

Attachment B - Superannuation legislation

To date, the claims of which Finance is aware primarily relate to the following schemes and legislation:

- the superannuation scheme (the 1922 Act scheme) established by the *Superannuation Act 1922* (the 1922 Act);
- the Commonwealth Superannuation Scheme (the CSS) established by the *Superannuation Act 1976* (the 1976 Act); and
- the Public Sector Superannuation scheme (the PSS) established by the *Superannuation Act 1990* (the 1990 Act).

SUPERANNUATION ACT 1922

The 1922 Act initially restricted membership to the 1922 Act scheme to persons employed in a permanent capacity.¹

Section 4(5) of the 1922 Act was introduced in 1942² and allowed temporary employees of the Commonwealth to apply to join the 1922 Act scheme if they met certain conditions. The conditions initially required no less than five years' continuous service, certification that the employee's services were likely to be retained for an indefinite period, and the successful completion of a medical examination.

Section 4(5) was amended in 1945 to enable temporary employees to apply to join the 1922 Act scheme if they were able to obtain certification that their employment was likely to continue for ten years rather than indefinitely. The other criteria remained the same.

In 1951 further amendments were made such that the requirements were reduced to the completion of three years' continuous service, certification that the employee's services were likely to be retained for seven years, and the successful completion of a medical examination. If the employee passed the required medical examination, the Superannuation Board could, in its discretion, accept the employee as a member of the 1922 Act scheme, or as a member of the Provident Account (which was also established under the 1922 Act).³

¹ Section 19(1) of the 1922 Act (as enacted), read with the definition of "employee" in s.4(1) of the 1922 Act. Mr Groom in the Second Reading Speech given upon the introduction of the Superannuation Bill on 19 September 1922 stated that "the essential feature of the employment in the Commonwealth Service is that it must be of a permanent character."

² By s.3 of the *Superannuation Act 1942*, No. 53 of 1942.

³ See section 5 and Part V of the 1922 Act. Members of the 1922 Act scheme could also elect under s.81 to contribute to the Provident Account, which was described in the Explanatory Memorandum to the *Superannuation Bill 1976* as "an accumulation type scheme" as distinct from the 1922 Act scheme, CSS and PSS which are all defined benefit schemes. Contributions to the Provident Account were at a rate of \$.10 for every \$2 of each fortnightly payment of salary, see s.80 of the 1922 Act. Benefits were of a lump sum equal to the greater of three times the aggregate of employee contributions paid and

Permanent and temporary employees of approved authorities also became eligible to apply to join the 1922 Act Scheme in 1942. Their eligibility provisions were generally the same as set out above, except that they did not have to meet any prior service requirements.

SUPERANNUATION ACT 1976

On 1 July 1976 the 1922 Act scheme was closed to new members, and replaced by the Commonwealth Superannuation Scheme (CSS) established by the *Superannuation Act 1976*. Contributing members to the 1922 Act scheme were compulsorily transferred to the CSS on 1 July 1976.

Under the 1976 Act, 'eligible employees' were required to contribute to the CSS. The definition of 'eligible employee' included:

- a person who was a permanent employee (including persons employed by an approved authority in a permanent capacity);⁴ and
- a person who was a temporary employee and was specified in a directions given under s.11, 12 or 13 of the 1976 Act.

A direction could be given under s.11, 12 or 13 of the 1976 Act where a temporary employee:

- had been employed for 12 months and the Commissioner of Superannuation was satisfied that the employee was likely to continue as a temporary employee for a further three years or that, during that period of three years the person is likely to become an eligible employee otherwise than by virtue of s.11(1) of the 1976 Act;⁵ or
- where they were a temporary employee of an approved authority, and the Commissioner was satisfied that they would, within twelve months of the date of the request, become employed by the approved authority in a permanent capacity;⁶ or
- where they were a temporary employee who was employed under a contract for a term of not less than one year, and the Commissioner directs they are an eligible employee.⁷

interest or one half of the salary payable at the date of retirement (s.82 of the 1922 Act), whether paid to the member on retirement, or paid to a widow

⁴ 'Permanent employee' was defined in s.3 to mean a person who is an officer for the purposes of the *Public Service Act 1922*, any other person employed by the Commonwealth or by an approved authority in a permanent capacity but does not include a part-time employee who is not an approved part-time employee.

⁵ See s.11(1) of the 1976 Act.

⁶ See s.12 of the 1976 Act.

⁷ See s.13 of the 1976 Act.

Eligible employees were required to undergo a medical examination by s.16 of the 1976 Act. A report of the results of the medical examination was required to be provided to the Commissioner of Superannuation. If, upon consideration of the medical reports, the Commissioner decided that the employee was not likely to continue to be an eligible employee until his or her maximum retirement age, the Commissioner could issue a benefit classification certificate. The benefit classification certificate could impact the superannuation benefit an employee received if he or she retired on invalidity grounds.

SUPERANNUATION ACT 1990

On 1 July 1990 The Public Sector Superannuation Scheme (PSS) established under the *Superannuation Act 1990* commenced. Employees commencing Commonwealth employment or employment with an approved authority after that date could no longer join the CSS. Contributors to the CSS were given the option of transferring to the PSS on 1 July 1990 and again in 1996.

Permanent employees⁸ were automatically members of the PSS and required to make contributions upon the commencement of the 1990 Act.⁹ Temporary employees were able to elect to become a member of the PSS. The election had effect immediately if the employee:

- had been employed under a contract for a term of not less than three months;
- had, during the period of two years immediately before the election, been a temporary employee, a permanent employee or the holder of a statutory office for a period that was not less, or for periods that were together not less, than three months; or
- had a transfer value from another superannuation scheme (other than the CSS) that the temporary employee intended to pay into the PSS.¹⁰

If none of those criteria applied, the election would take effect after three months' employment.¹¹

⁸ Defined by s.3 to mean a person who was an officer for the purposes of the *Public Service Act 1922* and any other person employed in a permanent capacity by the Commonwealth or by an approved authority.

⁹ See s.6 of the 1990 Act.

¹⁰ See s.8(2) of the 1990 Act.

¹¹ See s.8(3) of the 1990 Act.