



Occupational Superannuation Standards Act 1987

No. 97 of 1987

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Occupational Superannuation Standards Act 1987

No. 97 of 1987

**An Act to provide operating standards for certain
superannuation funds and approved deposit funds, and for
related purposes**

[Assented to 5 November 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Occupational Superannuation Standards Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act:
“adopted child”, in relation to a person, means a person adopted by the first-mentioned person:

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(a) under the law of a State or Territory relating to the adoption of children; or

(b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or Territory;

“approved auditor” means a person included in a class of persons specified in regulations made for the purposes of this definition;

“approved deposit fund” means a fund that:

(a) is an indefinitely continuing fund;

(b) is maintained by an approved trustee or approved trustees solely for approved purposes; and

(c) has approved rules;

“approved purposes”, in relation to a fund, means the purposes of:

(a) receiving on deposit amounts that will be deemed by section 27D of the Tax Act to have been expended out of eligible termination payments within the meaning of that section;

(b) dealing with such amounts, in accordance with the rules of the fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the fund; and

(c) subject to any contrary requirement in the standards from time to time applicable to the fund under section 8, repaying to depositors, or the legal personal representatives of depositors, upon request, amounts deposited with the fund together with accumulated earnings on such amounts;

“approved rules” means rules that include all the kinds of provisions specified in regulations made for the purposes of this definition;

“approved trustee” means a body specified in, or included in a class of bodies specified in, regulations made for the purposes of this definition;

“child”, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of the person;

“Commissioner” means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987*, or a person for the time being acting as Insurance and Superannuation Commissioner under that Act;

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“dependant”, in relation to a person, includes:

(a) any person who is or was the spouse of the person; and

(b) any child of the person;

“depositor”, in relation to a fund, means a person who has paid an amount, or on whose behalf an amount has been paid, to the fund;

“fund affected by a reviewable decision”, in relation to a reviewable decision, means the fund in relation to which the decision was made;

“legal personal representative” means an executor or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds a general power of attorney granted by a person;

“produce” includes permit access to;

“protected document” means a document given or produced under or for the purposes of this Act containing information relating to the affairs of any superannuation fund or approved deposit fund;

“protected information” means information disclosed or obtained under or for the purposes of this Act relating to the affairs of any superannuation fund or approved deposit fund;

“reviewable decision” means a decision of the Commissioner to give a notice in relation to a fund under section 12, 13, 14 or 15 stating that the Commissioner is not satisfied that the fund complied with the superannuation fund conditions or the approved deposit fund conditions, as the case may be, in relation to a year of income;

“superannuation fund” means a fund that:

- (a) is an indefinitely continuing fund; and
- (b) is maintained solely for either or both of the following purposes:
 - (i) the provision of benefits for each member of the fund in the event of the retirement of the member from any business, trade, profession, vocation, calling, occupation or employment in which the member is engaged;
 - (ii) the provision of benefits for dependants of each member of the fund in the event of the death of the member;

or for either or both of those purposes and for such ancillary purposes as the Commissioner approves;

“superannuation standards officer” means a person who is or has been appointed or employed by the Commonwealth and who, by reason of that appointment or employment, or in the course of that employment:

- (a) may acquire, or has acquired, protected information; or
- (b) may have, or has had, access to protected documents;

“Tax Act” means the *Income Tax Assessment Act 1936*;

“taxation officer” means a person who is an officer for the purposes of section 16 of the Tax Act;

“year of income”, in relation to a fund, means a period that is a year of income in relation to the fund for the purposes of the Tax Act, and includes such a period (other than a period that ended before 1

July 1986) the whole or a part of which occurred before the commencement of this Act.

(2) Where the rules of a fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, the provision does not prevent the fund from being treated as an indefinitely continuing fund for the purposes of the definition of "approved deposit fund" or "superannuation fund" in subsection (1).

Application of Act in relation to periods before commencement etc.

4. (1) For the purposes of the application of this Act in relation to a fund in relation to a year of income of the fund the whole or a part of which occurred before the commencement of this Act:

- (a) this Act shall be taken to have come into operation on 1 July 1986; and
- (b) the year of income shall, if it commenced before 1 July 1986, be deemed to have commenced on 1 July 1986.

(2) The first regulations made for the purposes of the definitions of "approved rules" and "approved trustee" in subsection 3 (1) shall be taken to have come into operation on 1 July 1986.

(3) Where any of the first regulations made for the purposes of subsection 7 (1) specify a day (not being a day before 1 July 1986) before the date of notification of the regulations in the *Gazette* as the day on which specified regulations are to be taken to have come into operation, those regulations shall be taken to have come into operation on the day so specified.

(4) Where any of the first regulations made for the purposes of subsection 8 (1) specify a day (not being a day before 1 July 1986) before the date of notification of the regulations in the *Gazette* as the day on which specified regulations are to be taken to have come into operation, those regulations shall be taken to have come into operation on the day so specified.

Satisfaction of superannuation fund conditions

5. (1) In this section, "proclaimed day" means the day, being a day after the commencement of this Act, fixed by Proclamation for the purposes of this section.

(2) A reference in this Act to a fund satisfying the superannuation fund conditions in relation to a year of income is a reference to the following conditions being satisfied in relation to the fund in relation to the year of income:

- (a) at all times during the year of income when the fund was in existence, the fund was a superannuation fund;
- (b) at all times during the year of income when the fund was in existence and there were in force regulations for the purposes of subsection 7 (1) prescribing standards applicable to the fund, the fund complied with those standards;

- (c) the trustees of the fund complied with:
 - (i) any requirement made in relation to the fund during the year of income by or under subsection 10 (1) or section 11; and
 - (ii) any requirement made in relation to the fund in relation to the year of income under subsection 10 (2);
- (d) if the year of income is a year of income ending before the proclaimed day—either:
 - (i) the income of the fund of the year of income would have been exempt from income tax under paragraph 23 (ja) of the Tax Act as in force immediately before the commencement of this Act; or
 - (ii) the income of the fund of the year of income would have been exempt from income tax under section 23F or 23FB of the Tax Act as in force immediately before the commencement of this Act, and section 121C of the Tax Act as in force immediately before that commencement would not have applied to reduce or deny that exemption;
- (e) if the year of income is a year of income commencing before and ending after the proclaimed day—either:
 - (i) if the year of income had ended on the proclaimed day, the income of the fund of the year of income would have been exempt from income tax under paragraph 23 (ja) of the Tax Act as in force immediately before the commencement of this Act; or
 - (ii) if the year of income had ended on the proclaimed day, the income of the fund of the year of income would have been exempt from income tax under section 23F or 23FB of the Tax Act as in force immediately before the commencement of this Act, and section 121C of the Tax Act as in force immediately before that commencement would not have applied to reduce or deny that exemption.

Satisfaction of approved deposit fund conditions

6. A reference in this Act to a fund satisfying the approved deposit fund conditions in relation to a year of income is a reference to the following conditions being satisfied in relation to the fund in relation to the year of income:

- (a) at all times during the year of income when the fund was in existence, the fund was an approved deposit fund;
- (b) at all times during the year of income when the fund was in existence and there were in force regulations for the purposes of subsection 8 (1) prescribing standards applicable to the fund, the fund complied with those standards;
- (c) the trustees of the fund complied with:

- (i) any requirement made in relation to the fund during the year of income by or under subsection 10 (1) or section 11; and
- (ii) any requirement made in relation to the fund in relation to the year of income under subsection 10 (2).

PART II—OPERATING STANDARDS FOR SUPERANNUATION FUNDS AND APPROVED DEPOSIT FUNDS

Operating standards for superannuation funds

7. (1) The regulations may prescribe standards applicable to the operation of superannuation funds.

(2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:

- (a) the persons who may contribute to superannuation funds;
- (b) the vesting in members of superannuation funds of benefits arising directly or indirectly from amounts contributed to superannuation funds;
- (c) the preservation of benefits arising directly or indirectly from amounts contributed to superannuation funds;
- (d) the payment by superannuation funds of benefits arising directly or indirectly from amounts contributed to superannuation funds;
- (e) the portability of benefits arising directly or indirectly from amounts contributed to superannuation funds;
- (f) the levels of benefits which may be provided by superannuation funds and the levels of assets which may be held by superannuation funds;
- (g) the application by superannuation funds of money no longer required to meet payments of benefits to members because the members have ceased to be entitled to receive those benefits;
- (h) the investment of assets of superannuation funds;
- (j) the number of trustees, and the composition of boards or committees of trustees, of superannuation funds;
- (k) the financial and actuarial reports to be prepared in relation to superannuation funds;
- (m) the disclosure of information to members of superannuation funds;
- (n) the matters required, permitted or not permitted to be included, from time to time, in the trust deeds of superannuation funds.

Operating standards for approved deposit funds

8. (1) The regulations may prescribe standards applicable to the operation of approved deposit funds.

(2) The standards that may be prescribed include, but are not limited to, standards relating to the following matters:

- (a) the kinds of amounts which may be deposited with approved deposit funds;
- (b) the preservation of amounts deposited with approved deposit funds, and of earnings on such amounts;
- (c) the payment out of approved deposit funds of amounts deposited with approved deposit funds, and of earnings on such amounts;
- (d) the portability of amounts deposited with approved deposit funds, and of earnings on such amounts;
- (e) the investment of assets of approved deposit funds;
- (f) the financial reports to be prepared in relation to approved deposit funds;
- (g) the disclosure of information to depositors with approved deposit funds;
- (h) the matters required, permitted or not permitted to be included, from time to time, in the trust deeds of approved deposit funds.

PART III—FUNCTIONS OF COMMISSIONER

General administration of Act

9. Subject to any directions of the Minister, the Commissioner shall have the general administration of this Act.

Information to be given to Commissioner

10. (1) The trustees of a superannuation fund or an approved deposit fund established after the commencement of this Act shall, within the prescribed period after establishment, give to the Commissioner the prescribed information.

(2) The Commissioner may from time to time, by notice in writing to the trustees of a superannuation fund or an approved deposit fund, require the trustees to provide such information or report in relation to such year of income as is specified in the notice.

Commissioner may require production of documents

11. (1) In this section, “authorised person” means a person authorised by the Commissioner, in writing, for the purposes of this section.

(2) The Commissioner may from time to time, by notice in writing to the trustees of a superannuation fund or an approved deposit fund, require the trustees to produce, or cause to be produced, to the Commissioner or an authorised person, at such reasonable time and reasonable place as are specified in the notice, any documents of the fund.

(3) Where a document produced to the Commissioner or an authorised person under subsection (2) is not in writing in the English language, the Commissioner or an authorised person may require the trustees of the fund to produce, or cause to be produced, to the Commissioner or an authorised person, a version of the document that is in writing in the English language.

(4) The trustees of a fund shall, within a reasonable time, comply with any requirement made by the Commissioner or an authorised person under subsection (3) in relation to the fund.

(5) The Commissioner or an authorised person may inspect, take extracts from and make copies of any document, or of any version of any document, produced to the Commissioner or an authorised person under this section.

Notices as to satisfaction of the superannuation fund conditions

12. (1) Where:

(a) after the end of a year of income of a fund, the trustees of the fund give to the Commissioner, in relation to the year of income:

(i) a return, in a form approved by the Commissioner for the purposes of this section, providing such information relating to the fund and to the fund's satisfaction of the superannuation fund conditions during the year of income as is required by the form to be provided;

(ii) a certificate by the trustees of the fund, in the prescribed form;

(iii) a certificate by an approved auditor, in the prescribed form; and

(iv) the prescribed application fee; and

(b) either:

(i) the return, certificates and fee referred to in paragraph (a) are received by the Commissioner on or before the day specified in the form of return as the day by which the return is to be given to the Commissioner; or

(ii) the return, certificates and fee referred to in that paragraph are received by the Commissioner, but are not all received until after the day referred to in subparagraph (i), and any prescribed late lodgment fee has also been received by the Commissioner;

subsection (3) applies in relation to the fund in relation to the year of income.

(2) A certificate referred to in subparagraph (1) (a) (ii) or (iii) may be endorsed on a return referred to in subparagraph (1) (a) (i).

(3) Where this subsection applies in relation to a fund in relation to a year of income, the Commissioner shall, subject to subsection (6), give notice in writing to the trustees of the fund stating whether the Commissioner is satisfied that the fund satisfied the superannuation fund conditions in relation to the year of income, having regard to:

(a) the return and certificates given under subsection (1); and

(b) any other information available to the Commissioner.

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(4) If:

- (a) the Commissioner has, under this section, given a notice to the trustees of a fund stating that the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions in relation to a year of income of the fund; and**
- (b) the Commissioner, after considering information that was not previously considered by the Commissioner, becomes satisfied that the fund so satisfied the superannuation fund conditions;**

the Commissioner shall give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is satisfied that the fund satisfied the superannuation fund conditions in relation to the year of income.

(5) If:

- (a) the Commissioner has, under this section, given a notice to the trustees of a fund stating that the Commissioner is satisfied that the fund satisfied the superannuation fund conditions in relation to a year of income of the fund; and**
- (b) the Commissioner, after considering information that was not previously considered by the Commissioner, ceases to be satisfied that the fund so satisfied the superannuation fund conditions;**

the Commissioner shall, subject to subsection (6), give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions in relation to the year of income.

(6) Where:

- (a) but for this subsection, the Commissioner would be required to give a notice stating that the Commissioner is not satisfied that a fund satisfied the superannuation fund conditions in relation to a year of income; and**
- (b) the Commissioner decides to give a notice under subsection 13 (1) stating that the Commissioner is satisfied that the fund should be treated as if it had satisfied the superannuation fund conditions in relation to the year of income;**

the Commissioner is not required to give the notice referred to in paragraph (a).

(7) A notice under this section stating that the Commissioner is not satisfied that a fund satisfied the superannuation fund conditions in relation to a year of income shall set out the reasons why the Commissioner is not so satisfied.

(8) The Commissioner shall advise the Commissioner of Taxation of particulars of all notices given under this section.

Discretion to treat funds as satisfying the superannuation fund conditions

13. (1) Where, in relation to a fund in relation to a year of income of the fund:

- (a) the trustees of the fund have not given the Commissioner the return, certificates and fee or fees referred to in subsection 12 (1), or the trustees of the fund have given the Commissioner the return, certificates and fee or fees referred to in that subsection but the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions; and
- (b) the trustees of the fund satisfy the Commissioner that, because of special circumstances that existed in relation to the fund during the year of income, it would be reasonable for the fund to be treated as if it had satisfied the superannuation fund conditions;

the Commissioner shall give notice in writing to the trustees of the fund stating that the Commissioner is satisfied that the fund should be treated as if it had satisfied the superannuation fund conditions in relation to the year of income.

(2) If:

- (a) the Commissioner has given a notice under subsection (1) in relation to a fund in relation to a year of income of the fund; and
- (b) the Commissioner, after considering information that was not previously considered by the Commissioner, becomes satisfied that the fund should not be treated as if it had satisfied the superannuation fund conditions in relation to the year of income;

the Commissioner shall give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is not satisfied that the fund satisfied the superannuation fund conditions in relation to the year of income.

(3) A notice under this section stating that the Commissioner is not satisfied that a fund satisfied the superannuation fund conditions in relation to a year of income shall set out the reasons why the Commissioner is not so satisfied.

(4) The Commissioner shall advise the Commissioner of Taxation of particulars of all notices given under this section.

Notices as to satisfaction of the approved deposit fund conditions

14. (1) Where:

- (a) after the end of a year of income of a fund, the trustees of the fund give to the Commissioner, in relation to the year of income:
 - (i) a return, in a form approved by the Commissioner for the purposes of this section, providing such information relating to the fund and to the fund's satisfaction of the approved deposit fund conditions during the year of income as is required by the form to be provided;

- (ii) a certificate by the trustees of the fund, in the prescribed form;
 - (iii) a certificate by an approved auditor, in the prescribed form; and
 - (iv) the prescribed application fee; and
- (b) either:
- (i) the return, certificates and fee referred to in paragraph (a) are received by the Commissioner on or before the day specified in the form of return as the day by which the return is to be given to the Commissioner; or
 - (ii) the return, certificates and fee referred to in that paragraph are received by the Commissioner, but are not all received until after the day referred to in subparagraph (i), and any prescribed late lodgment fee has also been received by the Commissioner;

subsection (3) applies in relation to the fund in relation to the year of income.

(2) A certificate referred to in subparagraph (1) (a) (ii) or (iii) may be endorsed on a return referred to in subparagraph (1) (a) (i).

(3) Where this subsection applies in relation to a fund in relation to a year of income, the Commissioner shall, subject to subsection (6), give notice in writing to the trustees of the fund stating whether the Commissioner is satisfied that the fund satisfied the approved deposit fund conditions in relation to the year of income, having regard to:

- (a) the return and certificates given under subsection (1); and
- (b) any other information available to the Commissioner.

(4) If:

- (a) the Commissioner has, under this section, given a notice to the trustees of a fund stating that the Commissioner is not satisfied that the fund satisfied the approved deposit fund conditions in relation to a year of income of the fund; and
- (b) the Commissioner, after considering information that was not previously considered by the Commissioner, becomes satisfied that the fund so satisfied the approved deposit fund conditions;

the Commissioner shall give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is satisfied that the fund satisfied the approved deposit fund conditions in relation to the year of income.

(5) If:

- (a) the Commissioner has, under this section, given a notice to the trustees of a fund stating that the Commissioner is satisfied that the fund satisfied the approved deposit fund conditions in relation to a year of income of the fund; and

(b) the Commissioner, after considering information that was not previously considered by the Commissioner, ceases to be satisfied that the fund so satisfied the approved deposit fund conditions; the Commissioner shall, subject to subsection (6), give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is not satisfied that the fund satisfied the approved deposit fund conditions in relation to the year of income.

(6) Where:

- (a) but for this subsection, the Commissioner would be required to give a notice stating that the Commissioner is not satisfied that a fund satisfied the approved deposit fund conditions in relation to a year of income; and
- (b) the Commissioner decides to give a notice under subsection 15 (1) stating that the Commissioner is satisfied that the fund should be treated as if it had satisfied the approved deposit fund conditions in relation to the year of income;

the Commissioner is not required to give the notice referred to in paragraph (a).

(7) A notice under this section stating that the Commissioner is not satisfied that a fund satisfied the approved deposit fund conditions in relation to a year of income shall set out the reasons why the Commissioner is not so satisfied.

(8) The Commissioner shall advise the Commissioner of Taxation of particulars of all notices given under this section.

Discretion to treat funds as satisfying the approved deposit fund conditions

15. (1) Subject to subsection (2), where, in relation to a fund in relation to a year of income of the fund:

- (a) the trustees of the fund have not given the Commissioner the return, certificates and fee or fees referred to in subsection 14 (1), or the trustees of the fund have given the Commissioner the return, certificates and fee or fees referred to in that subsection but the Commissioner is not satisfied that the fund satisfied the approved deposit fund conditions; and
- (b) the trustees of the fund satisfy the Commissioner that, because of special circumstances that existed in relation to the fund during the year of income, it would be reasonable for the fund to be treated as if it had satisfied the approved deposit fund conditions;

the Commissioner shall give notice in writing to the trustees of the fund stating that the Commissioner is satisfied that the fund should be treated as if it had satisfied the approved deposit fund conditions in relation to the year of income.

(2) The Commissioner shall not give a notice under subsection (1) in relation to a fund in relation to a year of income if the Commissioner is

satisfied that, at any time during the year of income when the fund was in existence, the fund was not maintained by an approved trustee or approved trustees.

(3) If:

- (a) the Commissioner has given a notice under subsection (1) in relation to a fund in relation to a year of income of the fund; and
- (b) the Commissioner, after considering information that was not previously considered by the Commissioner, becomes satisfied that the fund should not be treated as if it had satisfied the approved deposit fund conditions in relation to the year of income;

the Commissioner shall give notice in writing to the trustees of the fund revoking the notice referred to in paragraph (a) and stating that the Commissioner is not satisfied that the fund satisfied the approved deposit fund conditions in relation to the year of income.

(4) A notice under this section stating that the Commissioner is not satisfied that a fund satisfied the approved deposit fund conditions in relation to a year of income shall set out the reasons why the Commissioner is not so satisfied.

(5) The Commissioner shall advise the Commissioner of Taxation of particulars of all notices given under this section.

PART IV—MISCELLANEOUS

Review of certain decisions

16. (1) The trustees of a fund that is affected by a reviewable decision of the Commissioner may, if dissatisfied with the decision, by notice given to the Commissioner within the period of 21 days after the day on which the trustees of the fund first receive notice of the decision, or within such further period as the Commissioner allows, request the Commissioner to reconsider the decision.

(2) There shall be set out in the request reasons for making the request.

(3) Upon receipt of the request, the Commissioner shall reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the Commissioner thinks fit.

(4) Where the Commissioner does not confirm, revoke or vary a decision before the expiration of the period of 21 days after the day on which the Commissioner received the request under subsection (1) to reconsider the decision, the Commissioner shall, upon the expiration of that period, be deemed to have confirmed the decision under subsection (3).

(5) Where the Commissioner confirms, revokes or varies a decision before the expiration of the period referred to in subsection (4), the Commissioner shall, by notice served on the trustees making the request, inform the trustees of the result of the reconsideration of the decision and

the reasons for confirming, varying or revoking the decision, as the case may be.

(6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner that have been confirmed or varied under subsection (3).

(7) Where a decision is deemed, by reason of the operation of subsection (4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period commencing on the day on which the decision is deemed to be confirmed and ending on the twenty-eighth day after that day.

(8) Where a request is made under subsection (1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

(9) The hearing of a proceeding relating to a reviewable decision shall take place in private and the Administrative Appeals Tribunal may, by order:

- (a) give directions as to the persons who may be present; and
- (b) give directions of a kind referred to in paragraph 35 (2) (b) or (c) of the *Administrative Appeals Tribunal Act 1975*.

Statements to accompany notification of decisions

17. (1) Where notice in writing is given to the trustees of a fund affected by a reviewable decision that the reviewable decision has been made, that notice shall include a statement to the effect that:

- (a) the trustees may, if dissatisfied with the decision, seek a reconsideration of the decision by the Commissioner in accordance with subsection 16 (1); and
- (b) the trustees may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Commissioner upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

(2) Where the Commissioner confirms or varies a reviewable decision under subsection 16 (3) and gives to the trustees of a fund notice in writing of the confirmation or variation of the decision, that notice shall include a statement to the effect that the trustees may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

(3) Any failure to comply with the requirements of subsections (1) and (2) in relation to a reviewable decision or a decision under subsection 16 (3) does not affect the validity of that decision.

Secrecy

18. (1) In this section, "this Act" includes the regulations.

(2) Subject to this section, a person who is or has been a superannuation standards officer shall not, either directly or indirectly, except for the purposes of this Act:

- (a) make a record of, or communicate to any person, any protected information acquired by the first-mentioned person in the course of his or her duties as a superannuation standards officer; or
- (b) produce to any person any protected document.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(3) Nothing in subsection (2) prohibits a superannuation standards officer from communicating protected information, or producing a protected document, to:

- (a) the Commissioner of Taxation or a taxation officer authorised by the Commissioner of Taxation for the purposes of this section;
- (b) the Minister, the Secretary of the Department or an officer of the Department authorised by the Secretary of the Department for the purposes of this section;
- (c) a court for the purposes of this Act; or
- (d) a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

(4) A person who is or has been a superannuation standards officer shall not be required to communicate to a court any protected information, or to produce in a court any protected document, except when it is necessary to do so for the purposes of this Act.

(5) Where protected information is communicated, or a protected document is produced, under paragraph (3) (a) to the Commissioner of Taxation or to a taxation officer, the information, or the information contained in the document, shall, for the purposes of section 16 of the Tax Act, be taken to be information acquired by the Commissioner of Taxation or taxation officer in the manner mentioned in the definition of "officer" in subsection 16 (1) of that Act.

(6) Where protected information is communicated, or a protected document is produced, under paragraph (3) (b) to the Secretary of the Department or to an officer of the Department, the Secretary or officer shall not, either directly or indirectly, except for the purpose of advising the Minister in connection with the administration of this Act, make a record of, or divulge or communicate to any person, the information, or the information contained in the document, as the case may be.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(7) Section 38 of the *Freedom of Information Act 1982* does not apply in relation to a protected document or a document containing protected information.

Commissioner may publish statistical information

19. (1) Subject to subsection (2), the Commissioner may arrange for the publication of statistical information relating to superannuation funds and approved deposit funds.

(2) The Commissioner shall not arrange for the publication of information under subsection (1) in such a form as to identify a superannuation fund or approved deposit fund and to disclose information relating to the fund.

Delegation

20. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Commissioner, delegate to a person appointed or employed under the *Public Service Act 1922* all or any of the Commissioner's powers under this Act other than the Commissioner's powers under this section and section 21.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Annual reports

21. (1) The Commissioner shall, within 3 months after each year ending on 30 June, prepare and give to the Minister a report on the working, during the year, of this Act.

(2) The Minister shall cause a copy of a report given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Regulations

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing fees payable in respect of any matter under this Act.

*[Minister's second reading speech made in—
House of Representatives on 18 September 1987
Senate on 6 October 1987]*