

HEADS OF GOVERNMENT AGREEMENT

EXEMPTION OF CERTAIN PUBLIC SECTOR SUPERANNUATION SCHEMES FROM THE *SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993* AND THE *SUPERANNUATION (RESOLUTION OF COMPLAINTS) ACT 1993*

The Commonwealth Government and the State and Territory Governments recognise the need to apply national standards to certain aspects of superannuation without distinguishing either between employees of the public and private sector or employees of the public sector at different levels of government. For example, it is important that members' accrued entitlements are securely protected and that the taxation outcomes for members' superannuation benefits are broadly equivalent.

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 schemes 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 Act), the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) 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 Act and Regulations (SIS legislation) provide 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* and the *Income Tax Assessment Act 1997*.

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 to the best of their endeavours, as reflected in the Attachment to this agreement and from time to time in Commonwealth legislation. A statement of these commitments will be provided in the annual reports of the exempted schemes where annual reports are prepared and in any case conveyed annually to the Commonwealth Treasury.

The States and Territories will notify the Commonwealth of new schemes which it is proposed are appropriately exempted from the SIS legislation. The States and Territories are also to notify the Commonwealth of those 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 relevant legislation. The Commonwealth also undertakes that, in respect of any Commonwealth schemes which are exempted from the SIS legislation, 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 ARTHUR SINODINOS AO
Assistant Treasurer of the Commonwealth of Australia



Signed by the Honourable JAY WEATHERILL MP
Premier of South Australia

ATTACHMENT

Principles of the Commonwealth's superannuation legislation

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

As part of that wider retirement income policy objective, the particular objective of the Commonwealth's superannuation legislation is 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 the superannuation 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 are necessary for the superannuation industry to exhibit in order to fulfil its role, and other features of the industry which it is desirable to highlight or strengthen in the fulfilment of its role.

The incentives/mandatory arrangements are provided by way of the Income Tax Assessment Acts, the Superannuation Guarantee Act and the industrial award mechanism. On the other hand, the SIS legislation and the *Corporations Act 2001* provide for a range of requirements aimed at achieving the Government's retirement income policy 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 legislative 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 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 retirement income policy 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 the SIS legislation, including the provision of benefits on death, disability, resignation or other appropriate events. 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.

Contributions

In recognition that superannuation is intended to be used in retirement and the generous taxation concessions afforded to superannuation, there are various rules placed on the contributions that may be made by and for individuals. The SIS legislation sets out the circumstances in which superannuation funds may accept contributions. Whether or not contributions can be accepted may vary depending on a number of factors, including the member's age, and the nature of their employment.

MySuper

It is important to ensure simple and cost effective superannuation products are available for fund members, including as default products for those members who do not wish to be actively involved in choosing their superannuation arrangements. These products are called 'MySuper' products.

Specific rules are imposed on trustees of funds offering MySuper products to reflect that members of MySuper products rely on the trustee to act in their best financial interests. The requirements for MySuper products will be contained in the SIS legislation and the Corporations legislation. Trustees of exempted public sector schemes wishing to label their default products as MySuper are not required to be authorised by the Australian Prudential Regulation Authority (APRA) to offer a MySuper product; however, they would otherwise be expected to comply with the principles of other MySuper requirements.

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 other than in accordance with conditions for early release specified in the SIS Regulations. For this reason restrictions have been placed on the ability of members of superannuation funds to withdraw superannuation savings before retirement. The central importance of this can be seen in various increases to this restriction imposed by the Government, including by raising the age at which preserved benefits become available and by widening the range of benefits that must be preserved. 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.

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.

Portability and consolidation

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.

Generally, members of superannuation funds should have the ability to transfer their superannuation savings from one fund to another. However, exceptions are contained in the SIS legislation.

Procedures should be implemented to reduce the number of unnecessary superannuation accounts and the additional costs associated with members having multiple superannuation accounts. There should be no administrative impediment to portability and funds should facilitate account consolidation, both within funds and across funds, where it is in the member's best interests.

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, where relevant, APRA; or
- as permitted by the SIS legislation.

Lost members and unclaimed money

The *Superannuation (Unclaimed Money and Lost Members) Act 1999* allows prescribed public sector superannuation schemes to pay their unclaimed superannuation money to the Australian Taxation Office. To facilitate location of lost or unclaimed superannuation money, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* requires that information about the benefits of lost members and unclaimed monies be included on registers maintained by the Australian Taxation Office (ATO). The legislation facilitates the payment of unclaimed monies, including those of former temporary residents, by the States and Territories to the Commonwealth in order to provide a central point for all individuals to locate any lost and unclaimed superannuation.

Diversion of benefits

Steps to ensure that members 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, such as 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 except as provided for by Commonwealth legislation.

Insurance

Consistent with retirement incomes policy, insurance provided through superannuation allows for the provision of benefits to a member's dependants when the member dies, or to a member who is temporarily or permanently unable to work due to ill health. Accordingly, superannuation funds can only offer life insurance, total and permanent disability insurance and income protection insurance that is consistent with a condition of release under the SIS legislation. In relation to schemes exempt from the SIS legislation, self-insurance of benefits will be permitted on the understanding that any associated benefit payments are prescribed under the relevant State or Territory legislation or otherwise guaranteed by the State or Territory.

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.

Trustee governance

It is important that trustees of exempt schemes meet principles of trustee governance, consistent with the SIS legislation. A trustee should have a sound understanding of the legal environment and investment, insurance and taxation requirements in order to manage a fund prudently. In addition, a trustee should develop a policy which specifies a standard of behaviour. The trustee should conduct tests against this standard, address failures to meet this standard and have a policy for dealing with conflicts of interest.

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.

Risk management framework

In order to maintain the integrity of the superannuation system, it is important that trustees of superannuation funds prepare adequate documentation identifying and assessing the relevant risks they face. Relevant risks should include those relating to governance and decision-making processes, outsourcing arrangements, investment risk including liquidity, operational risks including potential fraud and theft, external risks including legislative and other regulatory changes and any other material risks. The documentation should also include statements as to how the trustee plans to implement processes to manage and monitor the risks they face.

Operational risk mitigation

Superannuation funds may be confronted with significant risks relating to losses resulting from failed internal processes, people or systems, or from external events. The SIS legislation requires trustees of complying superannuation funds to have access to adequate financial, human and technical resources in order to mitigate these risks. Holding adequate financial resources includes maintaining sufficient reserves to ensure member claims can be met in the event of an operational failure. In relation to schemes exempt from the SIS legislation, an alternative is to ensure that benefit payments are prescribed under the relevant State or Territory legislation or otherwise guaranteed by the State or Territory.

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 and compliance with relevant statutory 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.

Data and e-commerce standards

The SIS Act, supported by regulations and Commissioner of Taxation determinations and guidance, specifies the data and payment standards and e-commerce requirements that superannuation funds and employers must comply with when making and processing contributions and rollovers. Specifying standard requirements will bring significant efficiencies to the system and support the appropriate identification and matching of members with their superannuation.

Information to members

The disclosure of adequate and appropriate information to members in a clear, concise and effective manner 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 on joining 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.

Processes for the consideration of complaints

The importance of superannuation savings in the retirement income planning of all Australians means that superannuation decisions must be fair and equitable. 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 and external arrangements for the consideration in a timely manner of complaints made by members and beneficiaries.

Reporting to APRA and the ATO

APRA is the prudential regulator of the Australian financial services industry and is responsible 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 APRA's process. Therefore the States and Territories agree that they will supply APRA with statistical information on their schemes in the same way as is required of private sector schemes under the SIS legislation and the *Financial Sector (Collection of Data) Act 2001*.

In addition to its role regarding taxation, the ATO also requires information on contributions and member balances to facilitate the provision of this information to superannuation funds and superannuation fund members for the purpose of retirement income policy. Therefore the States and Territories agree that they will supply the ATO with information for this purpose.

Monitoring of the Agreement

The Commonwealth Treasury is responsible for monitoring this Agreement.

The Commonwealth, States and Territories agree to facilitate the exchange of information with the Commonwealth Treasury to enable this Agreement to be monitored.

The States and Territories further undertake to publish a statement, together with any annual financial report of each exempted scheme, outlining their compliance with undertakings made in this Agreement and to provide the statement and the annual financial report annually to the Commonwealth Treasury.