

2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Superannuation Legislation Amendment
(Superannuation Safety and Other
Measures) Bill 2005**

No. , 2005

(Finance and Administration)

**A Bill for an Act to amend the law relating to
superannuation, and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **superannuation, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Superannuation Legislation*
6 *Amendment (Superannuation Safety and Other Measures) Act*
7 2005.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The day on which this Act receives the Royal Assent.	
3. Schedule 2, items 1 to 25	1 January 2006.	1 January 2006
4. Schedule 2, items 26 and 27	Immediately after the provision(s) covered by table item 3.	
5. Schedule 2, items 28 and 29	1 January 2006.	1 January 2006
6. Schedule 3	The day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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Schedule 1—Amendments relating to the CSS Board and the PSS Board

Superannuation Act 1976

1 Section 27E

Insert:

SIS fitness and propriety standard means a standard prescribed under Part 3 of the *Superannuation Industry (Supervision) Act 1993* relating to fitness and propriety for trustees of funds (within the meaning of that Act) and RSE licensees (within the meaning of that Act).

2 After subsection 27F(1A)

Insert:

(1B) A person is not eligible for appointment as one of the members referred to in paragraph (1)(b) if the person’s appointment would result in a contravention of a SIS fitness and propriety standard.

3 Paragraph 27H(1)(b)

Omit “or from Australia”.

4 Application of amendment—paragraph 27H(1)(b) of the *Superannuation Act 1976*

The amendment of paragraph 27H(1)(b) of the *Superannuation Act 1976* made by this Schedule applies to an appointment made after the commencement of this item.

5 After subsection 27H(1B)

Insert:

(1C) A person is not eligible for appointment to act as an appointed member if the person’s appointment would result in a contravention of a SIS fitness and propriety standard.

6 Subsection 27M(3)

After “terminate”, insert “, under subsection (1) or (2),”.

1 **7 At the end of section 27M**

2 Add:

3 (6) If the continuation in office of an appointed member would
4 contravene a SIS fitness and propriety standard, the Minister may
5 terminate the appointment of the member.

6 (7) Subsections (1) and (2) do not limit subsection (6).

7 **8 After subsection 27N(4)**

8 Insert:

9 (4A) A member may, by writing signed by the member, appoint another
10 member as his or her proxy to attend and vote on his or her behalf
11 at a meeting of the Board at which the first-mentioned member is
12 not present.

13 (4B) A person appointed as the proxy of a member is not entitled to vote
14 on behalf of the member on a proposed decision unless:

15 (a) the instrument of proxy appointment sets out the terms of the
16 proposed decision; and

17 (b) the instrument of proxy appointment indicates whether the
18 member is in favour of, or against, the proposed decision;
19 and

20 (c) the person votes on the proposed decision in accordance with
21 that indication.

22 **9 After subsection 27N(5)**

23 Insert:

24 (5A) In determining whether a quorum is present, if a person is
25 attending both as a member and as a proxy representative of one or
26 more other members, count the person:

27 (a) once for the person's attendance as a member; and

28 (b) once for each proxy held by the person.

29 (5B) At a meeting, at least 2 members must be present.

30 **10 Subsection 27N(6)**

31 Omit "present at the meeting", substitute "voting, whether personally or
32 by proxy".

1 **11 After subsection 27N(7)**

2 Insert:

3 (7A) If a member votes by proxy at a meeting of the Board, the record
4 of that meeting must note that the vote was by proxy.

5 **12 At the end of section 27N**

6 Add:

7 Note: See also section 33B of the *Acts Interpretation Act 1901* (participation
8 in meetings by telephone etc.).

9 **13 After subsection 27P(4)**

10 Insert:

11 (4A) A disclosure under subsection (4) may be made:
12 (a) by the member personally; or
13 (b) on behalf of the member by a person who is attending the
14 meeting as the proxy representative of the member.

15 **14 Paragraphs 27P(5)(b) and (6)(b)**

16 After “take part”, insert “, either personally or by proxy,”.

17 **15 After paragraph 27Q(1)(a)**

18 Insert:

19 (aa) a member of the staff of the Board; or

20 **16 Subparagraph 27Q(3)(a)(ii)**

21 Omit “(1)(b)”, substitute “(1)(aa), (b)”.

22 **17 Paragraph 27Q(3)(c)**

23 Omit “(1)(c)”, substitute “(1)(aa), (c)”.

24 **18 Paragraph 163AB(1)(a)**

25 Omit “the SIS Act”, substitute “any other Act”.

26 **19 At the end of subsection 163AB(3)**

27 Add “unless doing so would breach Chapter 7 of the *Corporations Act*
28 *2001*”.

1 ***Superannuation Act 1990***

2 **20 After paragraph 28A(1)(a)**

3 Insert:

4 (aa) a member of the staff of the Board; or

5 **21 Subparagraph 28A(2)(a)(ii)**

6 Omit “(1)(b)”, substitute “(1)(aa), (b)”.

7 **22 Paragraph 28A(2)(c)**

8 Omit “(1)(c)”, substitute “(1)(aa), (c)”.

9 **23 Subparagraph 42A(1)(a)(ii)**

10 Omit “the SIS Act”, substitute “any other Act”.

11 **24 At the end of subsection 42A(3)**

12 Add “unless doing so would breach Chapter 7 of the *Corporations Act*
13 *2001*”.

14 **25 Paragraph 43(1)(d)**

15 Omit “the Act”, substitute “this Act”.

16 ***Superannuation Act 2005***

17 **26 After paragraph 28(1)(a)**

18 Insert:

19 (aa) a member of the staff of the Board; or

20 **27 Paragraph 28(2)(b)**

21 Omit “(1)(b)”, substitute “(1)(aa), (b)”.

22 **28 Subsection 28(4)**

23 Omit “(1)(c)”, substitute “(1)(aa), (c)”.

1
2 **Schedule 2—Amendments relating to negative**
3 **interest rates for the CSS**
4

5 *Superannuation Act 1976*

6 **1 Subsection 3(1) (definition of *accumulated basic***
7 ***contributions*)**

8 Omit “interest that is payable in respect of those contributions”,
9 substitute “interest on those contributions”.

10 **2 Subsection 3(1) (definition of *accumulated supplementary***
11 ***contributions*)**

12 Omit “interest that is payable in respect of those contributions”,
13 substitute “interest on those contributions”.

14 **3 Subsection 3(1)**

15 Insert:

16 *amount* includes a nil amount.

17 **4 Subsection 3(1)**

18 Insert:

19 *interest* includes negative or zero interest, and *accruing*, when
20 used in relation to interest, has a corresponding meaning.

21 **5 Subsection 3(1)**

22 Insert:

23 *notional interest* includes negative or zero notional interest.

24 **6 Subsection 3(1)**

25 Insert:

26 *plus* has a meaning affected by subsection (9).

27 **7 Subsection 3(1)**

28 Insert:

1 *sum* has a meaning affected by subsection (9).

2 **8 Subsection 3(1)**

3 Insert:

4 *total* has a meaning affected by subsection (9).

5 **9 At the end of section 3**

6 Add:

7 (9) If:

- 8 (a) a provision of this Act involves the calculation of a sum
9 (whether the expression “sum”, “total”, “plus” or any other
10 expression is used); and
11 (b) the calculation involves negative interest or negative notional
12 interest; and
13 (c) apart from this subsection, the sum would be less than zero;
14 the sum is taken to be zero.

15 **10 Subsection 7A(1)**

16 Omit “together with the amount of any interest that is payable in respect
17 of the amount”, substitute “plus interest on the amount”.

18 **11 Paragraphs 7A(2)(d), (e) and (f)**

19 Omit “together with the amount of any interest that is payable in respect
20 of the amount”, substitute “plus interest on the amount”.

21 **12 Subsections 7A(3) and (4)**

22 Omit “together with the amount of any interest that is payable in respect
23 of the amount”, substitute “plus interest on the amount”.

24 **13 Subsection 62B(4) (definition of *GBB*)**

25 Omit “together with”, substitute “plus”.

26 **14 Subsection 110SE(4) (definition of *GBB*)**

27 Omit “together with”, substitute “plus”.

28 **15 Subparagraph 145(7)(d)(i)**

29 Omit “interest that is payable in respect of that excess”, substitute
30 “interest on that excess”.

1 **16 After subsection 145(7)**

2 Insert:

3 (7A) An amount paid under subparagraph (7)(d)(i) in respect of a
4 particular excess must not be less than the amount of the excess.

5 **17 Subparagraph 145(8)(a)(i)**

6 After “equal to the amount”, insert “(the *principal amount*)”.

7 **18 Subparagraph 145(8)(a)(i)**

8 Omit “interest that is payable in respect of that amount”, substitute
9 “interest on the principal amount”.

10 **19 After subsection 145(8)**

11 Insert:

12 (8A) An amount paid into the Superannuation Fund under
13 subparagraph (8)(a)(i) in respect of a particular principal amount
14 must not be less than the principal amount.

15 **20 Subparagraph 145(9)(a)(i)**

16 After “equal to the amount”, insert “(the *principal amount*)”.

17 **21 Subparagraph 145(9)(a)(i)**

18 Omit “interest that is payable in respect of that amount”, substitute
19 “interest on the principal amount”.

20 **22 After subsection 145(9)**

21 Insert:

22 (9A) An amount paid into the Superannuation Fund under
23 subparagraph (9)(a)(i) in respect of a particular principal amount
24 must not be less than the principal amount.

25 **23 Paragraph 146MC(1)(a)**

26 Omit “together with”, substitute “plus”.

27 **24 Subsection 154A(1)**

1 Omit “interest is payable in respect of an amount, the interest must be
2 calculated, and is payable,”, substitute “interest is to be calculated on an
3 amount, that interest must be calculated”.

4 **25 Section 156A**

5 Before “If:”, insert “(1)”.

6 **26 Subsection 156A(1)**

7 Omit “interest in respect of the amount”, substitute “interest on the
8 amount”.

9 **27 At the end of section 156A**

10 Add:

11 (2) An amount paid under subsection (1) in respect of a particular
12 paragraph (1)(a) amount must not be less than the paragraph (1)(a)
13 amount.

14 **28 Transitional—subsections 154A(1) and (1A) of the**
15 ***Superannuation Act 1976***

16 The amendments made by this Schedule do not affect the continuity of
17 any determination made under subsection 154A(1) or (1A) of the
18 *Superannuation Act 1976* before the commencement of this item.

19 **29 Transitional—zero interest**

20 To avoid doubt, the amendments made by this Schedule do not imply
21 that:

- 22 (a) zero interest could not have been determined under
23 subsection 154A(1) of the *Superannuation Act 1976* before
24 the commencement of this item; or
25 (b) zero notional interest could not have been determined under
26 subsection 154A(1A) of the *Superannuation Act 1976* before
27 the commencement of this item.

1
2 **Schedule 3—Validation of certain benefits**
3 **under the Superannuation Act 1976**
4

5 **1 Validation of certain pensions**

6 *Scope*

- 7 (1) This item applies if:
8 (a) during the period:
9 (i) beginning on 1 July 1995; and
10 (ii) ending immediately before the commencement of this
11 item;
12 a pension commenced to be paid to a person; and
13 (b) throughout a period (the *interim period*):
14 (i) beginning when the pension commenced to be paid to
15 the person; and
16 (ii) ending at or before the commencement of this item;
17 the following conditions were satisfied:
18 (iii) the pension purported to be a benefit, or a part of a
19 benefit, payable to the person under the *Superannuation*
20 *Act 1976*;
21 (iv) the pension was not payable;
22 (v) the pension breached section 111A of the
23 *Superannuation Act 1976* (whether or not it also
24 breached anything else).

25 *Recovery of overpayment*

- 26 (2) The total amount of the pension paid to the person during the interim
27 period:
28 (a) is a debt due and payable to the Board; and
29 (b) may be recovered by the Board in a court of competent
30 jurisdiction.
- 31 (3) An amount recoverable under subitem (2) is not recoverable under
32 subsection 156(4) or (5) of the *Superannuation Act 1976*.

1 *Substitute payment*

- 2 (4) There is payable to the person a benefit equal to the total amount of
3 pension that would have been payable to the person during the interim
4 period if the pension had not breached whichever of the following
5 provisions is or are applicable:
6 (a) section 111A of the *Superannuation Act 1976*;
7 (b) section 110TB of the *Superannuation Act 1976*;
8 (c) the *Superannuation Industry (Supervision) Act 1993*;
9 (d) the Superannuation (CSS) Former Eligible Employees
10 Regulations.

11 *Set-off*

- 12 (5) The amount payable by the person under subitem (2) may be recovered
13 by deduction from the amount payable to the person under subitem (4).

14 *Payments do not breach section 111A of the Superannuation Act*
15 *1976 etc.*

- 16 (6) The payment under subitem (4) is taken not to breach any of the
17 following provisions:
18 (a) section 111A of the *Superannuation Act 1976*;
19 (b) section 110TB of the *Superannuation Act 1976*;
20 (c) the *Superannuation Industry (Supervision) Act 1993*;
21 (d) the Superannuation (CSS) Former Eligible Employees
22 Regulations.

- 23 (7) If the interim period ended at the commencement of this item, the
24 continuing payment of the pension after the commencement of this item
25 is taken not to breach any of the following provisions:
26 (a) section 111A of the *Superannuation Act 1976*;
27 (b) section 110TB of the *Superannuation Act 1976*;
28 (c) the *Superannuation Industry (Supervision) Act 1993*;
29 (d) the Superannuation (CSS) Former Eligible Employees
30 Regulations.

- 31 (8) If:
32 (a) the interim period ended before the commencement of this
33 item; and

1 (b) before the commencement of this item, the person became
2 entitled to periodic payments under section 33 of the
3 *Financial Management and Accountability Act 1997* in
4 substitution for the pension;

5 the payment of the pension after the commencement of this item is
6 taken not to breach any of the following provisions:

- 7 (c) section 111A of the *Superannuation Act 1976*;
8 (d) section 110TB of the *Superannuation Act 1976*;
9 (e) the *Superannuation Industry (Supervision) Act 1993*;
10 (f) the Superannuation (CSS) Former Eligible Employees
11 Regulations.

12 *Substitute payment taken to be a payment of pension*

- 13 (9) The payment under subitem (4) is taken to be a payment of pension
14 payable under the *Superannuation Act 1976*.

15 **2 Validation of certain lump sums**

16 *Scope*

- 17 (1) This item applies if:
18 (a) during the period:
19 (i) beginning on 1 July 1995; and
20 (ii) ending immediately before the commencement of this
21 item;
22 a lump sum was paid to a person; and
23 (b) the lump sum purported to be a benefit, or a part of a benefit,
24 payable to the person under the *Superannuation Act 1976*;
25 and
26 (c) the lump sum was not payable; and
27 (d) the lump sum breached section 111A of the *Superannuation*
28 *Act 1976* (whether or not it also breached anything else).

29 *Recovery of overpayment*

- 30 (2) The amount of the lump sum:
31 (a) is a debt due and payable to the Board; and
32 (b) may be recovered by the Board in a court of competent
33 jurisdiction.

1 (3) An amount recoverable under subitem (2) is not recoverable under
2 subsection 156(4) or (5) of the *Superannuation Act 1976*.

3 *Substitute payment*

4 (4) There is payable to the person a benefit equal to the lump sum that
5 would have been payable to the person if the lump sum had not
6 breached whichever of the following provisions is or are applicable:

- 7 (a) section 111A of the *Superannuation Act 1976*;
8 (b) section 110TB of the *Superannuation Act 1976*;
9 (c) section 139AA of the *Superannuation Act 1976*;
10 (d) the *Superannuation Industry (Supervision) Act 1993*;
11 (e) the Superannuation (CSS) Former Eligible Employees
12 Regulations.

13 *Set-off*

14 (5) The amount payable by the person under subitem (2) may be recovered
15 by deduction from the amount payable to the person under subitem (4).

16 *Payment does not breach section 111A of the Superannuation*
17 *Act 1976 etc.*

18 (6) The payment under subitem (4) is taken not to breach any of the
19 following provisions:

- 20 (a) section 111A of the *Superannuation Act 1976*;
21 (b) section 110TB of the *Superannuation Act 1976*;
22 (c) section 139AA of the *Superannuation Act 1976*;
23 (d) the *Superannuation Industry (Supervision) Act 1993*;
24 (e) the Superannuation (CSS) Former Eligible Employees
25 Regulations.

26 *Substitute payment taken to be a benefit under the*
27 *Superannuation Act 1976*

28 (7) The payment under subitem (4) is taken to be a benefit payable under
29 the *Superannuation Act 1976*.