to choose which superannuation fund receives their Superannuation Guarantee, or other, superannuation contributions. Under the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* the Choice of Funds regime commences on 1 July 2005.

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This Act effectively excluded Commonwealth Public Servants from the choice regime. The Government had sought to extend this right to Commonwealth employees. To do so, it needed to close membership of the PSS to new employees and replace it with a fully funded accumulation superannuation scheme.

Efforts to close membership to the PSS came to a head with the Senate's consideration of the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998 and its associated Bills. These Bills were voted down by the Senate on 8 August 2001.¹

At that time the Government did not reopen the matter in Parliament, choosing instead to close the PSS to new entrants from 1 July 2005 by the 20th Amending Deed² to the PSS Trust Deed and rules, under the *Superannuation Act 1990*, on 23 March 2004. The same amendments effectively close membership of the PSS Defined Benefits scheme to new members from 1 July 2005.³

The 20th Amending Deed also established the PSSAP as a sub-plan of the PSS with effect on 1 July 2005. The PSSAP will be a fully funded accumulation scheme. An accumulation scheme is one where the final benefit paid is made up of the contributions plus the associated investment returns. Fully funded means that the Government's contributions to the scheme fully meet its superannuation obligations to the relevant employees.

By comparison, the PSS is a 'defined benefit' scheme. A 'defined benefit' scheme is one where the final benefit is calculated with reference to a combination of years of service, final salary and, in some schemes such as the PSS, the level of contributions. Investment returns on the monies invested do not generally determine the size of the final benefit. It provides only partly funded superannuation benefits to government employees, which means that a substantial part of the employees final benefit is effectively drawn from the Commonwealth's consolidated revenue fund.

Government employers' contributions to the PSSAP will be 15.4 per cent of salary.⁴ This compares favourably with the minimum required Superannuation Guarantee contribution rate of 9 per cent of salary applying to private sector employees.

As noted in the recent Budget these changes to the Commonwealth's superannuation arrangements are part of the Government's efforts to restrict the growth of un-funded superannuation liabilities, currently amounting to more than \$91 billion, and estimated to about \$140 billion by 2020.⁵ They also allow those who commence Commonwealth employment after 1 July 2005 to participate in the Choice of Funds regime.

The proposed changes do not affect those who first entered Commonwealth employment on or before 30 June 2005 and are members of existing Commonwealth defined benefit superannuation schemes.

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Basis of policy commitment

These changes were announced in a press release by the Minister for Finance and Administration on 17 October 2003.

Section 5 of the *Superannuation Act 1990* provides that the Minister for Finance and Administration may amend the PSS Trust Deed by signed instrument, subject to obtaining the PSS Board's consent to the amendment where necessary. As noted above, on 23 March 2004 the Minister for Finance and Administration amended the Trust Deed, and the Rules for the administration of the PSS set out in the Schedule to the Trust Deed, by signed instrument. That instrument is called the Twentieth Amending Deed. The PSS Board has consented to those amendments.⁶

Position of significant interest groups/press commentary

After initial opposition to these changes the Community and Public Sector Union has welcomed the creation of a 'modern' superannuation scheme for public servants.⁷

Pros and cons

Under the current rules (taking effect on 1 July 2005 if these Bills were not passed) the PSSAP will operate inside the defined benefit PSS scheme. This may impose upon the PSSAP restrictions on the assets in which it invests. Further, the PSSAP may have to pay part of the costs of running a largely unrelated defined benefit scheme. The creation of a separate accumulation superannuation scheme for public servants avoids these problems.

The Commonwealth currently runs an accumulation superannuation scheme, the Australian Government Employees Superannuation Scheme (AGEST). Creation of a separate accumulation scheme may be seen as duplicating what is already in existence.

Consequences of failure to pass

The Explanatory Memorandum notes that this Bill contains a number of features that are due to commence from as early as 1 July 2005. The Explanatory Memorandum suggests that this commencement date is necessary to avoid a number of technical difficulties that would arise if the PSSAP was separated from the PSS at a later date.⁸ It is not clear what these technical difficulties may be.

Main Provisions

New **Section 5** defines who is a 'public sector employee' for the purposes of the PSSAP. Unlike the definition of member for the PSS, this definition does not distinguish between temporary and permanent Commonwealth employees. Amongst other things the definition

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notes that a public sector employee is a person who is 'employed' by the Commonwealth or an approved authority.

Previously, those employed by various incorporated bodies, such as Telstra, tended to have their own, in house, superannuation schemes. This clause allows the employees of any incorporated body to become members of the PSSAS. Under new **Section 8** an extremely broad range of entities can be designated as 'approved authorities'.

New **Section 6** extends the meaning of the term 'employed' for the purposes of this Bill. Under this clause a person may be a 'public sector employee' if they are a director of a company incorporated under either a State, Territory or Commonwealth law, and the company is also an approved authority within the meaning of that term in new **Section 5**. As such they can become members of the PSSAP. Normally directors are not regarded as 'employees' of an incorporated body.

New **Section 10** requires that the Minister (effectively the Minister for Finance and Administration) must execute the PSSAP trust deed before 1 July 2005. This clause, in combination with the provisions governing the commencement of various sections of the Bill in new **Section 2**, means that the trust deed will be established if, and only if, the proposed Superannuation (Consequential Amendments) Bill 2005 has received Royal Assent. As noted above the operation of this Bill, once passed, is largely dependent on the Consequential Bill receiving Royal Assent.

New **Section 11** enables the Minister to amend the PSSAP's trust deed in writing. However, any such change will be invalid if it has the effect that the PSSAP would cease to be a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) or if the amended trust deed would not comply with that Act.

Currently, the PSS and Commonwealth Superannuation Scheme (CSS) are not formally subject to the SIS Act. This has created difficulties in respect of the application of the new interdependency provisions governing the payment of tax free death benefits to dependents. In particular, the PSS and CSS rules do not allow the payment of a tax free death benefit to the surviving partner of a same sex couple. The commitment in this Bill for the PSSAP to be subject to the provisions of the SIS Act removes this difficulty with respect to the PSSAP.

Changes in the PSSAP's trust deed will be subject to disallowance procedures of the *Legislative Instruments Act 2003*.

New **Section 14** provides for two methods by which a 'public service employee' may become a member of the PSSAS. Firstly, if the employee is eligible to do so they may choose to become a member of the fund. Alternatively, if the person does not make any choice to have their superannuation contributions sent to a superannuation fund then their contributions will be sent to the PSSAP.

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By this means (in combination with Schedule 2 of the Consequential Bill and **Section 16** of this Bill) the PSSAP becomes the eligible choice fund for the purposes of section 32C of the *Superannuation Guarantee (Administration) Act 1992* (SG Act). It thus becomes government employer (default) fund for Choice Regime purposes.

New **Section 16** requires that the PSSAP becomes the sole eligible choice (or default) fund for those who are eligible to become a PSSAP member. This means that a government employer may only nominate the PSSAP as their default fund for the purposes of the Choice of Superannuation Funds regime. However, this new section does not require a person who is eligible to become a PSSAP member to actually become a member of that fund. They may still choose to have their contributions sent to another complying superannuation fund under the provisions of the Choice of Fund regime. Nor does this clause potentially affect Commonwealth employees who are already members of the PSS or CSS or any other Commonwealth superannuation scheme.

The remaining clauses outline the administrative arrangements for the PSSAP. These clauses establish arrangement similar to those governing the operation for the current Commonwealth superannuation schemes, and as such appear to be unexceptional.

Concluding Comments

The changes in the Commonwealth's superannuation arrangements outlined above do not affect the superannuation arrangements for the Australian Defence Force. The Defence Force Retirement Benefits Scheme (DFRDB) has been closed since 1990. The Military Superannuation and Retirement Benefits Scheme (MSBS) is similar to the PSS and like it commenced operation around 1990. The Government has not announced any plans to create an accumulation sub-plan of the MSBS similar to the PSSAP.

Endnotes

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- 1 The Senate, *Debates*, 8 August 2001, p. 25935.
 - 2 The 20th Amending Deed to the PSS Trust Deed and Rules is at <http://www.pss.gov.au/pss/legislation/20thdeed.pdf> (accessed 12 May 2005).
 - 3 See *Rule B2.1.1A of the 20th Amending Deed to the PSS Trust Deed and Rules*, p. 6.
 - 4 Department of Finance and Administration web site, Information Sheet, Public Sector Superannuation Scheme at http://www.finance.gov.au/super/public_sector_superannuation_s.html (accessed 12 May 2005).

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- 5 The Hon. Peter Costello MP, Treasurer and Senator the Hon Nicholas Minchin, Minister for Finance and Administration, *The Future Fund*, Joint Press Release, 11 May 2005.
- 6 The Hon. Nicholas Minchin, Minister for Finance and Administration, *New Superannuation Arrangements for Australian Government Employees*, Press Release, 17 October 2003 at <http://www.finance.gov.au/media/mfa%5F03%5F29.html> (accessed 12 May 2005) and Explanatory Statement, Twentieth Amending Deed to the Trust Deed to Establish an Occupational Superannuation Scheme for Australian Government Employees and Certain Other Persons Pursuant to Section 5 of the *Superannuation Act 1990*, at http://www.finance.gov.au/super/docs/ex_statement.pdf (accessed 12 May 2005).
- 7 Marcus Priest, 'Government stems super scheme drain', *Australian Financial Review*, 25 March 2004. p. 4.
- 8 The Minister for Finance and Administration, Senator the Hon. Nicholas Minchin, *Explanatory Memorandum to the Superannuation Bill 2005*, p. 3.

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