

HEADS OF GOVERNMENT AGREEMENT

EXEMPTION OF CERTAIN PUBLIC SECTOR SUPERANNUATION SCHEMES FROM THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

The Commonwealth and the State and Territory Governments recognise the need to apply national standards to certain aspects of superannuation without distinguishing between employees of the public and private sector. For example, it is important that members' accrued entitlements are securely protected, and that there is consistency of taxation outcomes for members' superannuation benefits.

There are, however, substantial differences between public sector schemes and those in the private sector. Public sector schemes often have complex benefit structures and are publicly accountable for their administrative effectiveness and efficiency and performance. They are controlled by legislative and other arrangements under State and Territory law, and are subject to substantial prudential controls imposed by the States and Territories.

These existing State and Territory controls include legislated benefits, internal and external auditing, actuarial valuations, investment powers, Crown appointment of trustees, high levels of reporting to members, the tabling of annual reports in the Parliament, appeal and review rights (often to an external body such as the Ombudsman or an Industrial Court), and equal employee/employer representation on trustee boards. These controls are extensive and subject the fund to a significant level of prudential control, and public and government scrutiny.

In recognition of the circumstances surrounding many public sector schemes, the Commonwealth agrees that certain State and Territory public sector schemes may appropriately be exempted from the Superannuation Industry (Supervision) Act 1993 (SIS), and the Superannuation (Resolution of Complaints) Act 1993. The Commonwealth also agrees that States or Territories may opt to allow members of an exempted public sector scheme to have access to the Superannuation Complaints Tribunal in preference to the existing appeal rights for the scheme. The SIS legislation provides for an exempt scheme to be taken to be a complying superannuation scheme for the purposes of the Superannuation Guarantee (Administration) Act 1992. The SIS legislation also provides that where an exempt scheme has a fund, the fund will have the status of a complying superannuation fund for the purposes of the Income Tax Assessment Act 1936.

To ensure that members of exempted public sector schemes are treated fairly and equally with their private sector counterparts, and that the Commonwealth's retirement income policy objectives are met in respect of scheme benefits, the States and Territories undertake to ensure that members' accrued benefits in exempted schemes are fully protected. As well, the States and Territories undertake to ensure that the exempted schemes will conform with the principles of the Commonwealth's retirement incomes policy, as reflected in the Attachment to this agreement and from time to time in Commonwealth legislation. A statement of these commitments will be published in the annual reports, where applicable, of the exempted schemes and conveyed annually to the Commonwealth Insurance and Superannuation Commissioner.

The States and Territories will notify the Commonwealth of those schemes which it proposes are appropriately exempted from SIS. The States and Territories are also to notify the Commonwealth of those exempted schemes which are to have access to the Superannuation Complaints Tribunal.

The Commonwealth undertakes to take the steps necessary to exempt selected State and Territory schemes from the SIS legislation from its commencement. For current purposes this would require the Commonwealth to make appropriate regulations under the SIS legislation. The Commonwealth also undertakes that in respect of any Commonwealth schemes which are exempted from SIS, the Commonwealth will comply with this agreement in the same way as is required of the States and Territories.

The Commonwealth and States agree that in monitoring this agreement, discussions will be needed from time to time between State, Territory and Commonwealth Ministers, or between their official representatives.



Signed by the Honourable RALPH WILLIS
Treasurer of the Commonwealth of Australia



Signed by the Honourable Shane L Stone MLA
Chief Minister of the Northern Territory

Principles of the Commonwealth's Superannuation Legislation

The major objective of the Federal Government's retirement income policy is to ensure an adequate income for all retired Australians.

As part of those wider retirement income policy objectives, the particular objectives of the Commonwealth's superannuation legislation are to establish arrangements under which all Australians have the opportunity for redistribution of working life savings, where redistribution is directed at financing a higher standard of living in retirement than if they were to rely on the age pension system alone.

These principles underlie the superannuation legislation which, through a mix of incentives and mandating of contributions, direct savings into that system. The legislation also seeks to impose on funds obligations for the sound and productive management of such savings and for producing benefits in ways consistent with the wider retirement income objectives.

The principles which underlie the Commonwealth's legislation reflect those features which the Commonwealth Government believes is necessary for the superannuation industry to exhibit in order to fulfil its role, and other features of the industry which it has been considered desirable to highlight or strengthen in the fulfilment of its role.

The incentives/mandatory arrangements are provided by way of the Tax Act, the Superannuation Guarantee Act and the industrial award mechanism. On the other hand, the Superannuation Industry (Supervision) package of legislation provides for the prudential supervision of a range of requirements aimed at achieving the superannuation objectives.

The SIS legislation includes provisions which have a general applicability across all types of superannuation schemes, for example, standards relating to vesting, preservation and maintenance of accrued benefits. There are, however, other SIS provisions which are directed more specifically to schemes which operate a fund to receive and invest employer and employee contributions and to pay for benefits. These latter SIS provisions, for example, arrangements for the appropriate control and investment of the fund and its financial reporting, auditing and general solvency are not directly relevant where the entire benefit is financed by the employer on an emerging cost basis.

The principal elements of the Commonwealth's supervision of these schemes are outlined below:

Sole Purpose

Superannuation funds must operate for the purposes of generating and providing genuine retirement benefits for members, or for other purposes consistent with SIS, including the provision of benefits on death, disability or resignation. Funds which operate for purposes outside those identified by the Commonwealth as assisting to achieve these ends will not qualify for the taxation concessions which have been made available for both superannuation funds and their members.

Investment

Superannuation funds must operate within limits consistent with the SIS legislation with respect to the provision of loans and other financial assistance to members or their relatives, the acquisition of certain assets from members and loans to or investments in a standard employer sponsor.

Vesting

Adequate vesting standards are necessary to ensure that benefits accruing in a superannuation fund for the purpose of payment as benefits on retirement are not diminished or lost to a member by virtue of the termination of the member's employment prior to retirement. By vesting certain benefits in members, each period of membership of a superannuation fund, whether lengthy or otherwise, will contribute to build the retirement income of its members. Benefits financed from employer contributions on behalf of employees under the Superannuation Guarantee arrangements and prescribed agreements and awards, as well as benefits financed by member contributions, vest in the member on the day they accrue. Other benefits vest in the member in accordance with the governing rules of the fund.

Preservation

Superannuation savings are designed to provide income in retirement and it is important that the benefits generated by funds are not, as far as possible, accessed before retirement. For this reason restrictions have been placed on the ability of members and former members of superannuation funds to withdraw superannuation savings before retirement. The central importance of this can be seen in the increases to this restriction planned by the Government by raising the age at which preserved benefits become available and by the preservation of all future employer financed benefits. These will strengthen the essential retirement incomes role of the superannuation industry by increasing the proportion of superannuation savings preserved for retirement and by making it more likely that superannuation savings are directed towards the provision of income in circumstances of genuine retirement from the workforce.

Portability

Where permitted by a fund's governing rules, the ability of persons to transfer amounts of superannuation benefits which have vested as a result of a period of employment with one employer to a rollover fund or a superannuation scheme operated by another subsequent employer is a means by which the potential for superannuation savings to produce retirement income can be enhanced. Consolidation of an individual's accounts reduces the impact of fees, charges and other costs on superannuation balances and allows a member's superannuation position to be more simply ascertained and understood.

Security of Accrued Benefits

A member's accrued benefits under the governing rules of a superannuation scheme must not be adversely affected by amendments of the governing rules or otherwise, other than:

- * in respect of the application of costs and outgoings of the scheme;
- * with the consent of the member or the **ISC**; or
- * as permitted by the **SIS** Act or **SIS** Regulations.

Diversion of Benefits

Steps to ensure that members finally receive the final cash benefits generated for payment by the superannuation fund also enhance the potential of the superannuation industry to fulfil its role and provide retirement income. Certain actions capable of reducing benefits available for use in retirement, ie an attempt by a member to assign, mortgage, have charged or have a lien attach to superannuation benefits, and attempts by others with whom the member may have made such arrangements to enforce them, must not be acted on or given effect to by the trustees of superannuation funds.

Member Representation

An important aspect of the prudential system established under the SIS Act is the added protection afforded to superannuation savings through the direct involvement of members in the management and control of most employer sponsored superannuation funds. Member representation on the governing bodies of superannuation funds can play a key role in monitoring the performance of the fund and giving added protection to superannuation savings by enhancing the accountability of a superannuation fund to those for whom it is committed to provide. By these means decisions concerning the benefits those funds provide, including investment decisions, will be more closely aligned to the interests of fund members.

Information to Members

The disclosure of adequate and appropriate information to members is critical if they are to be in a position to exercise influence over the direction taken by their fund and to evaluate its performance. Appropriate information is required to be disclosed to new members enjoining the fund, regularly to members during a period of membership of the fund, and on a member's exit from the fund. Appropriate information is also required to be available to members on request and to be disclosed in relation to significant events for the fund. The information disclosure requirements cover a very wide range of aspects of the operation of the fund and the times within which information must be provided.

Regular Audit and Regular Actuarial Review

Audits are an essential part of prudential requirements appropriate to the superannuation industry, not only to ensure the proper processes are being adhered to in the fund's handling of moneys but also as a means of ascertaining the ability of the fund to meet its likely benefit obligations. Regular auditing and reporting requirements provide a warning of potential and real difficulties to the industry supervisor, ensuring that remedial action is taken before the retirement incomes of members are affected. The added complexities of defined benefits funds require regular actuarial reviews for this purpose.

Processes for the Consideration of Complaints

The importance of the superannuation savings in the retirement income planning of all Australians means that superannuation arrangements must be carried out fairly and equitably. Trustees must be accountable for decisions which will finally affect members' and beneficiaries' retirement income. It is the duty of the trustees of superannuation funds to establish and maintain appropriate internal arrangement for the consideration in a timely manner of queries and complaints made by members and beneficiaries.

Reporting to the [ISC](#)

The ISC has the responsibility for advising the Commonwealth Government on matters relating to superannuation schemes, and for the collecting and publishing of statistics on the superannuation industry. The superannuation schemes of the States and Territories are an important part of the superannuation system and need to be included in the [ISC's](#) process. Therefore the States and Territories agree that they will supply the ISC with statistical information on their schemes in the same way as is required of private sector schemes under [SIS](#).

Monitoring of the Agreement

The States and Territories agree to facilitate the exchange of information with the Insurance and Superannuation Commissioner to enable the Agreement to be monitored. The Commonwealth, States and Territories further agree that this exchange of information with the Commissioner will be the mechanism by which the Agreement is to be monitored.