

PENSION FUNDS AMENDMENT BILL, 2007

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Pension Funds Amendment Bill, 2007

- ❑ Background and objectives of the legislation
- ❑ Major concerns around the legislation
- ❑ Principle Issues covered in legislation

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Background and Objectives of the legislation

- Surplus legislation in 2001 complex & inadequately drafted
- Urgency – Sanlam case on improper use
- Lack of clarity, need for technical correction (outdated references) & practical changes
- Jurisdiction – Bargaining Council funds & Pension Funds Adjudicator
- Registrar greater powers
- Not reform

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Background and Objectives

- ❑ “...provide clarity & close loopholes that allow for creative interpretations not aligned with intention of surplus legislation...”
- ❑ “...certain provisions challenged by those seeking to circumvent the spirit of the original legislation through creative legal interpretations...”

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Major Concerns around the proposed legislation

- ❑ Principle issue: Retrospectivity
- ❑ Practical application of retrospective legislation
- ❑ New powers of the Registrar

Issues covered in legislation

- Surplus & minimum benefits
- Inspection & intervention powers of the Registrar
- Extend jurisdiction of the Registrar
- Pension Funds Adjudicator jurisdiction & powers
- Other technical amendments

Surplus & minimum benefits

- ❑ “actuarial surplus” – improper use is taken into account even if there is a nil surplus
- ❑ “contingency reserve accounts” – Registrar power to disallow or require amendments to accounts & compliance with PF117 (allows subjective opinion without usual requirement of reasonableness)

Surplus & minimum benefits

- ❑ “defined contribution category of a fund” – takes into account transfer in of benefits into section 14
- ❑ new definition “fund return” – s15B(5)(f) requires apportioned surplus to include fund return whereas s15C future surplus distribution already allowed for & “unreasonable” decision falls within Adjudicator jurisdiction

Surplus & minimum benefits

- ❑ “minimum individual reserve” & s14B recognises minimum benefit for pensioners & deferred pensioners
- ❑ “surplus apportionment date” – for “nil schemes” as it forces all funds to have a SAD irrespective of whether fund has surplus or not

Surplus & minimum benefits

- ❑ clarify that minimum benefits also applicable to pensioners & deferred pensioners
- ❑ compel funds to grant at least minimum pension increase every three years
- ❑ s14B aligns formula with definition of “defined contribution category of fund” and “fund return” & is simplified

Surplus & minimum benefits

- ❑ RAF & purchased annuities not obligated to provide minimum pension increases
- ❑ minimum pension increase not to affect fund's financial soundness
- ❑ contingent pensions included in minimum individual reserve where that beneficiary is still alive

Surplus & minimum benefits

- ❑ advancement of fund's statutory actuarial valuation must be motivated to Registrar
- ❑ power for Registrar to set requirements for method & timing of repayment of improper use surplus
- ❑ re-define improper uses & period for investigation to at least 1 January 1980.

Surplus & minimum benefits

- valuation at SAD and SAS to be considered jointly
- permit individual SAS for an umbrella fund
- Registrar power to prescribe requirements for “nil schemes”
- allow transfer of employer surplus to member surplus account

Surplus & minimum benefits

- Future surplus can be allocated to employer or member surplus accounts

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Inspection & intervention powers

- ❑ new s18(5) authorises Registrar to require audit, valuation, inspection or investigation to any fund & s25 power to conduct compliance inspections
- ❑ S26 power to intervene in management of fund without Court Order
- ❑ sets out specific duties of administrator & provides remedies for non-compliance
- ❑ imposition of administrative penalties
- ❑ requires administrators to “endeavour to avoid conflicts of interest”
- ❑ “name & shame” transgressors if in public interest

Extend jurisdiction of Registrar

- ❑ Brings Bargaining Council funds under jurisdiction of Registrar (funds subjected to two regulatory authorities and dispute resolution for a)
- ❑ Broad impact – rather in reform
- ❑ Registrar power to issue directives to funds
- ❑ Minister power to delegate his/her powers under Act

Pension Fund Adjudicator jurisdiction & powers

- ❑ Provides for role of Deputy Pension Funds Adjudicator & acting Adjudicators
- ❑ Adjudicator power to condone late application of complaint (align with Prescription Act)
- ❑ Minister to make regulations regarding Adjudicator processes & procedures

Other technical amendments

- ❑ “rules” extended to include founding & other external documents
- ❑ new definition of spouse & allow “clean-break” deduction of non-member spouse’s benefit i/o Divorce Order
- ❑ permit deduction i/o Maintenance Orders

Other technical amendments

- ❑ s13A – clarity on period in terms of which interest is payable (in line with Regulation 30(7))
- ❑ s28 – fund may be exempted from voluntary dissolution provisions subject to certain conditions

Other technical amendments

- ❑ “dependant” reworded in line with changing legislation (Customary law etc)
- ❑ s37C excludes dedicated spouse’s & other dependant’s pensions from trustee discretion to allocate

Other technical amendments

- ❑ s14
 - ❑ certain transfers now excluded (75% agree) & valuation exempt or not required to register
 - ❑ 180 day submission period prescribed
 - ❑ 60 day period to transfer assets

Other technical amendments

- ❑ s14
 - ❑ interest must be added to transfer values
 - ❑ application lapses after 180 days
 - ❑ prescribed conditions for withdrawal or amendment of s14 certificate if inaccurate or error
 - ❑ no fees or commission on transferred amounts



THANK YOU

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