

2004 – 2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SUPERANNUATION (CONSEQUENTIAL AMENDMENTS)
BILL 2005**

EXPLANATORY MEMORANDUM

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

TABLE OF CONTENTS

	Page
General Outline	3
Financial Impact Statement	5
Terms Used in Notes on Clauses	6
Notes on Clauses	8

GENERAL OUTLINE

SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005

OUTLINE

The Superannuation (Consequential Amendments) Bill 2005 (the Bill) amends various Acts as set out in the schedules to the Bill. The amendments are a consequence of changes to the Australian Government's superannuation arrangements and in particular as a direct or indirect consequence of the Superannuation Bill 2005 (the 2005 Bill) which will establish the Public Sector Superannuation Accumulation Plan (PSSAP) as a separate accumulation superannuation fund and allow Australian Government employers to offer new employees and statutory office holders choice of fund arrangements like most private sector employers. This Bill and Explanatory Memorandum should be considered in conjunction with the 2005 Bill and the Explanatory Memorandum to that Bill.

This Bill will amend the:

- *Superannuation Act 1990* (1990 Act);
- *Superannuation Guarantee (Administration) Act 1992* (SG Act);
- *Superannuation (Productivity Benefit) Act 1988* (Productivity Benefit Act);
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990* (Supervisory Mechanisms Act);
- *Governor-General Act 1974* (Governor-General Act);
- *Judges' Pensions Act 1968* (Judges' Pensions Act);
- *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*; and
- Trust Deed under the 1990 Act.

Amendments to the 1990 Act and Trust Deed under the 1990 Act (Schedules 1 and 8)

The 2005 Bill will provide that the PSS Board will continue to be responsible for the PSSAP to be established pursuant to that Bill. The PSSAP would, but for the passage of the 2005 Bill, be established as a sub plan of the Public Sector Superannuation Scheme (PSS) from 1 July 2005 by the 20th Amending Deed (which will amend the Trust Deed and Rules under the 1990 Act).

As a consequence of establishing the PSSAP as a separate scheme and the 2005 Bill prescribing the PSS Board's functions and powers in relation to that scheme, this Bill will amend the 1990 Act and the Trust Deed under the 1990 Act to clarify that the provisions referring to the functions and powers of the PSS Board in the 1990 Act and in the Trust Deed are limited to its responsibilities in respect of the PSS established under that Act.

The Bill will also make a number of amendments to the 1990 Act to replace the PSS membership arrangements under the 20th Amending Deed which would have closed the (existing) defined benefit arrangements of the PSS to most new Australian Government employees and office holders from 1 July 2005. The Bill will ensure, in conjunction with the 2005 Bill, that the PSS is closed to most new Australian Government employees and office holders from 1 July 2005. Certain new employees and office holders with a relevant existing interest in the current Australian Government superannuation arrangements, such as a PSS preserved benefit, will continue to be eligible to resume PSS membership. Existing PSS members will not be affected by the changes.

Generally, existing PSS membership arrangements will require those new employees and office holders with a relevant existing interest to become PSS members if they resume Australian Government employment. However, certain persons, such as temporary employees and office holders, may have the option to resume PSS membership. Employees who do not choose PSS membership will have superannuation provided for them in accordance with the Productivity Benefit Act (subject to the closure of that Act to new employees and office holders from 1 July 2006 - see below) or will be able to have choice of fund arrangements under the SG Act. APS employees and certain other persons who have the option to join the PSS and who do not choose a fund offered by their employer will be required to join the PSS as the employer (default) fund.

Amendments to the SG Act (Schedule 2)

The SG Act will provide from 1 July 2005 that employers participating in the PSS are taken to comply with the choice of fund requirements under that Act in respect of PSS members. Following the establishment of the PSSAP as a separate scheme in accordance with the 2005 Bill, this Bill will amend the SG Act to provide that employers contributing to the PSSAP in respect of an employee will be taken to have complied with the choice of fund requirements under that Act until 30 June 2006. From that time relevant employers will become subject to the broader choice of fund requirements in the SG Act as they apply to most private sector employers.

Amendments to the Productivity Benefit Act (Schedule 3)

The Bill will amend the Productivity Benefit Act to close the superannuation arrangements provided under that Act to new employees and office holders from 1 July 2006. Employers will be required to offer these employees choice of fund arrangements under the SG Act from that date. The Productivity Benefit Act will continue to apply to employees and office holders who are qualified employees at 30 June 2005.

The Productivity Benefit Act will also be amended to facilitate employers offering choice of fund arrangements under the SG Act from as early as 1 July 2005 to members of the PSSAP.

Amendments to the Supervisory Mechanisms Act (Schedule 4)

The Bill will amend the Supervisory Mechanisms Act to recognise the superannuation arrangements provided for under the 2005 Bill and to facilitate the introduction of

choice of fund arrangements by Australian Government employers from 1 July 2006. Australian Government employers will be able to introduce choice of fund arrangements from as early as 1 July 2005. The Supervisory Mechanisms Act controls the provision of superannuation benefits to Australian Government employees.

Amendments to the Governor-General Act and the Judges' Pensions Act (Schedules 5 and 6)

The Bill amends the Governor-General Act and the Judges' Pensions Act as a consequence of the closure of the Productivity Benefit Act to new employees, to replace arrangements made under that Act for a Governor-General or a Judge. The amendments provide a lump sum benefit to Governors-General and Judges in circumstances where the superannuation benefit payable to or in respect of a Governor-General or a Judge otherwise would be less than the Superannuation Guarantee minimum level of employer superannuation.

Amendments to other Acts (Schedule 7)

The Bill will amend the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to extend their application to the 2005 Bill and to the Trust Deed of the PSSAP established under the 2005 Bill.

Financial Impact Statement

The Bill will have no financial impact.

TERMS USED IN NOTES ON CLAUSES

"**20th Amending Deed**" means the 20th Amending Trust Deed and Rules to the PSS made on 23 March 2004 in accordance with section 5 of the **1990 Act**.

"**1990 Act**" means the *Superannuation Act 1990*.

"**2005 Bill**" means the Superannuation Bill 2005.

"**ACT**" means the Australian Capital Territory.

"**APS**" means the Australian Public Service established by section 9 of the *Public Service Act 1999*.

"**APS Employee**" means an APS employee as defined in section 7 of the *Public Service Act 1999*.

"**Bill**" means the Superannuation (Consequential Amendments) Bill 2005.

"**Choice of fund arrangement**" means an arrangement where an employer makes contributions in respect of an employee in compliance with Part 3A of the **SG Act** as amended by the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*.

"**CSS**" means the Commonwealth Superannuation Scheme established under the *Superannuation Act 1976*.

"**Governor-General Act**" means the *Governor-General Act 1974*.

"**Judges' Pensions Act**" means the *Judges' Pensions Act 1968*.

"**NSW**" means New South Wales.

"**Productivity Benefit Act**" means the *Superannuation (Productivity Benefit) Act 1988*.

"**PSS**" means the Public Sector Superannuation Scheme established by the **PSS Trust Deed**.

"**PSSAP**" means the Public Sector Superannuation Accumulation Plan which would be established by the **PSSAP Trust Deed**.

"**PSSAP Fund**" means the fund which would be established, and vested in the **PSS Board**, by the **PSSAP Trust Deed**.

"**PSSAP Trust Deed**" means the Trust Deed which would be made under the terms of the **2005 Bill**.

"**PSS Board**" means the Board established under section 20 of the **1990 Act**.

“PSS Fund” means the fund established, and vested in the **PSS Board**, by the **PSS Trust Deed**.

“PSS Rules” means the rules governing the **PSS**, which are included in the **PSS Trust Deed**.

“PSS Trust Deed” means the trust deed made under the **1990 Act**.

“SG Act” means the *Superannuation Guarantee (Administration) Act 1992*.

“Supervisory Mechanisms Act” means *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.

NOTES ON CLAUSES

Clause 1: Short title

1. **Clause 1** provides for the short title of the Act to be the *Superannuation (Consequential Amendments) Act 2005*.

Clause 2: Commencement

2. **Clause 2** sets out a table containing the commencement information for each clause and schedule of the Bill.
3. **Item 1** of the table provides that clauses 1, 2 and 3 of the Bill and any provision not covered elsewhere in the table will commence on the day the Bill receives the Royal Assent.
4. **Item 2** of the table provides that Part 1 of Schedule 1 will commence at the same time as Part 2 of the 2005 Bill. Part 1 of Schedule 1 clarifies the functions and responsibilities of the PSS Board under the 1990 Act. Part 2 of the 2005 Bill provides for the PSSAP Trust Deed to be made establishing the PSSAP as a separate accumulation superannuation scheme and setting out the functions and powers of the PSS Board for that scheme. These amendments are necessary as a consequence of the establishment of the separate superannuation scheme to clearly define the PSS Board's responsibilities in respect of the PSS as opposed to the PSSAP. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme.
5. **Item 3** of the table provides that Part 2 of Schedule 1 will commence from the later of 1 July 2005 or the commencement of Part 2 of the 2005 Bill. Part 2 of Schedule 1 amends the 1990 Act to close membership of the PSS to new employees and office holders. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme providing membership for these new employees and office holders. In that event new employees will continue to join the PSS from 1 July 2005 as members of the accumulation sub plan provided for in the PSS Trust Deed.
6. **Item 4** of the table provides that Part 3 of Schedule 1 will commence on the day the Bill receives the Royal Assent. Part 3 of Schedule 1 contains a minor technical amendment to the 1990 Act which is not linked to the creation of the PSSAP.
7. **Item 5** of the table provides that Schedule 2 will commence immediately after the later of the commencement of Part 3A of the SG Act and Part 2 of the 2005 Bill. Schedule 2 will amend the SG Act to allow contributions to the PSSAP to constitute compliance with the choice of fund requirements under Part 3A of the SG Act until 1 July 2006. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme. If Part 2 of the 2005 Bill does not commence employers will continue to contribute to the PSS which meets the choice of fund requirements under section 32C(4) of the SG Act.

8. Item 6 of the table provides that Schedule 3 will commence at the same time as Part 2 of the 2005 Bill or 1 July 2005 whichever is later. Schedule 3 closes the Productivity Benefit Act to new employees from 1 July 2006 and facilitates choice of fund arrangements under the SG Act to PSSAP members from as early as 1 July 2005. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme. The choice of fund arrangements are not compatible with the mandatory membership arrangements of the PSS.

9. Item 6 of the table provides that Schedule 4 will commence at the same time as Part 2 of the 2005 Bill or 1 July 2005 whichever is later. Schedule 4 amends the Supervisory Mechanisms Act to allow for the provision of superannuation benefits under the 2005 Bill and allow employers to offer choice of fund arrangements as provided for in the SG Act. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme as the choice of fund arrangements are not specifically provided for within the existing superannuation arrangements.

10. Item 6 of the table provides that Schedule 5 will commence at the same time as Part 2 of the 2005 Bill or 1 July 2005 whichever is later. Schedule 5 amends the Governor-General Act to provide minimum Superannuation Guarantee superannuation benefits from 1 July 2006 in respect of a Governor-General. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme. The PSSAP makes provision for choice of fund arrangements under the SG Act for PSSAP members and persons eligible to be PSSAP members and as a result allows the closure of the Productivity Benefit Act from 1 July 2006. The commencement of these amendments before 1 July 2006 will facilitate the making of the relevant determination for calculating the benefit which will apply from 1 July 2006.

11. Item 6 of the table also provides that Schedule 6 will commence at the same time as Part 2 of the 2005 Bill or 1 July 2005 whichever is later. Schedule 6 amends the Judges' Pensions Act to provide minimum Superannuation Guarantee superannuation benefits from 1 July 2006 in respect of a Judge. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme. The PSSAP makes provision for choice of fund arrangements under the SG Act for PSSAP members and as a result allows the closure of the Productivity Benefit Act from 1 July 2006. The commencement of these amendments before 1 July 2006 will facilitate the making of the relevant determination for calculating the benefit, which will apply from 1 July 2006.

12. Item 6 of the table provides that Schedule 7 will commence at the same time as Part 2 of the 2005 Bill or 1 July 2005 whichever is later. Schedule 7 amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to ensure that benefits paid under the 2005 Bill will constitute taxable benefits for the purposes of the relevant tax legislation. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme.

13. Item 7 of the table provides that Schedule 8 will commence at the same time as Part 2 of the 2005 Bill. Schedule 8 amends the PSS Trust Deed to clarify the functions and powers of the PSS Board set out in that Trust Deed are only in relation to the

PSS. However it will not commence if Part 2 of the 2005 Bill does not commence establishing the PSSAP as a separate accumulation superannuation scheme.

14. Subclause 2(2) of the Bill provides for additional information to be included in the table in Subclause 2(1) on the passage of the Bill through the Parliament, such as the date of the Royal Assent and the dates of commencement of the different parts of the Bill.

Clause 3: Schedule(s)

15. Clause 3 outlines the application of the schedules to amend or repeal certain provisions in the Acts specified. It also provides for the amendment of the PSS Trust Deed under the 1990 Act by Schedule 8, while still allowing future amendments to the Trust Deed under that Act without restriction.

SCHEDULE 1 – AMENDMENT OF THE SUPERANNUATION ACT 1990

16. This schedule amends the 1990 Act as a consequence of the establishment of the PSSAP as a scheme separate to the PSS. The passage of the 2005 Bill will replace arrangements made by the 20th PSS Amending Deed to establish the PSSAP as a sub plan of the PSS.

17. Although the PSSAP is to be separated from the PSS, the PSS Board will be responsible for the PSSAP in the same way as it would have been responsible through the arrangements in the 20th Amending Deed.

18. Part 1 of this Schedule amends the 1990 Act to clarify that the provisions referring to the functions and powers of the PSS Board in the 1990 Act and in the Trust Deed are limited to its responsibilities in respect of the PSS established under that Act. The 2005 Bill and the PSSAP Trust Deed prescribe the Board's functions and powers in relation to the PSSAP.

19. Part 2 of this Schedule makes a number of amendments to the 1990 Act to replace the membership arrangements under the 20th Amending Deed. This Part ensures, in conjunction with the 2005 Bill, that the PSS is closed to most new Australian Government employees and office holders from 1 July 2005. Such persons will either join the PSSAP or a fund of their choice.

20. Part 3 of this Schedule makes a minor technical amendment correcting a reference to the trustee legislation for the ACT.

Part 1 – Amendments relating to the PSS Board etc.

Item 1

21. Item 1 amends subsection 22(1) of the 1990 Act. This item clarifies that, following the establishment of the PSSAP and the PSS Board becoming responsible for the administration of that scheme under the 2005 Bill, the functions and powers of the PSS Board as set out in the PSS Trust Deed are limited to those in respect of the PSS. Section 22 provides for the functions and powers of the PSS Board to be set out in the PSS Trust Deed and makes the PSS Board responsible for the administration of the 1990 Act.

Item 2

22. Item 2 adds a note at the end of section 22 of the 1990 Act. The note refers to the additional functions and powers of the PSS Board following the establishment of the PSSAP under the 2005 Bill. Section 22 provides for the functions and powers of the PSS Board to be set out in the PSS Trust Deed and makes the PSS Board responsible for the administration of the 1990 Act. The additional functions and powers of the PSS Board are set out in clause 20 of the 2005 Bill, which provides for the functions and powers of the PSS Board in relation to the PSSAP and the PSSAP Fund to be set out in the PSSAP Trust Deed and gives the PSS Board responsibility for the administration of the 2005 Bill.

Item 3

23. Item 3 amends subsection 26(1) of the 1990 Act by repealing and replacing subsection 26(1) to confirm that section 26 applies to the PSS Board only insofar as the PSS Board performs functions or exercises powers in relation to the PSS. Section 26 provides that neither the PSS Board or the PSS Fund are subject to a tax under a law of the Commonwealth or a State or Territory other than certain Acts specified in subsection 26(1) or by regulation under subsection 26(3).

Item 4

24. Item 4 clarifies that the amendment to subsection 26(1) of the 1990 Act under Item 3 has no effect on existing regulations made under subsection 26(3) of the 1990 Act.

Item 5

25. Item 5 amends paragraph 28(1)(a) of the 1990 Act to limit its application to the PSS Board's performance of its functions and powers in respect of the PSS. Paragraph 28(1)(a) provides that the PSS Board must, as soon as practicable, provide a report on the performance of its functions for each financial year. The amendment clarifies that the report on the PSS Board's performance of its functions is only in relation to the PSS. This clarification is necessary as a result of the additional functions given to the PSS Board under the 2005 Bill.

Item 6

26. Item 6 amends subsection 28(4) of the 1990 Act to limit its application to the PSS Board's performance of its functions and powers in respect of the PSS. Subsection 28(4) requires the PSS Board, if it has not provided a report under paragraph 28(1)(a) of the 1990 Act within 6 months of the end of the financial year, to provide an interim report on the performance of its functions during that year. This clarification is necessary as a result of the additional functions given to the PSS Board under the 2005 Bill.

Item 7

27. Item 7 amends subsection 29(1) of the 1990 Act. This item seeks to clarify that the application of this subsection is limited to the PSS Board's performance of its functions and powers in respect of the PSS. Subsection 29(1) gives the Commissioner for Superannuation responsibility for providing administrative services to the PSS Board to assist in the performance of its functions. This clarification is necessary as a result of the additional functions given to the PSS Board under the 2005 Bill.

Item 8

28. Item 8 amends subsection 43(3) of the 1990 Act. The item clarifies that money is only paid out of the PSS Fund where the PSS Board makes a payment in respect of an action, liability, claim or demand in relation to the PSS and its governing rules (the 1990 Act, regulations under that Act and the PSS Trust Deed). Section 43 provides the PSS Board and other persons responsible for, or assisting in, the administration of the 1990 Act and the PSS Trust Deed with indemnification against actions, liabilities, claims and demands. The PSS Fund is reimbursed for any money paid out from the Consolidated Revenue Fund. This item seeks to clarify that an action, liability, claim or demand must be in relation to the performance of duties or functions under the 1990 Act, regulations under that Act or the PSS Trust Deed.

Part 2 – Amendments relating to the membership of the Public Sector Superannuation Scheme

Items 9, 12 and 13

29. Item 9 amends section 3 to include a definition of a PSS invalidity pensioner by reference to the PSS Rules. A PSS invalidity pensioner is a person receiving a pension benefit under the PSS Rules because of invalidity retirement. This definition has been inserted to assist in defining the membership arrangements for such persons who resume employment. Items 12 and 13 make consequential changes to section 6 of the 1990 Act.

Items 10, 11, 14, and 15

30. These items make various amendments to section 6 of the 1990 Act to close the PSS to new employees and office holders from 1 July 2005 and, among other things, to prescribe additional circumstances where a person may be required to become a PSS member. Section 6 of the 1990 Act provides that a person is a PSS member if the person is described in subsection 6(1) of that Act but is excluded from PSS membership if they are a person described in subsection 6(2) of that Act.

31. The amendments made by these items to the existing membership provisions are in a similar form to provisions that apply under the 20th Amending Deed. That Deed, establishes the PSSAP as a sub plan of the PSS from 1 July 2005 and Rules B2.1.1A and Rules A2.1.2 provide that membership of the existing (defined benefit) PSS is restricted to existing employees and office holders at 30 June 2005 and to persons who have a relevant existing interest in the PSS (such as a PSS preserved benefit). However, the items noted in this Bill also provide for persons to become PSS members

where this is necessary for an employer to meet the choice of fund requirements under the SG Act.

32. As noted below, the items in this Bill insert a new subsection 6(4) to close PSS membership in respect of a person who becomes an employee or office holder on or after 1 July 2005. The Bill also inserts a subsection 6(5) to mandate PSS membership in respect of an APS employee and any other person determined by the Minister in certain circumstances where it is necessary for the person to become a PSS member in order for the employer to meet the choice of fund requirements. The Bill also provides, pursuant to new subsection 6(6) that a person who would otherwise be a PSS member as a result of subsection 6(5) is not a PSS member if they are described in subsection 6(6).

33. Although PSS membership will be closed to most new employees and office holders from 1 July 2005, the 2005 Bill provides that such persons will be eligible to become PSSAP members and, subject to the choice of fund requirements, may be required to become a PSSAP member in certain circumstances.

34. Item 10 amends subsection 6(1) of the 1990 Act, which includes persons as PSS members, to provide that this subsection is subject to the new subsection 6(4) (included by item 15 of this schedule) as well as the existing subsection 6(2). This ensures that an eligible person can become a PSS member only if they are not excluded by subsection 6(2) and 6(4) effectively limiting the application of subsection 6(1) after 30 June 2005.

35. Item 11 makes a technical amendment to subsection 6(1) of the 1990 Act.

36. Item 15 amends section 6 of the 1990 Act to include a number of new subsections that:

- under new subsection 6(4), close the PSS to new members unless a person has a relevant pre-existing interest in the scheme. A relevant pre-existing interest is a right to membership in relation to particular employment engaged in at 30 June 2005 or another relevant existing interest in the Australian Government's defined benefit schemes, the PSS and the CSS, that would allow resumption of membership or provide an entitlement to join the scheme under certain circumstances;
- under new subsection 6(5), mandate PSS membership for APS employees and other prescribed persons in certain circumstances where this would be necessary for an employer to meet the choice of fund requirements; and
- under new subsection 6(6), exclude certain persons from PSS membership who would otherwise be mandated as PSS members.

37. Subsection 6(4) of the 1990 Act provides that a person cannot become a PSS member on or after 1 July 2005 unless they meet certain conditions described in that subsection. For example, a person would be permitted to become a PSS member if they are already a PSS member in respect of other employment or an appointment (paragraph 6(4)(a)), the person has a PSS preserved benefit (paragraph 6(4)(b)), the person is a PSS invalidity pensioner (paragraph 6(4)(c)) or the person is a CSS member and is eligible to become a PSS member and has made an election accordingly (paragraph 6(4)(g)).

38. Subsection 6(4) also provides that certain existing employees and office holders at 30 June 2005 will continue to be eligible to make an election under section 7 or 8 (as appropriate) and join the PSS on or after 1 July 2005. Paragraph 6(4)(d) makes it clear that a statutory office holder will be able to elect to become a PSS member only during a term of appointment that was held at the end of 30 June 2005. Once the office holder commences new employment or a new term of appointment on or after 1 July 2006, that person will not be permitted to make an election to become a PSS member in accordance with this subsection.

39. Similarly, paragraph 6(4)(e) will ensure that a temporary employee will be permitted to become a PSS member during a term of employment that was held at the end of 30 June 2005 or, if the employment is not for a fixed term, the employee will be able to elect during that employment. Once the employee commences a new term of employment or commences new employment, that employee will not be permitted to make an election to become a PSS member in accordance with this subsection.

40. In certain circumstances, a temporary employee could make an election under section 8 of the 1990 Act to become a PSS member before they have met the necessary criteria to become such a member. For example, section 8 provides that a person is eligible to become a PSS member if they have accrued periods of relevant employment and appointments of at least three months in a two year period. Paragraph 6(4)(f) will allow such a person who has made their election to become a PSS member before 1 July 2005 to become a PSS member on or after that date once they have met the relevant criteria. This paragraph ensures also that such an election would not have effect if the person does not meet the criteria during a current term of employment or if the employment is not for a fixed term, during the person's current employment at 30 June 2005.

41. In certain circumstances, a temporary employee could make an election under section 8 of the 1990 Act to become a PSS member before they have met the necessary criteria to become such a member. For example, section 8 provides that a person is eligible to become a PSS member if they have accrued periods of relevant employment and appointments of at least three months in a two year period. Paragraph 6(4)(f) will allow such a person who has made their election to become a PSS member before 1 July 2005 to become a PSS member on or after that date once they have met the relevant criteria. This paragraph ensures also that such an election would not have effect if the person does not meet the criteria during a current term of employment or if the employment is not for a fixed term, during the person's current employment at 30 June 2005.

42. Subsection 6(5) provides that APS employees and any person determined by the Minister who is not already a PSS member are required to become PSS members where this is necessary for the employer to meet the choice of fund requirements under the SG Act. This subsection will only apply in respect of a temporary employee or office holder who will be eligible to become a PSS member on or after 1 July 2006 (as a permanent employee who is eligible to become a PSS member would be required to become a member pursuant to subsections 6(1) and 6(4)).

43. Paragraph 6(5)(d) provides that a relevant person will be required to become a PSS member under subsection 6(5) where this would be consistent with the employer complying with the choice of fund requirements in respect of that employee by:

- offering the employee choice of fund and the employee does not choose a fund (subsection 32C(2) of the SG Act);
- paying contributions to the PSS in respect of the employee as provided for in an Australian Workplace Agreement or a certified agreement under the *Workplace Relations Act 1996* or a certified agreement under the *Industrial Relations Act 1988* (subsection 32C(6) of the SG Act).

44. Subsection 6(6) prevents membership under subsection 6(5) where a person is an eligible employee under the *Superannuation Act 1976* (a CSS member), a person to whom the Judges' Pensions Act applies, a person excluded by the Minister by declaration under paragraph 6(2)(c), or a person determined by the Minister under this subsection.

45. Subsection 6(7) confirms that determinations under subparagraphs 6(5)(b)(ii) and paragraph 6(6)(d) are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. Subsection 6(8) specifically provides that the determinations are subject to disallowance by the Parliament under section 42 of the *Legislative Instruments Act 2003* and, as a consequence, Item 39 of the table under section 44 of the *Legislative Instruments Act 2003* which exempts superannuation legislative instruments (except regulations) from the disallowance process does not apply.

Item 16

46. Item 16 amends paragraph 19(1)(c) to include, as employees of an authority or body (other than a State authority), a person or persons included by a determination by the Minister made under paragraph 6(5)(b)(ii). Section 19 provides for payments as determined by the Minister to be made to the Commonwealth in respect of benefits payable to PSS members employed by an authority or body under subsection 19(1).

Item 17

47. Item 17 amends paragraph (b) of the definition of “declared authority” in subsection 35(4) to include an authority or body whose employees include a person or persons included by a determination by the Minister under paragraph 6(5)(b)(ii). Section 35 allows the Minister to direct in writing a declared authority to pay to the Commonwealth amounts in relation to the estimated costs of the PSS Board for the administration of the PSS.

Item 18

48. Item 18 amends paragraph 36(d) to include an authority or body whose employees include a person or persons included in a determination made by the Minister under paragraph 6(5)(b)(ii). Section 36 provides for the authority or body to pay for any medical examination required under the PSS Rules.

Part 3 – Technical amendment

Item 19

49. Item 19 amends section 25 of the 1990 Act to insert an updated reference to the trustee legislation of the Australian Capital Territory (ACT). Section 25 currently contains a reference to the *Trustee Act 1957* (ACT) which applied the *Trustee Act 1925* (NSW) to the ACT. The *Trustee Act 1957* was repealed by the *ACT Statute Law Amendment Act 2001 (No.2)*. The remaining provisions of the *Trustee Act 1957* providing for the operation of the *Trustee Act 1925* in the ACT were incorporated into the *Trustee Act 1925* (ACT).

SCHEDULE 2 – AMENDMENT OF THE SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992

50. This schedule amends the SG Act as a consequence of the separation of the PSSAP from the PSS by the 2005 Bill.

51. The amendments to the SG Act will provide that employers contributing to the PSSAP in respect of their employees are taken to comply with the choice of fund requirements under that Act until 30 June 2006. Without the establishment of the PSSAP by the PSSAP Trust Deed as a separate accumulation superannuation scheme, employers participating in the PSSAP would be covered by section 32C(4) of the SG Act which provides that contributions made to the PSS are taken to comply with the choice of fund requirements under the SG Act. From 1 July 2006, these employers will have to meet the choice of fund requirements in accordance with subsections 32C(1), 32C(2) or 32C(6) of the SG Act in respect of members of the PSSAP and new employees who do not join the PSS or the CSS.

Item 1

52. Item 1 amends subsection 6(1) of the interpretation section of the SG Act to include a definition “PSSAP”. The term “PSSAP” is included in the new subsection 32C(4) of the SG Act inserted by item 2 of this schedule. The PSSAP is the Public Sector Superannuation Accumulation Plan established by Trust Deed under the 2005 Bill.

Item 2

53. Item 2 inserts subsection 32C(4A) into the SG Act. Section 32C outlines the circumstances in which employer contributions satisfy the choice of fund requirements under that Act. The new subsection provides that employers who contribute to the PSSAP in respect of an employee are taken to comply with the choice of fund requirements under the SG Act for that employee until 1 July 2006. From 1 July 2006, these employers will have to meet the choice requirements under subsections 32C(1), 32C(2) or 32C(6) of the SG Act, that is, by contributing to the employee’s chosen fund or if a fund is not chosen, an eligible choice fund for the employer or by making contributions in respect of the employee as provided for in an Australian Workplace Agreement or a certified agreement under the *Workplace Relations Act 1996* or a certified agreement under the *Industrial Relations Act 1988*.

**SCHEDULE 3 – AMENDMENT OF THE SUPERANNUATION
(PRODUCTIVITY BENEFIT) ACT 1988**

54. This schedule closes the Productivity Benefit Act to new members from 1 July 2006 when employers participating in the PSSAP will be required to provide choice of fund arrangements.

55. The schedule also amends the Productivity Benefit Act to ensure that employees who leave the PSSAP under a choice of fund arrangement offered by their employer under the SG Act before 1 July 2006 as provided for under the 2005 Bill do not inadvertently become covered by the Productivity Benefit Act.

Item 1

56. Item 1 amends subsection 3(1), the interpretation section, of the Productivity Benefit Act to include a definition of the “PSSAP” as the Public Sector Superannuation Accumulation Plan established by the 2005 Bill. This definition is used in section 3AB which is inserted by item 3 of this schedule and provides that an employee who ceases to be an ordinary employer-sponsored member of the PSSAP as part of a choice of fund arrangement is not a qualified employee under the Productivity Benefit Act.

Item 2

57. Item 2 inserts two notes after the definition of “qualified employee” in subsection 3(1) of the Productivity Benefit Act. The notes refer to the new sections inserted by item 3 of this schedule which modify the application of this definition.

Item 3

58. Item 3 inserts two new sections 3AA and 3AB into the Productivity Benefit Act.

59. Section 3AA prevents a person becoming a qualified employee on or after 1 July 2006 irrespective of whether they would otherwise fall under that definition. This effectively closes the superannuation arrangements under the Productivity Benefit Act to new employees and office holders from that date.

60. The superannuation arrangements under the Productivity Benefit Act will continue to apply to employees or office holders covered at 30 June 2005 unless they elect to join the PSS under section 7 or 8 of the 1990 Act or the PSSAP under section 14 of the 2005 Bill, as appropriate to their circumstances.

61. Section 3AB allows employers to introduce choice of fund arrangements for employees who are PSSAP members without the employee coming under the superannuation arrangements under the Productivity Benefit Act. It ensures that from 1 July 2005 or a later date of commencement of the 2005 Bill, an employee who ceases to be an ordinary employer-sponsored member of the PSSAP because they have chosen to contribute to another fund as part of a choice of fund arrangement under the SG Act do not become a qualified employee for the purposes of the Productivity Benefit Act. This section will cease to be relevant from 1 July 2006 when section 3AA comes into effect.

SCHEDULE 4 – AMENDMENT OF THE SUPERANNUATION BENEFITS (SUPERVISORY MECHANISMS) ACT 1990

62. This schedule amends Supervisory Mechanisms Act as a consequence of the establishment of the PSSAP as a separate accumulation superannuation scheme and the provision for employers to offer choice of fund arrangements under the SG Act.

63. The amendments made by this schedule will ensure that the Supervisory Mechanisms Act does not prohibit employers from contributing to the PSSAP. They also prohibit the application of any prescribed requirements under that Act that would prevent an employer offering choice of fund arrangements in compliance with the Supervisory Mechanisms Act.

Item 1

64. Item 1 amends the definition of “relevant body” in subsection 3(1) of the interpretation section of the Supervisory Mechanisms Act to include an approved authority under the 2005 Bill for the purposes of complying with the Supervisory Mechanisms Act.

Item 2

65. Item 2 amends the definition of “relevant subsidiary” in subsection 3(1) to include in subparagraph 3(1)(a)(i) authorities, body corporates, companies and other bodies that could be an approved authority under the 2005 Bill.

Item 3

66. Item 3 amends the definition of superannuation benefits in subsection 3(1) to include benefits provided under the 2005 Bill.

Item 4

67. Item 4 inserts subsection 6(1A) which provides that any prescribed requirements under section 6 that would create a liability or notional liability under the SG Act have no effect. The purpose of this subsection is to ensure that employers may offer choice to employees as required and allowed by the SG Act while continuing to comply with the Supervisory Mechanisms Act

Item 5

68. Item 5 amends subsection 6(6) to clarify that the use of the term “employer” in subsection 6(1A) uses the meaning of employer as defined in the SG Act. The term “employer” as defined by subsection 6(6) continues to apply to the rest of section 6.

Item 6

69. Item 7 amends paragraphs 8(a) and 8(b) of the Supervisory Mechanisms Act to limit the Minister’s delegation powers by specifically excluding the 2005 Bill from the application of that section.

SCHEDULE 5 – AMENDMENT OF THE GOVERNOR-GENERAL ACT 1974

70. This schedule amends the Governor-General Act as a consequence of the closure of the Productivity Benefit Act from 1 July 2006 (see Schedule 3) to ensure a minimum level of superannuation for or in respect of a Governor-General.

Item 1

71. Item 1 inserts section 4AA in the Governor-General Act which replaces provisions contained in the Superannuation (Productivity Benefit) (Qualified Employees and Alternative Arrangements) Declaration No.1 from 1 July 2006 for a Governor-General who is not a qualified employee under the Productivity Benefit Act. Section 3AA of the Productivity Benefit Act as inserted by Item 3 of Schedule 3 ensures that no one can become a qualified employee on 1 July 2006 or after that date. That declaration ensures that where a Governor-General or a surviving spouse of a Governor-General dies the amount of the total superannuation benefit paid in respect of the person's service as Governor-General is at least equal to the minimum amount required by the SG Act to avoid an individual Superannuation Guarantee shortfall.

72. Subsection 4AA(1) provides that section 4AA applies if a Governor-General or a former Governor-General dies on or after 1 July 2006 without leaving a spouse, or if a former Governor-General has died leaving a spouse or spouses, and the spouse or the last surviving spouse dies on or after 1 July 2006 and the Governor-General was not a qualified employee under the Productivity Benefit Act.

73. The amount of benefit payable under section 4AA to the personal representative of the deceased person to whom the section applies, as worked out under subsections 4AA(2) and 4AA(3), is equal to:

- the sum of all amounts that would have been required to be contributed on a monthly basis to a complying superannuation fund to avoid an individual Superannuation Guarantee shortfall under the SG Act if no other benefits were payable to or in respect of the Governor-General under the Governor General Act; plus
- the amount of interest in accordance with a method determined by the Minister to have accrued on those contributions; less
- the amount of any other benefits paid to the former Governor-General or their spouse under section 4 of the Act in respect of service as Governor-General.

74. Subsection 4AA(4) provides that where a benefit is payable under subsection 4AA(2) to the personal representative of a person and no personal representative of the person can be found, the amount is to be paid to any individual or individuals whom the Minister determines.

75. Subsection 4AA(5) appropriates money for the benefit payable under this section.

76. Subsections 4AA(6) to (10) make provision for setting the interest to be applied to contributions under paragraph 4AA(2)(a). The method for setting the interest must be set out in a determination by the Minister (subsection 4AA(6)). The method may provide for the interest rate to vary over time (subsection 4AA(7)) and may apply to a period prior to the making of the determination but may not be revoked (subsection

4AA(9)). This is consistent with section 33(3) of the *Acts Interpretation Act 1901* which allows for the revocation of an instrument unless a contrary intention such as in subsection 4AA(9) is included in the relevant Act. Subsection 4AA(9) is not intended to apply to any other instruments under the Governor-General Act (subsection 4AA(10)).

77. Subsection 4AA(11) provides that the determination under subsection 4AA(6) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is subject to disallowance by the Parliament under section 42 of the *Legislative Instruments Act 2003*. Subsection 4AA(12) specifically provides for the determination to be subject to disallowance and, as such, item 39 of the table under section 44 of the *Legislative Instruments Act 2003* which exempts superannuation legislative instruments (except regulations) from the disallowance process does not apply.

78. Subsection 4AA(13) contains definitions of the terms “complying superannuation fund or scheme” and “individual Superannuation Guarantee shortfall” which have the same meaning as in the SG Act.

SCHEDULE 6 – AMENDMENT OF THE *JUDGES’ PENSIONS ACT 1968*

79. This schedule amends the Judges’ Pensions Act as a consequence of the closure of the Productivity Benefit Act from 1 July 2006 (see Schedule 3) to ensure a minimum level of superannuation for or in respect of a Judge.

Item 1

80. Item 1 inserts section 12A in the Judges’ Pensions Act. Section 12A will replace provisions contained in the Superannuation (Productivity Benefit) (Qualified Employees and Alternative Arrangements) Declaration No.1 from 1 July 2006 for Judges who are not qualified employees under the Productivity Benefit Act. Section 12A ensures that benefits paid under the Judges’ Pensions Act are at least equal to the minimum amount required by the SG Act to avoid a Superannuation Guarantee shortfall.

81. Subsection 12A(1) provides that section 12A applies in respect of a Judge who is not a qualified employee under the Productivity Benefit Act:

- where no pension is payable under the Judges’ Pensions Act to a Judge who ceases to hold office on or after 1 July 2006;
- where a Judge or former Judge dies on or after 1 July 2006 leaving no surviving spouse or eligible child; or
- where a pension payable to a surviving spouse or spouses or an eligible child or eligible children ceases to be payable on or after 1 July 2006.

82. The amount of benefit payable under section 12A to the person or the personal representative of the deceased person is worked out in accordance with subsections 12A(2) and 12A(3), and is equal to:

- the amount that would have been required to be contributed on a monthly basis to a complying superannuation fund to avoid an individual Superannuation Guarantee

shortfall under the SG Act if no other benefits were payable under the Judges' Pensions Act; plus

- the amount of interest in accordance with a method determined by the Minister to have accrued on those contributions; less
- the amount of any benefits paid under the Judges' Pensions Act to the person, any surviving spouse or eligible child.

83. Subsection 12A(4) provides that where a benefit is payable under subsection 12A(2) to the personal representative of a person, and no personal representative of the person can be found, the amount is to be paid to any individual or individuals whom the Minister determines.

84. Subsection 12A(5) appropriates money for the benefit payable under this section.

85. Subsections 12A(6) to (8) provide that a method for setting the interest to be applied to contributions under paragraph 12A(2)(b) must be set out in a determination by the Minister. The method may provide for the interest rate to vary over time and may apply to a period prior to the making of the determination.

86. Due to the requirement in paragraph 72(iii) of the Constitution that a Judge shall receive such remuneration as the Parliament may fix, the determination under subsection 12A(6) is subject to a number of specific requirements as set out in subsections 12A(9) to 12A(15) to ensure compliance with the Constitution. The determination:

- must be tabled in each House of the Parliament by the Minister within 15 sitting days of the determination being made;
- takes effect only after 15 sitting days have passed in both the House of Representatives and the Senate following tabling of the determination;
- is subject to disapproval by either House of the Parliament within 15 sitting days of being tabled in that House;
- may be varied but not be revoked. This is consistent with section 33(3) of the *Acts Interpretation Act 1901* which allows for the revocation of an instrument unless a contrary intention, such as in subsection 12A(12), is included in the relevant Act. Subsection 12A(12) is not intended to apply to any other instruments under the Judges' Pensions Act;
- is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* being subject to its own disallowance process as outlined above; and
- must be made in a manner consistent with paragraph 72(iii) of the Constitution.

87. Subsection 12A(16) contains definitions of the terms “complying superannuation fund or scheme” and “individual Superannuation Guarantee shortfall” which have the same meaning as in the SG Act.

SCHEDULE 7 – AMENDMENT OF OTHER ACTS

Income Tax Assessment Act 1936

Item 1

88. Item 1 amends subsection 24AJ(1) of the *Income Tax Assessment Act 1936* to confirm that any payment under the scheme established under the 2005 Bill, including a benefit payment, is subject to that Act. This is consistent with section 22 of the 2005 Bill which also applies the *Income Tax Assessment Act 1997* to the PSSAP Fund and the PSS Board in so far as it performs functions, or exercises powers in relation to the PSSAP or PSSAP Fund.

Income Tax Assessment Act 1997

Item 2

89. Item 2 amends subsection 55-5(1) of the *Income Tax Assessment Act 1997* to confirm that any payment under the scheme established under the 2005 Bill or a provision of that Bill, including a benefit payment, is subject to that Act. This is consistent with section 22 of the 2005 Bill which also applies the *Income Tax Assessment Act 1997* to the PSSAP Fund and the PSS Board in so far as it performs functions, or exercises powers in relation to the PSSAP or PSSAP Fund.

SCHEDULE 8 – AMENDMENT OF THE TRUST DEED OF THE PUBLIC SECTOR SUPERANNUATION SCHEME

Item 1

90. Item 1 amends clause 1 of the PSS Trust Deed to include the definitions “PSS functions” and “PSS powers” being those functions and powers of the PSS Board set out in the Trust Deed in relation to the PSS. This is included to clearly distinguish those functions and powers from the functions and powers of the PSS Board provided for in the PSSAP Trust Deed.

Item 2

91. Item 2 amends subclause 3.1 to clarify that this clause only relates to the functions of the PSS Board in respect of the PSS and the PSS Fund.

Item 3

92. Item 3 amends subclause 3.2 to include a reference to “PSS functions” as a consequence of the establishment of the PSSAP by the PSSAP Trust Deed and the functions and powers of the PSS Board set out in that Trust Deed.

Item 4

93. Item 4 amends subclause 3.2A to refer to “PSS functions” and “PSS powers” as a consequence of the establishment of the PSSAP by the PSSAP Trust Deed and the functions and powers of the PSS Board set out in that Trust Deed.

Item 5

94. Item 5 amends subclause 3.3 to refer to “PSS functions” and “PSS powers” as a consequence of the establishment of the PSSAP by the PSSAP Trust Deed and the functions and powers of the PSS Board set out in that Trust Deed.