



**SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES**

**REPORT ON SCRUTINY BY THE COMMITTEE
OF DELEGATED LEGISLATION MADE UNDER
ACTS PROVIDING SUPERANNUATION FOR
COMMONWEALTH EMPLOYEES**

NINETY-FIRST REPORT

JUNE 1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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**SENATE STANDING COMMITTEE ON
REGULATIONS AND ORDINANCES**

MEMBERS OF THE COMMITTEE

Senator Patricia Giles (Chair)
Senator Bronwyn Bishop (Deputy Chairman)
Senator Mal Colston
Senator Bill O'Chee
Senator Kay Patterson
Senator Olive Zakharov

PRINCIPLES OF THE COMMITTEE

(Adopted 1932: Amended 1979)

The Committee scrutinises delegated legislation to ensure:

- (a) *that it is in accordance with the statute;*
- (b) *that it does not trespass unduly on personal rights and liberties;*
- (c) *that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and*
- (d) *that it does not contain matter more appropriate for parliamentary enactment.*

INTRODUCTION

This report examines the delegated legislation made to effect the operation of the new scheme of superannuation for Commonwealth employees, introduced on 1 July 1990. In the following 18 months executive law makers made 105 different legislative instruments in 29 separate series under the parent Acts which effected the new scheme. The diversity and volume of these instruments illustrate the importance of delegated legislation in contemporary Australian public administration.

CHAPTER 1

THE NEW SCHEME

On 1 July 1990 a new superannuation scheme for Commonwealth employees came into operation. The new scheme was effected by three Acts. These were as follows:

. *Superannuation Act 1990*

. *Superannuation Legislation Amendment Act 1990*

. *Superannuation Benefits (Supervisory Mechanisms) Act 1990*

The second reading speech for the Bill which became the *Superannuation Act 1990* stated that the new scheme would become the main superannuation scheme for all Commonwealth sector employees, except those of government business enterprises and other agencies which had separate schemes. Membership would be compulsory for new employees and optional for all other staff. The speech also stated that the legislation was comparatively simple, with the details of the scheme in a trust deed attached as a schedule to the Bill. However, to ensure accountability to Parliament, any amendment of the trust deed must be by disallowable instrument.

The second reading speech for the Bill which became the *Superannuation Legislation Amendment Act 1990* stated that many of its provisions were associated with the introduction of the new scheme. Thus, the Bill provided for members of the old scheme, provided under the *Superannuation Act 1976*, to have the option to transfer to the new scheme. Provision was also made, where appropriate, for members to transfer to the schemes of government business enterprises and other agencies. The Bill implemented its intentions by providing for amendment of the *Superannuation Act 1976*, the *Superannuation Benefit (Interim Arrangement) Act 1988* (the short title of which was changed to the *Superannuation (Productivity Benefit) Act 1988*) and two minor Acts.

The second reading speech for the Bill which became the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* stated that the Bill would, in essence, re-enact provisions for supervision of Commonwealth sector superannuation. It was no longer appropriate for these provisions, previously in the *Superannuation Act 1976*, to be included in legislation relating to one particular Commonwealth scheme.

All three Acts received Royal Assent on 7 June 1990. The *Superannuation Act 1990* commenced partly on that date and more generally, in respect of the new scheme, on 1 July 1990. The *Superannuation Benefits (Supervisory Mechanisms) Act 1990* commenced on 1 July 1990. The *Superannuation Legislation Amendment Act 1990* commenced partly on assent, partly on 1 May 1987 and partly on 1 July 1990.

CHAPTER 2

DELEGATED LEGISLATION UNDER THE NEW SCHEME

All three Acts which effected the new Commonwealth superannuation scheme expressly provided for delegated legislation to be made. In addition, the *Superannuation Legislation Amendment Act 1990* provided for delegated legislation in the amendments it made to the *Superannuation Act 1976* and the *Superannuation Benefit (Interim Arrangement) Act 1988*.

The disallowable delegated legislation provided for by these Acts is set out below.

Superannuation Act 1990

- . section 3, paragraph (a) of the definition of "approved authority": a declaration in writing by the Minister that an authority or body is not an approved authority
- . section 3, paragraph (b) of the definition of "approved authority": a declaration in writing by the Minister that an authority or body is an approved authority
- . section 3, paragraph (b) of the definition of "statutory office": a declaration in writing by the Minister that an office is a statutory office
- . section 3, definition of "temporary employee": a declaration in writing by the Minister that a person is a temporary employee
- . subsection 5(1): an amendment of the trust deed by signed instrument by the Minister
- . paragraph 6(1)(j): a declaration in writing by the Minister that a person is a member of the superannuation scheme
- . paragraph 6(2)(c): a declaration in writing by the Minister that a person is not a member of the superannuation scheme

Subsection 45(1) of the Act provides that the above declarations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. That section generally provides that such instruments are subject to the same tabling and disallowable provisions as regulations.

In addition, subsection 45(2) expressly provides that the above declarations are statutory rules for the purposes of the *Statutory Rules Publication Act 1903*. Without such express provision instruments for the purposes of section 46A are not subject to the provisions of that Act.

Subsection 45(1) also provides that an amendment of the trust deed under subsection 5(1) is a disallowable instrument for the purposes of section 46A, but expressly provides that it is not a statutory rule.

Subsection 45(3) provides that a declaration for the purposes of paragraph (b) of the definition of "approved authority" in section 3, may take effect with 12 months retrospectivity.

This Act also makes express and general provision for regulations to be made.

- . subsection 26(3): the regulations may provide that an exemption from taxation does not apply to taxation under a specified law
- . paragraph 35(2)(c): the regulations may prescribe matters to which the Minister must have regard
- . subsection 40(1): the regulations may prescribe fees
- . subsection 40(2): the regulations may provide for the refund of fees
- . subsection 48: the regulations may prescribe all matters that are required or permitted or are necessary or convenient to give effect to the Act

Superannuation Benefits (Supervisory Mechanisms) Act 1990

- . subsection 6(3): a determination in writing by the Minister of guidelines for the provision of superannuation benefits

Paragraph 6(8)(b) provides that such guidelines are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*. However, there are no provisions similar to subsection 45(2) of the *Superannuation Act 1990*, making guidelines a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

- . paragraph 7(4)(a): a determination in writing by the Minister declaring arrangements or amendments to be in accordance with the Act
- . paragraph 7(4)(b): a determination in writing by the Minister declaring arrangements or amendments to be in accordance with the Act

paragraph 7(5)(a): a determination in writing by the Minister declaring arrangements or amendments to be in accordance with the Act

paragraph 7(5)(b): a determination in writing by the Minister declaring arrangements or amendments to be in accordance with the Act

Subsections 7(6) and (7) provide possibly unique tabling and disallowance procedures for the above determinations. Each determination must be tabled within 5 sitting days of making and may be disallowed by either House of the Parliament within a further 5 sitting days. There is no following reference to section 46A of the *Acts Interpretation Act 1901*, to other provisions of that Act, or to the *Statutory Rules Publication Act 1903*. However, subsections 7(8) to (10) expressly mirror procedural provisions relating to regulations in the *Acts Interpretation Act 1901*.

Superannuation Legislation Amendment Act 1990

subsection 8(2) provides that certain regulations under the *Superannuation Act 1976* are taken to be declarations for the purposes of that Act as amended by the *Superannuation Legislation Amendment Act 1990* and may be amended or replaced by such declarations.

Superannuation Act 1976

subsection 3(1), paragraph (a) of the definition of "approved authority": a declaration by the Minister that an authority or body is an approved authority

subsection 44AAD provides that the regulations may prescribe allowances

subsection 51A(6) provides that the regulations may modify this Act, or a provision of the Act specified in the regulations, in its application to a person or class of persons; subsection 51A(7) providing that such modifications may substitute benefits for those provided under this Act

section 54E provides that the regulations may prescribe certain persons and the manner in which a request must be made

subsection 54W(1) provides that the regulations may prescribe fees

subsection 54W(3) provides that the regulations may make provision for the refund of fees

- . section 110D: a declaration by the Minister, which may be retrospective to 1 July 1990, substituting amounts in a table
- . subsection 111E(1): a declaration by the Minister, which under subsection 110E(3) may be retrospective to 1 July 1990, that a class of eligible employees are not productivity employees
- . subsection 110F(1): a declaration by the Minister, which under subsection 110F(2) may be retrospective to 1 July 1990, that an eligible employee is a productivity employee
- . subsection 154A(4) provides that certain regulations in force at 1 July 1990 remain in force after that date, but are to be taken to be determinations of the Board after that date and may be amended or repealed by such determinations
- . subsection 155B(2) provides that the regulations may modify this Act in certain respects, with subsection 155B(3) providing that the modifications may, for example, include substitution of benefits in place of benefits provided by this Act
- . paragraph 160(6)(c) provides that the regulations may prescribe certain matters to which the Minister must have regard
- . subsection 168(9) provides that certain regulations made within 12 months of the commencement of the subsection may be retrospective to 1 July 1990
- . subsection 238(1): a determination by the Minister of a period in relation to a person
- . subsection 240(1): a determination by the Minister of times, assets and liabilities
- . subsection 241(1): a determination by the Minister of times and amounts
- . subsection 248(1): a determination in writing by the Minister of assets and liabilities

Subsection 4A provides that the above declaration for the purposes of subsection 3(1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, is a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903* and may operate retrospectively from 12 months before its making.

Section 110G provides that declarations under sections 110D, 110E or 110F

are statutory rules for the purposes of the *Statutory Rules publication Act 1903* and disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Subsection 238(2), 240(2), 241(3) and 248(2) merely provide that a determination by the Minister for the purposes of section 238, 240, 241 and 248 is a disallowable instrument. This would probably be interpreted as meaning a disallowable instrument under section 46A of the *Acts Interpretation Act 1901*.

Superannuation (Productivity Benefit) Act 1988

- . section 3D: a declaration by the Minister substituting sums of money or percentages
- . section 3E: a declaration by the Minister on interest factors
- . subsection 3F(1): a declaration by the Minister that a class of persons are qualified employees
- . subsection 3F(2): a declaration by the Minister that a class of persons are not qualified employees
- . subsection 4A(1): a declaration by the Minister about a class of qualified employees
- . subsection 4A(2): a declaration by the Minister that benefits are to apply to a declared class of employees
- . section 4G: a declaration by the Minister about calculation of interest

Section 3D provides that a declaration under that section may operate retrospectively to 1 July 1990. Subsections 3F(3) and 4A(3) provide that declarations under subsections 3F(1) and (2) and 4A(1) and (2) may operate retrospectively to 1 January 1988.

Section 9A provides that declarations must be in writing signed by the Minister.

Section 9B provides that the above declarations are both statutory rules for the purposes of the *Statutory Rules Publication Act 1903* and disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

CHAPTER 3

DELEGATED LEGISLATION MADE UNDER THE *SUPERANNUATION ACT 1990*

Between 7 June 1990 and 1 January 1992 the Minister made 23 disallowable legislative instruments under this Act. Almost all this legislation was made in accordance with provisions which require individual instruments to be made as statutory rules. However, no regulations were made.

The only delegated legislation under this Act which was not included in the Statutory Rules series were the First and the Second Amending Deeds to the Deed to establish an occupational superannuation scheme for Commonwealth employees and certain other persons under section 5 of the *Superannuation Act 1990*.

The statutory rules made under this Act are set out below.

Declarations under the *Superannuation Act 1990*, Statutory Rules 1990 Nos 163, 164, 165, 183 and 321

Superannuation (PSS) Approved Authority Declaration No 1, Statutory Rules 1990 No 411

Superannuation (PSS) Approved Authority Inclusion
Declarations Nos 1 to 5, Statutory Rules 1991 Nos 151, 189, 303, 394 and 423

Superannuation (PSS) Membership Exclusion Declarations
Nos 1 to 4, Statutory Rules 1991 Nos 17, 34, 254 and 420

Superannuation (PSS) Membership Inclusion
Declarations Nos 1 to 6, Statutory Rules 1991 Nos 107, 253, 419, 421, 424, and 463

CHAPTER 4

DELEGATED LEGISLATION MADE UNDER THE SUPERANNUATION ACT 1976

Between 7 June 1990 and 1 January 1992 the Governor-General and the Minister made 50 disallowable legislative instruments under this Act. As with the *Superannuation Act 1990*, most of this legislation was made under provisions which require individual instruments to be statutory rules.

However, unlike delegated legislation made under the other Acts effecting the new scheme, delegated legislation made as statutory rules under this Act also included a number of regulations.

One of the statutory rules made under this Act, the *Superannuation (CSS) Approved Authority Declaration No 4, Statutory Rules 1991 No 190*, was made under both the *Superannuation Act 1976* and the *Superannuation Legislation Amendment Act 1990*.

The only legislative instruments under this Act which were not made as statutory rules were the Period Determinations Nos 1 to 4 under section 238 of the *Superannuation Act 1976*.

The statutory rules made under this Act are set out below:

Declarations under the *Superannuation Act 1976*, Statutory Rules 1990 Nos 166, 167, 168, 169, 170 and 171

Superannuation (Continuing Contributions for Benefits) Regulations (Amendment), Statutory Rules 1990 Nos 179 and 379, Statutory Rules 1991 Nos 97, 168, 446 and 465

Superannuation (CSS) Productivity Employee Exclusion Declaration No 1, Statutory Rules 1990 No 355

Superannuation (CSS) Approved Authority Declarations Nos 3, 4, 5, 6 and 7, Statutory Rules 1990 No 412, Statutory Rules 1991 Nos 190, 304, 393 and 422

Superannuation (Eligible Employees) Regulations (Amendment), Statutory Rules 1990 Nos 142, 178 and 180

Superannuation (Former Eligible Employees) Regulations (Amendment), Statutory Rules 1990 Nos 141, 177 and 451, Statutory Rules 1991 Nos 161 and 445.

Superannuation (Interest) Regulations (Amendment), Statutory Rules 1990 No 127

Superannuation (Salary) Regulations (Amendment), Statutory Rules 1990 Nos 128, Statutory Rules 1991 Nos 167, 312 and 466

Superannuation (Transfer Arrangements) Regulations (Amendment), Statutory Rules 1990 Nos 140 and 271, Statutory Rules 1991 No 169

Superannuation (Approved Part-time Employees) Regulations (Amendment), Statutory Rules 1991 Nos 173 and 469

Superannuation (Cost of Administration) Regulations (Amendment), Statutory Rules 1991 No 162

Superannuation (CSS) Productivity Contribution Declaration No 1, Statutory Rules 1991 No 128

Superannuation (Deferred Benefits) Regulations (Amendment), Statutory Rules 1991 No 170

Superannuation (Existing Invalidity Pensioners) Regulations (Amendment), Statutory Rules 1991 No 192

Superannuation (Former Contributors for Units of Pension) Regulations (Amendment), Statutory Rules 1991 Nos 191 and 467

Superannuation (Former HLIC Employees) Regulations, Statutory Rules 1991 No 22

Superannuation (Former Provident Account Contributors) Regulations (Amendment), Statutory Rules 1991 Nos 171 and 468

Superannuation (Period of Contributory Service) Regulations (Amendment), Statutory Rules 1991 No 172

CHAPTER 5

DELEGATED LEGISLATION MADE UNDER THE *SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) ACT 1990*

Between 7 June 1990 and 1 January 1992 the Minister and delegates of the Minister made 19 disallowable legislative instruments under this Act.

Unlike other delegated legislation made as a result of the package, none of the 19 instruments were made as statutory rules.

The delegated legislation made under this Act was **Determinations Nos 1 to 8 of 1990 and Determinations Nos 1 to 11 of 1991** under subsection 6(3) of the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

CHAPTER 6

LEGISLATION MADE UNDER THE *SUPERANNUATION (PRODUCTIVITY BENEFIT) ACT 1988*

Between 7 June 1990 and 1 January 1992 the Minister made 13 disallowable legislative instruments under this Act following its amendment, and change of short title, by the *Superannuation Legislation Amendment Act 1990*. All were statutory rules. However, like many instruments made under the Acts comprising or amended by the package, none of these were made as regulations.

The statutory rules made under this Act are set out below.

Superannuation (Productivity Benefit) Alternative Arrangements Declarations Nos 1, 2 and 3, Statutory Rules 1990 Nos 415 and 416, Statutory Rules 1991 No 126

Superannuation (Productivity Benefit) Declarations Nos 1 to 9, Statutory Rules 1990 Nos 172 to 176, Statutory Rules 1991 Nos 123 to 125 and 127

Superannuation (Productivity Benefit) (Qualified Employees) Declaration No 1, Statutory Rules 1990 No 322

CHAPTER 7

DELEGATED LEGISLATION MADE UNDER THE *SUPERANNUATION LEGISLATION AMENDMENT ACT* 1990

Between 7 June 1990 and 1 January 1992 only one instrument was made under this Act, the *Superannuation (CSS) Approved Authority Declaration No 4, Statutory Rules 1991 No 190*. This instrument was also made under the *Superannuation Act 1976*.

CHAPTER 8

THE NATURE OF THE DELEGATED LEGISLATION

The most notable characteristic of the delegated legislation provided for in the group of Acts which effects the new scheme of Commonwealth superannuation is its diversity and volume.

During the 18 months following the general introduction of the new scheme on 1 July 1990 the Governor-General, the Minister and delegates made 105 instruments of delegated legislation in 29 different series under 42 enabling provisions in five principal Acts. The diversity of this legislation is illustrated by an analysis of the individual instruments. The volume is evident.

Of the 105 instruments, 80 were made as statutory rules and of these, 33 were made as regulations, all 33 under the *Superannuation Act 1976*. The 33 sets of regulations were included in 14 different types of principal regulations, either as principal regulations in themselves or as amendments of other principal regulations.

The remaining 47 instruments in the statutory rules series were made as declarations, under 12 separate legislative series. One of these declarations was made under two parent Acts.

The 25 instruments not included in the statutory rules series were made under three separate series of amending deeds, period determinations and determinations.

The instruments made under each parent Act were also diverse. Again, the volume is evident. Thus, under the *Superannuation Act 1990* there were two amending deeds in one series and 21 declarations in five separate series; under the *Superannuation Act 1976* there were four period determinations in one series, 33 regulations in 14 series and 13 declarations in four series; under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* there were 19 determinations in one series; under the *Superannuation (Productivity Benefit) Act 1988* there were 13 declarations in three series; and under the *Superannuation Legislation Amendment Act 1990* there was one declaration, which was also made under the *Superannuation Act 1976*.

Aspects of each of these series of instruments also illustrate the theme of diversity. For instance, the first five declarations made under the *Superannuation Act 1990* all have the same heading, *Declaration Under the Superannuation Act 1990*, and four of them have another heading indicating

the provision of the Act under which it is made, after the words used by the Minister to make the instrument. Each of them are then helpfully provided with a separate individual short title in the body of the instrument such as **Approved Authority Exclusion Declaration No 1** and **Statutory Office Declaration No 1**. These short titles are actually citations and are expressly provided as such. This is particularly helpful, as the instruments operate in a "stand alone" fashion and it is necessary to have some form of individual reference. Later declarations dispensed with the two general headings and used the citation as a heading.

The other 16 statutory rules made under this Act have different headings which are the same as the citation provision in the body of each instrument. There are other features of these statutory rules which should assist users. Thus, Explanatory Statements advise of express provisions to consolidate substantive provisions and standardise citations.

Under these provisions, Superannuation (PSS) Approved Authority Inclusion Declaration No 1, Statutory Rules 1991 No 151, revoked Superannuation (PSS) Approved Authority Declaration No 1, Statutory Rules 1990 No 411, and remade its provisions, in order to provide a consolidation of relevant provisions. As an aside, the revoking provision here inadvertently omitted the word "Superannuation" from the citation of the revoked instrument, *although this does not affect its validity*. Also, Superannuation (PSS) Membership Exclusion Declaration No 4, Statutory Rules 1991 No 420, repeals (rather than revokes), what its heading refers to as *Declarations under the Superannuation Act 1990*, Statutory Rules 1990 Nos 183 and 321, which are Membership Exclusion Declarations Nos 1 and 2, and remade them with a new citation, to standardise citation of these declarations. This instrument also repealed and generally remade another instrument, for ease of reference. In another useful provision, Superannuation (PSS) Membership Inclusion Declaration No 5, Statutory Rules 1991 No 419, repeals and remakes provisions of Superannuation (PSS) Membership Inclusion Declaration No 1, Statutory Rules 1991 No 107, to effect changes by way of a fresh declaration rather than by amendments.

One of the instruments made under this Act was made before the enabling provisions in the Act commenced, under section 4 of the *Acts Interpretation Act 1901*. The Membership Exclusion Declaration No 1, Statutory Rule 1990 No 183, was made on 21 June 1990 under paragraph 6(2)(c) of the Act, although that provision (and, of course, the instrument) did not commence until 1 July 1990.

Seven statutory rules under the Act operated with retrospective effect. Under subsection 48(2) of the *Acts Interpretation Act 1901* retrospective provisions are of no effect if they affect prejudicially the rights of any person other than the Commonwealth, or impose liabilities on any such person. *However, these instruments (Superannuation (PSS) Approved Authority*

Declaration No 1, Statutory Rules 1990 No 411, and Superannuation (PSS) Approved Authority Inclusion Declarations Nos 3, 4 and 5, Statutory Rules 1991 Nos 303, 394 and 423 were made under paragraph (b) of the definition of "approved authority" in section 3, which, under subsection 45(3) may take effect with 12 months retrospectivity. The other two instruments (Superannuation (PSS) Membership Exclusion Declaration No 3, Statutory Rules 1991 No 254, and Superannuation (PSS) Membership Inclusion Declaration No 2, Statutory Rules 1991 No 253) did not affect prejudicially any rights or impose any liabilities.

There were only two disallowable instruments made under this Act which were not statutory rules. These were two deeds amending the trust deed which, as a schedule to the Act, provided the details of the new scheme. Given the importance of these instruments, it may have been more suitable for the parent Act to provide that the amendments be statutory rules.

The instruments made under the amended *Superannuation Act 1976* also illustrate the diversity and volume of delegated legislation in this general scheme. Of the 50 such instruments, 46 were included in the statutory rules series, as part of 18 series of different principal regulations or declarations. The other four instruments were in one series.

As with the *Superannuation Act 1990*, scrutiny of individual instruments further illustrates the theme of diversity. One notable feature is the number of instruments which modify the operation of the parent Act, or in other cases provide that the Act is to have effect as if fresh provisions were included. Some 23 instruments affect the parent Act in this way. In addition, 11 of these affect the operation of the Act retrospectively, under express authority of that Act. These modifications of the Act themselves provide for several new instruments of delegated legislation. The 23 instruments are too numerous to list individually, but they are included in 11 different principal instruments.

Another noteworthy aspect of delegated legislation under this Act is that a further six instruments, which do not modify the Act, also operate retrospectively.

Two instruments repeal earlier delegated legislation. The *Superannuation (CSS) Productivity Employee Exclusion Declaration No.1, Statutory Rules 1991 No.355*, repeal four earlier declarations made under a section of the Act inserted by the *Superannuation Legislation Amendment Act 1990*. The *Superannuation Approved Authority Declaration No.4, Statutory Rules 1991 No.190*, was made under both the *Superannuation Act 1976* and the *Superannuation Legislation Amendment Act 1990*. This instrument, made on 21 June 1991, was expressed to operate retrospectively for almost a year, to 1 July 1990. Among other things, the instrument repealed 47 sets of regulations made before 1 July 1990, constituting the principal *Superannuation (Approved Authority) Regulations*.

There were only four disallowable instruments made under this Act which were not statutory rules. These four determinations by the Minister relate to a period of time during which an eligible employee transfers to an approved superannuation scheme. Given the nature of these instruments it may have been appropriate for the parent Act to provide that these determinations should be statutory rules.

Delegated legislation made under the *Superannuation (Productivity Benefit) Act 1988* is also notable for its diversity. All 13 instruments under this Act were made as statutory rules, in three series of instruments. Three instruments were included in the first series, one of which was retrospective and which repealed an instrument included in a different principal instrument. Nine instruments were included in the second series. The first five declarations in this series were set out in a similar way to the early declarations under the *Superannuation Act 1990*, with a heading for each set of statutory rules, *Declaration under the Superannuation (Productivity Benefit) Act 1988* followed by another different heading after the words used to make the instrument, together with a citation provision in the body of the instrument. Again, as with the *Superannuation Act 1990*, the later declarations in this series included the citation as the main heading and omitted the subsidiary heading. Of the nine declarations in this series, two modified the parent Act, one acted retrospectively and two revoked earlier instruments in the series.

None of the 19 instruments made under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* were made as statutory rules. These instruments are all quite similar, determining guidelines for the provision of benefits. They also revoked 42 earlier determinations made under the *Superannuation Act 1976* before 1 July 1990.

In summary, the legislative instruments made in consequence of this one new program illustrate the importance of delegated legislation in contemporary Commonwealth public administration. In order to effect the new scheme it was necessary to make 105 separate pieces of legislation in 18 months. The diversity and volume of this legislation are an example of the flexibility available to executive law makers to fill in the administrative details of a scheme established by statute. It seems clear that the scheme could not have been brought into operation as effectively without such a responsive legislative option.

The delegated legislation made to effect the new scheme of Commonwealth superannuation is a classic example of the appropriate use of such laws. It included large numbers of changes, over a period, generally involving the application of separate provisions to individuals or bodies. As such it is an ideal use of delegated legislation, dealing with the administrative application of particular cases to provisions established by parent Acts, each case being subject to the rigour of parliamentary scrutiny and the ultimate sanction of

disallowance. On balance, the large number of different principal instruments is probably helpful to users, enabling more precise identification of those affected. Also, the presentation and access of the different instruments is good, although it would have been improved if the parent Acts had required all series of delegated legislation made under their provisions to be statutory rules.

The place of delegated legislation in the administration of this scheme is emphasised by the subsequent passage of the *Superannuation Laws Amendment Act 1991*, assented to on 2 September 1991, which itself provided for yet further series of delegated legislation.

The Standing Committee on Regulations and Ordinances, on behalf of the Senate, scrutinised all of the 105 instruments made to effect the new scheme. However, the Committee had only a few relatively routine inquiries, which were quickly cleared up. In this case, it appeared that the diversity and volume of the delegated legislation under the five parent Acts did not affect the commitment to parliamentary propriety and personal liberties required by the Committee.



Patricia Giles
Chair