Superannuation Act 1976

No. 31, 1976

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This compilation is in 2 volumes

Volume 1: **sections 1-110S**
Volume 2: sections 110SA-250
Schedules
Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by Act No. 81, 2016. The amendment made by Act No. 13, 2018 has not commenced but is noted in the endnotes.

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About this compilation

This compilation

This is a compilation of the *Superannuation Act 1976* that shows the text of the law as amended and in force on 1 July 2018 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision for and in relation to an Occupational Superannuation Scheme, known as the Commonwealth Superannuation Scheme, for people employed by the Commonwealth and for certain other people

Part I—Preliminary

1 Short title

This Act may be cited as the *Superannuation Act 1976*.

2 Commencement

This Act shall come into operation on 1 July 1976.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

accumulated basic contributions, in relation to a person who has ceased to be an eligible employee, means an amount equal to the sum of the basic contributions that have been, or are deemed to have been, paid, or have become payable, by him or her on or after his or her first day of service and the amount of any interest on those contributions together with, in the case of a person who had previously ceased to be an eligible employee on an occasion earlier than his or her first day of service, any amount that, under section 7A, is to be added to the amount of his or her accumulated basic contributions.

accumulated contributions, in relation to a person who has ceased to be an eligible employee, means the sum of:

(a) the person's accumulated basic contributions; and

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(b) the person's accumulated supplementary contributions (if any);

less, if the person has made an election under section 80B or subsection 136(3A) or if the person's spouse has made an election under subsection 92(1A), the person's surcharge deduction amount.

accumulated employer contributions has the meaning given by section 110Q.

accumulated performance pay employee contributions, in relation to a person, means the sum of:

(a) an amount equal to the difference between:

(i) the sum of the amounts paid into a declared fund (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) in respect of the person under paragraph 11(1)(a) of the Superannuation (Productivity Benefit) Alternative Arrangements Declaration No. 6 (Statutory Rules 1993, No. 34); and

(ii) the sum of any amounts deducted by way of charges or fees from those amounts by the trustee of the fund; and

(b) interest on the amount mentioned in paragraph (a).

accumulated performance pay employer contributions, in relation to a person, means the sum of:

(a) an amount equal to the difference between:

(i) the sum of the amounts paid into a declared fund (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) in respect of the person under paragraph 11(1)(b) of the Superannuation (Productivity Benefit) Alternative Arrangements Declaration No. 6 (Statutory Rules 1993, No. 34); and

(ii) the sum of any amounts in the nature of income tax relevant to those amounts and any amounts deducted by way of charges or fees from those amounts by the trustee of the fund; and

(b) interest on the amount mentioned in paragraph (a).

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accumulated supplementary contributions, in relation to a person who has ceased to be an eligible employee, means an amount equal to the sum of the supplementary contributions that have been, or are deemed to have been, paid, or have become payable, by him or her on or after his or her first day of service and the amount of any interest on those contributions together with, in the case of a person who had previously ceased to be an eligible employee on an occasion earlier than his or her first day of service, any amount that, under section 7A, is to be added to the amount of his or her accumulated supplementary contributions.

age retirement pension means pension payable under Division 1 of Part V.

amount includes a nil amount.

approved authority means:

(a) an authority or other body that is declared by the Minister, by legislative instrument, to be an approved authority for the purposes of this Act and is:

(i) a body corporate incorporated, whether before or after the commencement of this Act, for a public purpose by an Act, regulations made under an Act or a law of a Territory; or

(ii) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, an Act, regulations made under an Act or a law of a Territory; or

(iii) a company or other body corporate incorporated, whether before or after the commencement of this Act, under a law of the Commonwealth or of a State or Territory, being a body corporate in which the Commonwealth has a controlling interest; or

(iv) an authority or body established, whether before or after the commencement of this Act, and whether by or in accordance with the provisions of an Act, regulations made under an Act or a law of a Territory or otherwise,

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and whether a body corporate or not, being an authority or body which is financed in whole or in substantial part, either directly or indirectly, by moneys provided by the Commonwealth; or

(v) a company or other body corporate incorporated, whether before or after the commencement of this subparagraph, under an Act or a law of a State or Territory, being a company or body corporate in which:

(A) an authority or body referred to in subparagraph (i), (ii), (iii) or (iv), or that is an approved authority because of paragraph (b), has; or

(B) the Commonwealth and one, or more than one, such authority or body together have; or

(C) 2 or more such authorities or bodies together have;

a controlling interest; or

(b) an authority or body that, immediately before the commencement of this Act, was an approved authority for the purposes of the superseded Act other than such an authority or body in relation to which a declaration under subsection (2A) is in force.

approved medical practitioner means a medical practitioner approved by CSC for the purposes of this Act.

approved part-time employee means:

(a) a part-time employee included in a class of part-time employees declared by the Minister, by notice published in the *Gazette*, to be an approved class of part-time employees for the purposes of this Act; or

(b) a person who:

(i) is the holder of a statutory office; and

(ii) performs the duties of the office on a part-time basis;

and is included in a class of such persons declared by the Minister, by notice published in the *Gazette*, to be an

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approved class of part-time employees for the purposes of this Act.

APS Agency means an Agency within the meaning of the Public Service Act.

ASIC means the Australian Securities and Investments Commission.

asking a question includes making a request (whether oral or in writing) for information.

associate member means a person who is entitled to a benefit under section 146MB or 146MC.

AWOTE means full-time adult average weekly ordinary time earnings for all persons in Australia.

basic contributions means contributions paid or payable under section 45.

benefit means pension or other benefit payable under this Act, and:

(a) includes a release authority lump sum (within the meaning of Part IXC) paid in relation to a release authority issued to a person under Subdivision 135-A in Schedule 1 to the *Taxation Administration Act 1953*; but

(b) does not include a payment made out of the Fund that is required to be made under:

(i) a release authority given to CSC under former section 292-410 of the *Income Tax Assessment Act 1997*; or

(ii) a transitional release authority given to the Board under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*; or

(iii) a release authority issued under former item 1 or 2 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

benefit classification certificate, in relation to a person, means a certificate in force in respect of the person under section 16.

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Board has the same meaning as in the *Superannuation Act 1990*.

category 1 deceased pensioner means a deceased pensioner who:

(a) before his or her death, was entitled to receive age retirement pension or early retirement pension; and

(b) had not elected under section 57AA or 61AB (as the case may be) to be paid that pension at a reduced rate.

category 2 deceased pensioner means a deceased pensioner who:

(a) before his or her death, was entitled to receive age retirement pension or early retirement pension; and

(b) had elected under section 57AA or 61AB (as the case may be) to be paid that pension at a reduced rate.

child, in relation to a person who has died, means:

(a) a child of the person, including:

(i) an adopted child, an ex-nuptial child, a foster child, a stepchild or a ward, of the person; and

(ii) someone who is a child of the person within the meaning of the *Family Law Act 1975*; or

(b) a child of a spouse of the person, including:

(i) an adopted child, an ex-nuptial child, a foster child, a stepchild or a ward, of the spouse; and

(ii) someone who is a child of the spouse within the meaning of the *Family Law Act 1975*.

commencing day means 1 July 1976.

Commissioner means the Commissioner for Superannuation appointed under section 17, as in force before its repeal by item 183 of Schedule 1 to the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*.

contribution day means, subject to section 3A, the Thursday that falls on 8 July 1976, and each succeeding alternate Thursday.

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contributions means basic contributions or supplementary contributions.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

CSS means the superannuation scheme established by this Act.

Defence Force Retirement and Death Benefits Act means the *Defence Force Retirement and Death Benefits Act 1973*.

deferred annuity has the same meaning as in the SIS Act.

designated employer has the meaning given by section 3C.

early retirement pension means pension payable under Division 2 of Part V.

eligible child, in relation to a person who has died and was, at the time of his or her death, an eligible employee or a retirement pensioner, means a person who:

(a) is a child of the deceased person; and

(b) is a person the 16th anniversary of whose birth has not occurred or:

(i) the 16th anniversary of whose birth has occurred but the 25th anniversary of whose birth has not occurred;

(ii) is receiving full-time education at a school, college or university; and

(iii) is not ordinarily in employment or engaged in work on his or her own account; and

(c) immediately before the deceased person's death:

(i) was (except where the person is a child of a spouse of the deceased person, but not of the deceased person) living with the deceased person;

(ii) was, in the opinion of CSC, wholly or substantially dependent upon the deceased person; or

(iii) where the person is a child born after the deceased person's death—would have been, in the opinion of

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CSC, living with the deceased person or so dependent if the person had been born before the death of the deceased person.

eligible employee means:

(a) a person who, immediately before the commencement of this Act, was an employee for the purposes of the superseded Act and has continued to be, and is, such an employee; and

(b) a person who is a permanent employee; and

(c) a person who is a temporary employee and is specified in a direction given under section 11 or 13; and

(d) a person who is the holder of a statutory office and is specified in a direction given under subsection 14(1) in relation to that statutory office; and

(e) a person:

(i) who is a temporary employee; or

(ii) who is the holder of a statutory office to which he or she was appointed on a full-time basis;

and who, immediately before the commencement of the employment by reason of which he or she is such a temporary employee or his or her appointment to that office, was an eligible employee by virtue of another paragraph of this definition or a previous application of this paragraph; and

(ea) a person to whom section 14A of this Act as previously in force applied immediately before that section was repealed; and

(eb) a person who has made an election under section 6A of the *Superannuation Act 1990*; and

(ec) a person included in a class of persons declared by the Minister, by legislative instrument, to be eligible employees for the purposes of this Act; and

(f) a person:

(i) who is a temporary employee; or

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(ii) who is the holder of a statutory office;

and to whom, immediately before becoming a temporary employee or the holder of that office, invalidity pension was payable and who is specified in a direction given under subsection 15(1);

but, in relation to a person to whom any of the preceding paragraphs of this definition applies, does not include:

(h) a person to whom the *Judges' Pensions Act 1968* applies; or

(i) a person who, immediately before the commencement of this paragraph, was included in a class of persons that, under the regulations in force at that time, were not eligible employees for the purposes of this Act; or

(j) a person included in a class of persons declared by the Minister, by legislative instrument, not to be eligible employees for the purposes of this Act; or

(k) a person who is a member of a scheme for the provision of superannuation benefits conducted by the Health Insurance Commission; or

(l) a person who is eligible for membership of a scheme referred to in paragraph (k), not being a person who:

(i) within the period, or the appropriate period, prescribed by that scheme for electing to become a member of that scheme, requests CSC, in writing, to direct that the person be treated as an eligible employee for the purposes of this Act; or

(ii) at the expiration of the period, or the appropriate period, referred to in subparagraph (i), has not elected to become a member of that scheme; or

(m) a person who, under section 15A, is excluded from this definition.

eligible roll-over fund means a fund in respect of which a declaration by the ISC under section 243 of the SIS Act is in force.

employer component, in relation to a benefit payable in respect of a person under Part VIAB, means that part of the benefit that is payable because of:

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(a) the accumulated performance pay employer contributions of the person; and

(b) if the person's transferable productivity amount was paid to CSC under section 110SL or was paid first to the trustee of another superannuation entity and then an amount in respect of that transferable productivity amount was paid under section 110SL by that trustee to CSC—the person's transferable productivity amount.

exempt public sector superannuation scheme has the same meaning as in the SIS Act.

existing contributor means a person who is, or has at any time been, a person referred to in paragraph (a) of the definition of ***eligible employee*** in this subsection and who, immediately before the commencing day, was a contributor for the purposes of the superseded Act.

extra spouse's pension means pension payable under Division 3A of Part VI.

final annual rate of salary, in relation to a person who has ceased to be an eligible employee, means:

(a) if paragraph (b), (c) or (d) does not apply in relation to the person—the person's annual rate of salary on his or her last day of service; or

(b) if the annual rate of salary by reference to which his or her final basic contribution (including a final basic contribution of nil) was calculated is higher than the rate specified in paragraph (a)—that higher rate; or

(c) if his or her annual rate of salary was higher than the rate referred to in paragraph (a) or (b) at any time on or after:

(i) the anniversary of his or her birth last preceding his or her last day of service; or

(ii) where, on or after that anniversary, he or she made an election under section 47 in respect of a reduction in his or her annual rate of salary—the date of the election;

that higher rate; or

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(d) if the person on his or her last day of service had, or would have had if that last day of service were the anniversary of his or her birth, an imputed annual rate of salary within the meaning of paragraph 47(1)(b) that was higher than the rate mentioned in paragraph (a), (b) or (c)—that imputed annual rate of salary.

final basic contribution, in relation to a person who has ceased to be an eligible employee, means the fortnightly basic contribution payable by him or her on the contribution day last preceding his or her last day of service, or, if his or her last day of service is a contribution day, payable by him or her on his or her last day of service.

first day of service, in relation to a person who is, or has ceased to be, an eligible employee, means:

(a) except where paragraph (b) applies—the day on which he or she became an eligible employee; or

(b) where the person has become an eligible employee on more than 1 occasion—the day on which he or she last became an eligible employee.

fortnightly rate of salary, in relation to an eligible employee, means an amount equal to one-twenty-sixth of the amount of his or her annual rate of salary.

Fund or ***Superannuation Fund*** means the CSS Fund established by this Act.

Note: From 1 July 2011, the CSS Fund is vested in CSC.

Fund accumulated employer contributions, in relation to a person, means the person's accumulated employer contributions less any part of them that is:

(a) a notional interim benefit of the person within the meaning of Part VIA; or

(b) interest on that benefit.

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industrial award means an industrial award, determination or agreement made, approved, lodged or registered under a law of the Commonwealth, a State or a Territory.

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

invalidity pension means pension payable under Division 4 of Part V, other than partial invalidity pension.

invest means expend moneys with a view to obtaining a present or future financial return (whether by way of income, profit or otherwise).

last day of service, in relation to a person who has ceased to be an eligible employee, means:

(a) except where paragraph (b) applies—the day on which he or she so ceased; or

(b) where the person has ceased to be an eligible employee on more than 1 occasion—the day on which he or she last so ceased.

late short-term marital or couple relationship, in relation to a deceased retirement pensioner, means a marital or couple relationship between the pensioner and his or her spouse that began:

(a) less than 3 years before the pensioner's death; and

(b) after the pensioner became a retirement pensioner and had reached the age of 60 years.

legal personal representative has the same meaning as in the SIS Act.

marital or couple relationship has the meaning given by section 8A.

maximum retiring age, in relation to a person who is, or has been, an eligible employee, means the age of 65 years or such lesser age as, under the regulations, is the maximum retiring age applicable to

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him or her or a class of persons in which he or she is, at the relevant time, included.

minimum retiring age means:

(a) in relation to a person who is an eligible employee:

(i) unless subparagraph (ii) applies—the age of 55 years; or

(ii) if another age is applicable under the terms and conditions of employment or appointment of the person—the other age; or

(b) in relation to a person who is no longer an eligible employee:

(i) unless subparagraph (ii) applies—the age of 55 years; or

(ii) if another age was applicable under the terms and conditions of employment or appointment of the person immediately before the person last ceased to be an eligible employee—the other age.

MSB Act means the *Military Superannuation and Benefits Act 1991*.

notional interest includes negative or zero notional interest.

orphan pension means pension payable under Division 4 of Part VI.

partial invalidity pension means pension payable under section 77 or 78.

partially dependent child, in relation to a person who has died and was, at the time of his or her death, an eligible employee or a retirement pensioner, means a person:

(a) who is a child (other than an eligible child) of the deceased person; and

(b) who is a person the 16th anniversary of whose birth has not occurred or is a person:

(i) the 16th anniversary of whose birth has occurred but the 25th anniversary of whose birth has not occurred; and

(ii) who is receiving full-time education at a school, college or university; and

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(iii) who is not ordinarily in employment or engaged in work on his or her own account; and

(c) to or in respect of whom, immediately before the deceased person's death, the deceased person was voluntarily making, or required by a court to make, regular maintenance payments.

partner: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

pension means any pension payable under this Act.

pension pay day means the Thursday that falls on 1 July 1976, and each succeeding alternate Thursday.

pensioner means a person who is entitled to pension under this Act.

period of contributory service, in relation to a person who has ceased to be an eligible employee, means a period equal to the period (the ***period of actual service***) beginning on the person's first day of service and ending on the person's last day of service (less any part of the period of actual service that is:

(a) a period of leave of absence in respect of which subsection 51(1) applies to the person; or

(b) a period of absence from duty in respect of which subsection 51A(1) of the *Superannuation Act 1976* as in force before 1 July 1990 applies to the person; or

(c) a period that is taken, under subsection 51A(5) of the *Superannuation Act 1976* as in force on and after 1 July 1990, to be a non-contributory period of service for the person; or

(d) a period in respect of which the person was not required or permitted to pay contributions because of subsection 3(3); or

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(e) a period in respect of which benefits did not accrue to the person because of section 55A);

together with, if the person had previously ceased to be an eligible employee on an occasion earlier than his or her first day of service, any period that, under section 8, is to be added to his or her period of contributory service.

period of prospective service, in relation to a person who, before attaining the age of 65 years or, if his or her maximum retiring age is less than 65 years, before attaining his or her maximum retiring age, ceases to be an eligible employee by reason of having been retired on the ground of invalidity or by reason of death, means the aggregate of:

(a) his or her period of contributory service; and

(b) the period commencing on the day immediately following his or her last day of service and ending on the day on which he or she will, or but for his or her death, would, attain the age of 65 years or his or her maximum retiring age, whichever is the earlier.

permanent employee means a person employed in a permanent capacity by the Commonwealth or by an approved authority, but does not include:

(a) a part-time employee who is not an approved part-time employee; or

(b) a person who is engaged or appointed for employment outside Australia only, not being a person who is included in a class of persons approved by the Minister, in writing, for the purposes of this definition.

plus has a meaning affected by subsection (9).

profit includes capital profit.

PSS Fund has the same meaning as in the *Superannuation Act 1990*.

Public Sector Superannuation Scheme has the same meaning as in the *Superannuation Act 1990*.

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Public Service Act means the *Public Service Act 1999*.

re-employed former contributor with preserved rights has the meaning given by section 4B.

regulated superannuation fund has the same meaning as in the SIS Act.

relevant industrial organization means an organization the members, or a substantial proportion of the members, of which are eligible employees.

retirement pensioner means:

(a) a person to whom age retirement pension, early retirement pension or invalidity pension is payable; or

(b) a person who has ceased to be an eligible employee and has made an election under section 110T.

Rules for the administration of the Public Sector Superannuation Scheme means the rules for the administration of that scheme set out in the Schedule to the deed by which that scheme was established.

Rules for the administration of the Superannuation (1990) Scheme means the rules for the administration of that scheme set out in the Schedule to the deed by which that scheme was established.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* and, except in a reference to a particular provision of that Act, includes the regulations in force under that Act.

spouse has a meaning affected by section 8B.

spouse's pension means pension payable under Division 1, 2 or 3 of Part VI.

statutory office means an office established by an Act, by regulations made under an Act or by a law of a Territory, or an office specified in the regulations as an office that is a statutory office for the purposes of this Act.

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stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a partner of the person is the ***stepchild*** of the person, if he or she would be the person's stepchild except that the person is not legally married to the partner.

sum has a meaning affected by subsection (9).

superannuation entity has the same meaning as in the SIS Act.

superannuation guarantee top-up benefit means benefit payable under section 110SE.

superseded Act means the *Superannuation Act 1922*.

supplementary contributions means contributions paid or payable under section 48.

surcharge debt account, in relation to a person, means the surcharge debt account kept for the person by CSC under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

surcharge deduction amount, in relation to a person to or in respect of whom benefits become payable under this Act, means the surcharge deduction amount that is specified in the determination made by CSC, under section 80A, in relation to the person.

temporary employee means a person employed, otherwise than in a permanent capacity, by the Commonwealth or by an approved authority, but does not include:

(c) a part-time employee who is not an approved part-time employee; or

(d) a person who is engaged or appointed for employment outside Australia only, not being a person who is included in a class of persons approved by the Minister, in writing, for the purposes of this definition.

total has a meaning affected by subsection (9).

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transferable productivity amount, in relation to a person whose continuing contributions (within the meaning of the *Superannuation (Productivity Benefit) Act 1988*) are, or were, held in a declared fund (within the meaning of that Act), means the sum of:

(a) an amount equal to the difference between:

(i) the sum of the continuing contributions paid into the declared fund; and

(ii) the sum of any amounts in the nature of income tax relevant to those contributions and any amounts deducted by way of charges or fees from those contributions by the trustee of the declared fund; and

(b) interest on the amount mentioned in paragraph (a).

Trustee has the same meaning as ***trustee*** has in the *Superannuation Act 1990*.

(1AA) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom paragraph (ec) of the definition of ***eligible employee*** applies or has applied or to and in relation to a prescribed class of persons to whom that paragraph applies or has applied.

(1A) A declaration made for the purposes of paragraph (ec) of the definition of ***eligible employee*** in subsection (1) may be expressed to have taken effect from and including a day specified in the declaration, being a day earlier than the day on which the declaration is signed but, subject to subsection (1B), not earlier than 12 months before the day on which the declaration is signed.

Note: The day of effect may be a day earlier than the day on which paragraph (ec) commenced (see subsection (1BC)).

(1B) If, before a declaration is made for the purposes of paragraph (ec) of the definition of ***eligible employee*** in subsection (1), contributions were accepted from, or in respect of, a person to whom the declaration applies, the declaration may be expressed to

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have taken effect from and including the earliest day on which contributions were so accepted.

Note: The day of effect may be a day earlier than the day on which paragraph (ec) commenced (see subsection (1BC)).

(1BA) A declaration made for the purposes of paragraph (j) of the definition of ***eligible employee*** in subsection (1) may be expressed to have taken effect from and including a day specified in the declaration, being a day earlier than the day on which the declaration is signed but not earlier than 1 July 2003, if, and only if, there is no person to whom the declaration applies:

(a) who was treated as an eligible employee on or after the specified day; or

(b) from, or in respect of, whom contributions were accepted on or after the specified day.

(1BB) A declaration that is expressed, in accordance with subsection (1A), (1B) or (1BA), to have taken effect from and including a day earlier than the day on which the declaration was signed, is taken to have had effect accordingly.

(1BC) To remove any doubt, a declaration made for the purposes of paragraph (ec) of the definition of ***eligible employee*** in subsection (1) may be expressed, to the extent permitted under subsection (1A) or (1B), to have taken effect from and including a day (the ***effective day***) earlier than the day on which that paragraph commenced. If a declaration is so expressed, it is taken to have had, before the day on which that paragraph commenced, the effect that the declaration would have had if that paragraph had been in force from and including the effective day.

(1BD) Despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a declaration made for the purposes of paragraph (ec) or (j) of the definition of ***eligible employee*** in subsection (1) of this section.

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(1C) For the purposes of this Act, to remove any doubt:

(a) a payment of a pension or benefit is taken to be permitted under the SIS Act if:

(i) the payment is permitted by that Act as modified under section 332 of that Act; or

(ii) the payment is authorised by an exemption granted by the Commissioner under that Act; and

(b) a benefit is taken to be dealt with in accordance with the SIS Act if:

(i) it is dealt with in accordance with that Act as modified under section 332 of that Act; or

(ii) it is dealt with in accordance with an exemption granted by the Commissioner under that Act.

(2A) If an authority or body referred to in paragraph (b) of the definition of ***approved authority*** in subsection (1) becomes a body:

(a) not operating for a public purpose under an Act, regulations made under an Act or a law of a Territory; and

(b) in which none of the following has a controlling interest, namely:

(i) the Commonwealth;

(ii) an authority or other body mentioned in paragraph (a) of that definition;

(iii) the Commonwealth together with one or more such authorities or bodies;

(iv) such an authority or body together with one or more other such authorities or bodies;

the Minister, for the purposes of paragraph (b), may, by legislative instrument, declare that the body is not an approved authority for the purposes of this Act.

(3) If a person ceases to be an eligible employee and, immediately after so ceasing, again becomes an eligible employee:

(a) the person is taken, for the purposes of this Act, other than paragraph (b), not to have so ceased; but

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(b) the person is not required or permitted to pay contributions in respect of the period between the time when the person ceased to be an eligible employee and the time when the person again becomes an eligible employee.

(4) A reference in this Act to a person who has ceased to be an eligible employee shall, unless the contrary intention appears, be read as including a reference to a person who has ceased to be an eligible employee by reason of death.

(5) A person who is or becomes employed by the Commonwealth or by an approved authority shall not be taken, for the purposes of this Act, to be employed otherwise than in a permanent capacity by reason only that his or her appointment was or is on probation and has not been confirmed.

(5AA) For the purposes of this Act, a person who was at any time before the commencement of this subsection, or is, a member of the Australian Capital Territory Fire Brigade (other than the Fire Commissioner or the Deputy Fire Commissioner) pursuant to an appointment made under the *Fire Brigade (Administration) Act 1974* of the Australian Capital Territory is taken:

(a) if the person was appointed, and ceased to hold office under the appointment, before 11 May 1989—to have been employed by the Commonwealth at all times from the time of his or her appointment or the commencement of this Act, whichever was the later, until the time when he or she ceased to hold office under the appointment; or

(b) if the person was appointed before 11 May 1989 and did not cease to hold office under the appointment before that day:

(i) to have been employed by the Commonwealth at all times from the time of his or her appointment or the commencement of this Act, whichever was the later, until the time immediately before that day; and

(ii) to have been or to be employed by the Australian Capital Territory at all times on and after that day until he or she ceased or ceases to hold office under the appointment; or

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(c) if the person was appointed on or after 11 May 1989—to have been or to be employed by the Australian Capital Territory at all times from and including the time of his or her appointment until he or she ceased or ceases to hold office under the appointment.

(5A) For the purposes of this Act, an AFP employee (within the meaning of the *Australian Federal Police Act 1979*) shall be deemed to be employed by the Commonwealth.

(6) Where a person is a director of a company or other body corporate incorporated, whether before or after the commencement of this Act, under a law of the Commonwealth or of a State or Territory, being a company or other body that is an approved authority, the person shall, for the purposes of this Act, be deemed to be employed by the company or other body.

(7) A reference in this Act, by number, to a provision of the superseded Act shall be read as a reference to that provision as re-numbered by section 78 of the *Superannuation Act 1959*.

(8) A reference in this Act to a medical examination by a medical practitioner does not include a reference to a medical examination by a person other than a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners unless:

(a) the medical examination is made in a place that is not in Australia or an external Territory; and

(b) the person is registered or licensed as a medical practitioner under a law of that place that provides for the registration or licensing of medical practitioners.

(9) If:

(a) a provision of this Act involves the calculation of a sum (whether the expression "sum", "total", "plus" or any other expression is used); and

(b) the calculation involves negative interest or negative notional interest; and

(c) apart from this subsection, the sum would be less than zero;

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the sum is taken to be zero.

3AA Operation despite repeal of *Commonwealth Legal Aid Act 1977*

This Act continues to apply despite the repeal of the *Commonwealth Legal Aid Act 1977* as if:

(a) section 3 and Part IV of that Act had not been repealed; and

(b) any arrangement under subsection 21(1) of that Act that ceased to be in force only because of that repeal had not ceased to be in force because of that repeal.

3A Variation of contribution days for certain employees

(1) If an eligible employee is paid remuneration in respect of his or her employment otherwise than in respect of fortnights ending on the day before a day that, apart from this section, would be a contribution day:

(a) CSC and the designated employer may agree in writing that this Act is to apply in relation to the employee as if references to contribution days were references to such days as are stated in, or determined in accordance with, the agreement; and

(b) if such an agreement is made:

(i) the agreement may provide that this Act is to apply in relation to the employee as if references to a fortnight were references to such period as is stated in, or determined in accordance with, the agreement; and

(ii) if the agreement provides as mentioned in subparagraph (i), this Act applies in relation to the employee as if cognate expressions (such as ***fortnightly***) were construed accordingly.

(2) An agreement made under subsection (1) has effect according to its terms.

(3) If an agreement is in force under subsection (1) in relation to an eligible employee, CSC may, having regard to this Act and the need to ensure equity between eligible employees, make any

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adjustments that it thinks appropriate in respect of the calculation and payment of contributions and benefits under this Act in respect of that employee.

3C Designated employers

(1) A reference in this Act to the designated employer of an eligible employee is a reference to:

(a) if the employee is a permanent employee or temporary employee but is not an LWOP employee or employed by an approved authority:

(i) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an annual Appropriation Act—the Department in respect of which the money is appropriated; or

(ii) if the remuneration in respect of his or her employment is paid wholly or mainly out of money appropriated by an Act other than an annual Appropriation Act—a Department determined by the Minister; or

(b) if the employee is the holder of a statutory office but is not an LWOP employee:

(i) if the remuneration in respect of the office is paid by an approved authority—the Authority; or

(ii) if subparagraph (i) does not apply—a Department or person determined by the Minister; or

(c) if the employee is employed by an approved authority but is not an LWOP employee—the authority; or

(d) otherwise—a person determined by the Minister.

(2) In this section:

Department means:

(a) an APS Agency; or

(b) a Department of the Parliament established under the *Parliamentary Service Act 1999*.

LWOP employee means an eligible employee who:

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(a) is on leave of absence without pay for a period in respect of which the Board has directed, for the purposes of subsection 51(1) of the *Superannuation Act 1976* as in force immediately before the commencement of the *Superannuation Legislation Amendment Act 1994*, that the subsection is not to apply; or

(b) is on leave of absence for a period that:

(i) is more than 12 weeks; and

(ii) is an excluded period of leave of absence for the purposes of subsection 51(1); or

(c) is a person to whom section 51A applies and is making contributions in accordance with an election made under subsection (3) of that section.

3F Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4 Application of Act

This Act applies both within and without Australia.

4AA Declarations, determinations, approvals etc. by Minister, CSC or Commissioner

(1) If a provision of this Act refers to a declaration or determination made, approval given or other thing done by the Minister, CSC or the Commissioner and there is no other provision in this Act expressly authorising the Minister, CSC or the Commissioner to make such a declaration or determination, give such an approval or do such a thing, the Minister, CSC or the Commissioner, as the case may be, is, and is taken to have at all times been, authorised to make such a declaration or determination, give such an approval or do such a thing.

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(2) An approval given by the Minister for the purposes of the definition of ***temporary employee*** in subsection 3(1) may take effect on a day not earlier than:

(a) 12 months before the giving of the approval; or

(b) if contributions have been accepted before the start of that period of 12 months from, or in respect of, the person to whom the approval relates—the earliest day on which contributions were so accepted.

4A Definition of *approved authority*—declarations

(1) Despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a declaration for the purposes of paragraph (a) or (b) of the definition of ***approved authority*** in subsection 3(1) of this Act.

(3) A declaration for the purposes of paragraph (a) of that definition may be expressed to have taken effect from and including a day not earlier than 12 months before the making of the declaration.

4B Meaning of *re-employed former contributor with preserved rights*

For the purposes of this Act, a person is a re-employed former contributor with preserved rights if:

(a) the person:

(i) was a contributor under the superseded Act; or

(ii) has ceased to be an eligible employee; and

(b) after his or her so ceasing or last ceasing to be such a contributor or an eligible employee (as the case may be), a transfer value in respect of the person was paid to the person administering a superannuation scheme (other than the scheme established under the superseded Act or the CSS); and

(c) on or after 1 July 1990, the person becomes:

(i) a permanent employee; or

(ii) a temporary employee; or

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(iii) the holder of a statutory office; or

(iv) a person to whom paragraph (ec) of the definition of ***eligible employee*** applies;

and a transfer value that includes the transfer value referred to in paragraph (b) is payable, or will, on the person's becoming an eligible employee, be payable, to or in respect of the person under:

(v) the superannuation scheme referred to in paragraph (b); or

(vi) another superannuation scheme applicable in relation to any employment in which the person was employed after ceasing, or last ceasing, to be a contributor under the superseded Act or an eligible employee (as the case may be).

5 Annual rate of salary

(1) In this section, ***salary*** means salary or wages and includes any allowance, or the value of any allowance, or any fee, that is an allowance or fee of a kind that, under the regulations, is to be treated as salary for the purposes of this Act, but does not include any part of any salary or wages that, under the regulations, is not to be treated as salary for the purposes of this Act.

(2) For the purposes of this Act but subject to subsections (3) to (3E), the annual rate of salary of an eligible employee on a particular day is an amount equal to the amount per annum of the salary payable to him or her on that day.

(3) The regulations may provide that, in a case specified in the regulations, the annual rate of salary of an eligible employee on a particular day shall, for the purposes of this Act or a provision of this Act specified in the regulations, be an amount equal to such amount per annum as is ascertained under the regulations.

(3AA) Despite subsections (1), (2) and (3), an eligible employee and his or her designated employer may agree that a particular annual rate is to be the employee's annual rate of salary for the purposes of the

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application of this Act on a particular day and, if such an agreement is made, the agreed rate is taken to be the employee's annual rate of salary on that day.

(3AB) Subsection (3AC) applies if:

(a) a Minister makes a determination under an Act in respect of the remuneration of a person appointed under that Act; or

(b) the Presiding Officers (within the meaning of the *Parliamentary Service Act 1999*) make a determination under that Act in respect of the remuneration of a person appointed under that Act; or

(c) a determination is made under the *Remuneration Tribunal Act 1973* in respect of the remuneration of a person;

and an annual rate of salary of the person can be ascertained under the determination. (To avoid doubt, subsection (3AC) applies whether a determination is expressed to apply to a person or an office.)

(3AC) Despite subsections (1), (2) and (3), for the purposes of the application of this Act on a particular day, the annual rate of salary of the person is the annual rate of salary ascertained for the purposes of this Act under the determination on that day.

(3A) If, at the time (the ***later time***) immediately before a person ceased or last ceased to be an eligible employee, the person was entitled to partial invalidity pension under section 77 or 78, the annual rate of salary payable to the person at the later time is to be worked out, for the purposes of this Act other than sections 77 and 78, under subsections (3B) to (3E).

(3B) If the person's entitlement arose under section 77, the annual rate of salary payable to the person at the later time is taken to be the amount per annum that would have been the person's final annual rate of salary at the time (the ***earlier time***) that was the occasion on which the person ceased or last ceased to be an eligible employee before the person's entitlement arose.

(3C) If the person's entitlement arose under section 78, the annual rate of salary payable to the person at the later time is taken to be the

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amount per annum that would, if the person had ceased to be an eligible employee on the day immediately before the day on which the person's entitlement arose, have been the person's final annual rate of salary at the time (the ***earlier time***) that would have been the occasion of the person's so ceasing to be an eligible employee.

(3D) However, if:

(a) the Australian Statistician has published, at or before the later time, an estimate or successive estimates of the change or changes (expressed as a percentage or percentages) in AWOTE in respect of the period between the relevant earlier time and the later time; and

(b) the estimate or estimates show an overall increase (expressed as a percentage) in those earnings over that period, or over the part of that period in respect of which the estimate or estimates were published;

the annual rate of salary payable to the person at the later time is taken to be the annual rate of salary worked out under subsection (3B) or (3C), as the case requires, increased by that percentage.

(3E) If, at any time, whether before or after the commencement of this subsection, the Australian Statistician has published or publishes for a particular period an estimate of a change (including an estimate that no change has occurred) in AWOTE in substitution for an estimate of such a change for that period previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.

(4) Where the rate of the salary, or of a part of the salary, of an eligible employee is not an annual rate, the amount per annum of that salary, or of that part of that salary, as the case may be, shall, for the purposes of this section, be ascertained:

(a) where the rate is a weekly rate—by multiplying the weekly rate by 52;

(b) where the rate is a monthly rate—by multiplying the monthly rate by 12; and

(c) in any other case—in such manner as is prescribed.

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6 References to anniversary of birth etc.

(1) A reference in this Act to the anniversary of the birth of a person shall be read as a reference to the day on which the anniversary occurs, and a reference in this Act to the anniversary of the birth of a person last preceding a particular day shall, where the person is or has been an eligible employee and that anniversary occurred before his or her first day of service, be read as a reference to his or her first day of service.

(2) Where a person was born on 29 February in any year, then, in any subsequent year that is not a leap year, the anniversary of the birth of the person shall be deemed to occur on 1 March of that subsequent year.

(3) For the purposes of this Act, a person shall be taken to have attained a particular age on the day immediately preceding the relevant anniversary of his or her birth.

6A Persons engaged in more than one employment

(1) Subject to subsection (3), if:

(a) a person is engaged in more than one employment; and

(b) either:

(i) in relation to more than one of those employments the person is an eligible employee; or

(ii) in relation to any such employment, the person would, if that were the person's only employment, be an eligible employee or entitled to request that a direction be given under section 11, 13 or 14;

this Act has a separate operation in respect of the person in relation to any employment in relation to which the person is an eligible employee, or any employment mentioned in subparagraph (b)(ii), as if that were the person's only employment.

(2) A separate operation of this Act given by subsection (1) in respect of a person in relation to any employment, being a person who is,

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or becomes, an eligible employee in relation to that employment, continues after the person ceases to be an eligible employee.

(3) A person who:

(a) is an eligible employee and on leave of absence without pay from particular employment; and

(b) while on such leave engages in other employment;

is not, for the purposes of this section, because of engaging in that other employment, taken to be engaged in 2 different employments.

(4) If, before the commencement of this section, a person made payments in respect of any employment that would have been contributions if subsection (1) had then been in force, that subsection is taken to have been in force in relation to that person at the time the payments were made or at such earlier time (not being a time earlier than the commencement of that employment) as CSC may determine.

(5) If, because of subsection (1), this Act has a separate operation in respect of a person in relation to any employment, the person may elect, by notice in writing to CSC, that that subsection applies to him or her in respect of that employment before the commencement of this section and, where such an election is made, that subsection is taken to have been in force in relation to the person during the period of that employment.

(6) The regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision in relation to a person in respect of whom this Act, because of subsection (1), has an operation in relation to any employment.

7 Retirement on ground of invalidity

(1) A reference in this Act to the retirement of an eligible employee on the ground of invalidity shall be read as a reference to his or her having been retired, or his or her services having been otherwise

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terminated, on the ground of physical or mental incapacity to perform his or her duties.

(2) Where a person has, before attaining his or her maximum retiring age, ceased to be an eligible employee otherwise than by reason of death or by reason of his or her having been retired, or his or her services having been otherwise terminated, on the ground of physical or mental incapacity to perform his or her duties, but CSC is satisfied that, at the time he or she ceased to be an eligible employee, he or she was, by reason of physical or mental incapacity, totally and permanently incapacitated within the meaning of Part IVA, CSC may direct that the person shall, for the purposes of this Act, be deemed to have been retired on the ground of invalidity because of that physical or mental incapacity.

7A Accumulated basic and supplementary contributions and Fund accumulated employer contributions—additional amounts

(1) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, invalidity pension becomes payable to him or her in accordance with section 67 or 70; and

(b) his or her entitlement to the pension is cancelled under subsection 76(1) upon his or her again becoming an eligible employee;

then, upon his or her next ceasing to be an eligible employee, there shall be added to the amount that, but for this subsection, would be the amount of his or her accumulated basic contributions an amount equal to the amount paid to the Fund under subsection 112(5) in respect of the person upon his or her again becoming an eligible employee as referred to in paragraph (b), plus interest on the amount.

(2) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits become applicable in relation to him or her by virtue of Division 3 of Part IX;

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(b) a deferred benefit does not become payable to him or her; and

(c) those deferred benefits cease, by virtue of paragraph 144(1)(b), to be applicable in relation to the person upon his or her again becoming an eligible employee;

then, upon his or her next ceasing to be an eligible employee:

(d) there shall be added to the amount that, but for this subsection, would be the amount of his or her accumulated basic contributions an amount equal to the amount that was his or her accumulated basic contributions upon his or her ceasing to be an eligible employee as referred to in paragraph (a), plus interest on the amount; and

(e) there shall be added to the amount that, but for this subsection, would be the amount of his or her accumulated supplementary contributions an amount equal to the amount that was his or her accumulated supplementary contributions upon his or her ceasing to be an eligible employee as referred to in paragraph (a), plus interest on the amount; and

(f) there shall be added to the amount that, but for this subsection, would be the amount of the person's Fund accumulated employer contributions an amount equal to the amount that was the person's Fund accumulated employer contributions upon the person ceasing to be an eligible employee as referred to in paragraph (a), plus interest on the amount.

(3) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits become applicable in relation to him or her by virtue of Division 3 of Part IX;

(b) those deferred benefits cease to be applicable in relation to the person upon a deferred benefit by way of invalidity pension becoming payable to him or her in accordance with section 67 or 70;

(c) the person does not, before again becoming an eligible employee, become entitled to deferred benefit by way of

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invalidity benefit otherwise than in accordance with section 67 or 70; and

(d) his or her entitlement to deferred benefit is cancelled under subsection 76(1) upon his or her again becoming an eligible employee;

then, upon his or her next ceasing to be an eligible employee, there shall be added to the amount that, but for this subsection, would be the amount of his or her accumulated basic contributions an amount equal to the amount paid to the Fund under subsection 112(9) in respect of the person upon his or her entitlement to deferred benefit being cancelled under subsection 76(1), plus interest on the amount.

(4) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits become applicable in relation to him or her by virtue of Division 3 of Part IX;

(b) those deferred benefits cease to be applicable in relation to the person upon a deferred benefit by way of invalidity pension becoming payable to him or her in accordance with section 67 or 70;

(c) his or her entitlement to the deferred benefit is cancelled under subsection 143(2) and deferred benefits again become applicable in relation to him or her;

(d) the person does not, before again becoming an eligible employee, become entitled to deferred benefit by way of invalidity benefit otherwise than in accordance with section 67 or 70; and

(e) those deferred benefits cease, by virtue of paragraph 144(1)(b), to be applicable in relation to the person upon his or her again becoming an eligible employee;

then, upon his or her next ceasing to be an eligible employee, there shall be added to the amount that, but for this subsection, would be the amount of his or her accumulated basic contributions an amount equal to the amount paid, or last paid, to the Fund under subsection 112(9) in respect of the person upon his or her

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entitlement to deferred benefit being cancelled under subsection 143(2), plus interest on the amount.

8 Contributory service—additional periods

(1) Where:

(a) a person became entitled to an invalidity pension upon his or her ceasing to be an eligible employee; and

(b) he or she again becomes an eligible employee and the pension referred to in paragraph (a) is cancelled under subsection 76(1) upon his or her again becoming an eligible employee;

then, upon his or her next ceasing to be an eligible employee, there shall be added to the period that, but for this subsection, would be his or her period of contributory service:

(c) the period that was his or her period of contributory service upon his or her previously ceasing to be an eligible employee and becoming entitled to the pension that was so cancelled; and

(d) if that pension was payable in accordance with section 67 or 68—any period in respect of which that pension was payable.

(2) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits are applicable in relation to him or her by virtue of Division 3 of Part IX; and

(b) the person again becomes an eligible employee and the deferred benefits cease to be applicable in relation to him or her by virtue of section 144;

then, upon his or her next ceasing to be an eligible employee, there shall be added to the period that, but for this subsection, would be his or her period of contributory service:

(c) the period that was his or her period of contributory service upon his or her previously ceasing to be an eligible employee and becoming a person in relation to whom deferred benefits are applicable; and

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(d) if, during any period after his or her previously so ceasing to be an eligible employee and before he or she again becomes an eligible employee, he or she was in receipt of deferred benefits, being invalidity pension payable in accordance with section 67 or 68—any period in respect of which that pension was payable.

(3) Where:

(a) a person ceases to be an eligible employee and, upon so ceasing, deferred benefits are applicable in relation to the person by virtue of Division 3 of Part IX;

(b) those deferred benefits cease to be applicable in relation to the person upon a deferred benefit by way of invalidity pension becoming payable to the person; and

(c) the person again becomes an eligible employee and the person's entitlement to deferred benefit is, upon the person's so becoming an eligible employee, cancelled under subsection 76(1);

then, upon the person's next ceasing to be an eligible employee, there shall be added to the period that, but for this subsection, would be the person's period of contributory service:

(d) the period that was the person's period of contributory service upon the person's previously ceasing to be an eligible employee and becoming a person in relation to whom deferred benefits are applicable; and

(e) if, during any period after the person's previously so ceasing to be an eligible employee and before the person again becomes an eligible employee, the person was in receipt of deferred benefit by way of invalidity pension in accordance with section 67 or 68—any period in respect of which that pension was payable.

8A Marital or couple relationship

(1) For the purposes of this Act, a person had a ***marital or couple relationship*** with another person at a particular time if the person ordinarily lived with that other person as that other person's

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husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time.

(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at a particular time only if:

(a) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of at least 3 years up to that time; or

(b) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of less than 3 years up to that time and CSC, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time;

whether or not the person was legally married to that other person.

(3) For the purposes of this Act, a marital or couple relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

(a) the person was wholly or substantially dependent on that other person at the time;

(b) the persons were legally married to each other at the time;

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

(c) the persons had a child who was:

(i) born of the relationship between the persons; or

(ii) adopted by the persons during the period of the relationship; or

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(iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;

(d) the persons jointly owned a home which was their usual residence.

(5) For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:

(a) temporary absence; or

(b) absence because of the person's illness or infirmity.

8B Spouse who survives a deceased person

(1) In this section:

deceased person means a person who was, at the time of his or her death, an eligible employee or a retirement pensioner.

(2) For the purposes of this Act, a person is a spouse who survives a deceased person if the person had a marital or couple relationship with the deceased person at the time of the death of the deceased person (the ***death***).

(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:

(a) the person had previously had a marital or couple relationship with the deceased person; and

(b) the person did not, at the time of the death, have a marital or couple relationship with the deceased person but was legally married to the deceased person; and

(d) in CSC's opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.

10 Members of Defence Force

(1) A member of the Defence Force shall not, by reason only of being a member of the Defence Force, be deemed to be an eligible employee.

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(2) Where a member of the Defence Force who is liable to contribute under the Defence Force Retirement and Death Benefits Act or the MSB Act becomes an eligible employee, he or she shall not be treated as such until he or she ceases to be liable to contribute under that Act.

11 Temporary employees likely to be continued in employment

(1) Where a person who is a temporary employee requests CSC to direct, under this section, that the person be treated as an eligible employee for the purposes of this Act, CSC may direct that the person is, as from the day on which the direction is given, an eligible employee for the purposes of this Act.

(4) The regulations may make provision for modifying this section in the application of the section to and in relation to a prescribed temporary employee, or to and in relation to a prescribed class of temporary employees.

13 Temporary employees employed under contract

(1) Where:

(a) a person who is a temporary employee is employed under a contract; and

(b) the person requests CSC to direct, under this section, that he or she be treated as an eligible employee for the purposes of this Act;

CSC may direct that the person is an eligible employee for the purposes of this Act.

(2) A direction under subsection (1) in relation to a person who is employed under a contract has effect from:

(a) where the person has been employed under that contract for longer than one year—the day of the direction; or

(b) in any other case—the day specified in the direction, which may be a day earlier than the day on which the direction is given but not earlier than the day on which the person commenced to be employed under that contract.

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13A Sections 11 and 13 not applicable to certain persons employed on or after 1 July 1990

Sections 11 and 13 do not apply in relation to a person who is on 1 July 1990, or becomes after that date, a temporary employee unless:

(a) immediately before the person became or becomes so employed:

(i) invalidity pension was, or would, but for a suspension of payment, have been, payable to him or her under this Act; or

(ii) deferred benefits were applicable to him or her under this Act or the superseded Act; or

(iii) a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was, or but for a suspension of payment would have been, payable to him or her; or

(b) the person became or becomes, by virtue of his or her being so employed, a re-employed former contributor with preserved rights.

14 Statutory office holders

(1) Where:

(a) a person is the holder of a statutory office to which the person has been appointed on a full-time basis; and

(b) the person requests CSC to direct, under this section, that he or she be treated as an eligible employee for the purposes of this Act;

CSC may direct that the person is an eligible employee for the purposes of this Act.

(4) A direction under subsection (1) in relation to a person who is the holder of a statutory office has effect from:

(a) where the person has been holding that office for longer than one year—the day of the direction; or

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(b) in any other case—the day specified in the direction, which may be a day earlier than the day on which the direction is given but not earlier than the day on which the person commenced to hold that office.

(5) This section does not apply in relation to a person who is on 1 July 1990, or becomes after that date, the holder of a statutory office unless:

(a) immediately before the person became or becomes the holder of the statutory office:

(i) invalidity pension was, or would, but for a suspension of payment, have been, payable to him or her under this Act; or

(ii) deferred benefits were applicable to him or her under this Act or the superseded Act; or

(iii) a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was, or but for a suspension of payment would have been, payable to him or her; or

(b) the person became or becomes, by virtue of his or her becoming the holder of the statutory office, a re-employed former contributor with preserved rights.

15 Invalidity pensioners returning to employment except as permanent employees

Where:

(a) a person to whom invalidity pension is payable becomes a temporary employee or the holder of a statutory office to which the person was appointed on a full-time basis; and

(b) CSC is satisfied that the health of the person has become so restored as to enable him or her to perform duties of a kind that are, in the opinion of CSC, suitable to be performed by him or her, having regard to the duties performed by him or her immediately before he or she ceased to be an eligible employee by reason of his or her retirement on the ground of invalidity;

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CSC may direct that the person is, as from the date of the direction, or shall be deemed to have been as from such earlier date as is specified in the direction (not being a date earlier than the date on which he or she became a temporary employee or the holder of the statutory office), an eligible employee for the purposes of this Act.

15A Persons excluded from definition of *eligible employee*

(1) A person who, on or after 1 July 1990, becomes a permanent employee because he or she is employed in a permanent capacity by an approved authority declared by the Minister to be an exempt authority for the purposes of this subsection is excluded from the definition of ***eligible employee*** in subsection 3(1).

(2) If, on or after 1 July 1990, a person (other than a person to whom subsection (1) applies) becomes a permanent employee, that person is excluded from the definition of ***eligible employee*** in subsection 3(1) unless:

(c) immediately before the person becomes so employed or is so appointed:

(i) the person was an eligible employee; or

(ii) invalidity pension was, or would, but for a suspension of payment, have been, payable to him or her under this Act; or

(iii) deferred benefits were applicable to him or her under this Act or the superseded Act; or

(iv) a pension of a kind mentioned in section 64A or 65 of the superseded Act as in force immediately before the repeal of that section was, or but for a suspension of payment would have been, payable to him or her; or

(d) the person becomes, by virtue of his or her employment or appointment, a re-employed former contributor with preserved rights.

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16 Medical examination, and issue of benefit classification certificate, on becoming eligible employee

(2) CSC may, for the purposes of this section, require a person (other than a person to whom section 184 applies) who proposes to become or becomes an eligible employee to undergo, within such period as CSC specifies, such medical examination or examinations by an approved medical practitioner or practitioners as CSC determines.

(3) A report or reports of the result or results of the medical examination or examinations shall be furnished to CSC.

(4) CSC shall consider the report or reports, and such other matters (if any) as CSC considers relevant, and, if it is of the opinion that there is a real risk that the person, by reason of or for a reason connected with a physical or mental condition or conditions referred to in the report or reports, will not continue to be an eligible employee until the person attains his or her maximum retiring age, CSC shall issue a benefit classification certificate to that effect, being a certificate in which the relevant condition or conditions is or are specified.

(4A) Subsection (4) does not apply after 31 March 1991 in relation to a person:

(a) in respect of whom a benefit classification certificate was not in force on that date; and

(b) who was on 30 June 1990, and continued to be until 31 March 1991, an eligible employee.

(4B) Despite subsection (4A), subsection (4) applies to a person mentioned in subsection (4A) who, after 31 March 1991, ceases to be an eligible employee and again becomes an eligible employee.

(4C) Nothing in subsection (4A) affects the operation of section 16AC or subsections 184(5) to (5C) (inclusive).

(5) In the application of this Act to an eligible employee at any time, a reference in this Act to a benefit classification certificate that is in force in respect of an eligible employee shall, in the case of an

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eligible employee whose period of contributory service would, if he or she ceased to be an eligible employee at that time, be not less than 20 years or an eligible employee who has attained his or her maximum retiring age, be read as not including a reference to a benefit classification certificate that has been issued in respect of him or her.

(5A) In the application of this Act to:

(a) an eligible employee who has previously ceased to be an eligible employee by reason of retirement on the ground of invalidity, being an eligible employee to whom, upon his or her so ceasing, invalidity benefit was payable in accordance with section 69, 72 or 73; or

(b) an eligible employee who has previously ceased to be an eligible employee otherwise than by reason of retirement on the ground of invalidity;

a reference in this Act to a benefit classification certificate that is in force in respect of the eligible employee shall be read as not including a reference to a benefit classification certificate (if any) that was issued in respect of him or her before or upon his or her so previously ceasing to be an eligible employee.

(6) Where a benefit classification certificate is in force in respect of an eligible employee, he or she may, on grounds specified in the request, request CSC to revoke the certificate or to revoke the certificate and issue in substitution for the certificate a new benefit classification certificate and, where an eligible employee makes such a request, he or she shall, within such period as CSC requires, undergo such further medical examination (if any) or examinations by an approved medical practitioner or practitioners as CSC requires.

(7) A report or reports of the result or results of the further medical examination or examinations shall be furnished to CSC.

(8) CSC shall consider the report or reports (if any), and such other matters as it considers relevant, and:

(a) where there is not more than 1 physical or mental condition specified in the benefit classification certificate and CSC is

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of the opinion that there is not a real risk that the person, by reason of or for a reason connected with that condition, will not continue to be an eligible employee until he or she attains his or her maximum retiring age—CSC shall revoke the certificate;

(b) where there is more than 1 physical or mental condition specified in the benefit classification certificate:

(i) if CSC is of the opinion that there is not a real risk that the person, by reason of or for a reason connected with those conditions, will not continue to be an eligible employee until the person attains his or her maximum retiring age—CSC shall revoke the certificate; or

(ii) if CSC is of the opinion that there is a real risk that the person, by reason of or for a reason connected with 1 or some only of the conditions specified in the certificate, will not continue to be an eligible employee until he or she attains his or her maximum retiring age—CSC shall revoke the certificate and issue in substitution for the certificate a new benefit classification certificate specifying only the condition or conditions in respect of which CSC is of the opinion referred to in this subparagraph; and

(c) in any other case—CSC shall refuse the request to revoke the benefit classification certificate or to revoke the benefit classification certificate and to issue in substitution for the certificate a new benefit classification certificate.

(9) Where, under subsection (8), CSC revokes a benefit classification certificate on a particular day:

(a) the revocation has effect on and from that day; and

(b) the new certificate (if any) issued in substitution for the revoked certificate is to be taken to have been issued on that day.

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16AA Benefit event happening before section 16 procedures completed

(1) In this section:

benefit event, in relation to a person who is an eligible employee, means:

(a) the person's death; or

(b) the person ceasing to be an eligible employee because of retirement on the ground of invalidity; or

(c) the annual rate of salary of the person decreasing under such circumstances that CSC is satisfied that the decrease can properly be attributed to physical or mental incapacity.

condition means a physical or mental condition.

examination means a medical examination.

(2) Subsections (3) to (9), inclusive, apply where, as at the time of a benefit event in relation to a person who is an eligible employee:

(a) the person has undergone no examination under subsection 16(2); or

(b) the person has undergone such an examination, or 2 or more such examinations, but CSC has not yet decided that the person should not be required under subsection 16(2) to undergo a further examination; or

(c) CSC has so decided but has not yet considered the report or reports of the result or results of the examination or examinations that the person has undergone under subsection 16(2); or

(d) CSC has considered the report or reports but has not yet decided whether or not to issue a benefit classification certificate in respect of the person under subsection 16(4); or

(e) CSC has decided so to issue such a certificate but has not yet issued it.

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(3) If subparagraph (2)(a) or (b) applies, CSC must, in relation to each examination (if any) that:

(a) CSC required the person under subsection 16(2) to undergo; or

(b) CSC is satisfied it would, but for the benefit event, have so required the person to undergo;

but that the person did not in fact undergo, determine what, in CSC's opinion, the report of the result of the examination would have contained if the person:

(c) had undergone the examination on the day when the person:

(i) if paragraph (2)(a) applies—became an eligible employee; or

(ii) if paragraph (2)(b) applies—underwent the examination, or the later or last of the examinations, referred to in that paragraph; and

(d) at or in connection with the examination:

(i) had answered properly, within the meaning of section 16AC, all the questions asked of the person; and

(ii) had given no false or misleading information.

(4) For the purposes of subsection (3), CSC must consider such information and other matters as it considers relevant.

(5) In subsection (6):

report material means:

(a) if paragraph (2)(a) applies—the determination or determinations under subsection (3); or

(b) if paragraph (2)(b) applies:

(i) the report or reports of the result or results of the examination or examinations referred to in that paragraph; and

(ii) the determination or determinations (if any) under subsection (3); or

(c) if paragraph (2)(c) or (d) applies—the report or reports referred to in that paragraph.

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(6) Unless paragraph (2)(e) applies, CSC must consider the report material and any other matters (other than matters excluded by subsection (7)) that it considers relevant and, if satisfied on the basis of the matters set out in the report material and of those other matters that, had the benefit event not happened, it would have formed on that basis the opinion that there was a real risk that the person, by reason of, or for a reason connected with:

(a) a condition that is referred to in the report material and that CSC is satisfied is a condition of the person that existed at the time when the person became an eligible employee; or

(b) 2 or more such conditions;

would not continue to be an eligible employee until the person attained his or her maximum retiring age, must issue in respect of the person a benefit classification certificate specifying the condition or conditions.

(7) The matters excluded by this subsection are the following:

(a) the fact that the benefit event has happened;

(b) any information CSC has about the causes of:

(i) the death; or

(ii) the incapacity that was the ground for the retirement; or

(iii) the incapacity to which CSC is satisfied that the decrease in the annual rate of salary of the person could properly be regarded as attributable;

as the case may be;

(c) any information CSC has about the person's state of physical or mental health, or medical history, during a period beginning after:

(i) if the person has undergone an examination or examinations under subsection 16(2)—the person underwent the examination or the later or last of the examinations; or

(ii) otherwise—the person became an eligible employee.

(8) If paragraph (2)(e) applies, CSC must issue in respect of the person the benefit classification certificate that CSC would have so issued but for the benefit event.

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(9) For the purposes of this Act, a benefit classification certificate issued under this section is to be taken to have been issued under subsection 16(4) on the day before the day of the benefit event.

(10) Nothing in this section applies in relation to a person who on 30 June 1990 was, and until the time of the benefit event in relation to the person, being a benefit event that occurred after 31 March 1991, continued to be, an eligible employee.

16AB Condition coming into existence after person became eligible employee

(1) This section applies where a benefit classification certificate (whether issued before or after the commencement of this section):

(a) is in force in respect of a person (in this section called the ***employee***) who is an eligible employee; or

(b) was in force in respect of a person (in this section also called the ***employee***) immediately before:

(i) the annual rate of salary of the employee decreased, at or after that commencement, under such circumstances that CSC is satisfied that the decrease can properly be attributed to physical or mental incapacity; or

(ii) the employee ceased, at or after that commencement, to be an eligible employee.

(2) A person, being:

(a) the employee or a person acting on his or her behalf; or

(b) if the employee is dead:

(i) a spouse or child of the employee who is entitled to benefits under Part VI; or

(ii) a person acting on behalf of such a spouse or child;

may apply to CSC for the certificate to be revoked under this section.

(3) If an application is made under subsection (2) and the employee is living, CSC may, for the purposes of the application, require him or her to undergo within a specified period such medical

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examination or examinations by an approved medical practitioner or practitioners as CSC determines.

(4) A report or reports of the result or results of a medical examination or medical examinations under subsection (3) is to be given to CSC.

(5) On an application under subsection (2), CSC must consider each report (if any) given to CSC under subsection (4), and such other matters (if any) as it thinks relevant, and must:

(a) if it is satisfied that a physical or mental condition or conditions specified in the certificate came into existence after the relevant time:

(i) if the certificate specifies no other physical or mental condition—revoke the certificate; or

(ii) otherwise—revoke the certificate and issue in substitution for it a new benefit classification certificate that does not specify the first-mentioned condition or conditions but specifies the other condition or conditions specified in the revoked certificate; or

(b) otherwise—refuse the application.

(6) For the purposes of paragraph (5)(a), the relevant time is the time when the employee:

(a) if he or she became an eligible employee because of paragraph (a) of the definition of ***eligible employee*** in subsection 3(1)—became an employee for the purposes of the superseded Act; or

(b) otherwise—became an eligible employee.

(7) Except for the purposes of this section, a certificate revoked under subsection (5) is taken never to have been issued.

(8) A certificate issued under subsection (5) in substitution for a revoked certificate is taken to have been issued on the day on which, and under the provision under which, the revoked certificate was issued.

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(9) Subsections (5), (7) and (8) have effect even if the certificate referred to in subsection (1) had previously been revoked, in which case:

(a) a certificate issued under subsection (5) in substitution for the first-mentioned certificate is taken to have been revoked at the time of the previous revocation; and

(b) a certificate that was previously issued in substitution for the first-mentioned certificate is taken to have been issued in substitution for the certificate (if any) issued under subsection (5).

16AC Issue of benefit classification certificate where duty of disclosure breached

(1) In this section:

condition means a physical or mental condition.

relevant person means:

(a) a person:

(i) who is an eligible employee; and

(ii) who has not attained his or her maximum retiring age; and

(iii) whose period of contributory service, if the person were to cease to be an eligible employee, would be less than 20 years; or

(b) a person:

(i) who is or was an eligible employee to whom partial invalidity pension is or was payable in accordance with section 78; and

(ii) whose period of contributory service, if the person had ceased to be an eligible employee at the time when partial invalidity pension became so payable, would have been less than 20 years; or

(c) a person:

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(i) who has ceased, because of death or retirement on the ground of invalidity, to be an eligible employee before attaining his or her maximum retiring age; and

(ii) whose period of contributory service is less than 20 years.

(2) Subsections (4) to (8), inclusive, apply where CSC is satisfied, in respect of a person who is a relevant person:

(a) that:

(i) at or in connection with a medical examination that the person was required under subsection 16(2) or (6) or 16AB(3) to undergo; or

(ii) in connection with a request under subsection 16(6) by the person;

the person failed to answer properly a question asked of him or her or gave false or misleading information; and

(b) that, if the person had answered the question properly or had not given that false or misleading information:

(i) where there is in force, or there was in force immediately before the person's retirement or death, a benefit classification certificate in respect of the person—a condition or conditions of the person not specified in the certificate would be or would have been so specified; or

(ii) where subparagraph (i) does not apply—there would be in force, or there would have been in force immediately before the person's retirement or death, a benefit classification certificate in respect of the person specifying a condition or conditions of the person.

(3) Subsections (4) to (8), inclusive, also apply where CSC is satisfied, in respect of a person who is a relevant person:

(a) that, in connection with an application under subsection 16AB(2) for the revocation of a certificate issued in respect of the person, a person (in this section called the ***non-discloser***), being:

(i) the relevant person; or

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(ii) the applicant; or

(iii) a person acting on the applicant's behalf; or

(iv) a person on whose behalf the applicant was acting;

failed to answer properly a question asked of him or her or gave false or misleading information; and

(b) that, if the non-discloser had answered the question properly or had not given that false or misleading information:

(i) where there is in force, or there was in force immediately before the relevant person's retirement or death, a benefit classification certificate in respect of the relevant person—a condition or conditions of the relevant person not specified in the certificate would be or would have been so specified; or

(ii) where subparagraph (i) does not apply—there would be in force, or there would have been in force immediately before the relevant person's retirement or death, a benefit classification certificate in respect of the relevant person specifying a condition or conditions of the relevant person.

(4) If subparagraph (2)(b)(i) or (3)(b)(i) applies, CSC shall revoke the certificate and issue in substitution for it a new benefit classification certificate in which the condition or conditions referred to in that subparagraph is or are specified either in addition to, or instead of, the condition, or some or all of the conditions, specified in the revoked certificate.

(5) If subparagraph (2)(b)(ii) or (3)(b)(ii) applies, CSC shall issue in respect of the relevant person a benefit classification certificate specifying the condition or conditions referred to in that subparagraph.

(6) Except for the purposes of this section, a certificate revoked under subsection (4) is taken never to have been issued.

(7) A certificate issued under subsection (4) in substitution for a revoked certificate is taken to have been issued on the day on

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which, and under the provision under which, the revoked certificate was issued.

(8) A certificate issued under subsection (5) shall be taken to have been issued on the day, and under the provision, that CSC determines to be the day on which, and the provision under which, a benefit classification certificate would have been issued, or would have been taken to have been issued, as the case requires, in respect of the relevant person if the relevant person, or the non-discloser, as the case may be, had answered the question properly, or had not given the false or misleading information, as the case may be.

(9) For the purposes of this section, a person answers a question properly if, and only if, he or she gives in answer to the question all the information that he or she could reasonably be expected to give, on the basis of:

(a) his or her knowledge about the relevant matters; and

(b) the knowledge that, having regard to his or her knowledge about the relevant matters, he or she could reasonably be expected to have about those matters;

if he or she answered the question fully and truthfully on the basis of the knowledge referred to in paragraphs (a) and (b).

(10) In subsection (9):

relevant matters, in relation to a question asked of a person, means:

(a) in any case—the matters that the person could reasonably be expected to regard as relevant to answering the question; and

(b) if the question is asked of the person:

(i) at or in connection with a medical examination that the person was required under subsection 16(2) or (6) or 16AB(3) to undergo; or

(ii) in connection with a request by the person under subsection 16(6); or

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(iii) in connection with an application under subsection 16AB(2) for the revocation of a certificate issued in respect of the person;

the person's medical history and past and present state of physical and mental health.

16AD Service of certificates and of related notices

(1) CSC must serve:

(a) a copy of a benefit classification certificate; or

(b) notice of the revocation of a benefit classification certificate; or

(c) notice of a refusal by CSC of a request or application made under subsection 16(6) or 16AB(2) in relation to a benefit classification certificate;

on:

(d) in any case—the person to whom the certificate relates; and

(e) in the case of:

(i) a copy of a certificate issued under subsection 16AB(5) on an application made under subsection 16AB(2); or

(ii) notice of a refusal by CSC of an application made under subsection 16AB(2);

the applicant.

(2) Where subsection (1) requires a copy or notice to be served on a person and the person has died, CSC must serve the copy or notice on:

(a) the person's personal representative; or

(b) such other person or persons as CSC, in its discretion, determines.

16A Eligible employees deprived of salary

Where:

(a) section 32A of the *Public Service Act 1922* as in force at any time before the commencement of the *Public Service and*

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Statutory Authorities Amendment Act 1983 applied in relation to an eligible employee;

(b) a section of another Act that corresponded with the section of the *Public Service Act 1922* referred to in paragraph (a) applied in relation to an eligible employee; or

(c) the terms and conditions of employment of an eligible employee have at any time included, or include, provisions that correspond with the provision made by the section of the *Public Service Act 1922* referred to in paragraph (a);

this Act applies, and shall be deemed to have applied, to the employee as if any period during which he or she was or is deprived of salary under and in accordance with that section, or those provisions of his or her terms and conditions of employment, as the case may be, were a period during which he or she was on leave of absence without pay.

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Part IIA—CSC

27C Functions of CSC

(1) The functions of CSC under this Act are:

(a) to manage and invest the Fund so as to maximise the return earned on the Fund, having regard to:

(i) the need to make provision for payments out of the Fund under this Act; and

(ii) the need for equity among eligible employees and associate members; and

(iii) the need to exercise reasonable care and prudence in order to maintain the integrity of the Fund; and

(b) to be responsible for the general administration of this Act.

Note: For other functions of CSC, see section 8 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

(2) It is the duty of CSC, in the exercise of its functions under paragraph (1)(a):

(a) to establish from time to time:

(i) policies for the investment of money standing to the credit of the Fund; and

(ii) the strategies to be adopted to achieve those policies; and

(b) to ensure that the decisions and operations of CSC are directed towards achieving the objective referred to in paragraph (1)(a); and

(c) to ensure that CSC has, or has access to, the skills, facilities and resources required to achieve the objective referred to in paragraph (1)(a); and

(d) to take reasonable steps, consistently with the objective referred to in paragraph (1)(a) and subject to subsection (4), to inform eligible employees and associate members about the management and investment of the Fund; and

(e) to liaise with relevant industrial organisations concerning the interests of eligible employees and, subject to subsection (4),

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to inform those organisations about the management and investment of the Fund; and

(f) to ensure that CSC conducts its operations in an efficient manner; and

(g) to ensure that CSC complies with its obligations under this Act and its other legal obligations.

(3) Without limiting the generality of paragraph (2)(a), CSC must develop and maintain plans and procedures for the implementation of its investment strategies in relation to the Fund.

(4) CSC must, in performing its duties under paragraphs (2)(d) and (e), have regard to the need to protect information the disclosure of which could adversely affect the financial position or the commercial or other operations of CSC.

(5) Without limiting the generality of paragraph (2)(d), CSC must, at least once in each financial year, publish to eligible employees a summary that contains information of the kind referred to in that paragraph.

(8) The reference in paragraph (2)(e) to relevant industrial organisations is a reference to relevant industrial organisations the objectives of which extend to representing the interests of their members in relation to the terms and conditions of employment of those members.

27CA CSC to keep records with respect to contributions etc.

CSC must cause proper records to be kept in respect of:

(a) contributions paid into the Superannuation Fund; and

(b) benefits paid under this Act, whether out of the Superannuation Fund or out of the Consolidated Revenue Fund; and

(c) amounts that, under this Act, are:

(i) paid out of the Consolidated Revenue Fund into the Superannuation Fund; or

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(ii) paid out of the Superannuation Fund to the Commonwealth.

27D Powers

Subject to this Act, CSC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

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Part III—CSS Fund

40 Establishment of Fund

For the purposes of this Act, there shall be a Fund to be known as the CSS Fund.

41 Fund to be managed by CSC

(1) The Fund shall be managed by CSC.

(2) CSC has power to do, in Australia or elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the management of the Fund, and the investment under section 42 of moneys standing to the credit of the Fund, including, without limiting the generality of the foregoing, power:

(a) to give guarantees;

(aa) to underwrite or sub-underwrite any form of investment;

(ab) subject to subsection (3), to borrow moneys;

(b) to appoint agents and attorneys;

(c) to act as agents for other persons;

(d) to engage consultants and investment managers; and

(e) to open and maintain accounts with banks.

(3) CSC may not borrow money otherwise than in accordance with the SIS Act.

(5) Without limiting the generality of subsection (2), the reference in that subsection to the doing of things necessary or convenient to be done as incidental to the investment under section 42 of moneys standing to the credit of the Fund includes a reference to the taking of action to control or manage, or to enhance or protect the value of, any investment made out of those moneys or to enhance or protect the return on any such investment.

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(6) Without limiting the generality of paragraph (2)(aa), the reference in that paragraph to underwriting or sub-underwriting any form of investment includes a reference to underwriting or sub-underwriting the issue of shares, debentures or units in a unit trust.

(7) The reference in paragraph (2)(d) to the engagement of investment managers shall be read as a reference to the placement of funds with persons who undertake to invest, and manage the investment of, those funds on behalf of CSC.

(8) Nothing in this section or section 42 shall be read as derogating from CSC's duties under section 27C.

(9) In this section:

bank has the same meaning as it has in the *Public Governance, Performance and Accountability Act 2013*.

42 Investment of funds

(1) Moneys standing to the credit of the Fund which CSC is of the opinion are moneys that are not for the time being required for the purpose of making payments out of the Fund under this Act shall, so far as is practicable, be invested by CSC in accordance with this Part, but CSC shall so manage the Fund that moneys that are from time to time required to pay benefits that are payable out of the Fund are available for that purpose.

(2) Moneys that, by virtue of subsection (1), are required to be invested by CSC may be invested in any manner and, without limiting the generality of the foregoing, may be invested by CSC jointly with another person or other persons.

(3) CSC may invest the money only through an investment manager or managers.

(4A) CSC must ensure that any investment manager engaged by CSC in accordance with subsection (3):

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(a) operates within the investment powers of CSC and the investment strategy and policy determined for the time being by CSC; and

(b) reports to CSC on the state of CSC's investments and the investment market at such times and in such manner as CSC determines.

(5) Income derived from the investment of moneys standing to the credit of the Fund, or otherwise from the management of the Fund by CSC, shall form part of the Fund.

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Part IV—Contributions

45A Payment of contributions to be subject to SIS Act

Despite any other provision of this Act, an eligible employee is not entitled or permitted to pay contributions if, under the SIS Act, the Fund is not permitted to receive those contributions.

45 Basic contributions

(1) Subject to subsection 3(3) and sections 51, 51A and 54, an eligible employee shall pay fortnightly basic contributions.

Note: The amount of fortnightly basic contributions payable might be nil (see subsection 46(2)).

(2) Subject to subsection (3), the first fortnightly basic contribution of an eligible employee is payable:

(a) in the case of an eligible employee who, immediately before the commencing day, was an employee for the purposes of the superseded Act—on the contribution day next following the commencing day; and

(b) in any other case—on the contribution day next following the day on which the person became an eligible employee;

and subsequent basic contributions are payable on each succeeding contribution day during the period during which the person continues to be an eligible employee.

(3) Where an eligible employee (not being an eligible employee referred to in paragraph (2)(a) who was an existing contributor) dies, or retires on the ground of invalidity, before the day on which, but for his or her death or retirement, his or her first fortnightly basic contribution would have been payable, that contribution shall be deemed to have become payable by him or her on the day on which he or she became an eligible employee.

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46 Amount of basic contribution

(1) The amount of the fortnightly basic contribution payable by an eligible employee on a contribution day is an amount equal to 5 per centum of the fortnightly rate of salary that was payable (or is deemed by section 47 to have been payable) to the employee on the anniversary of his or her birth last preceding that contribution day or, if that amount is not a multiple of 10 cents, the next higher amount that is such a multiple.

(2) However, an eligible employee may elect that the amount of the fortnightly basic contribution payable by the employee is an amount equal to 0% of the fortnightly rate of salary referred to in subsection (1).

Note: The election is suspended during some periods of leave of absence without pay of more than 12 weeks (see sections 51A and 51AA).

(3) To avoid doubt, while an election made by an eligible employee under subsection (2) is in force:

(a) basic contributions continue to be payable by the employee; and

(b) the amount of basic contribution that is payable by the employee is nil.

(4) An eligible employee may revoke an election at any time.

(5) An eligible employee who makes an election under subsection (2), or revokes an election under subsection (4), must give written notice of the election or revocation to CSC.

(6) An election under subsection (2), or a revocation under subsection (4), takes effect from the first contribution day following the day on which notice of the election or revocation is given to CSC.

47 Decreases in salary

(1) If, on an anniversary of an eligible employee's birth (in this subsection referred to as the ***relevant anniversary***), his or her

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annual rate of salary is less than the highest annual rate of salary that was payable (or is deemed by a previous application of this subsection, or by subsection (3), to have been payable) to him or her on any day during the period commencing on the anniversary of his or her birth last preceding the relevant anniversary and ending on the day immediately preceding the relevant anniversary, his or her annual rate of salary on the relevant anniversary shall, unless he or she has made or makes an election under subsection (2) by virtue of a decrease in his or her annual rate of salary that occurred during that period, be deemed, for the purposes of section 46, and any subsequent application of this subsection, to be such rate as is relevant to the eligible employee under the regulations or if there is no such rate:

(a) where paragraph (b) does not apply—that highest annual rate of salary; or

(b) where, if:

(i) there had not been any decrease in his or her annual rate of salary during the period beginning immediately after the last day on which that highest annual rate of salary was payable to him or her and ending on the relevant anniversary; and

(ii) his or her annual rate of salary had been increased during the period by the same percentage as any overall percentage increase in AWOTE that occurred over the period (being an overall percentage increase worked out from estimates of changes in AWOTE in respect of the period published by the Australian Statistician, other than estimates published in substitution for earlier estimates);

the annual rate of salary of the eligible employee on the relevant anniversary (in this paragraph called the ***imputed annual rate of salary***) would be higher than that highest annual rate of salary—that imputed annual rate of salary.

(2) If the annual rate of salary payable to an eligible employee decreases, the employee may, not later than 3 months after the anniversary of his or her birth next following the date of the decrease, elect, by notice in writing to CSC, that subsection (1)

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shall not apply in relation to his or her annual salary on that anniversary of his or her birth.

(3) Where:

(a) an eligible employee makes an election under subsection (2) by virtue of a decrease in his or her annual rate of salary; and

(b) the annual rate of his or her salary on the anniversary of his or her birth next following the date of the decrease is less than the highest annual rate of salary that was payable to him or her on any day during the period commencing on the date of the decrease and ending on the day immediately preceding that anniversary;

the annual rate of his or her salary on that anniversary shall, for the purposes of section 46 and subsection (1) of this section, be deemed to be such rate as is relevant to the eligible employee under the regulations or if there is no such rate:

(c) where paragraph (d) does not apply—that highest annual rate of salary; or

(d) where, if:

(i) there had not been any decrease in his or her annual rate of salary during the period beginning immediately after the last day on which that highest annual rate of salary was payable to him or her and ending on the relevant anniversary; and

(ii) his or her annual rate of salary had been increased during the period by the same percentage as any overall percentage increase in AWOTE that occurred over the period (being an overall percentage increase worked out from estimates of changes in AWOTE in respect of the period published by the Australian Statistician, other than estimates published in substitution for earlier estimates);

the annual rate of salary of the eligible employee on the relevant anniversary (in this paragraph called the ***imputed annual rate of salary***) would be higher than that highest annual rate of salary—that imputed annual rate of salary.

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(4) Where:

(a) an eligible employee makes an election under subsection (2) by virtue of a decrease in his or her annual rate of salary;

(b) the annual rate of salary payable to him or her immediately after the decrease is less than the rate of salary that was payable (or is deemed by subsection (1) or (3) to have been payable) to him or her on the anniversary of his or her birth last preceding the date of the decrease; and

(c) the election is made before the anniversary of his or her birth next following the date of the decrease;

the annual rate of his or her salary on the anniversary of his or her birth last preceding the date of the decrease shall, for the purpose of calculating the amount of the basic contribution payable by him or her on each contribution day occurring after the date of the election and before the anniversary of his or her birth next following that date, be deemed to be the annual rate of his or her salary immediately after the decrease.

48 Supplementary contributions

An eligible employee may, on any contribution day, pay a supplementary contribution of such amount as the employee determines.

50A Deductions of contributions by designated employer

(1) If the designated employer of an eligible employee deducts a fortnightly basic contribution or a supplementary contribution from the employee's salary:

(a) the employer is to pay the amount deducted to CSC; and

(b) if an amount deducted is not paid to CSC on the day on which it is deducted and CSC directs that this paragraph is to apply in relation to the amount—the employer is to pay to CSC interest on the amount in respect of the period beginning on the day on which the amount is deducted and ending on the day immediately before the day on which the amount is paid.

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(2) CSC is to pay to the Fund any interest paid to CSC under paragraph (1)(b).

51 Leave of absence without pay

Scope of section

(1) This section applies to a person if:

(a) the person is, or at any time has been, an eligible employee; and

(b) the person, while an eligible employee, has been on leave of absence without pay for a period longer than 12 weeks; and

(c) the period of leave of absence is not an excluded period of leave of absence; and

(d) where the period of leave of absence starts after 30 June 2003—the person's designated employer has stopped making payments to the Commonwealth in respect of benefits that become payable under this Act to or in respect of the person.

Note: Subsection (3) prohibits a person to whom this section applies from making contributions during the period of leave of absence without pay.

Excluded periods (during which person is permitted to make contributions)

(2) For the purposes of subsection (1), the following periods of leave of absence of a person are, subject to subsections (2AA) and (2B), excluded periods of leave of absence:

(a) a period of leave of absence during which the person's liability to make contributions is deferred under subsection 54(1);

(b) a period of sick leave without pay;

(d) a period of compensation leave granted under the *Safety, Rehabilitation and Compensation Act 1988* or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

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(da) a period of leave of absence because of a service injury or disease (within the meaning of the *Military Rehabilitation and Compensation Act 2004*) in respect of which the person is receiving compensation under section 86 (part-time Reservists) or 127 (former member maintained in hospital) of that Act;

(f) subject to subsection (2A), a period of leave of absence for the purpose of engaging in other employment (other than employment by an approved organisation) if:

(i) in respect of a person employed in an APS Agency—the Agency Head of the Agency is satisfied that the engaging by the person in the other employment is in the interests of the Australian Public Service; or

(ii) in respect of any other person—the person's employer is satisfied that the engaging by the person in the other employment is in the employer's interests;

(g) subject to subsection (2A), a period of leave of absence for the purpose of engaging in employment by an approved organisation;

(h) subject to subsection (2BC), a period of leave of absence in respect of which there is in force an agreement made (whether before or after the end of the period) between the Minister and CSC declaring the period to be an excluded period of leave of absence.

(2AA) Subsection (2) does not apply in respect of a period, or a part of a period, of leave of absence occurring after the commencement of this subsection in respect of which the person is, because of section 45A, not entitled to pay contributions.

Certain transfers of employment (during which person is permitted to make contributions)

(2A) Subject to subsection (2BA), paragraph (2)(f) or (g) does not apply in respect of a period, or a part of a period, of leave of absence granted to a person unless the following requirements have been complied with:

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(a) if the person is ordinarily employed by one of the following Governments, authorities or bodies (the ***usual employer***):

(i) the Government of the Australian Capital Territory or of the Northern Territory;

(ii) an authority or body established by or under a law of the Australian Capital Territory or of the Northern Territory;

(iii) the Australian National University;

(v) another authority or body declared by the Minister, by signed writing, to be an authority or body to which this subparagraph applies;

the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the ***temporary employer***) makes payments to the usual employer of such amounts, or at such rates, as are determined in respect of the person during the period or the part of the period by:

(vi) if the usual employer is an authority or body established by or under a law of the Australian Capital Territory or of the Northern Territory—the Government of the Territory concerned; or

(vii) otherwise—the usual employer;

(b) if the person is ordinarily employed by one of the following authorities or bodies (the ***usual employer***) that is not an authority or body referred to in paragraph (a):

(i) an approved authority;

(ii) another authority or body referred to in subsection 159(1);

(iii) a body referred to in item 2.1 of Schedule 1 to the Superannuation (Continuing Contributions for Benefits) Regulations;

the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the ***temporary employer***):

(iv) makes payments to the usual employer of such amounts, or at such rates, as the Minister determines in respect of

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the person during the period or the part of the period; and

(v) makes those payments at the times at which payments are required to be made to the Commonwealth under section 159 by authorities or bodies to which that section applies;

(c) if the person is ordinarily employed by someone other than a Government, authority or body referred to in paragraph (a) or (b)—the person's employer in respect of the employment engaged in during the period, or the part of the period, of leave of absence (the ***temporary employer***) makes payments to the Commonwealth of such amounts or at such rates, and at such times, as the Minister determines in respect of the person during the period or the part of the period.

(2B) Subject to subsection (2BA), except in respect of a person who is not a productivity employee within the meaning of Part VIA or is, under an agreement made between the Minister and CSC, exempted from the operation of this subsection, subsection (2) does not apply in respect of a period, or a part of a period, of leave of absence granted to a person unless:

(a) if the leave of absence was granted so that the person could engage in other employment—the other employer; or

(b) otherwise—the employer by whom the person is ordinarily employed;

makes payments to CSC in respect of the person, during the period, or the part of the period, of leave of absence, of productivity contributions of the amounts worked out under section 110C.

(2BA) Subsections (2A) and (2B) have effect in relation to a particular period of leave granted to a person, or a particular part of such a period, subject to any modifications agreed between the Minister and CSC in relation to the person in respect of the period or the part of the period, as the case may be.

(2BB) In paragraphs (2)(f) and (g):

approved organisation means:

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(a) an organisation registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009* whose membership includes people who are eligible employees or members of the Public Sector Superannuation Scheme; or

(b) a body consisting of organisations referred to in paragraph (a).

Minister and CSC agreements that period is an excluded period

(2BC) An agreement made under paragraph (2)(h) in respect of a period of leave of absence may be subject to such conditions as are set out in the agreement, and, if any such conditions are contravened in relation to the period or a part of the period, that paragraph does not apply in respect of the period or the part of the period, as the case may be.

(2BD) The Minister and CSC may at any time vary or terminate an agreement made under paragraph (2)(h).

Prohibition on making contributions during period of unpaid leave

(3) A person to whom this section applies is not required or permitted, and shall be deemed not to have been required or permitted, to make contributions on any contribution day occurring during the period of leave of absence without pay, and the regulations may make provision for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of such persons.

(4) The modifications that may be made by regulations in pursuance of subsection (3) include, but are not limited to, modifications providing for benefits in addition to, or in substitution for, benefits provided for by this Act.

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Anticipating that a person will be on unpaid leave for more than 12 weeks

(5) For the purposes of this section, an eligible employee who is on leave of absence without pay but has not been on leave of absence without pay for a period that exceeds 12 weeks, but is expected to be on leave of absence without pay for a period exceeding 12 weeks, shall, except as otherwise provided by the regulations, be deemed to have been on leave of absence without pay for a period exceeding 12 weeks.

Section does not apply to maternity and parental leave etc.

(6) A person who is on leave of absence without pay for reasons related to:

(a) the birth of a child of the person or of the spouse, or de facto partner within the meaning of the *Acts Interpretation Act 1901*, of the person; or

(b) the termination (otherwise than by child-birth) of a pregnancy of the person; or

(c) the adoption of a child by the person;

is taken, for the purposes of this section, not to be absent during that period on leave of absence without pay.

(7) The reference in paragraph (6)(a) to the birth of a child of the person includes a reference to the birth of a child who is a child of the person within the meaning of the *Family Law Act 1975*.

51AA Leave of absence without pay where basic contributions are of 0%

(1) This section applies to a person if:

(a) the person is, or at any time has been, an eligible employee; and

(b) the person, while an eligible employee, has been on leave of absence without pay for a period of more than 12 weeks; and

(c) paragraph 51(2)(b), (d), (da), (f) or (g) applies in respect of the period; and

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(d) the person has (whether before or after the period of leave began) made an election under subsection 46(2) (contributions of 0%) that is in force.

(2) Despite the election made under subsection 46(2), the person is required to make contributions, on each contribution day occurring during the period of leave, of the amount that is payable under subsection 46(1).

Note: Subsection 46(1) requires a person to pay 5% of his or her fortnightly rate of salary. However, the person would be permitted to make contributions of 0% after the period of leave ends (without making a further election).

(3) For the purposes of this section, an eligible employee is taken to have been on leave of absence without pay for a period of more than 12 weeks if:

(a) the employee has been on leave of absence without pay for a period of less than 12 weeks; but

(b) the employee is expected to be on leave of absence without pay for a period of more than 12 weeks.

(4) The regulations may modify the operation of this section in relation to:

(a) a person to whom this section applies; or

(b) a prescribed class of such persons.

51A Maternity and parental leave

(1) This section applies to a person:

(a) who is, or at any time has been, an eligible employee; and

(b) who, on or after 1 July 1990, has been, while an eligible employee, on leave of absence without pay for reasons related to:

(i) the birth of a child of the person or of the spouse, or de facto partner within the meaning of the *Acts Interpretation Act 1901*, of the person; or

(ii) the termination (otherwise than by child-birth) of a pregnancy of the person; or

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(iii) the adoption of a child by the person.

(2) Subject to this section, where this section applies to a person in respect of a period of leave of absence, the person is not required or permitted to make contributions on any contribution day occurring during that period.

(3) A person to whom this section applies in respect of a period of leave of absence may, by writing addressed to CSC, elect to pay contributions on any contribution day that:

(a) occurs during that period of leave of absence; and

(b) is specified in the instrument of election; and

(c) is not a contribution day earlier than the day of election.

(4) Where a person makes an election under subsection (3), the person is required to pay, on each contribution day to which the election relates, the contribution or contributions (as the case may be) that, but for subsection (2), would be payable under subsection 46(1) (despite any election in force under subsection 46(2)) by the person on that day.

Note: Subsection (4) requires a person to pay 5% of his or her fortnightly rate of salary even if an election by the person to pay 0% of that salary is in force under subsection 46(2). However, the person would be permitted to make contributions of 0% after the period covered by the election under subsection (3) ends (without making a further election under subsection 46(2)).

(5) For the purposes of the definition of ***period of contributory service*** in subsection 3(1):

(a) if a person to whom this section applies in respect of a period of leave of absence does not make an election under subsection (3)—the whole of the period of leave of absence is taken to be a non-contributory period of service for the person; or

(b) if the person elects to pay contributions in respect of a number, but not all, of the contribution days included in the period of leave of absence:

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(i) there must be deducted from the number of days included in the period of leave of absence 14 days in respect of each of those contribution days; and

(ii) the period consisting of the resulting number of days is taken to be a non-contributory period of service for the person.

(6) The regulations may make provisions for modifying this Act, or a provision of this Act specified in the regulations, in the application of this Act or that provision to and in relation to a person to whom this section applies, or to and in relation to a prescribed class of such persons.

(7) The modifications that may be made by the regulations in pursuance of subsection (6) include, but are not limited to, modifications providing for benefits in addition to, or in substitution for, benefits provided for by this Act.

(8) The reference in subparagraph (1)(b)(i) to the birth of a child of a person includes a reference to the birth of a child who is a child of the person within the meaning of the *Family Law Act 1975*.

52 Payment of contributions where eligible employee on leave of absence without pay or at less than full pay

Where an eligible employee is on leave of absence, either without pay or with less than full pay, CSC may, upon application in writing by or on behalf of the eligible employee, permit him or her to make payment of the contributions falling due during the absence in such instalments and at such times as CSC approves.

53 Payment of contributions

(1) Contributions payable under this Act shall, subject to subsection (2), be paid to CSC by or on behalf of the person liable to pay the contributions.

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(2) Contributions payable under this Act by an eligible employee may be deducted from his or her salary and any contributions so deducted shall be paid to CSC.

(3) CSC shall pay all contributions received by it under this section into the Fund.

54 Deferment of contributions of contributors under Defence Force Retirement and Death Benefits Act

(1) Where an eligible employee is or becomes liable to contribute under the Defence Force Retirement and Death Benefits Act or the MSB Act, his or her liability to make contributions under this Act is deferred until, for any reason (including death):

(a) he or she ceases (otherwise than by reason of the operation of section 18 of the Defence Force Retirement and Death Benefits Act) to be liable to contribute under that Act; or

(b) he or she ceases to be an eligible employee;

whichever first occurs, but, upon his or her so ceasing to be liable or so ceasing to be an eligible employee, the amount of the deferred contributions shall be paid to CSC.

(2) Subsection (1) does not apply to an eligible employee who, immediately before becoming liable to contribute under the Defence Force Retirement and Death Benefits Act or the MSB Act, is entitled to retirement pay or pension (as the case requires) under that Act or pension under the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time or under any other Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time.

(3) Subsection (1) does not apply, and shall be deemed never to have applied, to an eligible employee who, upon ceasing to be liable to contribute under the Defence Force Retirement and Death Benefits Act, becomes entitled to retirement pay under section 23 of that Act.

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Part IVA—Retirement on ground of invalidity

Division 1—Preliminary

54A Interpretation

In this Part, unless the contrary intention appears:

Comcare means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established under the *Safety, Rehabilitation and Compensation Act 1988*.

compensation leave, in relation to an eligible employee, means leave of absence from his or her employment due to an incapacity for work resulting from an injury in respect of which:

(a) if the *Safety, Rehabilitation and Compensation Act 1988* or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* applies in relation to the eligible employee—compensation is payable under section 19 or 22 of that Act; or

(aa) if the *Military Rehabilitation and Compensation Act 2004* applies in relation to the eligible employee—compensation is payable under section 86 (part-time Reservists) or 127 (former member maintained in hospital) of that Act; or

(b) in any other case—payments similar in nature to payments under those sections are payable.

totally and permanently incapacitated has the meaning given by section 54B.

54B Meaning of *totally and permanently incapacitated*

For the purposes of this Part a person is totally and permanently incapacitated if, because of a mental or physical condition, it is unlikely that the person will ever be able to work in any employment or hold any office for which the person:

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(a) is reasonably qualified by education, training or experience; or

(b) could become reasonably qualified after retraining.

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Division 2—Certification by CSC

54C Eligible employee not to be retired on ground of invalidity without certificate from CSC

(1) In spite of anything contained in any Act, industrial award or contract of employment, an eligible employee who has not reached his or her maximum retiring age is not, after the commencement of this section, capable of being retired from the employment or office by virtue of which he or she is an eligible employee on the ground that, because of any mental or physical condition, the eligible employee is unable to perform his or her duties, unless CSC has certified in writing that, if the eligible employee is so retired, he or she will be entitled to receive benefits under Division 4 of Part V.

(2) CSC must not give a certificate in respect of an eligible employee under subsection (1) unless CSC has approved the retirement of the eligible employee on the ground of invalidity in accordance with this Part.

(3) In subsection (1), a reference to an eligible employee being retired from employment or office includes a reference to the services of the eligible employee being otherwise terminated.

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Division 3—Assessment process

54D Interpretation

In this Division:

employee, in relation to a licensed administering authority, means a person who under the *Safety, Rehabilitation and Compensation Act 1988* is an employee of the licensed administering authority.

licensed administering authority means a Commonwealth authority that holds a Class 2 Licence or a Class 3 Licence under Part VIIIA, or a corporation that holds a Class B Licence under Part VIIIB, of the *Safety, Rehabilitation and Compensation Act 1988*.

retirement means retirement on the ground of invalidity.

54E Request for approval of retirement

A request to CSC for the approval of the retirement of an eligible employee:

(a) may be made by:
  (i) the eligible employee; or
  (ii) the person or body by which the eligible employee is employed; or
  (iii) any other person authorised under the regulations; and

(b) if the regulations make provision as to the manner in which the request is to be made—must be made in accordance with the regulations.

54F Assessment panel

(1) Subject to subsection 54H(1), CSC must appoint a panel consisting of such number of persons as CSC determines to assist it in reaching a decision whether or not to approve the retirement of an eligible employee.

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(2) The members of the panel must be persons with expertise in the assessment of invalidity claims for the purposes of superannuation.

(3) CSC:

(a) may require the eligible employee to undergo such medical examinations as it considers necessary and to provide such information as the members of the panel require; and

(b) must make available to the members of the panel any medical or other evidence that it has concerning the eligible employee and that is relevant to his or her proposed retirement.

(4) The members of the panel must, within the period applicable under subsection (5), make recommendations in writing to CSC, giving reasons for their recommendations:

(a) on the question whether the eligible employee is totally and permanently incapacitated; and

(b) on any other matter that the panel considers relevant or CSC may require.

(5) Recommendations under subsection (4) are to be made in relation to an eligible employee not later than 2 years after:

(a) if the eligible employee is on sick leave as a result of the condition in relation to which the request was made to CSC to approve his or her retirement—the commencement of that sick leave; or

(b) if the eligible employee is on compensation leave as a result of that condition—the day on which the request was made to CSC.

54G CSC to seek recommendations

(1) If the request to CSC was made in relation to a condition in respect of which the eligible employee is entitled to receive compensation under the *Safety, Rehabilitation and Compensation Act 1988*, CSC must, subject to subsection 54H(1):

(a) if the eligible employee is an employee of a licensed administering authority—also ascertain whether or not the licensed administering authority recommends that the eligible

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employee be retired because he or she is totally and permanently incapacitated; or

(b) if the eligible employee is not an employee of a licensed administering authority—also ascertain whether or not Comcare recommends that the eligible employee be retired because he or she is totally and permanently incapacitated.

(2) If the request to CSC was made in relation to a condition in respect of which the eligible employee is entitled to receive compensation under the *Military Rehabilitation and Compensation Act 2004* or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, CSC may, subject to subsection 54H(1), also ascertain the views of the Military Rehabilitation and Compensation Commission as to whether or not the employee be retired because he or she is totally and permanently incapacitated.

54H CSC to decide whether to approve retirement

(1) If, after considering:

(a) any medical report submitted with the request to approve the retirement of an eligible employee; and

(b) any other matter that it considers relevant;

CSC is satisfied that, because of his or her mental or physical condition, the eligible employee is totally and permanently incapacitated, CSC may decide to approve the retirement of the eligible employee without appointing a panel of persons under subsection 54F(1) or seeking the recommendations of Comcare or a licensed administering authority or the views of the Military Rehabilitation and Compensation Commission, as the case may be, under section 54G.

(2) If subsection (1) does not apply, CSC, after:

(a) taking into consideration the recommendations made to CSC under subsection 54F(4) and section 54G and any views given to CSC under that section; and

(b) ascertaining whether it is practicable for the eligible employee to find employment, or to be appointed to an office, for which he or she is reasonably qualified by

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education, training or experience or could become reasonably qualified after retraining;

must decide whether or not to approve the retirement of the eligible employee unless it defers its decision under subsection (2A).

(2A) If, after taking the steps mentioned in paragraphs (2)(a) and (b), CSC thinks that it should allow further time within which to make a decision whether or not to approve the retirement of an eligible employee, CSC may:

(a) defer making such a decision until such time as appears to it to be appropriate; and

(b) if it appears to it to be desirable in the circumstances, before making a decision again have the matter considered by a panel mentioned in section 54F.

(2B) Where CSC wants to have the matter considered again by a panel mentioned in section 54F, that section, other than subsection (5), applies, subject to subsection (2C), in relation to the matter in the same way as it applied in relation to the initial consideration of the matter by such a panel.

(2C) In the application of section 54F as mentioned in subsection (2B), subsection 54F(4) applies as if the period within which the members of the panel are required to make recommendations in writing to CSC were such period as is specified by CSC in the particular case.

(2D) If the matter is again considered by a panel of persons, CSC is to take the recommendations of the panel into consideration before making its decision.

(3) A decision of CSC to approve or not to approve the retirement of an eligible employee must be in writing.

54J Eligible employee etc. to be informed of decision of CSC

CSC must send a copy of its decision to approve or not to approve the retirement of an eligible employee to:

(a) the eligible employee; and

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(b) the person or body by whom the eligible employee is employed;

together with:

(c) a written statement of the reasons for the decision; and

(d) if a panel was appointed under subsection 54F(1) to assist CSC in making its decision—a copy of the recommendations of the panel.

54JA Other provisions relating to invalidity assessment

(1) Where CSC:

(a) for the purposes of subsection 7(2) gives consideration to whether a person was, because of physical or mental incapacity, totally and permanently incapacitated within the meaning of Part IVA; or

(b) for the purposes of a provision of section 122 gives consideration to whether a person would have ceased to be an eligible employee because of retirement on the ground of invalidity; or

(c) for the purposes of a provision of section 138 or 146MC gives consideration to whether a person has become totally and permanently incapacitated within the meaning of Part IVA;

the following provisions of this section apply.

(2) CSC, if it thinks it desirable in the particular case, may appoint a panel consisting of such number of persons as CSC determines to assist it in its consideration of a matter mentioned in subsection (1).

(3) The members of the panel must be persons with expertise in the assessment of invalidity claims for the purposes of superannuation.

(4) CSC:

(a) may require the person to undergo such medical examinations as it considers necessary and to provide such information as the members of the panel require; and

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(b) must make available to the members of the panel any medical or other evidence that it has concerning the person and that is relevant in the circumstances.

(5) The members of the panel must, within such period as is specified by CSC, make recommendations in writing to CSC, giving reasons for their recommendations:

(a) on the matter under consideration by CSC; and

(b) on any other matter that the panel considers relevant or CSC may specify.

(6) If the matter under consideration relates to a condition in respect of which the person is, or was, entitled to receive compensation under the *Safety, Rehabilitation and Compensation Act 1988*, CSC may ascertain, in relation to that matter, the views of any Commonwealth authority that, under that Act, is or has been, liable to pay compensation in respect of the person.

(6A) If the matter under consideration relates to a condition in respect of which the person is, or was, entitled to receive compensation under the *Military Rehabilitation and Compensation Act 2004* or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, CSC may ascertain, in relation to that matter, the views of the Military Rehabilitation and Compensation Commission.

(7) The fact that, in relation to a matter, CSC has previously under this section received the recommendations of a panel or ascertained the views of a Commonwealth authority does not prevent CSC, if it wishes to give the matter further consideration, from again appointing such a panel under this section or ascertaining those views.

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Division 4—Pre-assessment payments and rehabilitation

54K Determination of requests, payments and rehabilitation programs to be in accordance with the Rules for the administration of the Public Sector Superannuation Scheme

Divisions 2 and 3 of Part 12 of the Rules for the administration of the Public Sector Superannuation Scheme apply in relation to a person to whom a request under section 54E relates as if:

(aa) any reference in those Divisions to an approved medical practitioner were a reference to an approved medical practitioner within the meaning of this Act; and

(b) any reference in Division 2 to a fortnightly rate of salary were a reference to a fortnightly rate of salary within the meaning of this Act; and

(ba) the reference in paragraph 12.2.4(c) to a member were a reference to an eligible employee within the meaning of this Act; and

(c) any reference in rule 12.2.5 to partial invalidity pension were a reference to partial invalidity pension within the meaning of this Act; and

(d) subparagraph 12.2.5(c)(i) were amended by omitting "exercised the option under rule 4.3.4" and substituting "made an election under section 68, 69, 71 or 72; and

(e) rule 12.2.6 were omitted and the following rule substituted:

"12.2.6 The amount applicable to a member for the purposes of paragraph 12.2.5(b) or subparagraph 12.2.5(c)(ii) is 50% of the fortnightly rate of salary applicable to the person."; and

(f) rule 12.2.7 were omitted.

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54L Making of payments

(1) Payments to a person under Division 2 of Part 12 of the Rules for the administration of the Public Sector Superannuation Scheme as made applicable in relation to the person by section 54K:

(a) are to be made on contribution days; and

(b) are taken, for the purposes of section 53, to be payments of salary.

(2) A payment referred to in subsection (1) is to be made outs of the Consolidated Revenue Fund, which is appropriated accordingly.

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Division 6—Administrative costs

54ZA Costs to be paid from Consolidated Revenue Fund

The following costs:

(a) any cost incurred in relation to a panel of persons appointed under subsection 54F(1) or 54JA(2);

(b) the cost of any medical examination that a person is required to undergo under subsection 54F(3) or 54JA(4);

(c) the cost of any rehabilitation program met by CSC under Division 3 of Part 12 of the Rules for the administration of the Public Sector Superannuation Scheme as made applicable in relation to the person by section 54K;

are payable from the Consolidated Revenue Fund, which is appropriated accordingly.

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Part V—Eligible employees' benefits

Division 1A—Application of SIS Act

55A Accrual of benefits to be subject to SIS Act

Despite any other provision of this Act, benefits do not accrue to an eligible employee if, under the SIS Act, the accrual of those benefits is not permitted.

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Division 1—Age retirement benefit

55 Entitlement to age retirement benefit

(1) Where a person ceases to be an eligible employee on or after attaining the age of 65 years, otherwise than by reason of death, then, if the person does not make an election under section 62 and subject to subsection (3) of this section, the person is entitled to:

(a) standard age retirement pension in accordance with subsection 56(1), (2), (3) or (5) or paragraph 57AA(4)(a); and

(b) if he or she does not make an election under section 64, additional age retirement pension in accordance with subsection 57(1) or (1A) or paragraph 57AA(4)(b); and

(c) lump sum benefit (if any) in accordance with subsection 57(2) or paragraph 57AA(4)(c).

(2) Where a person ceases to be an eligible employee on or after attaining the age of 60 years, but before attaining the age of 65 years, otherwise than by reason of death, then, if the person does not make an election under section 62 and subject to subsections (2A) and (3) of this section, the person is entitled to:

(a) standard age retirement pension in accordance with subsection 56(4) or (5) or paragraph 57AA(4)(a); and

(b) if he or she does not make an election under section 64, additional age retirement pension in accordance with subsection 57(1) or (1A) or paragraph 57AA(4)(b); and

(c) lump sum benefit (if any) in accordance with subsection 57(2) or paragraph 57AA(4)(c).

(2A) Subsection (2) does not apply to a person who ceases to be an eligible employee by reason of retirement on the ground of invalidity unless at the time that he or she ceases to be an eligible employee he or she has attained his or her maximum retiring age.

(3) Subsections (1) and (2) do not apply to a person whose period of contributory service is less than 1 year.

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(4) Payment of benefit to which a person becomes entitled under this section may be postponed under Part VIB.

56 Rate of standard age retirement pension

(1A) This section does not apply to a person who makes an election under subsection 57AA(1).

(1) Where:

(a) a person is entitled to standard age retirement pension by virtue of subsection 55(1); and

(b) his or her period of contributory service is not less than 30 years;

then, subject to subsections (2) and (5) of this section, the annual rate of that pension is 50 per centum of his or her final annual rate of salary.

(2) Where:

(a) a person is entitled to standard age retirement pension by virtue of subsection 55(1); and

(b) the person's period of contributory service before attaining the age of 65 years exceeds 30 years;

then, subject to subsection (5), the annual rate of that pension is:

(c) if that period of contributory service consists of 30 complete years and a part of a year—such percentage of the person's final annual rate of salary as is calculated in accordance with the formula:

$$50 + \frac{D \times 0.25}{365};$$

where:

D is the number of days included in that part of a year; or

(d) if that period of contributory service consists exactly of a number of complete years, or exceeds 40 years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in

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that period, is applicable in accordance with Table 1 in Schedule 1; or

(e) if paragraphs (c) and (d) do not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in that period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 0.25}{365};$$

where:

P is the percentage referred to in paragraph (d); and

D is the number of days included in that part of a year.

(3) Where:

(a) a person is entitled to a standard age retirement pension by virtue of subsection 55(1); and

(b) his or her period of contributory service is less than 30 years;

then, subject to subsection (5), the annual rate of that pension is:

(c) if that period of contributory service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to that number of years, is applicable in accordance with Table 2 in Schedule 1; or

(d) if that period of contributory service consists of a number of complete years and a part of a year—such percentage of the person's final annual rate of salary as is ascertained in accordance with the formula:

$$P_1 + \frac{D \times P_2}{365};$$

where:

$\boldsymbol{P_1}$ is the percentage referred to in paragraph (c); and

D is the number of days included in that part of a year; and

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P *2* is equal to:

(i) if the person's period of contributory service is not less than 20 years—1; or

(ii) if the person's period of contributory service is less than 20 years—2.

(4) Where a person is entitled to standard age retirement pension by virtue of subsection 55(2), then, subject to subsection (5), the annual rate of that pension is:

(a) if the person's period of contributory service consists exactly of a number of complete years, or exceeds 40 years—such percentage of the person's final annual rate of salary as, having regard to the person's age on his or her last day of service and to the number of complete years included in the person's period of contributory service, is applicable in accordance with Schedule 2; or

(b) if paragraph (a) does not apply and the person's period of contributory service consists of a number of complete years and of a part of a year—such percentage of the person's final annual rate of salary as is calculated in accordance with the formula:

$$P_1 + \frac{D \times (P_2 - P_1)}{365};$$

where:

P *1* is the percentage referred to in paragraph (a); and

D is the number of days included in that part of a year; and

P *2* is such percentage of the person's final annual rate of salary as, having regard to his or her age on his or her last day of service and the number of complete years that would be included in the person's period of contributory service if the part of a year included in it were taken to be a complete year, is applicable in accordance with Schedule 2.

(5) If:

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(a) a person is entitled to standard age retirement pension by virtue of subsection 55(1) or (2); and
(b) the person's surcharge debt account is in debit when the pension becomes payable to the person; and
(c) the person does not make an election under section 80B or 80C;

the annual rate of the pension is the rate worked out as provided in subsection 80D(1).

57 Rate of additional age retirement pension and amount of lump sum benefit

(1AA) This section does not apply to a person who makes an election under subsection 57AA(1).

(1) Where a person is entitled to additional age retirement pension by virtue of section 55, then, subject to subsection (1A), the annual rate of that pension is:
(a) an amount per annum equal to the amount (in this section referred to as the ***base amount***) that is the product of his or her accumulated contributions and such factor as, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her in accordance with regulations made for the purposes of this paragraph; or
(b) if the rate ascertained in accordance with paragraph (a) of this subsection is greater than 20 per centum of his or her final annual rate of salary—20 per centum of his or her final annual rate of salary.

(1A) If:
(a) a person is entitled to additional age retirement pension by virtue of section 55; and
(b) the person's surcharge debt account is in debit when the pension becomes payable to the person; and
(c) the person makes an election under section 80C;

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the annual rate of that pension is the rate worked out as provided in subsection 80D(2).

(2) Where the base amount is greater than an amount (in this subsection referred to as the ***maximum amount***) equal to 20 per centum of the amount per annum that is his or her final annual rate of salary, there shall be paid to him or her a lump sum benefit equal to the amount by which his or her accumulated contributions exceed an amount ascertained by dividing the maximum amount by the factor referred to in paragraph (1)(a).

57AA Election to receive age retirement benefit at reduced rate

(1) Subject to subsection (2), a person who becomes, or is about to become, entitled to standard age retirement pension payable under this Division may, not later than 3 months after but not earlier than 3 months before he or she becomes so entitled, by notice in writing to CSC, elect to be paid age retirement benefit at a reduced rate under this section.

(2) A person who has made an election under section 76A or 110T may not make an election under subsection (1).

(3) If a person makes an election under section 110T after making an election under subsection (1), the person is taken not to have made the election under subsection (1).

(4) If a person makes an election under subsection (1):

(a) the annual rate at which standard age retirement pension is payable to the person is 93% of the annual rate at which that pension would be payable to the person if he or she did not make the election; and

(b) if the person is entitled to additional age retirement pension, the annual rate of that pension is:

(i) an amount per annum equal to the amount (***base amount***) worked out by multiplying the person's accumulated contributions by the factor that, having regard to the person's age on his or her last day of service and such other matters (if any) as are prescribed,

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is applicable to the person under regulations made for the purposes of this paragraph; or

(ii) if the rate worked out under subparagraph (i) is greater than 20% of his or her final annual rate of salary—20% of the person's final annual rate of salary; and

(c) if the base amount is greater than an amount (***maximum amount***) equal to 20% of the person's final annual rate of salary, the person is to be paid a lump sum benefit equal to the amount by which his or her accumulated contributions exceed an amount worked out by dividing the maximum amount by the factor referred to in subparagraph (b)(i).

57A Age retirement pension on election under section 76A

Where a person:

(a) makes an election under section 76A; and

(b) would, if he or she had retired otherwise than on the ground of invalidity, have been entitled to a standard age retirement pension under section 55;

then, on the day on which the person ceases to be entitled to an invalidity pension because of the election, the person becomes entitled to:

(c) standard age retirement pension at the rate that would have been the rate of that pension at the time of the election if he or she had retired otherwise than on the ground of invalidity; and

(d) if the person did not make an election under section 68 or 71 at the time of his or her retirement, additional age retirement pension in accordance with subsection 57(1) as if his or her accumulated contributions consisted only of his or her accumulated basic contributions.

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Division 2—Early retirement benefit

57B Definition

(1) In this Division, ***fixed-term employee*** means:

(a) a person appointed under section 58 of the Public Service Act; or

(b) an APS employee on a fixed term; or

(d) a person who holds an appointment, or is employed, otherwise than under the Public Service Act, by the Commonwealth for a fixed term; or

(e) a person who holds an appointment, or is employed, by an approved authority for a fixed term.

(2) For the purposes only of this Division, if, after ceasing to hold an office of Secretary under the Public Service Act, a person is immediately engaged under section 60 of that Act, the following provisions have effect:

(a) if the person ceased to hold the office of Secretary because the office was abolished, the office is to be taken to have been abolished at the same time as the engagement under that section ends, and the person is to be taken to have ceased to be an eligible employee because of the abolition of the office;

(b) if the person ceased to hold the office of Secretary because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the engagement under that section ends, and the person is to be taken to have ceased to be an eligible employee because of the expiration of the term of the appointment;

(c) if the person ceased to hold the office of Secretary because his or her appointment to the office was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the engagement under that section ends, and the person is to be taken to have ceased to be an eligible employee because of the termination of the appointment.

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(3) For the purposes only of this Division, if, after ceasing to hold a Commonwealth office within the meaning of Part IV of the *Public Service Act 1922*, a person continues as an officer by virtue of a direction under subsection 87ZCA(1) of that Act, the following provisions have effect:

(a) if the person ceased to hold the Commonwealth office because the office was abolished, the office is to be taken to have been abolished at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the abolition of the office;

(b) if the person ceased to hold the Commonwealth office because the term of his or her appointment to the office expired, that term is to be taken to have expired at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the expiration of the term of the appointment;

(c) if the person ceased to hold the Commonwealth office because his or her appointment was terminated before the expiration of the term of the appointment, the appointment is to be taken to have been terminated at the same time as the person ceases to be an officer by virtue of the direction, and the person is to be taken to have ceased to be an eligible employee because of the termination of the appointment.

58 Early retirement—voluntary or involuntary retirement

(1) For the purposes of this Act, a person shall be deemed to have ceased to be an eligible employee by reason of early retirement if:

(a) the person is deemed by subsection (2) to have retired voluntarily; or

(b) the person is deemed by subsection (3) to have retired involuntarily; or

(c) the person is deemed by section 58A or 58B to have retired involuntarily.

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(2) Where:

(a) the minimum retiring age of a person who is an eligible employee is less than 60 years; and

(b) on or after reaching the person's minimum retiring age but before reaching the age of 60 years, the person ceases to be an eligible employee for any reason other than death or involuntary retirement;

the person shall, for the purposes of this Act, be deemed to have retired voluntarily.

(3) Where a person ceases to be an eligible employee because:

(a) if the person has attained his or her minimum retiring age—the person is retired, otherwise than at his or her own request;

(aa) in the case of an SES employee—the person retires under section 37 of the Public Service Act;

(b) the person's employment or appointment is terminated on a ground similar to a ground specified in section 76D, 76L or 76W of the *Public Service Act 1922*, as in force immediately before its repeal;

(d) except in the case of a temporary employee—his or her position or office ceases to exist, whether by reason of its being abolished or otherwise;

(h) the person retires, or the person's employment or appointment is terminated, in prescribed circumstances;

the person shall, for the purposes of this Act, be deemed to have retired involuntarily.

(3B) The termination, under the *Public Sector Management Act 1994* of the Australian Capital Territory, of an appointment made under that Act is not to be taken to be the termination of the appointment for the purposes of paragraph (3)(b) of this section if:

(a) the appointment was made on probation; and

(b) the appointment had not been confirmed when the termination was effected.

(4) Subsections (2) and (3) and sections 58A and 58B do not apply to a person:

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(a) who ceases to be an eligible employee by reason of retirement on the ground of invalidity; or

(b) whose period of contributory service is less than 1 year.

(5) If the question arises whether employment mentioned in paragraph (3A)(b) is equivalent employment, the Minister may determine the matter.

58A Special provision regarding certain holders of statutory offices

(1) Subsection (2) applies to a person who:

(a) ceases to be an eligible employee; and

(b) immediately before ceasing to be an eligible employee, is the holder of a statutory office (in this section called the ***relevant statutory office***); and

(c) immediately before becoming the holder of the relevant statutory office:

(i) was an APS employee or a Secretary (within the meaning of the Public Service Act), other than a fixed-term employee; or

(ii) was a fixed-term employee (other than a person referred to in paragraph 57B(1)(d) or (e)) who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed to the relevant statutory office; or

(iii) was an employee (other than as a fixed-term employee) of the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office; or

(iv) as a fixed-term employee, held office under an appointment, or was employed, by the authority or body that is liable to pay the remuneration of the holder of the relevant statutory office and would have been deemed,

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by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed to the relevant statutory office; or

(v) held a statutory office and would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not been appointed to the relevant statutory office.

(2) A person to whom this subsection applies is to be deemed, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to the relevant statutory office if:

(a) the person was eligible to be re-appointed to the office; and

(b) he or she desired to be so re-appointed; and

(c) he or she was not so re-appointed.

(3) If:

(a) a person who is the holder of a statutory office ceases to be an eligible employee on the expiration of the term of his or her appointment to the office; and

(b) the person is not a person to whom subsection (2) applies; and

(c) the person is eligible to be re-appointed to the office; and

(d) although the person desires to be so re-appointed, he or she is not re-appointed;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

(4) If:

(a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of

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the appointment, that subsection (2) is not to apply to the person in relation to the office; and

(b) the term of the appointment expires; and

(c) the person is eligible to be re-appointed to the office; and

(d) although the person desires to be so re-appointed, he or she is not re-appointed; and

(e) but for this subsection, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

(5) If:

(a) it is provided in the document by means of which a person is appointed to a statutory office, or it is a term or condition of the appointment, that subsection (3) is not to apply to the person in relation to the office; and

(b) the term of the appointment expires; and

(c) the person is eligible to be re-appointed to the office; and

(d) although the person desires to be so re-appointed, he or she is not re-appointed; and

(e) but for this subsection, the person would not have been deemed, for the purposes of this Act, to have retired involuntarily;

the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

(6) If a person who is the holder of a statutory office ceases to be an eligible employee because the person's appointment to the statutory office is terminated before the expiration of the term of the appointment, the following provisions have effect:

(a) if:

(i) the document by means of which the person was appointed to the office provided that, in the events that have happened, the person was not to be deemed to have retired involuntarily for the purposes of this Act; or

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(ii) it was a term or condition of the appointment that, in the events that have happened, the person was not to be deemed to have retired involuntarily for the purposes of this Act;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily;

(b) in any other case, the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

(7) The document by means of which a person is appointed to a statutory office must not include provision of the kind mentioned in paragraph (5)(a) except with the approval of the Minister.

(8) An appointment of a person must not be made on the basis that it is a term or condition of the appointment that subsection (3) is not to apply to the person in relation to the office unless the Minister has approved the making of the appointment on that basis.

(9) The inclusion of a provision in a document in contravention of subsection (7) is ineffective for the purposes of paragraph (5)(a), but the document is as effective in all other respects as it would be apart from this subsection.

(10) If an appointment is made in contravention of subsection (8), the term or condition referred to in that subsection is ineffective, but all other terms and conditions of the appointment are as effective in all other respects as they would be apart from this subsection.

(11) In the case of a person who has ceased to be an eligible employee on more than one occasion, this section cannot have effect except in relation to the last such occasion.

58B Special provision regarding certain fixed-term employees

(1) Subsection (2) applies to a person who:

(a) ceases to be an eligible employee; and

(b) immediately before ceasing to be an eligible employee, is a fixed-term employee under employment referred to in this section as the ***latest employment***; and

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(c) immediately before becoming a fixed-term employee under the latest employment:

(i) was an APS employee or a Secretary (within the meaning of the Public Service Act), other than a fixed-term employee; or

(ii) was an employee (other than a fixed-term employee) of the authority or body that appointed him or her as a fixed-term employee under the latest employment; or

(iii) was employed by the Commonwealth (otherwise than as a fixed-term employee) under the same law (not being the Public Service Act) as that under which he or she was employed in the latest employment; or

(iv) was a fixed-term employee (other than a person referred to in paragraph 57B(1)(d) or (e)) who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or

(v) was:

(A) a fixed-term employee of the authority or body that appointed or employed him or her under the latest employment; or

(B) a fixed-term employee of the Commonwealth under the same law (not being the Public Service Act) as that under which he or she was employed in the latest employment;

who would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of the appointment or employment by virtue of which the person was a fixed-term employee had he or she not been appointed or employed as a fixed-term employee under the latest employment; or

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(vi) held a statutory office and would have been deemed, by a provision of this Division (including this section) or otherwise, for the purposes of this Act, to have retired involuntarily on the expiration of the term of his or her appointment to that office had he or she not become a fixed-term employee.

(2) A person to whom this subsection applies is to be deemed, for the purposes of this Act, to have retired involuntarily on the expiration of the fixed term of his or her appointment or employment as a fixed-term employee if:

(a) the person was eligible to be re-appointed or re-employed as a fixed-term employee; and

(b) he or she desired to be so re-appointed or re-employed; and

(c) he or she was not so re-appointed or re-employed.

(3) If:

(a) a person who is a fixed-term employee ceases to be an eligible employee on the expiration of the fixed term of his or her appointment or employment as a fixed-term employee; and

(b) the person is not a person to whom subsection (2) applies; and

(c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and

(d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

(4) If:

(a) it is provided in a document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that subsection (2) is not to apply to the person in relation to the appointment or employment; and

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(b) the fixed term of the appointment or employment expires; and

(c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and

(d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed; and

(e) but for this subsection, the person would have been deemed to have retired involuntarily;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily.

(5) If:

(a) it is provided in a document by means of which a person is appointed or employed as a fixed-term employee, or it is a term or condition of the appointment or employment, that subsection (3) is not to apply to the person in relation to the appointment or employment; and

(b) the fixed term of the appointment or employment expires; and

(c) the person is eligible to be re-appointed or re-employed as a fixed-term employee; and

(d) although the person desires to be so re-appointed or re-employed, he or she is not so re-appointed or re-employed; and

(e) but for this subsection, the person would not have been deemed to have retired involuntarily;

the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

(6) If a person who is a fixed-term employee ceases to be an eligible employee because his or her appointment or employment is terminated before the expiration of the fixed term, the following provisions have effect:

(a) if:

(i) the document by means of which the person was appointed or employed in the position or office provided

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that, in the events that have happened, the person was not to be deemed to have retired involuntarily for the purposes of this Act; or

(ii) it was a term or condition of the appointment or employment that, in the events that have happened, the person was not to be deemed to have retired involuntarily for the purposes of this Act;

the person is not to be deemed, for the purposes of this Act, to have retired involuntarily;

(b) in any other case, the person is to be deemed, for the purposes of this Act, to have retired involuntarily.

(7) A document by means of which a person is appointed or employed as a fixed-term employee must not include provision of the kind mentioned in paragraph (5)(a) except with the approval of the Minister.

(8) A person must not be appointed or employed as a fixed-term employee on the basis that it is a term or condition of the appointment or employment that subsection (3) is not to apply to the person in relation to the appointment or employment unless the Minister has approved the appointment or employment of the person on that basis.

(9) The inclusion of a provision in a document in contravention of subsection (7) is ineffective for the purposes of paragraph (5)(a), but the document is as effective in all other respects as it would be apart from this subsection.

(10) If a person is appointed or employed in contravention of subsection (8), the term or condition referred to in that subsection is ineffective, but all other terms and conditions of the appointment or employment are as effective in all other respects as they would be apart from this subsection.

(11) In the case of a person who has ceased to be an eligible employee on more than one occasion, this section cannot have effect except in relation to the last such occasion.

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59 Entitlement to early retirement benefit

(1) Where a person who has not attained the age of 60 ceases to be an eligible employee by reason of early retirement, then, if the person does not make an election under section 62, he or she is entitled to:

(a) standard early retirement pension in accordance with section 60 or paragraph 61AB(4)(a); and

(b) if he or she does not make an election under section 64, additional early retirement pension in accordance with subsection 61(1) or (1A) or paragraph 61AB(4)(b); and

(c) lump sum benefit (if any) in accordance with subsection 61(2) or paragraph 61AB(4)(c).

(2) Payment of benefit to which a person becomes entitled under this section may be postponed under Part VIB.

60 Rate of standard early retirement pension

(1A) This section does not apply to a person who makes an election under subsection 61AB(1).

(1) Where a person is entitled to standard early retirement pension by virtue of section 59, then, subject to subsection (2), the annual rate of that pension is the amount per annum of the standard age retirement pension that would be payable to him or her in accordance with subsection 56(4) if his or her age on his or her last day of service had been 60 years, reduced by 3⅓ per centum of that amount for each year, or part of a year, included in the period commencing on the day immediately following his or her last day of service and ending on the day immediately preceding the day on which the 60th anniversary of his or her birth will occur.

(2) If:

(a) the person's surcharge debt account is in debit when standard early retirement pension becomes payable to the person; and

(b) the person does not make an election under section 80B or 80C;

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the annual rate of that pension is the rate worked out as provided in subsection 80D(1).

61 Rate of additional early retirement pension and amount of lump sum benefit

(1AA) This section does not apply to a person who makes an election under subsection 61AB(1).

(1) Where a person is entitled to additional early retirement pension by virtue of section 59, then, subject to subsection (1A), the annual rate of that pension is:

(a) an amount per annum equal to the amount (in this section referred to as the ***base amount***) that is the product of his or her accumulated contributions and the factor applicable to him or her under subsection (3); or

(b) if the rate ascertained in accordance with paragraph (a) is greater than 20 per centum of the notional final annual rate of salary of the person—20 per centum of his or her notional final annual rate of salary.

(1A) If:

(a) a person is entitled to additional early retirement pension by virtue of section 59; and

(b) the person's surcharge debt account is in debit when the pension becomes payable to the person; and

(c) the person makes an election under section 80C;

the annual rate of that pension is the rate worked out as provided in subsection 80D(2).

(2) Where the base amount is greater than an amount (in this subsection referred to as the ***maximum amount***) equal to 20 per centum of the amount per annum that is the notional final annual rate of salary of the person, there shall be paid to him or her a lump sum benefit equal to the amount by which his or her accumulated contributions exceed an amount ascertained by dividing the maximum amount by the factor applicable to him or her under subsection (3).

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(3) The factor applicable to a person for the purposes of subsections (1) and (2) is such factor as, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her in accordance with regulations made for the purposes of this subsection.

(4) In this section:

notional final annual rate of salary, in relation to a person, means the annual rate of the person's final annual rate of salary reduced by such percentage of that rate as, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her in accordance with regulations made for the purposes of this definition.

61A Early retirement pension on election under section 76A

Where a person:

(a) makes an election under section 76A; and

(b) would, if he or she had resigned or had retired otherwise than on the ground of invalidity, have been entitled to a standard early retirement pension under section 59;

then, on the day on which the person ceases to be entitled to an invalidity pension because of the election, the person becomes entitled to:

(c) standard early retirement pension at the rate that would have been the rate of that pension at the time of the election if he or she had resigned or had retired otherwise than on the ground of invalidity; and

(d) if the person did not make an election under section 68 or 71 at the time of his or her retirement, additional early retirement pension in accordance with subsection 61(1) as if his or her accumulated contributions consisted only of his or her accumulated basic contributions.

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61AB Election to receive early retirement benefit at reduced rate

(1) Subject to subsection (2), a person who becomes, or is about to become, entitled to standard early retirement pension under this Division or Subdivision C of Division 3 of Part VIC may, not later than 3 months after but not earlier than 3 months before he or she becomes so entitled, by notice in writing to CSC, elect to be paid early retirement benefit at a reduced rate under this section.

(2) A person who has made an election under section 76A or 110T may not make an election under subsection (1).

(3) If a person makes an election under section 110T after making an election under subsection (1), the person is taken not to have made the election under subsection (1).

(4) If a person makes an election under this section:

(a) the annual rate at which standard early retirement pension is payable to the person is 93% of the annual rate at which that pension would be payable to the person if he or she did not make the election; and

(b) if the person is entitled to additional early retirement pension, the annual rate of that pension is:

(i) an amount per annum equal to the amount (***base amount***) worked out by multiplying the person's accumulated contributions by the factor applicable to him or her under subsection (5); or

(ii) if the rate worked out under subparagraph (i) is greater than 20% of the person's notional final annual rate of salary—20% of his or her notional final annual rate of salary; and

(c) if the base amount is greater than an amount (***maximum amount***) equal to 20% of the person's final annual rate of salary, the person is to be paid a lump sum benefit equal to the amount by which his or her accumulated contributions exceed an amount worked out by dividing the maximum amount by the factor applicable to him or her under subsection (5).

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(5) The factor applicable to a person for the purposes of paragraphs (4)(b) and (c) is the factor that, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her under regulations made for the purposes of this subsection.

(6) In this section:

notional final annual rate of salary, in relation to a person, means the annual rate of the person's final annual rate of salary reduced by the percentage of that rate that, having regard to his or her age on his or her last day of service and such other matters (if any) as are prescribed, is applicable to him or her under regulations made for the purposes of this definition.

62 Election for lump sum benefit in case of involuntary retirement

(1) Where a person who ceases, or is about to cease, to be an eligible employee by reason of early retirement is deemed, or will, upon so ceasing, be deemed, by subsection 58(3), or by section 58A or 58B, to have retired involuntarily, the person may, not later than 3 months after, and not earlier than 3 months before, the day on which he or she so ceases to be an eligible employee, elect by notice in writing to CSC, that, in lieu of pension and lump sum benefit being payable under section 55 or 59, benefit be paid under this section.

(2) Subject to subsection (2CA) and section 62B, if a person who ceases to be an eligible employee before 1 July 2000 makes an election under subsection (1), the person is entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59, to payment of:

(a) if paragraph (b) does not apply, a lump sum benefit equal to the sum of:

(i) 3.5 times the amount of the person's accumulated basic contributions; and

(ii) the amount of the person's accumulated supplementary contributions (if any); or

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(b) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, a lump sum benefit equal to the sum of:

(i) the amount worked out using the formula:

$$\text{Actual contributions} + (\text{Notional contributions} \times 2.5)$$; and

(ii) the amount of the person's accumulated supplementary contributions (if any).

(2A) Subject to subsection (2CA) and section 62B, if a person who ceases to be an eligible employee on or after 1 July 2000 makes an election under subsection (1), subsection (2B) or (2C) has effect.

(2B) If the person has reached the age of 55 years at the time when he or she ceases to be an eligible employee and provides CSC with a statement to the effect that he or she has retired from the workforce upon so ceasing, the person is (subject to subsection (2CA)) entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59, to payment of:

(a) if paragraph (b) does not apply, a lump sum benefit equal to the sum of:

(i) 3.5 times the amount of the person's accumulated basic contributions; and

(ii) the amount of the person's accumulated supplementary contributions (if any); or

(b) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, a lump sum benefit equal to the sum of:

(i) the amount worked out using the formula:

$$\text{Actual contributions} + (\text{Notional contributions} \times 2.5)$$; and

(ii) the amount of the person's accumulated supplementary contributions (if any).

(2C) If the person has not reached the age of 55 years at the time when he or she ceases to be an eligible employee or has not provided CSC with a statement to the effect that he or she has retired from

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the workforce upon so ceasing, the person is (subject to subsection (2CA)) entitled, in lieu of pension and lump sum benefit to which, if the election had not been made, the person would be entitled under section 55 or 59:

(a) to have an amount equal to the lump sum benefit mentioned in subsection (2B) treated as a preserved benefit under the SIS Act and dealt with accordingly; or

(b) to payment of an amount equal to the amount of the person's accumulated contributions and to have an amount equal to the balance of the lump sum benefit mentioned in subsection (2B) treated as a preserved benefit under the SIS Act and dealt with accordingly.

(2CA) If the person's surcharge debt account is in debit when the lump sum benefit becomes payable to the person, the lump sum benefit to which the person is entitled is equal to the difference between:

(a) the lump sum benefit to which the person would be entitled if this subsection did not apply to the person; and

(b) the person's surcharge deduction amount.

(2D) In this section:

Actual contributions, in relation to a person, means the person's accumulated basic contributions.

Notional contributions, in relation to a person, means the amount that would have been the person's accumulated basic contributions if, during the period in respect of which partial invalidity pension was paid, the person's basic contributions had been paid at the rate at which they would have been paid (including, if the person has made an election that is in force under subsection 46(2), at the rate of nil) if:

(a) in respect of a partial invalidity pension paid under section 77—the person's annual rate of salary on the day on which the person again became an eligible employee had been the same as the annual rate of the person's retirement salary for the purposes of that section; or

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(b) in respect of a partial invalidity pension paid under section 78—the person's annual rate of salary had not decreased as mentioned in that section.

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Division 2A—Preservation of benefit payable under subsection 62(2)

62A Interpretation

(1) In this Division:

accumulated government body contributions, in relation to a person's relevant period of employment, means the total of:

(a) the total amount of the productivity contributions applicable to the person in respect of the period; and

(b) notional interest on the amount worked out under paragraph (a).

government body scheme means a superannuation scheme:

(a) established by, or operating for the benefit of employees of:

(i) an authority of the Commonwealth; or

(ii) a State or an authority of a State; or

(iii) a Territory or an authority of a Territory; or

(iv) a body corporate in which the Commonwealth, or a person of the kind referred to in paragraph (i), (ii) or (iii), either individually or in combination with one or more other such persons, has a controlling interest; and

(b) that has eligible employees as members; and

(c) under which productivity contributions accrue in respect of those eligible employees.

notional accumulated SG contributions, in relation to a person's relevant period of employment, means an amount equal to the sum of:

(a) the person's SG minimum contributions in relation to that period as reduced by an amount specified in, or worked out in accordance with, a determination made by an actuary under subsection (5); and

(b) notional interest on the amount worked out under paragraph (a).

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period of actual contributory service, in relation to a person, means the person's period of contributory service other than any part of that period added by the operation of subsection 128(5) that is not attributable to a transfer value previously paid under Division 3 of Part IX.

productivity contribution means:

(a) in relation to a person who is a productivity employee within the meaning of Part VIA—a productivity contribution within the meaning of that Part (other than an amount taken to be a productivity contribution by virtue of the operation of paragraph 128(2)(c)); or

(b) in relation to any other person—an amount similar in kind to such a productivity contribution, whether worked out under an industrial award or otherwise.

rate of fund contribution tax means 15% or such other rate as is determined by CSC under section 110SD.

relevant period of employment, in relation to a person, means:

(a) if the whole of the person's period of actual contributory service occurred after 30 June 1994—that period; or

(b) if part only of the person's period of actual contributory service occurred after that date—that part of the person's period of actual contributory service.

SG minimum contribution has the same meaning as in Part VIAA.

top-up benefit means superannuation guarantee top-up benefit payable under section 110SE.

(2) For the purposes of paragraph (a) of the definition of ***accumulated government body contributions*** in subsection (1), the amount of a productivity contribution applicable to a person in relation to a particular period (***the accrual period***) is:

(a) if the relevant government body scheme provides for productivity contributions (applicable to all eligible employees who are members of the scheme) that may be expressed as a percentage of the earnings (as described for

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the purposes of the scheme) of each employee—that percentage of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

(b) if the relevant government body scheme provides for productivity contributions (applicable to a class of eligible employees identified by the scheme) that may be expressed as a percentage of the earnings (as described for the purposes of the scheme) of each employee in the class, and the percentage is lower than the corresponding percentage for any other class of eligible employees—that percentage of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person; or

(c) if the relevant government body scheme is a defined benefit superannuation scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* that provides for a productivity related benefit applicable to all eligible employees who are members of the scheme—the contribution percentage, in relation to that benefit, of the earnings of the person for the accrual period based on the person's fortnightly rate of salary that, for the purposes of section 46, was payable on the most recent anniversary of birth of the person.

(3) For the purposes of paragraph (2)(c), ***contribution percentage*** means the rate of contribution, expressed as a percentage of the eligible employees' earnings and certified by an actuary, required to provide the productivity related benefit.

(4) The percentage referred to in paragraph (2)(a) or (b) must be certified by the person's employer.

(5) For the purposes of the definition of ***notional accumulated SG contributions*** in subsection (1), an actuary is to determine:

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(a) an amount representing the cost of death and invalidity cover relevant to the person's SG minimum contributions; or

(b) a means of working out such an amount.

62B Preservation of portion of benefit

(1) If a benefit is payable to a person under subsection 62(2), the portion of that benefit worked out under whichever of subsections (3) and (4) of this section applies is to be treated as a preserved benefit under the SIS Act and dealt with accordingly.

(3) If a person's employer was liable to pay productivity contributions under section 110H in respect of the person for the person's relevant period of employment, the portion of the benefit referred to in subsection (1) is the amount worked out using the formula:

$$\text{NASGC} - \frac{\text{AEC} \times 100}{(100 - \text{TR})}$$

where:

NASGC is the notional accumulated SG contributions in respect of the person for the person's relevant period of employment.

AEC is that part of the accumulated employer contributions in respect of the person that is based on the operation of paragraphs 110Q(1)(a) and (b) in relation to productivity contributions paid or payable after 30 June 1994.

TR is the percentage figure representing the rate of fund contribution tax applicable to the relevant period of employment.

(4) If a person's employer was liable to pay productivity contributions to a government body scheme in respect of the person for the person's relevant period of employment, the portion of the benefit referred to in subsection (1) is whichever of the following amounts is determined by CSC after having regard to the views of the government body:

(a) an amount worked out using the formula:

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NASGC – AGBC;

(b) an amount worked out using the formula:

$$NASGC - \frac{GBB \times 100}{(100 - TR)};$$

(c) an amount worked out using the formula:

$$NASGC - \frac{GBPROD \times 100}{(100 - TR)};$$

where:

NASGC is the notional accumulated SG contributions in respect of the person for the person's relevant period of employment.

AGBC is the accumulated government body contributions in respect of the person for the person's relevant period of employment.

GBB is the benefit paid or payable from the government body scheme in respect of the person for the person's relevant period of employment plus, except where the person ceases to be both a member of the government body scheme and an eligible employee, notional interest on that benefit.

TR is the percentage figure representing the rate of fund contribution tax applicable to the relevant period of employment.

GBPROD is the total of:

(a) that part of the amount that has been paid to the Commissioner or CSC under section 110MA in respect of the person for the person's relevant period of employment less the amount in the nature of income tax (if any) that is relevant to that amount; and

(b) interest on the paid amount referred to in paragraph (a).

(5) In determining the benefit paid or payable from a government body scheme in respect of a person, CSC may accept a statement from the trustees, the administrator on behalf of the trustees or, if there

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are no trustees, the administrator of the government body scheme as to:

(a) the amount of benefit paid or payable; or
(b) the date on which it was paid or is payable; or
(c) the period in respect of which the benefit was paid or is payable; or
(d) rates of interest applicable to amounts of money paid to the scheme; or
(e) any other matter in connection with the payment of the benefit.

62C Application of formulae

If a single application of a formula set out in section 62B cannot properly be made for the whole of a person's relevant period of employment because of a change in the person's employment, the rate of fund contribution tax or any other thing:

(a) that period is to be broken up into such separate periods as is appropriate for the proper application of such a formula in respect of each such period; and
(b) the resulting amounts (including negative amounts) are to be aggregated in respect of the whole of the person's period of actual contributory service.

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Division 3—Commutation of additional age or early retirement pensions

63 Pensions to which Division applies

This Division applies:

(a) to additional age retirement pension payable under Division 1 of this Part; and

(b) to additional early retirement pension payable under Division 2 of this Part.

64 Election to commute

(1) A person who becomes, or is about to become, entitled to a pension to which this Division applies may, not later than 3 months after but not earlier than 3 months before he or she becomes so entitled, make, by notice in writing to CSC, an election to commute that pension into a lump sum benefit payable to him or her.

(2) If a pension to which this Division applies becomes, or is about to become, payable on a date worked out under section 110TB to a person who elected to postpone payment of that pension under Part VIB, the person may, not later than 3 months after but not earlier than 3 months before, the pension becomes so payable, make, by notice in writing to CSC, an election to commute that pension into a lump sum benefit payable to him or her.

65 Lump sum benefit payable on commutation

(1) Where a person makes an election under section 64 to commute a pension to which this Division applies, there shall be paid to the person a lump sum benefit equal to his or her accumulated contributions and:

(a) he or she is not entitled to the pension; and

(b) spouse's additional pension is not payable under subsection 93(1) to a spouse of the person.

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(2) Where a lump sum benefit is payable under subsection 57(2), paragraph 57AA(2)(c), subsection 61(2) or paragraph 61AB(2)(c) to a person who has made or makes an election under section 64, subsection (1) of this section has effect in relation to him or her as if the reference in that subsection to his or her accumulated contributions were a reference to the amount of those contributions reduced by the amount of the lump sum benefit payable under subsection 57(2), paragraph 57AA(2)(c), subsection 61(2) or paragraph 61AB(2)(c).

(3) Where a person who is entitled to:

(a) additional age retirement pension by virtue of section 57A; or

(b) additional early retirement pension by virtue of section 61A;

has made or makes an election under section 64, subsection (1) of this section has effect in relation to the person as if the reference in that subsection to the person's accumulated contributions were a reference to the person's accumulated basic contributions.

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Division 4—Invalidity benefit

66 Entitlement to invalidity pension

(1) Subject to subsections (3), (3A) and (4) of this section and to section 79, where a person ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his or her maximum retiring age then, except in a case where subsection (2) of this section applies, the person is entitled:

(a) if the person does not make an election under section 68 or 69—to invalidity pension in accordance with section 67 and, where the person has paid supplementary contributions, a lump sum benefit in accordance with that section;

(b) if the person makes an election under section 68—to invalidity pension, and a lump sum benefit, in accordance with that section; or

(c) if the person is entitled to make an election under section 69 and makes such an election—to a lump sum benefit in accordance with that section.

(2) Subject to subsections (3), (3A) and (4) of this section and section 79, where:

(a) a person ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his or her maximum retiring age;

(b) there was in force in respect of the person, immediately before the person's retirement, a benefit classification certificate; and

(c) CSC is of the opinion that the incapacity which was the ground for his or her retirement was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or such conditions;

the person is entitled:

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(d) where the period of contributory service of the person is not less than 8 years:

(i) if the person does not make an election under section 71 or 72—to invalidity pension in accordance with section 70 and, where the person has paid supplementary contributions, a lump sum benefit in accordance with that section;

(ii) if the person makes an election under section 71—to invalidity pension, and a lump sum benefit, in accordance with that section; or

(iii) if the person is entitled to make an election under section 72 and makes such an election—to a lump sum benefit in accordance with that section; or

(e) where the period of contributory service of the person is less than 8 years—to a lump sum benefit in accordance with section 73.

(2A) Where CSC is of the opinion that:

(a) a person will, in the near future, cease to be an eligible employee by reason of retirement on the ground of invalidity before attaining the person's maximum retiring age;

(b) there will be in force in respect of the person, immediately before the person's retirement, a benefit classification certificate; and

(c) the incapacity which will be the ground for the person's retirement was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or such conditions;

then:

(d) CSC shall inform the person in writing that CSC had formed the opinions referred to in paragraphs (a), (b) and (c); and

(e) where the person becomes a person referred to in paragraph (2)(a) and to whom paragraph (2)(b) applies, CSC shall be taken to have formed the opinion referred to in paragraph (2)(c) in relation to that person immediately on the person becoming a person referred to in paragraph (2)(a)

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unless, whether before or after the person became a person so referred to, CSC informed the person in writing that this subsection is not to apply to the person.

(2B) Where CSC forms the opinion referred to in paragraph (2)(c) in relation to a person on a date after the date on which the person retired, any payment to that person before the first-mentioned date of benefit or of pension purported to be made under subsection (2) shall be deemed to have been as valid as it would have been if CSC had formed that opinion immediately on the person's retirement.

(3) Where a person to whom invalidity pension had been payable in accordance with section 68 or 71 again became an eligible employee and later ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his or her maximum retiring age, he or she is not entitled to invalidity benefit in accordance with section 67 or 70, but he or she is entitled to invalidity benefit in accordance with section 68 or 71, as the case may be, as if he or she had made an election under whichever of those sections is applicable.

(3A) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits become applicable in relation to him or her by virtue of Division 3 of Part IX;

(b) deferred benefits cease to be applicable in relation to the person upon a deferred benefit by way of invalidity pension becoming payable to him or her in accordance with section 68 or 71;

(c) the deferred benefit is cancelled under subsection 76(1) upon his or her again becoming an eligible employee or is cancelled under subsection 143(2); and

(d) the person later ceases to be an eligible employee by reason of retirement on the ground of invalidity before attaining his or her maximum retiring age or becomes entitled to deferred benefit by way of invalidity benefit;

the person is not entitled to invalidity benefit in accordance with section 67 or 70, but he or she is entitled to invalidity benefit in

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accordance with section 68 or 71, as the case may be, as if he or she had made an election under whichever of those sections is applicable.

(3B) Subsections (3) and (3A) shall not be taken to prevent a person who would, but for those subsections, be entitled to make an election under section 69 or 72 from making such an election and becoming entitled to invalidity benefit in accordance with whichever of those sections is applicable.

(4) Subsections (1) and (2) do not apply to a person whose period of prospective service is less than 1 year.

67 Invalidity benefit where pension not reduced on medical grounds and election not made under section 68 or 69

(1) This section applies to a person who:

(a) is entitled to invalidity benefit by virtue of subsection 66(1); and

(b) does not make an election under section 68 or 69.

(2) Where the period of prospective service of a person to whom this section applies is not less than 30 years, then, subject to subsections (3) and (4A) of this section, the annual rate of the pension to which the person is entitled is 70 per centum of that person's final annual rate of salary.

(3) Where the period of contributory service of a person to whom this section applies exceeds 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if that period of contributory service consists of 30 complete years and a part of a year—such percentage of the person's final annual rate of salary as is calculated in accordance with the formula:

$$70 + \frac{D \times 0.25}{365};$$

where:

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D is the number of days included in that part of a year; or

(b) if that period of contributory service consists exactly of a number of complete years, or exceeds 40 years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period, is applicable in accordance with columns 1 and 2 of Schedule 3; or

(c) if paragraphs (a) and (b) do not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in that period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 0.25}{365};$$

where:

P is the percentage referred to in paragraph (b); and

D is the number of days included in that part of a year.

(4) Where the period of prospective service of a person to whom this section applies is less than 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if that period of prospective service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to that number of years, is applicable in accordance with columns 1 and 2 of Schedule 4; or

(b) if that period of prospective service consists of a number of complete years and a part of a year—such percentage of the person's final annual rate of salary as is ascertained in accordance with the formula:

$$P_1 + \frac{D \times P_2}{365};$$

where:

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***P*$_1$** is the percentage referred to in paragraph (a); and

D is the number of days included in that part of a year; and

***P*$_2$** is equal to:

(i) if the person's period of prospective service is not less than 20 years—1.4; or

(ii) if the person's period of prospective service is less than 20 years—2.8.

(4A) If the surcharge debt account of a person to whom this section applies is in debit when invalidity pension becomes payable to the person, the annual rate of the pension to which the person is entitled is the rate worked out as provided in subsection 80D(1).

(5) Where a person to whom this section applies has paid supplementary contributions, the lump sum benefit to which the person is entitled is an amount equal to the person's accumulated supplementary contributions.

68 Election where benefit not reduced on medical grounds

(1) A person who becomes, or is about to become, entitled to invalidity pension by virtue of subsection 66(1) may, not later than 3 months after becoming, but not earlier than 3 months before he or she becomes, so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 67, pension and lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under subsection (1) and the period of prospective service of the person is not less than 30 years, then, subject to subsections (3) and (4A), the annual rate of the pension to which the person is entitled is 50 per centum of that person's final annual rate of salary.

(3) Where a person makes an election under subsection (1) and the period of contributory service of the person exceeds 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

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(a) if that period of contributory service consists of 30 complete years and a part of a year—such percentage of the person's final annual rate of salary as is calculated in accordance with the formula:

$$50 + \frac{D \times 0.25}{365};$$

where:

D is the number of days included in that part of a year; or

(b) if that period of contributory service consists exactly of a number of complete years, or exceeds 40 years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period, is applicable in accordance with columns 1 and 3 of Schedule 3; or

(c) if paragraphs (a) and (b) do not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in that period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 0.25}{365};$$

where:

P is the percentage referred to in paragraph (b); and

D is the number of days included in that part of a year.

(4) Where a person makes an election under subsection (1) and the period of prospective service of the person is less than 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if that period of prospective service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to that number of

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years, is applicable in accordance with columns 1 and 3 of Schedule 4; or

(b) if that period of prospective service consists of a number of complete years and a part of a year—such percentage of the person's final annual rate of salary as is ascertained in accordance with the formula:

$$P_1 + \frac{D \times P_2}{365};$$

where:

P *1* is the percentage referred to in paragraph (a); and

D is the number of days included in that part of a year; and

P *2* is equal to:

(i) if the person's period of prospective service is not less than 20 years—1; or

(ii) if the person's period of prospective service is less than 20 years—2.

(4A) If:

(a) a person makes an election under subsection (1); and

(b) the person's surcharge debt account is in debit when invalidity pension becomes payable to the person; and

(c) the person does not make an election under section 80B;

the annual rate of the pension to which the person is entitled is the rate worked out as provided in subsection 80D(1).

(5) Where a person makes an election under subsection (1), the lump sum benefit to which the person is entitled is an amount equal to the person's accumulated contributions.

(6) A person who makes an election under section 69 is not entitled to make an election under subsection (1) of this section.

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69 Election where benefit not reduced on medical grounds and period of prospective service less than 8 years

(1) A person:

(a) who becomes, or is about to become, entitled to invalidity benefit by virtue of subsection 66(1); and

(b) whose period of prospective service, at the time of his or her so becoming entitled to invalidity benefit is, or will be, less than 8 years;

may, not later than 3 months after becoming, but not earlier than 3 months before he or she becomes, so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 67, lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under subsection (1), then, subject to subsection (3), the lump sum benefit to which the person is entitled is an amount equal to whichever is the greater of:

(a) the sum of:

(i) 3½ times the amount of the person's accumulated basic contributions; and

(ii) the amount of the person's accumulated supplementary contributions (if any); or

(b) the sum of:

(i) one-half of the amount that is the amount per annum of the person's final annual rate of salary; and

(ii) the amount of the person's accumulated supplementary contributions (if any).

(3) If:

(a) a person makes an election under subsection (1); and

(b) the person's surcharge debt account is in debit when invalidity benefit becomes payable to the person;

the lump sum benefit to which the person is entitled is an amount equal to the difference between:

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(c) the amount that would be payable to the person under subsection (2) if this subsection did not apply to the person; and

(d) the person's surcharge deduction amount.

(4) A person who makes an election under section 68 is not entitled to make an election under subsection (1) of this section.

70 Invalidity benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 71 or 72

(1) This section applies to a person:

(a) who is entitled to invalidity benefit by virtue of subsection 66(2);

(b) whose period of contributory service is not less than 8 years; and

(c) who has not made an election under section 71 or 72.

(2) Where the period of prospective service of a person to whom this section applies is not less than 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if the person's period of contributory service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with columns 1 and 2 of Schedule 5; or

(b) if paragraph (a) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 3.5}{365};$$

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where:

P is the percentage referred to in paragraph (a); and

D is the number of days in that part of a year.

(3) Where the period of prospective service of a person to whom this section applies is less than 30, but is not less than 20, years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is an amount per annum calculated by:

(a) ascertaining the amount per annum that is:

(i) if the person's period of prospective service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of prospective service, is applicable in accordance with columns 1 and 2 of Schedule 6; or

(ii) if subparagraph (i) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of prospective service, is calculated in accordance with the formula:

$$P + \frac{D_1 \times 1.4}{365};$$ and

(b) multiplying the amount so ascertained by:

(i) if the person's period of contributory service consists exactly of a number of complete years—such factor as, having regard to that number of years, is applicable in accordance with Schedule 7; or

(ii) if subparagraph (i) does not apply—such factor as, having regard to the number of complete years, and the part of a year, included in the person's period of contributory service, is calculated in accordance with the formula:

$$F + \frac{D_2 \times 0.05}{365};$$

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where:

P is the percentage referred to in subparagraph (a)(i); and

$\boldsymbol{D_1}$ is the number of days in the part of a year referred to in subparagraph (a)(ii); and

F is the factor referred to in subparagraph (b)(i); and

$\boldsymbol{D_2}$ is the number of days in the part of a year referred to in subparagraph (b)(ii).

(4) Where the period of prospective service of a person to whom this section applies is less than 20 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if the person's period of contributory service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to that number of complete years, is applicable in accordance with columns 1 and 2 of Schedule 8; or

(b) if paragraph (a) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 2.8}{365};$$

where:

P is the percentage referred to in paragraph (a); and

D is the number of days in the part of a year included in the person's period of contributory service.

(4A) If the surcharge debt account of a person to whom this section applies is in debit when invalidity pension becomes payable to the

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person, the annual rate of the pension to which the person is entitled is the rate worked out as provided in subsection 80D(1).

(5) Where a person to whom this section applies has paid supplementary contributions, the lump sum benefit to which the person is entitled is an amount equal to the person's accumulated supplementary contributions.

71 Election where benefit reduced on medical grounds, period of contributory service not less than 8 years

(1) A person:

(a) who becomes, or is about to become, entitled to invalidity benefit by virtue of subsection 66(2); and

(b) whose period of contributory service, at the time of his or her so becoming entitled to invalidity benefit is not, or will not be, less than 8 years;

may, not later than 3 months after becoming, but not earlier than 3 months before he or she becomes, so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 70, pension and lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under subsection (1) and the period of prospective service of the person is not less than 30 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if the person's period of contributory service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of contributory service, is applicable in accordance with columns 1 and 3 of Schedule 5; or

(b) if paragraph (a) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of contributory service, is calculated in accordance with the formula:

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$$P + \frac{D \times 2.5}{365};$$

where:

P is the percentage referred to in paragraph (a); and

D is the number of days in that part of a year.

(3) Where a person makes an election under subsection (1) and the period of prospective service of the person is less than 30, but is not less than 20, years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is an amount per annum calculated by:

(a) ascertaining the amount per annum that is:

(i) if the person's period of prospective service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to the number of complete years included in that period of prospective service, is applicable in accordance with columns 1 and 3 of Schedule 6; or

(ii) if subparagraph (i) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of prospective service, is calculated in accordance with the formula:

$$P + \frac{D_1 \times 1}{365};$$ and

(b) multiplying the amount so ascertained by:

(i) if the person's period of contributory service consists exactly of a number of complete years—such factor as, having regard to that number of years, is applicable in accordance with Schedule 7; or

(ii) if subparagraph (i) does not apply—such factor as, having regard to the number of complete years, and the part of a year, included in the person's period of

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contributory service, is calculated in accordance with the formula:

$$F + \frac{D_2 \times 0.05}{365};$$

where:

P is the percentage referred to in subparagraph (a)(i); and

$\boldsymbol{D_1}$ is the number of days in the part of a year referred to in subparagraph (a)(ii); and

F is the factor referred to in subparagraph (b)(i); and

$\boldsymbol{D_2}$ is the number of days in the part of a year referred to in subparagraph (b)(ii).

(4) Where a person makes an election under subsection (1) and the period of prospective service of the person is less than 20 years, then, subject to subsection (4A), the annual rate of the pension to which the person is entitled is:

(a) if the person's period of contributory service consists exactly of a number of complete years—such percentage of the person's final annual rate of salary as, having regard to that number of complete years, is applicable in accordance with columns 1 and 3 of Schedule 8; or

(b) if paragraph (a) does not apply—such percentage of the person's final annual rate of salary as, having regard to the number of complete years, and the part of a year, included in the person's period of contributory service, is calculated in accordance with the formula:

$$P + \frac{D \times 2}{365};$$

where:

P is the percentage referred to in paragraph (a); and

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D is the number of days in the part of a year included in the person's period of contributory service.

(4A) If:

(a) a person makes an election under subsection (1); and

(b) the person's surcharge debt account is in debit when invalidity pension becomes payable to the person; and

(c) the person does not make an election under section 80B;

the annual rate of the pension to which the person is entitled is the rate worked out as provided in subsection 80D(1).

(5) Where a person makes an election under subsection (1), the lump sum benefit to which the person is entitled is an amount equal to the person's accumulated contributions.

(6) A person who makes an election under section 72 is not entitled to make an election under subsection (1) of this section.

72 Election where benefit reduced on medical grounds and period of contributory service less than 15, but not less than 8, years

(1) A person:

(a) who becomes, or is about to become, entitled to invalidity benefit by virtue of subsection 66(2); and

(b) whose period of contributory service, at the time of his or her so becoming entitled to invalidity benefit is, or will be, less than 15, but not less than 8, years;

may, not later than 3 months after becoming, but not earlier than 3 months before he or she becomes, so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 70, lump sum benefit be paid in accordance with this section.

(2) Where a person makes an election under subsection (1), then, subject to subsection (3), the lump sum benefit to which the person is entitled is an amount equal to whichever is the greater of:

(a) the sum of:

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(i) 3½ times the amount of the person's accumulated basic contributions; and

(ii) the amount of the person's accumulated supplementary contributions (if any); or

(b) the sum of:

(i) one-half of the amount that is the amount per annum of the person's final annual rate of salary; and

(ii) the amount of the person's accumulated supplementary contributions (if any).

(3) If:

(a) a person makes an election under subsection (1); and

(b) the person's surcharge debt account is in debit when invalidity pension becomes payable to the person;

the lump sum benefit to which the person is entitled is an amount equal to the difference between:

(c) the amount that would be payable to the person under subsection (2) if this subsection did not apply to the person; and

(d) the person's surcharge deduction amount.

(4) A person who makes an election under section 71 is not entitled to make an election under subsection (1) of this section.

73 Invalidity benefit where benefit reduced on medical grounds and period of contributory service less than 8 years

(1) This section applies to a person:

(a) who is entitled to invalidity benefit by virtue of subsection 66(2); and

(b) whose period of contributory service is less than 8 years.

(2) Subject to subsection (3), the lump sum benefit to which a person to whom this section applies is entitled is an amount equal to whichever is the greater of:

(a) the sum of:

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(i) 3½ times the amount of the person's accumulated basic contributions; and

(ii) the amount of the person's accumulated supplementary contributions (if any); or

(b) the sum of:

(i) one-half of the amount that is the amount per annum of the person's final annual rate of salary; and

(ii) the amount of the person's accumulated supplementary contributions (if any).

(3) If the person's surcharge debt account is in debit when invalidity benefit becomes payable to the person, the lump sum benefit to which the person is entitled is an amount equal to the difference between:

(a) the amount that would be payable to the person under subsection (2) if this subsection did not apply to the person; and

(b) the person's surcharge deduction amount.

73A Reduction of invalidity pensions because of earnings

(1) In this section:

earnings rate, in relation to an invalidity pensioner, means the amount per annum last estimated by CSC under subsection (3) as the annual rate of the personal earnings of the pensioner.

invalidity pensioner means a person to whom invalidity pension is payable and who has not attained the age of 65 years.

personal earnings, in relation to an invalidity pensioner, means salary, wages, fees or other amounts received by the pensioner for services rendered, or work performed, by the pensioner, and includes:

(a) remuneration paid to the pensioner as the director of a company; and

(b) commission received by the pensioner for canvassing, collecting or similar activities.

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prescribed maximum rate means:

(a) immediately before 1 January 2002—the rate that was the prescribed maximum rate under this section immediately before the commencement of item 1 of Schedule 2 to the *Superannuation Legislation Amendment (Indexation) Act 2001*; or

(b) on or after 1 January 2002—the rate that is the prescribed maximum rate because of subsection (2).

prescribed percentage, in relation to a prescribed half-year, means the prescribed percentage in relation to that half-year for the purposes of section 148.

prescribed half-year means a prescribed half-year within the meaning of Part X.

relevant maximum rate, in relation to an invalidity pensioner, means:

(a) the prescribed maximum rate; or

(b) 75% of the amount per annum worked out by increasing the final annual rate of salary of the pensioner by the same percentage as any overall percentage increase in AWOTE that occurred during the period since the pensioner ceased to be an eligible employee (being an overall increase worked out from estimates of changes in AWOTE in respect of the period published by the Australian Statistician, other than estimates published in substitution for earlier estimates);

whichever is the greater.

relevant pension rate, in relation to an invalidity pensioner, means:

(a) where the pensioner did not make an election under section 68 or 71—the annual rate of the invalidity pension of the pensioner; or

(b) where the pensioner made such an election—the rate that would have been the annual rate of that pension if the pensioner had not made the election.

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(2) Where rates at which invalidity pensions were payable immediately before the commencement of a prescribed half-year are increased in accordance with section 148, the rate that, immediately before that commencement, was (because of paragraph (a) of the definition of ***prescribed maximum rate*** or the previous operation of this subsection) the prescribed maximum rate is increased, with effect from that commencement, by the prescribed percentage, in relation to that prescribed half-year, of that rate.

(3) Where an invalidity pensioner or a person acting on behalf of the pensioner gives CSC particulars of the pensioner's personal earnings and an estimate of those earnings for the next 12 months (whether in compliance with a notice under subsection 74(1) or otherwise), CSC shall estimate the amount per annum that is the annual rate of the personal earnings of the pensioner.

(4) Subject to subsections (5) and (6) but notwithstanding any other provision of this Act, during any period during which the sum of the relevant pension rate of an invalidity pensioner and the earnings rate of the pensioner exceeds the relevant maximum rate for the pensioner, then:

(a) where the lesser of the excess or of that earnings rate is less than the annual rate of the invalidity pension of the pensioner—the amount of the fortnightly instalments of that pension shall be ascertained as if the annual rate of the pension were reduced by the lesser of the excess or of that earnings rate; or

(b) where the lesser of the excess or of that earnings rate is equal to or exceeds the annual rate of that pension—the pension is suspended.

(5) If, after making a calculation for the purposes of subsection (4), CSC ascertains that an invalidity pensioner has been, or is being, paid instalments of invalidity pension, that, by virtue of that subsection, should not have been, or be, paid or the amount of which should have been, or be, lower, then, notwithstanding that subsection, those instalments shall be taken to have been, or be, lawfully paid.

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(6) If, after making a calculation for the purposes of subsection (4), CSC ascertains that an invalidity pensioner has, because of a previous calculation for those purposes, not been paid instalments of invalidity pension that should have been paid or been paid instalments of invalidity pension the amount of which should have been higher, that invalidity pensioner is not entitled to be paid, but may be paid, the amount of those instalments or of the balance of those instalments, as the case may be.

(7) Where an invalidity pensioner:

(a) is, on the commencement of this section, in receipt of personal earnings; or

(b) begins, after the commencement of this section, to receive personal earnings;

the pensioner, or a person acting on behalf of the pensioner, shall give CSC particulars in writing of these personal earnings and an estimate of the amount of the personal earnings that the pensioner expects to receive in the next 12 months.

(8) Where:

(a) an estimate of the personal earnings of an invalidity pensioner has been given to CSC under this Act; and

(b) the pensioner or a person acting on behalf of the pensioner revises that estimate;

the pensioner or the person acting on behalf of the pensioner shall give to CSC particulars in writing of the personal earnings of the pensioner and an estimate of those earnings for the next 12 months.

(9) In ascertaining, for the purposes of this Act or of the superseded Act, the annual rate of an invalidity pension or the rate at which an invalidity pension is payable, any reduction or suspension under this section shall be disregarded but nothing in this subsection or in any other provision of this Act or in any provision of the superseded Act shall be taken to imply that a person is entitled to be paid an amount not paid because of such a reduction or suspension.

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73B Reduction of invalidity pensions because of pre-assessment payments

Where:

(a) a person is entitled to receive payments of a kind mentioned in section 54L (in this section called ***pre-assessment payments***); and

(b) the person is retired on the ground of invalidity with effect from a day occurring during the period of the person's entitlement to pre-assessment payments;

the person is entitled to invalidity pension in respect of a pension pay day immediately preceding a contribution day occurring during that period only to the extent (if any) by which the amount of pension that, but for this section, would be payable exceeds the amount of pre-assessment payment payable on that contribution day.

74 Power of the CSC to require invalidity pensioner to be medically examined etc.

(1) CSC may, by notice in writing given to a person to whom invalidity pension is payable, require the person:

(a) to submit himself or herself for medical examination by a medical practitioner at a time, being a time before the person attains the age of 65 years, and place specified in the notice; or

(b) to give in writing to CSC, within such period as is specified in the notice, being a period that ends before the person attains the age of 65 years:

(i) such information as is required by the notice with respect to any employment (whether as an employee or on the person's own account) in which the person has been engaged during such period as is specified in the notice; or

(ii) particulars of the person's personal earnings, within the meaning of section 73A, and an estimate of the amount

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of those earnings that the person expects to receive in the next 12 months.

(2) A notice under subsection (1) shall set out the effect of subsection (3).

(3) Where a person fails to comply with a notice given under subsection (1) and CSC is not satisfied that there was a reasonable excuse for the failure, CSC may, by notice in writing given to the person, suspend the person's invalidity pension with effect from such day as CSC determines, being a day not earlier than:

(a) in a case where the first-mentioned notice required the person to submit himself or herself for medical examination on a day specified in the notice—the day next following that day; or

(b) in a case where the first-mentioned notice required the person to furnish information within a period specified in the notice—the day next following the expiration of that period.

(4) A notice to a person under subsection (3) shall set out the effect of subsections (5C), (5E) and (5F) and of section 74A.

(5) Subject to section 74A, a suspension of a person's invalidity pension under subsection (3) continues in force, unless sooner revoked, until the person attains the age of 65 years.

(5A) Invalidity pension is not payable in respect of a period during which a suspension of the pension under subsection (3) is in force.

(5B) Where:

(a) the invalidity pension of a person is suspended under subsection (3); and

(b) CSC, having regard to such matters as he or she considers relevant, is of the opinion that the suspension should be revoked;

CSC may, by notice in writing given to the person or to the person and a person acting on the person's behalf, as the case requires, revoke the suspension with effect from such day as CSC determines, being a day not later than the day on which the notice is given.

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(5C) Without limiting subsection (5B), where the invalidity pension of a person (in this subsection referred to as the ***relevant person***) is suspended under subsection (3), the relevant person, or another person acting on his or her behalf, may, by notice in writing given to CSC, request CSC to revoke the suspension, and where such a request is made, CSC shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be:

(a) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to submit himself or herself for medical examination—require the relevant person to submit himself or herself for medical examination by a medical practitioner at a time, being a time before the relevant person attains the age of 65 years, and place specified in the second-mentioned notice; or

(b) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to give information to CSC (in this paragraph referred to as ***the original notice***)—require the relevant person to give in writing to CSC, within such period as is specified in the second-mentioned notice, being a period that ends before the relevant person attains the age of 65 years, such information as was required by the original notice to be given.

(5D) A notice given by CSC under subsection (5C) shall set out the effects of subsections (5E) and (5F) and of section 74A.

(5E) Where:

(a) because of a request having been made to revoke the suspension of the invalidity pension of a person (in this subsection referred to as the ***relevant person***), a notice under subsection (5C) is given to the relevant person or to the relevant person and another person; and

(b) either:

(i) the relevant person complies with the notice; or

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(ii) the relevant person fails to comply with the notice but CSC is satisfied that there was a reasonable excuse for the failure;

CSC shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, revoke the suspension with effect from such day as CSC determines, being a day not later than:

(c) in a case to which subparagraph (b)(i) applies—the day on which the relevant person so complied with the notice; or

(d) in a case to which subparagraph (b)(ii) applies—the day on which CSC became so satisfied.

(5F) Where:

(a) because of a request having been made to revoke the suspension of the invalidity pension of a person (in this subsection referred to as the ***relevant person***), a notice under subsection (5C) is given to the relevant person or to the relevant person and another person; and

(b) the relevant person fails to comply with the notice and CSC is not satisfied that there was a reasonable excuse for the failure;

CSC shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, refuse to revoke the suspension.

(5G) A notice under subsection (5F) shall set out the effect of section 74A.

(6) Where a person whose invalidity pension has been suspended under subsection (3) of this section or subsection 73A(4) dies before the invalidity pension again becomes payable, he or she shall, for the purposes of subsection 93(2), 106(1) or 108(1), be deemed to have been in receipt of invalidity pension at the time of his or her death and, for the purposes of section 96 and subsections 106(3) and 108(3), the pension shall be deemed to have been payable at the rate at which it would have been payable to him or her if it had not been suspended.

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(7) Where invalidity pension again becomes payable to a person whose pension was suspended under subsection (3) of this section or subsection 73A(4), the person shall, for the purposes of the application of Part X in relation to the pension, be deemed to have been in receipt of invalidity pension during the period of the suspension at the rate at which it would have been payable to him or her if it had not been suspended.

(8) The cost of any medical examination carried out for the purposes of this section shall be treated as part of the cost of the administration of this Act.

(9) Where CSC is required by this section to give a person a notice, the notice shall be taken to have been given to the person if:

(a) the notice is served on the person personally;

(b) the notice is sent to the person by pre-paid post as a letter and the person acknowledges receipt of the letter; or

(c) where CSC has caused all reasonable steps to be taken to ascertain a reliable address of the person, the notice is sent to the person by pre-paid post to:

(i) in a case where CSC is satisfied that at least one reliable address of the person has been ascertained—that reliable address, or one of the reliable addresses, ascertained; or

(ii) in any other case—the last address of the person known to CSC.

(10) A reference in subsection (9) to a reliable address of a person shall be read as a reference to an address where, if a letter were sent to the person by pre-paid post to the address, the person would probably receive the letter.

(11) Nothing in this section shall be taken, by implication, to exclude or limit the application of Part XIA of the superseded Act to decisions of CSC (within the meaning of that Act) under this section.

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74A Cancellation of invalidity pension where pension suspended for 12 months etc.

Where:

(a) a person's invalidity pension is suspended under subsection 74(3);

(b) immediately before the suspension, the person had not attained the age of 64 years; and

(c) the suspension is not revoked:

(i) in a case where a request to revoke the suspension is made under section 74 before the expiration of a period of 12 months after the suspension came into force and CSC does not make a decision under section 74 in relation to that request within that period—upon the making of that decision; or

(ii) in any other case—for a period of 12 months;

CSC may, by notice in writing given to the person, cancel the person's entitlement to invalidity pension.

75 Invalidity pensioner restored to health to be found employment

(1) Where CSC is satisfied, after receiving the report or reports of a medical practitioner or medical practitioners with respect to the health of a person to whom invalidity pension is payable, that the health of the person has become so restored as to enable him or her to perform duties of a kind that are, in the opinion of CSC, suitable to be performed by him or her (having regard to the duties performed by him or her immediately before his or her retirement on the ground of invalidity and to such other matters as CSC considers relevant), CSC shall so inform such person or authority as CSC considers appropriate with a view to that person or authority finding suitable employment for the pensioner.

(2) If:

(a) the pensioner is offered by the Commonwealth or by an approved authority employment (not being employment on a part-time basis) that involves the performance of duties that,

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in the opinion of CSC, are suitable to be performed by him or her (having regard to the duties performed by him or her immediately before his or her retirement on the ground of invalidity and to such other matters as CSC considers relevant); and

(b) the person unreasonably refuses or fails to accept the offer within 14 days after the receipt by him or her of the offer, or within such further period as CSC allows;

CSC may cancel the person's entitlement to invalidity pension.

76 Cancellation of invalidity pension where invalidity pensioner again becomes eligible employee etc.

(1) Upon a person to whom invalidity pension is payable again becoming an eligible employee, his or her entitlement to that pension is, by force of this subsection, cancelled.

(2) Where:

(a) a person, upon ceasing to be an eligible employee, becomes entitled to invalidity pension;

(b) his or her entitlement to that pension is cancelled under subsection (1) upon his or her again becoming an eligible employee; and

(c) he or she again ceases to be an eligible employee before attaining his or her maximum retiring age by reason of death or retirement on the ground of invalidity;

the annual rate of any pension that becomes payable under this Act to or in respect of him or her upon or after his or her again ceasing to be an eligible employee as referred to in paragraph (c) shall not be less than:

(d) in the case of pension payable to the person:

(i) the rate at which the invalidity pension referred to in paragraph (a) would have been payable to him or her if he or she had not again become an eligible employee; or

(ii) if a lesser rate is applicable in relation to him or her under the regulations—that lesser rate; and

(e) in the case of pension payable in respect of the person:

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(i) the rate at which that pension would have been payable in respect of him or her if he or she had not again become an eligible employee; or

(ii) if a lesser rate is applicable in relation to him or her under the regulations—that lesser rate.

(3) If:

(a) a person's entitlement to an invalidity pension has, whether before or after the commencement of this subsection, been cancelled under subsection (1) upon the person's becoming an eligible employee; and

(b) the person so became an eligible employee as a result of having been appointed to an office or position on probation; and

(c) after that commencement the person ceases to be an eligible employee before attaining the person's maximum retiring age; and

(d) the person so ceased to be an eligible employee as a result of the appointment not being confirmed because the person had a physical or mental condition;

the person is entitled to invalidity pension, and subsection (2) applies, for the purpose of calculating the annual rate of that pension, as if the person had so ceased to be an eligible employee by reason of retirement on the ground of invalidity.

76A Renunciation of invalidity pension in favour of age pension

Where a person:

(a) became entitled to an invalidity pension under section 66 after attaining his or her minimum retiring age;

(b) did not make an election under section 69 or 72;

(c) would, if he or she had resigned or had retired otherwise than on the ground of invalidity, have been entitled to a pension under section 55 or 59; and

(d) has not attained the age of 65 years;

the person may make, by notice in writing to CSC, an election to renounce the invalidity pension and, where the person does so, the

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person is not entitled to the invalidity pension on and after a day determined by CSC (not being a day earlier than the day on which the election was made).

77 Partial invalidity pension payable in certain circumstances where invalidity pensioner again becomes eligible employee

(1) Where the annual rate of salary of a person referred to in section 76 is, on the day on which he or she again becomes an eligible employee, less than the annual rate of his or her retirement salary, he or she is entitled to a partial invalidity pension in accordance with this section.

(2) The annual rate of partial invalidity pension to which a person is, at any time, entitled by virtue of subsection (1) is:

(a) if the annual rate of his or her salary is, at that time, not less than one-half of the annual rate of his or her retirement salary—an amount per annum ascertained in accordance with the formula:

$$\frac{A}{B}\left(C - D\right)$$

where:

A is:

(i) if invalidity pension was payable to the person in accordance with section 67 immediately before he or she became entitled to partial invalidity pension—the amount per annum equal to the annual rate at which invalidity pension would have been payable to him or her in accordance with section 68 immediately after his or her retirement on the ground of invalidity if he or she had made an election under subsection 68(1) and subsection 68(4A) did not apply to him or her;

(ii) if invalidity pension was payable to the person in accordance with section 70 immediately before he or she became entitled to partial invalidity pension—the amount per annum equal to the annual rate at which

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invalidity pension would have been payable to him or her in accordance with section 71 immediately after his or her retirement on the ground of invalidity if he or she had made an election under subsection 71(1) and subsection 71(4A) did not apply to him or her; or

(iii) in any other case—the amount per annum equal to the annual rate at which invalidity pension was payable to him or her immediately after his or her retirement on the ground of invalidity.

B is an amount per annum equal to his or her final annual rate of salary on the day that was his or her last day of service before he or she became entitled to the invalidity pension that was payable to him or her immediately before he or she became entitled to partial invalidity pension.

C is an amount per annum equal to the annual rate of his or her retirement salary; and

D is an amount per annum equal to his or her annual rate of salary; or

(b) if the annual rate of his or her salary is, at that time, less than one-half of the annual rate of his or her retirement salary—such annual rate as CSC, in its discretion, determines, being an annual rate not less than the rate that would be payable to the person if paragraph (a) applied to him or her.

(3) Upon the annual rate of salary of a person to whom partial invalidity pension is payable in accordance with this section becoming equal to or greater than the annual rate of his or her retirement salary, his or her entitlement to that pension is, by force of this subsection, cancelled.

(4) Upon a person to whom partial invalidity pension is payable in accordance with this section ceasing to be an eligible employee, his or her entitlement to that pension is, by force of this subsection, cancelled.

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(5) Subject to subsection (6), a reference in this section to the annual rate of the retirement salary of a person to whom subsection (1) applies shall be read as a reference to the rate that was his or her annual rate of salary immediately before he or she last ceased to be an eligible employee.

(6) Where at any time CSC, having regard to any changes in rates of remuneration which have occurred since the retirement of a person referred to in subsection (5) and which CSC considers to be relevant, is of the opinion that the annual rate of the retirement salary of the person should, for the purposes of this section, be a rate other than the rate referred to in subsection (5) or a rate specified by CSC in a previous determination made under this subsection, CSC may determine that, for the purposes of this section, the annual rate of the retirement salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

(7) Subject to subsection (8), a reference in the preceding provisions of this section to the annual rate of the salary of a person to whom subsection (1) applies shall, notwithstanding any change in that rate of salary, be read as a reference to the rate that was his or her annual rate of salary on the day on which he or she again became an eligible employee.

(8) Where at any time CSC, having regard to any changes in the annual rate of salary of a person referred to in subsection (7) which have occurred since he or she again became an eligible employee and which CSC considers to be relevant, is of the opinion that the annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in subsection (7) or a rate specified by CSC in a previous determination made under this subsection, CSC may determine that, for the purposes of this section, the annual rate of the salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

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78 Partial invalidity pension where eligible employee's salary decreases for health reasons

(1) Subject to section 78A, if the annual rate of salary of an eligible employee who has not attained his or her maximum retiring age and is not entitled to partial invalidity pension in accordance with section 77 decreases under such circumstances that CSC is satisfied that the decrease can properly be regarded as attributable to physical or mental incapacity and:

(a) the number of complete years included in the period that would have been his or her period of contributory service if he or she had ceased to be an eligible employee on the day immediately preceding the day on which that rate decreases is not less than 8 years; or

(b) where the number of complete years included in that period is less than 8 years:

(i) a benefit classification certificate is not in force in respect of him or her immediately before that last-mentioned day; or

(ii) a benefit classification certificate is so in force in respect of him or her but CSC is of the opinion that the physical or mental incapacity was not caused, or substantially contributed to, by a physical or mental condition or conditions specified in the certificate or a physical or mental condition or conditions connected with such a condition or such conditions;

he or she is entitled to a partial invalidity pension in accordance with this section.

(2) The annual rate of partial invalidity pension to which a person is, at any time, entitled by virtue of subsection (1) is:

(a) except where paragraph (b) applies:

(i) if the annual rate of his or her salary is, at that time, not less than one-half of his or her previous annual rate of salary—an amount per annum ascertained in accordance with the formula:

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$$\frac{A}{B}\ (C - D)$$

where:

A is an amount per annum equal to the annual rate at which invalidity pension would have been payable to him or her in accordance with section 68 if he or she had become entitled to invalidity benefit on the day on which he or she became entitled to partial invalidity pension and had made an election under subsection 68(1) and if subsection 68(4A) did not apply to him or her.

B is an amount per annum equal to the annual rate that would have been his or her final annual rate of salary if he or she ceased to be an eligible employee on the day immediately preceding the day on which he or she became entitled to partial invalidity pension.

C is an amount per annum equal to his or her previous annual rate of salary; and

D is an amount per annum equal to his or her annual rate of salary; or

(ii) if the annual rate of his or her salary is, at that time, less than one-half of his or her previous annual rate of salary—such annual rate as CSC, in its discretion, determines, being an annual rate not less than the rate that would be payable to the person if subparagraph (i) applied to him or her; or

(b) where:

(i) there was in force in respect of the person, immediately before he or she became entitled to partial invalidity pension in accordance with this section, a benefit classification certificate; and

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(ii) CSC is of the opinion that the physical or mental incapacity referred to in subsection (1) was caused, or substantially contributed to, by a physical or mental condition or conditions specified in the certificate or a physical or mental condition or conditions connected with such a condition or such conditions;

then:

(iii) if the annual rate of his or her salary, at that time, is not less than one-half of his or her previous annual rate of salary—an amount per annum ascertained in accordance with the formula:

$$\frac{A}{B}\left(C - D\right)$$

where:

A is an amount per annum equal to the annual rate at which invalidity pension would have been payable to him or her in accordance with section 71 if he or she had become entitled to invalidity benefit on the day on which he or she became entitled to partial invalidity pension and had made an election under subsection 71(1) and if subsection 71(4A) did not apply to him or her.

B is an amount per annum equal to the annual rate that would have been his or her final annual rate of salary if he or she ceased to be an eligible employee on the day immediately preceding the day on which he or she became entitled to partial invalidity pension.

C is an amount per annum equal to his or her previous annual rate of salary; and

D is an amount per annum equal to his or her annual rate of salary; or

(iv) if the annual rate of his or her salary is, at that time, less than one-half of his or her previous rate of salary—such annual rate as CSC, in its discretion, determines, being

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an annual rate not less than the rate that would be payable to the person if subparagraph (iii) applied to him or her.

(3) Upon the annual rate of salary of a person to whom partial invalidity pension is payable in accordance with this section becoming equal to or greater than his or her previous annual rate of salary, his or her entitlement to that pension is, by force of this subsection, cancelled.

(4) Upon a person to whom partial invalidity pension is payable in accordance with this section ceasing to be an eligible employee, his or her entitlement to that pension is, by force of this subsection, cancelled.

(5) Subject to subsection (6), a reference in this section to the previous annual rate of salary of a person to whom subsection (1) applies shall be read as a reference to the rate that was his or her annual rate of salary immediately before he or she became entitled to partial invalidity pension under this section.

(6) Where at any time CSC, having regard to any changes in rates of remuneration which have occurred since a person referred to in subsection (5) became entitled to partial invalidity pension and which CSC considers to be relevant, is of the opinion that the previous annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in subsection (5) or a rate specified by CSC in a previous determination made under this subsection, CSC may determine that, for the purposes of this section, the previous annual rate of salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

(7) Subject to subsection (8), a reference in the preceding provisions of this section to the annual rate of the salary of a person to whom subsection (1) applies shall, notwithstanding any change in that rate of salary, be read as a reference to the rate that was his or her

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annual rate of salary on the day on which he or she became entitled to partial invalidity pension under this section.

(8) Where at any time CSC, having regard to any changes in the annual rate of salary of a person referred to in subsection (7) which have occurred since he or she became entitled to partial invalidity pension and which CSC considers to be relevant, is of the opinion that the annual rate of salary of the person should, for the purposes of this section, be a rate other than the rate referred to in subsection (7) or a rate specified by CSC in a previous determination made under this subsection, CSC may determine that, for the purposes of this section, the annual rate of the salary of the person shall, from the date of the determination or such other date as is specified in the determination, be deemed to be such rate as is specified in the determination.

78A Partial invalidity pension not payable in certain circumstances

(1) A partial invalidity pension, or an increase in the rate of such a pension, is not payable to a person under section 78 if the person is entitled to compensation under the *Safety, Rehabilitation and Compensation Act 1988*, the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* or the *Military Rehabilitation and Compensation Act 2004*, or under any other law of the Commonwealth, or any law of a State or Territory, providing for compensation for an employee who suffers injury or disease arising out of, or in the course of, his or her employment, in respect of the physical or mental incapacity that would, apart from this subsection, give rise to the entitlement to the pension or to the increase, as the case may be.

(2) If a person was entitled to a partial invalidity pension immediately before the commencement of this section, subsection (1) does not apply to the pension as payable immediately before that day and applies to an increase in the rate of the pension on or after that day only to the extent to which the increase results from a decrease in the annual rate of salary of the person occurring on or after that day.

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79 Benefit not payable under Division in certain circumstances

Where:

(a) a person ceases to be an eligible employee by reason of retirement on the ground of invalidity; and

(b) the incapacity which was the ground for his or her retirement was, in the opinion of CSC, due to wilful action on the part of the person for the purpose of obtaining invalidity benefit;

the person is not entitled to benefit under this Division.

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Division 4A—Early release of benefits

79A Definitions

(1) In this Division:

available early release amount, in relation to a person at a particular time, means the difference between the person's early release amount at that time and the person's early release deduction amount at that time.

available early release authority amount, in relation to a person at a particular time, means the amount worked out by:

(a) starting with the person's early release authority amount at that time; and

(b) subtracting from the result of paragraph (a) the person's early release deduction amount at that time; and

(c) adding to the result of paragraph (b) the lesser of:

(i) the amount referred to in paragraph (a) of the definition of ***early release amount***; and

(ii) the modified early release deduction amount in relation to the person at the time.

Note 1: The result of paragraph (b) may be less than nil.

Note 2: Subparagraph (c)(i) is affected by subsection (2).

compassionate ground has the same meaning as in regulation 6.01 of the *Superannuation Industry (Supervision) Regulations 1994*.

deferred benefit member means a person, who has ceased to be an eligible employee, to or in respect of whom a deferred benefit has not been paid.

early release amount, in relation to a person at a particular time, means the sum of the following amounts:

(a) the person's accumulated basic contributions;

(b) the person's accumulated supplementary contributions;

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(c) the person's accumulated employer contributions (disregarding any amounts mentioned in paragraphs 110Q(1)(c) and (d));
(d) the amount (if any) payable in respect of the person under section 110SN;
(e) the amount of the benefit payable to the person under Subdivision B of Division 2 of Part IX.

Note: This definition is affected by subsection (2).

early release authority amount, in relation to a person at a particular time, means the sum of the amounts referred to in paragraphs (b) to (e) of the definition of ***early release amount***.

Note: This definition is affected by subsection (2).

early release deduction amount, in relation to a person at a particular time, means the total of the following:
(a) the amount of each early release lump sum previously paid to or for the benefit of the person;
(b) interest on the amount of each such early release lump sum for the period beginning at the time the early release lump sum is paid and ending at the particular time.

early release lump sum means a lump sum paid under section 79B.

modified early release deduction amount, in relation to a person at a particular time, means the total of the following:
(a) the amount of each early release lump sum previously paid to or for the benefit of the person under subsection 79B(1);
(b) interest on the amount of each such early release lump sum for the period beginning at the time the early release lump sum is paid and ending at the particular time.

severe financial hardship has the same meaning as in regulation 6.01 of the *Superannuation Industry (Supervision) Regulations 1994*.

(2) For the purposes of a provision mentioned in subsection (3), work out an amount referred to in the definition of ***early release amount***:

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(a) in the case of an eligible employee—as if the person ceased to be an eligible employee at that time; or

(b) in the case of a deferred benefit member—as if the person ceased to be a deferred benefit member at that time; or

(c) in the case of a person who has made an election under section 110T—as if the person's benefit became payable at that time.

Note: The components that make up a person's early release amount and early release authority amount might be reduced if CSC has received, under Part IXB (family law superannuation splitting), a splitting agreement or splitting order in relation to the person's superannuation interest.

(3) For the purposes of subsection (2), the provisions are as follows:

(a) the definition of ***early release amount***;

(b) the definition of ***early release authority amount***;

(c) the definition of ***available early release authority amount***.

79B Early release of benefits

(1) For the purposes of the *Superannuation Industry (Supervision) Regulations 1994*, a lump sum may be paid, on the grounds of severe financial hardship or on compassionate grounds, in accordance with those regulations, to or for the benefit of the following persons:

(a) an eligible employee;

(b) a deferred benefit member;

(c) a person who has made an election under section 110T (postponement of benefits).

(1A) A lump sum may be paid in compliance with a release authority issued to CSC under section 131-15 in Schedule 1 to the *Taxation Administration Act 1953* for the benefit of the following persons:

(a) an eligible employee;

(b) a deferred benefit member;

(c) a person who has made an election under section 110T (postponement of benefits).

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(2) To avoid doubt, more than one early release lump sum can be paid to or for the benefit of a person.

Note: The components that make up the person's early release amount and early release authority amount are not reduced when a lump sum is paid under this section. However, when a benefit to which the person is entitled under this Act becomes payable to the person, the amount of the benefit is reduced to reflect any previous lump sums paid to or for the benefit of the person (see section 79D).

79C Requirements relating to early release of benefits

(1) In addition to any requirements in the *Superannuation Industry (Supervision) Regulations 1994*, the amount of an early release lump sum paid to or for the benefit of a person at a particular time must not exceed:

(a) for a lump sum paid under subsection 79B(1)—the person's available early release amount at that time; and

(b) for a lump sum paid under subsection 79B(1A)—the person's available early release authority amount at that time.

Payment to be made to or for the benefit of a person

(2) Despite section 112 of this Act (payments from the Consolidated Revenue Fund), an early release lump sum that is payable to or for the benefit of a person must be paid out of the Superannuation Fund to or for the benefit of the person.

Benefit does not become payable

(3) For the purposes of this Act, merely because an early release lump sum becomes payable to or for the benefit of a person does not mean a benefit to which the person is entitled under this Act becomes payable.

79D Calculation of benefits after payment of early release lump sums

(1) This section applies if:

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(a) an early release lump sum is paid to or for the benefit of a person; and
(b) a benefit to which the person is entitled under this Act becomes payable to the person at a particular time.

(2) The amount of the benefit to which the person is entitled to be paid at that time must be reduced to reflect the person's early release deduction amount at that time. However, the method of working out the amount of the reduction is to be determined by CSC.

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Division 5—Miscellaneous

80 Payment of accumulated contributions where no other benefit payable under Part

(1) Subject to subsections (2) and (3), where:

(a) a person ceases to be an eligible employee otherwise than by reason of death; and

(b) the person is not entitled to benefit under Division 1, 2 or 4 of this Part or under Division 3 of Part IX;

the person is entitled to a lump sum benefit, payable out of the Fund, of an amount equal to the person's accumulated contributions.

(2) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, invalidity pension becomes payable to him or her in accordance with section 67 or 70;

(b) his or her entitlement to the pension is cancelled under subsection 76(1) upon his or her again becoming an eligible employee; and

(c) the person again ceases to be an eligible employee, otherwise than by reason of death, but, upon so ceasing, does not become entitled to benefit under Division 1, 2 or 4 of this Part or under Division 3 of Part IX;

the person is entitled to a lump sum benefit equal to the sum of:

(d) an amount equal to so much of his or her accumulated basic contributions as would be applicable in relation to him or her but for section 7A;

(e) his or her accumulated supplementary contributions; and

(f) where the amount that, under section 7A, is to be added to the amount of his or her accumulated basic contributions exceeds the difference between:

(i) the total of the amounts of invalidity pension at any time paid to the person in accordance with section 67 or 70

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and the amounts of deferred benefit by way of invalidity pension at any time paid to the person in accordance with either of those sections (other than an amount, if any, taken into account in a previous application of this subsection or subsection (3) in relation to the person); and

(ii) what would have been that total if the person had made an election under subsection 68(1) or 71(1) in respect of the invalidity pension or deferred benefit so paid:

the amount of that excess.

(3) Where:

(a) a person ceases to be an eligible employee and, upon his or her so ceasing, deferred benefits become applicable in relation to him or her by virtue of Division 3 of Part IX;

(b) those deferred benefits cease to be applicable in relation to the person upon a deferred benefit by way of invalidity pension becoming payable to him or her in accordance with section 67 or 70;

(c) the person does not, before again becoming an eligible employee, become entitled to deferred benefit by way of invalidity benefit otherwise than in accordance with section 67 or 70;

(d) his or her entitlement to deferred benefit is cancelled under subsection 76(1) upon his or her again becoming an eligible employee or is cancelled under subsection 143(2) and he or she later becomes an eligible employee; and

(e) the person again ceases to be an eligible employee, otherwise than by reason of death, but, upon so ceasing, does not become entitled to benefit under Division 1, 2 or 4 of this Part or under Division 3 of Part IX;

the person is entitled to a lump sum benefit equal to the sum of:

(f) an amount equal to so much of his or her accumulated basic contributions as would be applicable in relation to him or her but for section 7A;

(g) his or her accumulated supplementary contributions; and

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(h) where the amount that, under section 7A, is to be added to the amount of his or her accumulated basic contributions exceeds the difference between:

(i) the total of the amounts of invalidity pension at any time paid to the person in accordance with section 67 or 70 and the amounts of deferred benefit by way of invalidity pension at any time paid to the person in accordance with either of those sections (other than an amount, if any, taken into account in a previous application of this subsection or subsection (2) in relation to the person); and

(ii) what would have been that total if the person had made an election under subsection 68(1) or 71(1) in respect of the invalidity pension or deferred benefit so paid;

the amount of that excess.

80A Surcharge deduction amount

(1) If:

(a) benefits become payable to or in respect of a person who has ceased to be an eligible employee; and

(b) the person's surcharge debt account is in debit when those benefits become so payable;

CSC must determine in writing the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of those benefits.

(2) In making the determination, CSC must have regard to the following:

(a) the amount by which the person's surcharge debt account is in debit when those benefits become payable;

(b) the value of the employer-financed component of those benefits;

(c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the person, were assumed

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to be likely to be payable to the person on his or her ceasing to be an eligible employee;

(d) whether the person has or had qualified for his or her maximum benefit entitlement under this Act;

(e) any other matter that CSC considers relevant.

(3) The amount determined by CSC may not be more than the total of the following amounts:

(a) 15% of the employer-financed component of any part of the benefits payable to the person that accrued between 20 August 1996 and 1 July 2003;

(b) 14.5% of the employer-financed component of any part of the benefits payable to the person that accrued in the 2003-2004 financial year;

(c) 12.5% of the employer-financed component of any part of the benefits payable to the person that accrued in the 2004-2005 financial year.

(4) Reductions under Division 3 of Part IXB are to be disregarded in applying subsection (3) of this section.

80B Election not to have pension adjusted to take surcharge deduction amount into account

(1) A person:

(a) who, by virtue of an election (***first election***) under this Act, is entitled to a lump sum benefit under section 65, 68 or 71; and

(b) whose surcharge debt account is in debit when the benefit becomes payable to him or her;

may, within the period during which the first election may be made, by notice in writing given to CSC, elect not to have any pension payable to the person adjusted to take the person's surcharge deduction amount into account.

(2) However, a person may not make an election under this section if the person has given CSC a written notice under paragraph 146RB(2)(c).

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80C Election to have additional retirement pension adjusted to take surcharge deduction amount into account

(1) A person:

(a) who is entitled to additional age retirement pension (see sections 55 and 57) or additional early retirement pension (see sections 59 and 61); and

(b) whose surcharge debt account is in debit when the benefit becomes payable to him or her;

may, not later than 3 months after, but not earlier than 3 months before, the pension becomes payable, by notice in writing given to CSC, elect that the pension be adjusted to take the person's surcharge deduction amount into account.

(2) However, a person may not make an election under this section if the person has given CSC a written notice under paragraph 146RB(2)(c).

80D Calculation of certain pension rates

(1) The following rates of pension:

(a) the annual rate at which standard age retirement pension is payable to a person under subsection 56(5);

(b) the annual rate at which standard early retirement pension is payable to a person under subsection 60(2);

(c) the annual rate at which invalidity pension is payable to a person under subsection 67(4A), 68(4A), 70(4A) or 71(4A);

are worked out by using the formula:

$$\text{Basic pension rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic pension rate means the annual rate at which the pension to which the person is entitled would be payable to the person if the person's surcharge debt account were not in debit when the pension becomes payable.

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conversion factor means the factor that is applicable to the person under the determination made by CSC under subsection 154AB(1).

surcharge deduction amount means the person's surcharge deduction amount.

(2) The following rates of pension:

(a) the annual rate at which additional age retirement pension is payable to a person under subsection 57(1A);

(b) the annual rate at which additional early retirement pension is payable to a person under subsection 61(1A);

are worked out by using the formula:

$$\text{Basic pension rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic pension rate means the annual rate at which the pension to which the person is entitled would be payable to the person if the person's surcharge debt account were not in debit when the pension becomes payable.

conversion factor means the factor that is applicable to the person under the determination made by CSC under subsection 154AB(2).

surcharge deduction amount means the person's surcharge deduction amount.

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Part VI—Benefits payable to spouses and children

Division 1—Spouse's benefit on death of eligible employee before attaining maximum retiring age

81 Entitlement to spouse's benefit under Division

(1) Where an eligible employee who dies before attaining his or her maximum retiring age is survived by a spouse, then, except in a case where subsection (2) of this section applies, the spouse is entitled:

(a) if the spouse does not make an election under section 83 or 84—to spouse's pension in accordance with section 82 and, where the eligible employee had paid supplementary contributions, a lump sum benefit in accordance with that section;

(b) if the spouse makes an election under section 83—to spouse's pension, and a lump sum benefit, in accordance with that section; or

(c) if the spouse is entitled to make an election under section 84 and makes such an election—to a lump sum benefit in accordance with that section.

(2) Where:

(a) an eligible employee who dies before attaining his or her maximum retiring age is survived by a spouse;

(b) there was in force in respect of the eligible employee, immediately before his or her death, a benefit classification certificate; and

(c) CSC is of the opinion that the eligible employee's death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or conditions;

the spouse is entitled:

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(d) where the period of contributory service of the eligible employee is not less than 8 years:

(i) if the spouse does not make an election under section 86 or 87—to spouse's pension in accordance with section 85 and, where the eligible employee had paid supplementary contributions, a lump sum in accordance with that section;

(ii) if the spouse makes an election under section 86—to spouse's pension, and a lump sum benefit, in accordance with that section; or

(iii) if the spouse is entitled to make an election under section 87 and makes such an election—to a lump sum benefit in accordance with that section; or

(e) where the period of contributory service of the eligible employee is less than 8 years—to a lump sum benefit in accordance with section 88.

(3) Where the surviving spouse is the spouse of an eligible employee who, if he or she had not died but had retired on the ground of invalidity on the day of his or her death, would have been entitled to invalidity benefit as provided by subsection 66(3) or (3A), the spouse shall be deemed, for the purposes of this Division, to have made an election under subsection 83(1) or 86(1), as the case may be.

(3A) Subsection (3) shall not be taken to prevent a spouse who would, but for that subsection, be entitled to make an election under subsection 84(1) or 87(1) from making such an election and becoming entitled to spouse's benefit in accordance with section 84 or 87, as the case may be.

(4) Subsections (1) and (2) do not apply to the spouse of a deceased eligible employee whose period of prospective service is less than 1 year.

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Section 82

82 Spouse's benefit where benefit not reduced on medical grounds and election not made under section 83 or 84

(1) This section applies to the spouse of a deceased eligible employee who:

(a) is entitled to spouse's benefit by virtue of subsection 81(1); and

(b) does not make an election under section 83 or 84.

(2) The annual rate of spouse's pension of a spouse to whom this section applies is 67 per centum of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit in accordance with that section.

(3) If, at any time when spouse's pension is payable to a spouse to whom this section applies, there are children of the deceased eligible employee who are eligible children, then, in the application of subsection (2) at that time to the spouse, the reference in subsection (2) to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

(c) where there are 3 or more eligible children—100 per centum.

(4) Where a spouse to whom this section applies is the spouse of a deceased eligible employee who had paid supplementary contributions, the lump sum benefit to which the spouse is entitled is an amount equal to the accumulated supplementary contributions of the deceased eligible employee.

83 Election where pension not reduced on medical grounds

(1) The spouse of a deceased eligible employee who becomes entitled to spouse's benefit by virtue of subsection 81(1) may, not later than 3 months after becoming so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with

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section 82, pension and lump sum benefit be paid in accordance with this section.

(2) Where a spouse makes an election under subsection (1) of this section, the annual rate of pension to which the spouse is entitled is 67 per centum of the annual rate of the pension to which the deceased eligible employee would have been entitled under section 68 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and had made an election under that section.

(3) If, at any time when spouse's pension is payable to a spouse who makes an election under subsection (1), there are children of the deceased eligible employee who are eligible children, then, in the application of subsection (2) at that time to the spouse, the reference in subsection (2) to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

(c) where there are 3 or more eligible children—100 per centum.

(4) The lump sum benefit to which a spouse who makes an election under subsection (1) is entitled is an amount equal to the accumulated contributions of the deceased eligible employee.

(5) A spouse who makes an election under section 84 is not entitled to make an election under subsection (1) of this section.

84 Election where benefit not reduced on medical grounds and period of prospective service less than 8 years

(1) The spouse of a deceased eligible employee (being an eligible employee whose period of prospective service is less than 8 years) who becomes entitled to spouse's benefit by virtue of subsection 81(1) may, not later than 3 months after becoming so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 82, lump sum benefit be paid in accordance with this section.

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(2) Where a spouse makes an election under subsection (1) of this section, the lump sum benefit to which the spouse is entitled in accordance with this section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under subsection 69(2) or (3) (as the case may be) if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and had made an election under section 69.

(4) A spouse who makes an election under section 83 is not entitled to make an election under subsection (1) of this section.

85 Spouse's benefit where benefit reduced on medical grounds, period of contributory service not less than 8 years and election not made under section 86 or 87

(1) This section applies to the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who:

(a) is entitled to spouse's benefit by virtue of subsection 81(2); and

(b) does not make an election under section 86 or 87.

(2) The annual rate of spouse's pension of a spouse to whom this section applies is 67 per centum of the annual rate of invalidity pension to which the deceased eligible employee would have been entitled under section 70 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension in accordance with that section.

(3) If, at any time when spouse's pension is payable to a spouse to whom this section applies, there are children of the deceased eligible employee who are eligible children then, in the application of subsection (2) at that time to the spouse, the reference in subsection (2) to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

(c) where there are 3 or more eligible children—100 per centum.

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(4) Where a spouse to whom this section applies is the spouse of a deceased eligible employee who had paid supplementary contributions, the lump sum benefit to which the spouse is entitled is an amount equal to the accumulated supplementary contributions of the deceased eligible employee.

86 Election where benefit reduced on medical grounds and period of contributory service not less than 8 years

(1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is not less than 8 years) who becomes entitled to spouse's benefit by virtue of subsection 81(2) may, not later than 3 months after becoming so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 85, pension and lump sum benefit be paid in accordance with this section.

(2) Where a spouse makes an election under subsection (1) of this section, the annual rate of the pension to which the spouse is entitled is 67 per centum of the annual rate of the pension to which the deceased eligible employee would have been entitled under section 71 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and had made an election under that section.

(3) If, at any time when spouse's pension is payable to a spouse who makes an election under subsection (1), there are children of the deceased eligible employee who are eligible children, then, in the application of subsection (2) at that time to the spouse, the reference in subsection (2) to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

(c) where there are 3 or more eligible children—100 per centum.

(4) Where a spouse makes an election under subsection (1), the lump sum benefit to which the spouse is entitled is an amount equal to the accumulated contributions of the deceased eligible employee.

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(5) A spouse who makes an election under section 87 is not entitled to make an election under subsection (1) of this section.

87 Election where pension reduced on medical grounds and period of contributory service less than 15, but not less than 8, years

(1) The spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 15, but not less than 8, years) who becomes entitled to spouse's benefit by virtue of subsection 81(2) may, not later than 3 months after becoming so entitled, elect, by notice in writing to CSC, that, in lieu of benefit being payable in accordance with section 85, a lump sum benefit be paid in accordance with this section.

(2) Where a spouse makes an election under subsection (1) of this section, the lump sum benefit to which the spouse is entitled in accordance with this section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under subsection 72(2) or (3) (as the case may be) if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and had made an election under section 72.

(4) A spouse who makes an election under section 86 is not entitled to make an election under subsection (1) of this section.

88 Spouse's benefit where pension reduced on medical grounds and period of contributory service is less than 8 years

(1) Where the spouse of a deceased eligible employee (being an eligible employee whose period of contributory service is less than 8 years) is entitled to lump sum benefit by virtue of subsection 81(2), the lump sum benefit payable in accordance with this section is an amount equal to the lump sum benefit to which the deceased eligible employee would have been entitled under subsection 73(2) if he or she had not died, but had, on the day

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immediately following the date of his or her death, become entitled to invalidity benefit.

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Division 2—Spouse's benefit on death of eligible employee after attaining maximum retiring age

89 Entitlement to spouse's benefit under Division

(1) Where an eligible employee who dies on or after attaining his or her maximum retiring age is survived by a spouse, the spouse is entitled to:

(a) spouse's standard pension in accordance with section 90;

(b) subject to subsection 92(2), spouse's additional pension in accordance with subsection 91(1); and

(c) lump sum benefit (if any) in accordance with subsection 91(2).

(2) Subsection (1) does not apply to the spouse of a deceased eligible employee whose period of contributory service is less than 1 year.

90 Rate of spouse's standard pension

(1) Where the spouse of a deceased eligible employee is entitled to spouse's standard pension by virtue of section 89, the annual rate of that pension is, subject to subsection (2) of this section, 67 per centum of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled if he or she had not died but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension in accordance with section 56.

(2) If, at any time when spouse's standard pension is payable by virtue of section 89 to the spouse of a deceased eligible employee, there are children of the eligible employee who are eligible children, then, in the application of subsection (1) of this section at that time to the spouse, the reference in that subsection to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

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(c) where there are 3 or more eligible children—100 per centum.

91 Rate of spouse's additional pension and amount of lump sum benefit

(1) Where the spouse of a deceased eligible employee is entitled to spouse's additional pension by virtue of section 89, then, subject to subsection 92(2), the annual rate of that pension is:

(a) an amount per annum equal to the amount (in this section referred to as the ***base amount***) that is the product of the accumulated contributions of the deceased eligible employee and such factor as is applicable in accordance with regulations made for the purposes of this paragraph; or

(b) if the rate ascertained in accordance with paragraph (a) is greater than 13.4 per centum of the final annual rate of salary of the deceased eligible employee—13.4 per centum of that final annual rate of salary.

(2) Where the base amount is greater than an amount (in this subsection referred to as the ***maximum amount***) equal to 13.4 per centum of the amount per annum that is the final annual rate of salary of a deceased eligible employee, there shall be paid to the spouse of that eligible employee a lump sum benefit equal to the amount by which the accumulated contributions of the deceased eligible employee exceed an amount ascertained by dividing the maximum amount by the factor referred to in paragraph (1)(a).

92 Election to commute spouse's additional pension entitlement

(1) The spouse of a deceased eligible employee who becomes entitled to spouse's additional pension by virtue of section 89 may, not later than 3 months after becoming so entitled, make, by notice in writing to CSC, an election to commute that pension into a lump sum benefit.

(1A) If a spouse makes an election under subsection (1), the spouse may, at the same time, by notice in writing to CSC, elect not to

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have any pension payable to him or her adjusted to take the eligible employee's surcharge deduction amount into account.

(2) Where a spouse makes an election under subsection (1) there shall be paid to the spouse a lump sum benefit equal to the accumulated contributions of the deceased eligible employee and the spouse is not entitled to the pension to which the election relates.

(3) Where a lump sum benefit is payable under subsection 91(2) to a spouse who makes an election under this section, subsection (2) of this section has effect in relation to the spouse as if the reference in that subsection to the accumulated contributions of the deceased eligible employee were a reference to the amount of those contributions reduced by the amount of the lump sum benefit payable under subsection 91(2).

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Division 3—Spouse's benefit on death of pensioner

93 Entitlement to spouse's benefit on death of pensioner

(1) Where a pensioner to whom age retirement pension or early retirement pension is payable dies and is survived by a spouse, the spouse is, subject to section 95A, entitled:

(a) to spouse's standard pension in accordance with section 94; and

(b) if the pensioner:

(i) did not make an election under section 64; or

(ii) made an election under subsection 64(2) but died before a lump sum benefit became payable;

to spouse's additional pension under section 95.

(2) Where a pensioner to whom invalidity pension is payable dies and is survived by a spouse, the spouse is, subject to section 96AA, entitled to spouse's pension in accordance with section 96.

94 Rate of spouse's standard pension on death of age or early retirement pensioner

(1) If, at any time, the spouse of a category 1 deceased pensioner is entitled to spouse's standard pension under paragraph 93(1)(a), then, subject to subsection (2A), the annual rate of that pension is:

(a) if at that time there are no children of the pensioner who are eligible children—67% of the annual rate (***pensioner rate***) at which standard age retirement pension or standard early retirement pension (as the case may be) was payable to the pensioner immediately before his or her death; or

(b) if at that time only one child of the pensioner is an eligible child—78% of the pensioner rate; or

(c) if at that time 2 children of the pensioner are eligible children—89% of the pensioner rate; or

(d) if at that time 3 or more children of the pensioner are eligible children—100% of the pensioner rate.

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(2) If, at any time, the spouse of a category 2 deceased pensioner is entitled to spouse's standard pension under paragraph 93(1)(a), then, subject to subsection (2A), the annual rate of that pension is:

(a) if at that time there are no children of the pensioner who are eligible children—85% of the annual rate (***pensioner rate***) at which standard age retirement pension or standard early retirement pension (as the case may be) was payable to the pensioner immediately before his or her death; or

(b) if at that time only one child of the pensioner is an eligible child—97% of the pensioner rate; or

(c) if at that time 2 or more children of the pensioner are eligible children—108% of the pensioner rate.

(2A) If the spouse of the deceased pensioner had a late short-term marital or couple relationship with the pensioner, spouse's standard pension is payable to the spouse at the rate applicable under section 96AB.

(3) Despite subsections (1), (2) and (2A), if, on any of the 7 pension pay days immediately following the death of the pensioner, spouse's standard pension would, apart from this subsection, be payable to the spouse of the deceased pensioner at a rate that is less than the rate (***pensioner rate***) at which standard age retirement pension or standard early retirement pension (as the case may be) would be payable to the deceased pensioner on that day if he or she had not died, spouse's standard pension is payable to the spouse on that day at a rate equal to the pensioner rate.

95 Rate of spouse's additional pension on death of age or early retirement pensioner

(1) If the spouse of a category 1 deceased pensioner is entitled to spouse's additional pension under paragraph 93(1)(b), then, subject to subsection (1B), the annual rate of that pension is 67% of the annual rate at which additional age retirement pension or additional early retirement pension was payable to the pensioner immediately before his or her death.

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(1A) If the spouse of a category 2 deceased pensioner is entitled to spouse's additional pension under paragraph 93(1)(b), then, subject to subsection (1B), the annual rate of that pension is 85% of the annual rate at which additional age retirement pension or additional early retirement pension was payable to the pensioner immediately before his or her death.

(1B) If the spouse of the deceased pensioner had a late short-term marital or couple relationship with the pensioner, spouse's additional pension is payable to the spouse at the rate applicable under section 96AB.

(2) Despite subsections (1), (1A) and (1B), if:

(a) the pensioner did not make an election under section 64; and

(b) on any of the 7 pension pay days immediately following the death of the pensioner, spouse's additional pension would, apart from this subsection, be payable to the spouse of the deceased person at a rate that is less than the rate (***pensioner rate***) at which additional age retirement pension or additional early retirement pension (as the case may be) would be payable to the deceased pensioner on that day if he or she had not died;

spouse's additional pension is payable to the spouse on that day at a rate equal to the pensioner rate.

95A Lump sum instead of spouse's standard pension etc.

(1) If:

(a) the annual rate at which spouse's standard pension is payable to a person under subsection 94(2A); or

(b) if the person is entitled to spouse's additional pension under subsection 95(1B)—the combined annual rate of the spouse's standard pension and the spouse's additional pension payable to the person;

is less than the annual rate determined in writing by CSC for the purposes of this section, the person may, not later than 3 months after the pension or pensions become payable, by notice in writing

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to CSC, elect to commute the pension or pensions into a lump sum benefit payable to him or her.

(2) If the person makes the election, there is payable to the person, instead of spouse's standard pension, or spouse's standard pension and spouse's additional pension (as the case may be), a lump sum of an amount determined in writing by CSC after consultation with an actuary.

96 Rate of spouse's pension on death of invalidity pensioner

(1) Where the spouse of a deceased pensioner is entitled to spouse's pension by virtue of subsection 93(2), the annual rate of that pension is, subject to subsection (2A), 67 per centum of the annual rate at which invalidity pension was payable to the deceased pensioner immediately before the pensioner's death.

(2) If, at any time when spouse's pension is payable to the spouse under subsection (1), there are children of the deceased pensioner who are eligible children, then, in the application of subsection (1) at that time to the spouse, the reference in subsection (1) to 67 per centum shall be read as a reference to:

(a) where there is 1 eligible child—78 per centum;

(b) where there are 2 eligible children—89 per centum; or

(c) where there are 3 or more eligible children—100 per centum.

(2A) If the spouse of the deceased pensioner had a late short-term marital or couple relationship with the pensioner, spouse's pension is payable to the spouse at the rate applicable under section 96AB.

(3) In spite of subsections (1) and (2), on each of the 7 pension pay days immediately following the death of a pensioner referred to in subsection 93(2), spouse's pension is payable to the spouse of the deceased pensioner at the same rate at which invalidity pension would be payable to the deceased pensioner on that day if he or she had not died.

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96AA Lump sum instead of spouse's pension

(1) If the annual rate at which spouse's pension is payable to a person under subsection 96(2A) is less than the annual rate determined in writing by CSC for the purposes of this section, the person may, not later than 3 months after the pension becomes payable, by notice in writing to CSC, elect to commute that pension into a lump sum benefit payable to him or her.

(2) If the person makes the election, there is payable to the person, instead of spouse's pension, a lump sum of an amount determined in writing by CSC after consultation with an actuary.

96A Set off against pension in certain circumstances

(1) Where:

(a) the spouse of a deceased pensioner to whom age retirement pension, early retirement pension or invalidity pension (in this section called the ***primary pension***) was payable is entitled to spouse's benefit in accordance with subsection 94(3), 95(2) or 96(3); and

(b) an amount purporting to be an instalment of primary pension payable to the pensioner in respect of a period in respect of which spouse's benefit is payable in accordance with subsection 94(3), 95(2) or 96(3) is paid into an account with a bank; and

(c) the bank pays, out of that account, to the spouse of the deceased pensioner an amount not exceeding the amount so paid into the account;

then, in spite of any other law:

(d) the bank is not liable to the Commonwealth, the personal representative of the deceased pensioner or anyone else for any loss incurred because of the payment of that amount to the spouse of the pensioner; and

(e) an amount equal to the amount so paid by the bank to the spouse of the deceased pensioner must be set off against any amount of spouse's benefit payable to him or her in accordance with subsection 94(3), 95(2) or 96(3).

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(2) In this section:

bank has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

96AB Rate applicable for purposes of certain provisions

(1) If, at any time:

(a) spouse's standard pension under subsection 94(2A); or

(b) spouse's additional pension under subsection 95(1B); or

(c) spouse's pension under subsection 96(2A);

is payable to the spouse of a deceased pensioner, then, for the purposes of whichever of those subsections is applicable, the applicable rate is:

(d) if paragraph (e) does not apply—the rate worked out by using the formula:

$$\text{Basic rate of pension} \times \frac{\text{Number of days in relevant period}}{1095}$$

(e) if at that time there is one or more than one eligible child who became a child of the pensioner:

(i) before the pensioner became a retirement pensioner or turned 60; or

(ii) at least 3 years before the pensioner died;

—such rate, being a rate higher than the rate worked out under paragraph (d) but less than the basic rate of pension, as CSC determines to be fair and equitable in all the circumstances of the case.

(2) In subsection (1):

basic rate of pension means the annual rate at which, apart from subsection (1), spouse's standard pension, spouse's additional pension or spouse's pension (as the case requires) would be payable to the spouse at that time.

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relevant period means the period:

(a) beginning on the day on which the marital or couple relationship between the deceased pensioner and his or her spouse began; and

(b) ending on the day on which the pensioner died.

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Division 3A—Spouse's benefit attributable to partially dependent children

96B Extra spouse's pension—general

(1) If at any time when spouse's pension is payable:

(a) to the spouse of a deceased eligible employee in accordance with section 82, 83, 85, 86 or 90; or

(b) to the spouse of a deceased pensioner in accordance with subsection 94(1) or section 96;

there is one, or more than one, child of the deceased eligible employee or pensioner who is a partially dependent child, then, subject to subsection (3) and section 96BA, the spouse is entitled to extra spouse's pension in accordance with subsection (2).

(2) Where, at any time, the spouse of a deceased eligible employee or pensioner is entitled to extra spouse's pension under subsection (1), the annual rate of that pension is:

(a) the applicable percentage of the annual rate of the pension by reference to which the spouse's pension payable to the spouse under section 82, 83, 85, 86 or 90, subsection 94(1) or section 96 (whichever is applicable) is to be calculated under that section; or

(b) an amount equal to the amount per annum of the regular maintenance payments that the deceased eligible employee or deceased pensioner was, at the time of his or her death, voluntarily making, or required by a court to make, to or in respect of the partially dependent child or children;

whichever is less.

(3) The spouse of a deceased eligible employee or deceased pensioner is not entitled to extra spouse's pension under subsection (1) at any time when there are more than 2 children of the deceased eligible employee or deceased pensioner who are eligible children.

(4) Where, at any time, the spouse of a deceased eligible employee or pensioner is entitled to extra spouse's pension under subsection (1),

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then, for the purposes of subsection (2), the applicable percentage is:

(a) if at that time 2 children of the deceased eligible employee or pensioner are eligible children—11 per centum; or

(b) if at that time one child of the deceased eligible employee or pensioner is an eligible child:

(i) if there is only one partially dependent child—11 per centum; or

(ii) if there is more than one partially dependent child—22 per centum; or

(c) if at that time no child of the deceased eligible employee or pensioner is an eligible child:

(i) if there is only one partially dependent child—11 per centum; or

(ii) if there are 2 partially dependent children—22 per centum; or

(iii) if there are more than 2 partially dependent children—33 per centum.

(5) If, at any time when spouse's pension is payable to the spouse of a deceased pensioner in accordance with subsection 94(2), there is one, or more than one, child of the deceased pensioner who is a partially dependent child, then, subject to subsection (7) and section 96BA, the spouse is entitled to extra spouse's pension in accordance with subsection (6).

(6) If, at any time, the spouse of a deceased pensioner is entitled to extra spouse's pension under subsection (5), the annual rate of that pension is:

(a) the applicable percentage of the annual rate of the pension by reference to which the spouse's pension payable to the spouse under subsection 94(2) is to be calculated under that subsection; or

(b) an amount equal to the amount per annum of the regular maintenance payments that the deceased pensioner was, at the time of his or her death, voluntarily making, or required

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by a court to make, to or in respect of the partially dependent child or children;

whichever is less.

(7) The spouse of a deceased pensioner is not entitled to extra spouse's pension under subsection (5) at any time when there is more than one child of the deceased pensioner who is an eligible child.

(8) If, at any time, the spouse of a deceased pensioner is entitled to extra spouse's pension under subsection (5), then, for the purposes of subsection (6), the applicable percentage is:

(a) if, at that time, one child of the deceased pensioner is an eligible child—11%; or

(b) if, at that time, no child of the deceased pensioner is an eligible child:

(i) if there is one partially dependent child—12%; or

(ii) if there are 2 or more partially dependent children—23%.

96BA Extra spouse's pension—special case

(1) If:

(a) the spouse of a deceased pensioner had a late short-term marital or couple relationship with the pensioner; and

(b) apart from this section, the spouse of the deceased pensioner would, at any time, be entitled to extra spouse's pension under subsection 96B(2) or (6);

the annual rate of that pension at that time is:

(c) if paragraph (d) does not apply—the amount worked out by using the formula:

$$\text{Basic rate of pension} \times \frac{\text{Number of days in relevant period}}{1095}$$

(d) if at that time there is one or more than one eligible child or partially dependent child who became a child of the pensioner:

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(i) before the pensioner became a retirement pensioner or turned 60; or

(ii) at least 3 years before the pensioner died;

—such rate, being a rate higher than the rate worked out under paragraph (c) but less than the basic rate of pension, as CSC determines to be fair and equitable in all the circumstances of the case.

(2) In subsection (1):

basic rate of pension means the annual rate at which, apart from subsection (1), extra spouse's pension would be payable to the person.

relevant period means the period:

(a) beginning on the day on which the marital or couple relationship between the deceased pensioner and his or her spouse began; and

(b) ending on the day on which the pensioner died.

96BB Lump sum instead of extra spouse's pension

If:

(a) instead of a pension under Division 3 of this Part, a lump sum benefit is payable to the spouse of a deceased pensioner under section 95A or 96AA; and

(b) had the pension been payable to the spouse, extra spouse's pension would be payable to him or her under section 96B;

there is payable to the spouse, instead of that extra spouse's pension, a lump sum of an amount determined in writing by CSC after consultation with an actuary.

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Division 4—Orphan benefit

96C Interpretation

In this Division, a reference to an eligible child includes a reference to a partially dependent child.

97 Orphan benefit—death of eligible employee after attaining maximum retiring age

(1) Where:

(a) an eligible employee dies on or after attaining his or her maximum retiring age;

(b) his or her period of contributory service is not less than 1 year; and

(c) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children;

then:

(d) at any time after his or her death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2); and

(e) if the surviving child or 1 or more of the surviving children is or are, immediately after his or her death, an eligible child or eligible children or, in the opinion of CSC, is or are likely to become an eligible child or eligible children—lump sum benefit is payable in respect of that child or those children in accordance with subsection (3).

(2) Where, by virtue of paragraph (1)(d), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional standard age retirement pension of the deceased eligible employee as is applicable under section 109.

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(3) Where, by virtue of paragraph (1)(e), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount equal to the accumulated contributions of the deceased eligible employee.

(4) The reference in subsection (2) to the notional standard age retirement pension of a deceased eligible employee means the rate of the standard age retirement pension to which he or she would have been entitled if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension in accordance with section 56.

98 Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds and direction not given under section 99

(1) Where:

(a) an eligible employee dies before attaining his or her maximum retiring age;

(b) his or her period of prospective service is not less than 1 year; and

(c) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children;

then, except in a case where section 99, 100 or 101 applies:

(d) at any time after his or her death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2); and

(e) if the deceased eligible employee had paid supplementary contributions and the surviving child or 1 or more of the surviving children is or are, immediately after his or her death, an eligible child or eligible children or, in the opinion of CSC, is or are likely to become an eligible child or eligible children—lump sum benefit is payable in respect of that child or those children in accordance with subsection (3) of this section.

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(2) Where, by virtue of paragraph (1)(d), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) Where, by virtue of paragraph (1)(e), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount equal to the accumulated supplementary contributions of the deceased eligible employee.

(4) The reference in subsection (2) to the notional invalidity pension of a deceased eligible employee means:

(a) subject to paragraph (b) of this subsection, the rate of the invalidity pension to which the eligible employee would have been entitled under section 67 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension in accordance with that section; or

(b) where an amount equal to the deceased eligible employee's accumulated contributions has been paid out of the Fund under section 111—the rate of the invalidity pension to which the eligible employee would have been entitled under section 68 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension and had made an election under that section.

(5) Where a deceased eligible employee would, if he or she had not died but had retired on the ground of invalidity on the day of his or her death, have been entitled to invalidity benefit as provided by subsection 66(3) or (3A), this section applies in relation to him or her as if:

(a) there were substituted for paragraph (1)(e) of this section provision that lump sum benefit equal to the accumulated contributions of the deceased eligible employee were payable

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in respect of the child or children referred to in that paragraph; and

(b) paragraph (4)(b) of this section applied in relation to him or her.

99 Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit not reduced on medical grounds, period of prospective service less than 8 years and direction given under this section

(1) Where:

(a) an eligible employee dies before attaining his or her maximum retiring age;

(b) his or her period of prospective service is less than 8 years but not less than 1 year;

(c) there was not in force in respect of him or her immediately before his or her death a benefit classification certificate or, if such a certificate was in force in respect of him or her immediately before his or her death, CSC is of the opinion that his or her death was not caused, and was not substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or such conditions;

(d) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children, being a child who is, or children at least one of whom is, an eligible child; and

(e) CSC is of the opinion that no other surviving child of the deceased eligible employee who is not an eligible child immediately after his or her death is likely to become an eligible child;

then, upon application in writing being made to CSC not later than 3 months after the date of the eligible employee's death by or on behalf of the eligible child or eligible children, CSC may, in its discretion, direct that, in lieu of benefit being payable in accordance with section 98 in respect of the eligible child or

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eligible children, a lump sum benefit be payable in accordance with this section.

(2) Subject to subsection (3), where CSC gives a direction under subsection (1) of this section in relation to an eligible child or eligible children of a deceased eligible employee, there is payable in respect of the eligible child or eligible children a lump sum benefit of an amount equal to the amount of the lump sum benefit to which the deceased eligible employee would have been entitled under subsection 69(2) or (3) (as the case may be) if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to an invalidity pension and had made an election under section 69.

(3) Where:

(a) CSC gives a direction under subsection (1) of this section in relation to an eligible child or eligible children of a deceased eligible employee; and

(b) that child, or each of those children, is a partially dependent child;

there is payable in respect of the child or children a lump sum benefit of an amount determined by CSC, being an amount that is:

(c) not less than the amount of the deceased eligible employee's accumulated contributions; and

(d) not more than the sum of the lump sum benefit referred to in subsection (2) and the productivity benefit payable in respect of the deceased eligible employee under Part VIA.

100 Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years

(1) Where:

(a) an eligible employee dies before attaining his or her maximum retiring age;

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(b) his or her period of contributory service is not less than 8 years;

(c) there was in force in respect of him or her immediately before his or her death a benefit classification certificate and CSC is of the opinion that his or her death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or such conditions; and

(d) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children;

then:

(e) at any time after his or her death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children—orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2); and

(f) if the deceased eligible employee had paid supplementary contributions and the surviving child or 1 or more of the surviving children is or are, immediately after his or her death, an eligible child or children or, in the opinion of CSC, is or are likely to become an eligible child or children—lump sum benefit is payable in respect of that child or those children in accordance with subsection (3).

(2) Where, by virtue of paragraph (1)(e) of this section, orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) Where, by virtue of paragraph (1)(f), lump sum benefit is payable in respect of a surviving child or surviving children of a deceased eligible employee, the lump sum benefit is an amount equal to the accumulated supplementary contributions of the deceased eligible employee.

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(4) The reference in subsection (2) of this section to the notional invalidity pension of a deceased eligible employee means:

(a) subject to paragraph (b) of this subsection, the rate of the invalidity pension to which the eligible employee would have been entitled under section 70 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension in accordance with that section; or

(b) where an amount equal to the deceased eligible employee's accumulated contributions has been paid out of the Fund under section 111—the rate of the invalidity pension to which the eligible employee would have been entitled under section 71 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension and had made an election under that section.

(5) Where a deceased eligible employee would, if he or she had not died but had retired on the ground of invalidity on the day of his or her death, have been entitled to invalidity benefit as provided by subsection 66(3) or (3A), this section applies in relation to him or her as if:

(a) there were substituted for paragraph (1)(f) of this section provision that lump sum benefit equal to the accumulated contributions of the deceased eligible employee were payable in respect of the child or children referred to in that paragraph; and

(b) paragraph (4)(b) of this section applied in relation to him or her.

101 Orphan benefit—death of eligible employee before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service less than 8 years

(1) Where:

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(a) an eligible employee dies before attaining his or her maximum retiring age;
(b) his or her period of contributory service is less than 8 years;
(c) his or her period of prospective service is not less than 1 year;
(d) there was in force in respect of him or her immediately before his or her death a benefit classification certificate and CSC is of the opinion that his or her death was caused, or was substantially contributed to, by a physical or mental condition or conditions specified in the certificate or by a physical or mental condition or conditions connected with such a condition or such conditions;
(e) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children; and
(f) the surviving child or 1 or more of the surviving children is or are, immediately after his or her death, an eligible child or eligible children or, in the opinion of CSC, is or are likely to become an eligible child or eligible children;

a lump sum benefit is payable in respect of that child or those children in accordance with this section.

(2) Subject to subsection (3), where, by virtue of subsection (1), a lump sum benefit is payable in respect of the child or children of a deceased eligible employee, the lump sum benefit payable in accordance with this section is an amount equal to the amount of the lump sum benefit to which the deceased eligible employee would have been entitled under subsection 73(2) or (3) (as the case may be) if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit under section 73.

(3) Where:
(a) by virtue of subsection (1) a lump sum benefit is payable in respect of the child or children of a deceased eligible employee; and

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(b) that child, or each of those children, is a partially dependent child;

there is payable in respect of the child or children a lump sum benefit of an amount determined by CSC, being an amount that is:

(c) not less than the amount of the deceased eligible employee's accumulated contributions; and

(d) not more than the sum of the lump sum benefit referred to in subsection (2) and the productivity benefit payable in respect of the deceased eligible employee under Part VIA.

102 Orphan benefit—death of spouse of deceased eligible employee who died after attaining maximum retiring age

(1) Where:

(a) spouse's pension is payable to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee on or after attaining his or her maximum retiring age; and

(b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee;

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children, is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional standard age retirement pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in subsection (2) to the notional standard age retirement pension of a deceased eligible employee means the rate of the standard age retirement pension to which the deceased eligible employee would have been entitled on the day on which the spouse's pension ceased to be payable if the eligible employee had not died, but had, on the day immediately following the date of

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his or her death, become entitled to standard age retirement pension in accordance with section 56.

103 Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age and where benefit not reduced on medical grounds

(1) Where:

(a) spouse's pension is payable in accordance with section 82 or 83 to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee before attaining his or her maximum retiring age; and

(b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee;

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1), orphan pension is at any time payable in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in subsection (2) to the notional invalidity pension of a deceased eligible employee means:

(a) subject to paragraph (b) of this subsection, the rate of the invalidity pension to which the eligible employee would have been entitled under section 67 on the day on which spouse's pension ceased to be payable to the spouse if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension in accordance with that section; or

(b) if the spouse had made an election under section 83—the rate of the invalidity pension to which he or she would have been entitled under section 68 on the day on which spouse's

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pension ceased to be payable to the spouse if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and made an election under section 68.

104 Orphan benefit—death of spouse of deceased eligible employee who died before attaining maximum retiring age where benefit reduced on medical grounds and period of contributory service not less than 8 years

(1) Where:

(a) spouse's pension is payable in accordance with section 85 or 86 to the spouse of a person who ceased to be an eligible employee by reason of the death of the eligible employee before attaining his or her maximum retiring age; and

(b) the spouse dies but is survived by a person or persons who is or are the child or children of the deceased eligible employee;

then, at any time after the spouse's death when the surviving child or 1 or more of the surviving children, is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1), orphan benefit is payable at any time in respect of an eligible child or eligible children of a deceased eligible employee, the annual rate of pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased eligible employee as is applicable under section 109.

(3) The reference in subsection (2) to the notional invalidity pension of a deceased eligible employee means:

(a) subject to paragraph (b) of this subsection, the rate of the invalidity pension to which the eligible employee would have been entitled under section 70 on the day on which spouse's pension ceased to be payable to the spouse if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension in accordance with that section; or

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(b) if the spouse had made an election under section 86—the rate of the invalidity pension to which he or she would have been entitled under section 71 on the day on which spouse's pension ceased to be payable to the spouse if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity benefit and made an election under section 71.

105 Orphan benefit—death of age or early retirement pensioner

(1) Where:

(a) a pensioner to whom age retirement pension or early retirement pension is payable dies; and

(b) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children;

then, subject to section 108A, at any time after his or her death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1) of this section, orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of the child or children is such percentage of the notional standard pension of the deceased pensioner as is applicable under section 109.

(3) A reference in subsection (2) to the notional standard pension of a deceased pensioner means the annual rate at which standard age retirement pension or standard early retirement pension, as the case may be, was payable to the deceased pensioner immediately before his or her death.

106 Orphan benefit—death of invalidity pensioner

(1) Where:

(a) a pensioner to whom invalidity pension is payable dies; and

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(b) he or she is not survived by a spouse but is survived by a person or persons who is or are his or her child or children;

then, subject to section 108A, at any time after his or her death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1) of this section, orphan pension is payable in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased pensioner as is applicable under section 109.

(3) A reference in subsection (2) to the notional invalidity pension of a deceased pensioner means the rate at which invalidity pension was payable to the deceased pensioner immediately before his or her death.

107 Orphan benefit—death of spouse of deceased age retirement or early retirement pensioner

(1) Where:

(a) spouse's pension is payable to the spouse of a person to whom age retirement pension or early retirement pension was payable at the time of the person's death; and

(b) the spouse dies, but is survived by a person or persons who is or are the child or children of the deceased pensioner;

then, subject to section 108A, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1), orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in

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respect of that child or those children is such percentage of the notional standard pension of the deceased pensioner as is applicable under section 109.

(3) A reference in subsection (2) to the notional standard pension of a deceased pensioner means the rate at which standard age retirement pension or standard early retirement pension, as the case may be, would have been payable to the deceased pensioner immediately before the pensioner's death if the pensioner had died on the day on which his or her spouse died.

108 Orphan benefit—death of spouse of deceased invalidity pensioner

(1) Where:

(a) a spouse's pension is payable to the spouse of a person to whom invalidity pension was payable at the time of the person's death; and

(b) the spouse dies, but is survived by a person or persons who is or are the child or children of the deceased pensioner;

then, subject to section 108A, at any time after the spouse's death when the surviving child or 1 or more of the surviving children is an eligible child or are eligible children, orphan pension is payable in respect of the eligible child or eligible children in accordance with subsection (2).

(2) Where, by virtue of subsection (1), orphan pension is payable at any time in respect of an eligible child or eligible children of a deceased pensioner, the annual rate of the pension payable in respect of that child or those children is such percentage of the notional invalidity pension of the deceased pensioner as is applicable under section 109.

(3) A reference in subsection (2) to the notional invalidity pension of a deceased pensioner means the annual rate at which invalidity pension would have been payable to the deceased pensioner immediately before the pensioner's death if he or she had died on the day on which his or her spouse died.

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108A Orphan benefit reduced if deceased pensioner had marital or couple relationship of less than 3 years etc.

(1) This section applies to the eligible child or eligible children of a deceased retirement pensioner if the child, or at least one of the children, is a child of the pensioner because of a late short-term marital or couple relationship between the pensioner and his or her spouse.

(2) This section also applies to the eligible child or eligible children of a deceased retirement pensioner if:

(a) the child, or at least one of the children, became a child of the pensioner only because he or she was an adopted child, foster child or ward of the pensioner; and

(b) he or she had been such an adopted child, foster child or ward for a period of less than 3 years before the pensioner's death.

(3) Orphan pension is payable in respect of a person or persons to whom this section applies only in accordance with this section.

(4) If, apart from this section, orphan pension would at any time be payable under section 105, 106, 107 or 108 in respect of a person or persons to whom this section applies, the annual rate of that pension at that time is:

(a) if paragraph (b) does not apply—the amount worked out by using the formula:

$$\text{Basic rate of pension} \times \frac{\text{Number of days in relevant period}}{1095}$$

(b) if at that time there is one or more than one eligible child who is not a child referred to in subsection (1) or (2)—such rate, being a rate higher than the rate worked out under paragraph (a) but less than the basic rate of pension, as CSC determines to be fair and equitable in all the circumstances of the case.

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(5) In subsection (4):

basic rate of pension means the annual rate at which, apart from this section, orphan pension would be payable at that time in respect of the person under subsection 105(2), 106(2), 107(2) or 108(2).

relevant period means the period:

(a) beginning on the day on which:

(i) the marital or couple relationship between the deceased pensioner and his or her spouse began; or

(ii) the child, or one of the children, first became an adopted child, foster child or ward of the pensioner; and

(b) ending on the day on which the pensioner died.

109 Percentages applicable for purpose of certain provisions

(1) Where, at any time, orphan pension is payable in respect of an eligible child or eligible children of a deceased eligible employee or a deceased pensioner, then, for the purposes of subsection 97(2), 98(2), 100(2), 102(2), 103(2), 104(2), 106(2) or 108(2), as the case requires, the applicable percentage is:

(a) if at that time there is 1 eligible child—45 per centum;

(b) if at that time there are 2 eligible children—80 per centum;

(c) if at that time there are 3 eligible children—90 per centum; and

(d) if at that time there are 4 or more eligible children—100 per centum.

(2) If, at any time, orphan pension is payable in respect of an eligible child or eligible children of a deceased pensioner, then, for the purposes of subsection 105(2) or 107(2), the applicable percentage is the percentage worked out in accordance with the following table:

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Applicable percentage			
Item	**Number of eligible children**	**Category 1 deceased pensioner**	**Category 2 deceased pensioner**
1	If, at that time, there is 1 eligible child	45%	51%
2	If, at that time, there are 2 eligible children	80%	92%
3	If, at that time, there are 3 eligible children	90%	108%
4	If, at that time, there are 4 or more eligible children	100%	108%

109A Orphan pension—when there are partially dependent children

(1) Subject to subsection (3), if:

(a) at any time when orphan pension is payable in accordance with a provision of this Division to or in respect of an eligible child or eligible children of a deceased eligible employee or pensioner, that child or any of those children is a partially dependent child; and

(b) but for this section, that pension would be payable at an annual rate that exceeds the maximum permissible rate in relation to that pension, the annual rate of that pension is an amount per annum equal to the maximum permissible rate.

(2) For the purposes of subsection (1), the maximum permissible rate, in relation to orphan pension payable in accordance with a provision of this Division to or in respect of an eligible child or eligible children of a deceased eligible employee or pensioner who is, or any of whom is, a partially dependent child is:

(a) where the pension is payable to or in respect of one eligible child and that child is a partially dependent child—an amount per annum equal to the amount per annum of the regular maintenance payments that the deceased eligible employee or pensioner was, at the time of his or her death, voluntarily making, or required by a court to make, to or in respect of the child; or

(b) in any other case—an amount per annum equal to the sum of:

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(i) the annual rate at which orphan pension would be payable under that provision if the deceased eligible employee or pensioner had no partially dependent child; and

(ii) the amount per annum of the regular maintenance payments that the deceased eligible employee or pensioner was, at the time of his or her death, voluntarily making, or required by a court to make, to or in respect of his or her partially dependent child or children.

(3) This section does not apply at any time when there are more than 3 eligible children of the deceased eligible employee or pensioner who are not partially dependent children.

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Division 5—Miscellaneous

109AB Eligible employee or retirement pensioner survived by one spouse and child not in the custody, care and control of the spouse

(1) Where a person (in this section called the ***deceased person***) who is an eligible employee or a retirement pensioner dies and is survived by one spouse and by an eligible child or eligible children, or a partially dependent child or partially dependent children, not in the custody, care and control of the spouse, benefit is only payable under Division 1, 2, 3 or 3A in accordance with this section.

(2) The amount of spouse's pension payable to the spouse must not exceed:

(a) if the deceased person was, immediately before his or her death, an eligible employee who had not attained his or her maximum retiring age—the applicable percentage of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 or 70 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension under that section; or

(b) if the deceased person was, immediately before his or her death, an eligible employee who had attained his or her maximum retiring age—the applicable percentage of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled under section 56 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension under that section; or

(c) if the deceased person was, immediately before his or her death, a retirement pensioner and had had a marital or couple relationship that had begun:

(i) before he or she had become a retirement pensioner; or

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(ii) before he or she had turned 60; or

(iii) not less than 3 years before the pensioner's death;

—the applicable percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death.

(3) The applicable percentage mentioned in paragraphs (2)(a) and (b) is:

(a) if there are no eligible children of the deceased person in the custody, care and control of the spouse—67%; or

(b) if there is one such eligible child—78%; or

(c) if there are 2 such eligible children—89%; or

(d) if there are 3 or more such eligible children—100%.

(3A) The applicable percentage mentioned in paragraph (2)(c) is the percentage worked out in accordance with the following table:

Applicable percentage

Item	Number of eligible children in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there are no eligible children of the deceased person in the custody, care and control of the spouse	67%	85%
2	If there is one eligible child of the deceased person in the custody, care and control of the spouse	78%	97%
3	If there are 2 eligible children of the deceased person in the custody, care and control of the spouse	89%	108%
4	If there are 3 or more eligible children of the deceased person in the custody, care and control of the spouse	100%	108%

(3B) If the deceased person:

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(a) was, immediately before his or her death, a retirement pensioner; and
(b) had had a late short-term marital or couple relationship with his or her spouse;

the amount of the spouse's pension payable to the spouse must not exceed such percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death as is determined by CSC.

(3C) In making a determination under subsection (3B), CSC must take into consideration:
(a) the extent to which spouse's pension payable to the spouse of a deceased pensioner under Division 3 is reduced when the spouse and the deceased pensioner have been in a marital or couple relationship of the kind referred to in paragraph (3B)(b); and
(b) whether one or more than one eligible child, or one or more than one partially dependent child, of the pensioner is or is not a child of the pensioner because of the late short-term marital or couple relationship referred to in paragraph (3B)(b).

(4) CSC must, having regard to:
(a) the needs of the spouse; and
(b) the respective needs of any eligible child or eligible children, or any partially dependent child or partially dependent children, of the deceased person; and
(c) such other matters as CSC considers relevant;

subject to the limitations set out in subsections (5), (5A) and (7), determine the part of a benefit to which the spouse is entitled under Division 1, 2, 3 or 3A that is attributable to each such child.

(5) Benefit attributed under subsection (4) to an eligible child or eligible children of the deceased person not in the custody, care and control of the spouse must not exceed in the aggregate:
(a) if the deceased person was, immediately before his or her death, an eligible employee who had not attained his or her

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maximum retiring age—the applicable percentage of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 or 70 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension under that section; or

(b) if the deceased person was, immediately before his or her death, an eligible employee who had attained his or her maximum retiring age—the applicable percentage of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled under section 56 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension under that section; or

(c) if the deceased person was, immediately before his or her death, a retirement pensioner and had had a marital or couple relationship that had begun:

(i) before he or she had become a retirement pensioner; or

(ii) before he or she had turned 60; or

(iii) not less than 3 years before the pensioner's death;

—the applicable percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death.

(5A) If the deceased person:

(a) was, immediately before his or her death, a retirement pensioner; and

(b) had had a late short-term marital or couple relationship with his or her spouse;

benefit attributed under subsection (4) to the eligible child or eligible children of the deceased person not in the custody, care and control of the spouse must not exceed in the aggregate such proportion of the applicable percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death as is determined by CSC.

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(5B) In making a determination under subsection (4) or (5A), CSC must take into consideration:

(a) the extent to which spouse's pension payable to the spouse of a deceased pensioner under Division 3 is reduced when the spouse and the deceased pensioner have been in a marital or couple relationship of the kind referred to in paragraph (5A)(b); and

(b) whether one or more than one eligible child of the pensioner is or is not a child of the pensioner because of the late short-term marital or couple relationship referred to in paragraph (5A)(b).

(6) The applicable percentage mentioned in paragraphs (5)(a) and (b) is:

(a) if there is one eligible child not in the custody, care and control of the spouse—45%; or

(b) if there are 2 such eligible children—80%; or

(c) if there are 3 such eligible children—90%; or

(d) if there are 4 or more such eligible children—100%.

(6A) The applicable percentage mentioned in paragraph (5)(c) is the percentage worked out in accordance with the following table:

Applicable percentage

Item	Number of eligible children not in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is one eligible child not in the custody, care and control of the spouse	45%	51%
2	If there are 2 eligible children not in the custody, care and control of the spouse	80%	92%
3	If there are 3 eligible children not in the custody, care and control of the spouse	90%	108%
4	If there are 4 or more eligible children not in the custody, care and control of the spouse	100%	108%

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(7) Benefit attributed under subsection (4) to a partially dependent child or partially dependent children of the deceased person must not exceed in the aggregate the lesser of:

(a) the annual rate of the regular maintenance payments being made, or required to be made by order of a court, in relation to the child or children by the deceased person immediately before his or her death; or

(b) the maximum benefit that, under subsection (5) or (5A), could be attributed to the child or children if the child or children were an eligible child or eligible children, as the case may be, of the deceased person not in the custody, care and control of the spouse.

(8) CSC must not determine that a part of spouse's additional pension, being such pension mentioned in sections 89 and 93, is attributable to a partially dependent child or partially dependent children.

(9) Where CSC makes a determination under subsection (4), the spouse may make any election under this Act in relation to the part of a benefit that, under the determination, is not attributable to a child or children (being a child or children not in the custody, care and control of the spouse) as if the part of the benefit were the whole of the benefit to which the spouse had become entitled.

(10) Where a determination is made under subsection (4), CSC, having regard to the respective needs of the persons mentioned in that subsection and to such other matters as CSC considers relevant, may vary the determination from time to time.

(11) A reference in subsection (2) to spouse's pension does not include a reference to spouse's additional pension mentioned in sections 89 and 93.

(12) For the purposes of this section, in determining the needs of a spouse, disregard any need that results from an election made by the spouse under section 146E.

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(13) CSC must ensure that so much of a spouse's pension as is commuted under section 146E is not attributed under this section to a child.

110 Eligible employee or retirement pensioner survived by more than one spouse

(1) Where a person (in this section called the ***deceased person***) who is an eligible employee or a retirement pensioner dies and is survived by more than one spouse, benefit is only payable under Division 1, 2, 3 or 3A in accordance with this section.

(2) Subject to this section and section 110AB, benefit payable under Division 1, 2, 3 or 3A to those spouses is such benefit as would be payable in respect of the deceased person if the deceased person had had only one spouse who survived him or her.

(3) CSC must, having regard to:

(a) the respective needs of the surviving spouses; and

(b) the respective needs of any eligible child or eligible children, or any partially dependent child or partially dependent children, of the deceased person; and

(c) such other matters as CSC considers relevant;

allocate any benefit payable in respect of the deceased person under Division 1, 2, 3 or 3A (other than a benefit payable in accordance with section 91) among those spouses, subject to the limitations set out in subsections (4) and (5), and benefit is payable accordingly.

(4) The amount of spouse's pension payable to a spouse must not exceed:

(a) if the deceased person was, immediately before his or her death, an eligible employee who had not attained his or her maximum retiring age—the applicable percentage of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 or 70 if he or she had not died, but had, on the day

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immediately following the date of his or her death, become entitled to invalidity pension under that section; or

(b) if the deceased person was, immediately before his or her death, an eligible employee who had attained his or her maximum retiring age—the applicable percentage of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled under section 56 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension under that section; or

(c) if the deceased person was, immediately before his or her death, a retirement pensioner and had had a marital or couple relationship with the spouse that had begun:

(i) before the retirement pensioner had become a retirement pensioner; or

(ii) before the retirement pensioner had turned 60; or

(iii) not less than 3 years before the pensioner's death;

—the applicable percentage of the annual rate of pension payable to the retirement pensioner before his or her death; or

(d) if the deceased pensioner was, immediately before his or her death, a retirement pensioner and had had a late short-term marital or couple relationship with the spouse—such percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death as is determined by CSC.

(5) The applicable percentage mentioned in paragraphs (4)(a) and (b) is:

(a) if there are no eligible children of the deceased person in the custody, care and control of the spouse—67%; or

(b) if there is one such eligible child—78%; or

(c) if there are 2 such eligible children—89%; or

(d) if there are 3 or more such eligible children—100%.

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(5A) The applicable percentage mentioned in paragraph (4)(c) is the percentage worked out in accordance with the following table:

Applicable percentage

Item	Number of eligible children in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is no eligible child of the deceased person in the custody, care and control of the spouse	67%	85%
2	If there is one eligible child of the deceased person in the custody, care and control of the spouse	78%	97%
3	If there are 2 eligible children of the deceased person in the custody, care and control of the spouse	89%	108%
4	If there are 3 or more eligible children of the deceased person in the custody, care and control of the spouse	100%	108%

(5B) In making a determination under paragraph (4)(d), CSC must take into consideration:

(a) the extent to which spouse's pension payable to the spouse of a deceased pensioner under Division 3 is reduced when the spouse and the deceased pensioner have been in a marital or couple relationship of the kind referred to in paragraph (4)(d); and

(b) whether there is in the custody, care and control of the spouse one, or more than one, eligible child who:

(i) was not born of the marital or couple relationship referred to in paragraph (4)(d); or

(ia) was not a child of the spouse, and the pensioner, within the meaning of the *Family Law Act 1975*; or

(ii) did not become a stepchild of the pensioner as a result of that marital or couple relationship; or

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(iii) is not a child of the person with whom the pensioner had that marital or couple relationship.

(6) Where, under subsection (3), CSC allocates a benefit payable in respect of a deceased person and there is an eligible child or eligible children, or a partially dependent child or partially dependent children, of the deceased person, CSC must determine the part of the benefit that is attributable to each such child other than, in the case of a benefit payable under section 91 or 95, a partially dependent child.

(7) Benefit attributed under subsection (6) to an eligible child or eligible children of the deceased person not in the custody, care and control of any of the surviving spouses must not exceed in the aggregate:

(a) if the deceased person was, immediately before his or her death, an eligible employee who had not attained his or her maximum retiring age—the applicable percentage of the annual rate of the invalidity pension to which the deceased eligible employee would have been entitled under section 67 or 70 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to invalidity pension under that section; or

(b) if the deceased person was, immediately before his or her death, an eligible employee who had attained his or her maximum retiring age—the applicable percentage of the annual rate of the standard age retirement pension to which the deceased eligible employee would have been entitled under section 56 if he or she had not died, but had, on the day immediately following the date of his or her death, become entitled to standard age retirement pension under that section; or

(c) if the deceased person was, immediately before his or her death, a retirement pensioner and had been in a marital or couple relationship that had begun:

(i) before he or she had become a retirement pensioner; or

(ii) before he or she had turned 60; or

(iii) not less than 3 years before the pensioner's death;

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the applicable percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death.

(7A) If:

(a) the deceased person:

(i) was, immediately before his or her death, a retirement pensioner; and

(ii) had had a late short-term marital or couple relationship; and

(b) one or more than one eligible child of the pensioner:

(i) was born of that marital or couple relationship; or

(ia) was, within the meaning of the *Family Law Act 1975*, a child of the pensioner and the person with whom the pensioner had that marital or couple relationship; or

(ii) became a stepchild of the pensioner as a result of that marital or couple relationship; or

(iii) is a child of the person with whom the pensioner had that marital or couple relationship; and

(c) that child or any of those children is not in the custody, care and control of any of the surviving spouses;

the following provisions apply:

(d) benefit attributed under subsection (6) to that child or to each of those children should be less than the amount of benefit that would be attributed to him or her if he or she were an eligible child other than a child referred to in paragraph (b);

(e) benefit attributed under subsection (6) to the eligible child or eligible children of the deceased person not in the custody, care and control of any of the surviving spouses must not exceed in the aggregate such proportion of the applicable percentage of the annual rate of pension payable to the retirement pensioner immediately before his or her death as is determined by CSC.

(7B) In making a determination under subsection (6) as affected by paragraph (7A)(d) or under paragraph (7A)(e), CSC must take into consideration:

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(a) the extent to which spouse's pension payable to the spouse of a deceased pensioner under Division 3 is reduced when the spouse and the deceased pensioner have been in a marital or couple relationship of the kind referred to in paragraph (7A)(a); and

(b) whether the eligible child or any of the eligible children not in the custody of any surviving spouse was or was not a child referred to in paragraph (7A)(b).

(8) The applicable percentage mentioned in paragraphs (7)(a) and (b) is:

(a) if there is one eligible child not in the custody, care and control of any of the surviving spouses—45%; or

(b) if there are 2 such eligible children—80%; or

(c) if there are 3 such eligible children—90%; or

(d) if there are 4 or more such eligible children—100%.

(8A) The applicable percentage mentioned in paragraph (7)(c) is the percentage worked out in accordance with the following table:

Applicable percentage

Item	Number of eligible children not in custody etc. of spouse	Category 1 deceased pensioner	Category 2 deceased pensioner
1	If there is one eligible child not in the custody, care and control of the spouse	45%	51%
2	If there are 2 eligible children not in the custody, care and control of the spouse	80%	92%
3	If there are 3 eligible children not in the custody, care and control of the spouse	90%	108%
4	If there are 4 or more eligible children not in the custody, care and control of the spouse	100%	108%

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(9) Benefit attributed under subsection (6) to a partially dependent child or partially dependent children of the deceased person must not exceed in the aggregate the lesser of:

(a) the annual rate of the regular maintenance payments being made, or required to be made by order of a court, in relation to the child or children by the deceased person immediately before his or her death; or

(b) the maximum benefit that, under subsection (7) or (7A), could be attributed to the child or children if the child or children were an eligible child or eligible children, as the case may be, of the deceased person not in the custody, care and control of any of the surviving spouses.

(10) Where the deceased person was, immediately before his or her death, an eligible employee who had attained his or her maximum retiring age:

(a) CSC, having regard to:

(i) the respective needs of the surviving spouses; and

(ii) the respective needs of any eligible child or eligible children; and

(iii) such other matters as CSC considers relevant;

must, for the purposes of ascertaining the benefit payable in accordance with section 91, allocate the accumulated contributions of the deceased person among such spouses; and

(b) section 91 applies in relation to a spouse of the deceased person as if:

(i) the deceased person had had only one spouse who survived him or her and that person were that spouse; and

(ii) the accumulated contributions of the deceased person were the part of those contributions allocated to that spouse under paragraph (a); and

(iii) each reference in that section to 13.4 per centum were a reference to such percentage as bears to 13.4 per centum the same proportion as the part of the accumulated contributions of the deceased person allocated to that

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spouse under paragraph (a) bears to the accumulated contributions of the deceased person.

(11) Where, under subsection (10), CSC allocates a benefit payable in respect of a deceased person and there is an eligible child or eligible children of the deceased person not in the custody, care and control of any of the surviving spouses, CSC must determine the part of the benefit that is attributable to each such child.

(12) Each of the surviving spouses of a deceased person may make such elections under this Act in relation to the part of a benefit allocated to the spouse that is not attributable to a child or children (being a child or children not in the custody, care and control of the spouse) as could be made by the spouse in relation to the benefit if the deceased person had had only one spouse who survived him or her and that person were that spouse.

(13) Where a benefit is payable in accordance with an allocation made under subsection (3) or (10), CSC, having regard to the respective needs of the persons mentioned in that subsection and to such other matters as CSC considers relevant, may vary the allocation from time to time.

(14) Where:

(a) benefit is payable to the surviving spouses of a deceased person under subsection 81(1) or (2); and

(b) the spouses are entitled under subsection (12) of this section to make an election under section 84 or 87; and

(c) one or more, but not all, of the surviving spouses make such an election;

then:

(d) unless CSC otherwise directs, orphan pension is not payable in respect of a child (including a child of a kind referred to in subparagraph (b)(i) or (ii) of the definition of ***child*** in subsection 3(1)) of a spouse who makes such an election; and

(e) if orphan pension becomes payable in respect of a child or children of the deceased person, the rate of the pension is such rate as CSC determines, being a rate equal to such rate

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as CSC considers would have been the rate of pension payable to, or for the benefit of, that child or those children but for paragraph (d).

(15) Orphan benefit is not payable under section 102, 103, 104, 107 or 108 in respect of the children of a deceased person until the death of the last of the surviving spouses entitled to pension under this section.

(16) A reference in subsection (4) to spouse's pension does not include a reference to spouse's additional pension mentioned in sections 89 and 93.

(17) For the purposes of this section, in determining the needs of a spouse, disregard any need that results from an election made by the spouse under section 146E.

(18) CSC must ensure that so much of a spouse's pension as is commuted under section 146E is not allocated under this section.

110AB Spouse's pension to be increased in certain circumstances

(1) If, at any time:

(a) spouse's pension is payable:

(i) to the spouse of a deceased eligible employee under section 82, 83, 85, 86 or 90; or

(ii) to the spouse of a deceased pensioner under section 94 or 96; and

(b) the sum of the spouse's pension and extra spouse's pension (if any) is less than the annual rate of the pension by reference to which the rate of spouse's pension is calculated under whichever is applicable of section 82, 83, 85, 86, 90, 94 or 96 (in this section called the ***base amount***); and

(c) there is more than one spouse of the deceased eligible employee or pensioner;

the spouse's pension is increased under this section.

(2) The increase in the annual rate of spouse's pension is:

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(a) the applicable percentage of the base amount; or

(b) the amount by which the base amount exceeds the sum of the spouse's pension and the extra spouse's pension;

whichever is less.

(3) Where, at any time, the spouse's pension is increased under this section, the applicable percentage is:

(a) in the case of spouses of a category 2 deceased pensioner:

(i) if there are 2 spouses—11%; or

(ii) if there are 3 or more spouses—22%; or

(b) in any other case:

(i) if there are 2 spouses—11%; or

(ii) if there are 3 spouses—22%; or

(iii) if there are 4 or more spouses—33%.

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Part VIA—Productivity superannuation

110A Interpretation

In this Part, unless the contrary intention appears:

notional interim benefit, in relation to a person, has the same meaning as in section 8A of the *Superannuation (Productivity Benefit) Act 1988*.

productivity benefit means a benefit payable under section 110P.

productivity contribution, in relation to a productivity employee, has the meaning given by section 110C.

productivity employee means:

(a) an eligible employee other than:
  (i) an employee of the Northern Territory or of an authority of the Northern Territory; or
  (ii) an employee of a State or of an authority of a State; or
  (iii) a person who is engaged or appointed for employment outside Australia only; or
  (iv) a person in a class in respect of which a declaration is in force under section 110E; or

(b) an eligible employee in respect of whom a declaration is in force under section 110F;

but does not include an eligible employee whom the Minister and CSC have agreed to exempt from the operation of subsection 51(2B).

productivity related benefit means a benefit not payable under this Act that consists of, or is worked out by reference to, an amount like the amount described in paragraph 110Q(1)(a).

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110B Rate of salary

For the purposes of section 110C, the fortnightly rate of salary of a productivity employee is taken to be the rate of salary that, for the purposes of section 46, was his or her fortnightly rate of salary on the last anniversary of his or her birth that occurred before the contribution day on which the productivity contribution is payable.

110C Productivity contributions

(1) Subject to this section, the productivity contribution in respect of a productivity employee for a fortnight is the amount ascertained in accordance with the following Table:

TABLE

Fortnightly rate of salary	**Fortnightly productivity contribution**
Less than $846	$25.40
$846 or more but less than $1,300	The amount that is 3% of the employee's fortnightly rate of salary
$1,300 or more but less than $1,950	$39.00
$1,950 or more	The amount that is 2% of the employee's fortnightly rate of salary.

(2) Where CSC makes a declaration under section 110D in relation to a period, the Table has effect in relation to that period as if it had been varied in accordance with the declaration.

(3) Where an amount that, but for this subsection, would be a productivity contribution in respect of a productivity employee includes a part of a cent, then:

(a) where the part is .5 of a cent or more—that part shall be taken to be 1 cent; and

(b) in any other case—the part shall be disregarded.

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110D Variation of Table

Before the commencement of a period, CSC, in accordance with a method of calculation notified to CSC by the Minister, may, by legislative instrument, declare that the Table in subsection 110C(1) is to have effect in relation to the period as if amounts specified in the declaration were substituted for amounts specified in the Table (whether sums of money or percentages).

110E Exclusion of certain employees

(1) The Minister may, by legislative instrument, declare that a specified class of eligible employees are not to be productivity employees for the purposes of this Part.

(2) The Minister is only to make a declaration about a class of employees if he or she is satisfied that those employees are entitled to productivity related benefits.

(3) A declaration under this section takes effect from such day, not earlier than 1 July 1990, as is specified in it.

110EA Effect of retrospective declaration under section 110E

If the Minister makes a declaration under section 110E with retrospective effect:

(a) the amounts paid as productivity contributions in respect of an employee to whom the declaration relates in respect of the period covered by the declaration; and

(b) interest in respect of those amounts;

are payable, as soon as practicable after the declaration is made, to the fund out of which the productivity related benefits to which the employee is entitled as mentioned in subsection 110E(2) are payable.

110F Inclusion of certain employees

(1) The Minister may, by legislative instrument, declare an eligible employee described in subparagraph (a)(i), (ii) or (iii) of the

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definition of ***productivity employee*** in section 110A to be a productivity employee for the purposes of this Part.

(2) A declaration under this section takes effect from such day, not earlier than 1 July 1990, as is specified in it.

110G Legislative instruments disallowable

Despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a declaration made under section 110D, 110E or 110F of this Act.

110H Payments of productivity contributions to CSC

(1) Subject to subsection (3), a designated employer of a productivity employee is to pay to CSC:

(a) productivity contributions in respect of the employee in respect of each fortnight occurring during the employee's employment by the employer; and

(b) where a productivity contribution is not paid on the day on which it is payable under subsection (2A)—interest on it in respect of the period commencing on that day and ending on the day immediately before the day when it is paid.

(2) A productivity contribution in respect of a productivity employee is not payable in respect of a fortnight unless:

(a) a basic contribution is payable by the employee for the fortnight; or

(b) if paragraph (a) does not apply:

(i) the productivity contribution is required to be paid in respect of the employee by an industrial award; or

(ii) a basic contribution would be payable by the employee for the fortnight if the employee's tax file number had been quoted (for superannuation purposes), within the meaning of the *Income Tax Assessment Act 1997*, to CSC.

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(2A) If a basic contribution is payable by a productivity employee for a fortnight, the productivity contribution in respect of the employee for the fortnight is payable on the contribution day on which the basic contribution is payable.

(2B) If subparagraph (2)(b)(ii) applies, the productivity contribution in respect of the employee for the fortnight is payable on the contribution day on which the basic contribution would have been payable if the employee's tax file number had been quoted (for superannuation purposes), within the meaning of the *Income Tax Assessment Act 1997*, to CSC.

(3) Where CSC is satisfied that:

(a) a productivity employee is to be, or was, a member of a superannuation scheme during a period; and

(b) the scheme provides for a productivity related benefit in respect of the employee;

CSC may, by notice in writing given to the employee's designated employer, waive the obligation of the employer under subsection (1) in respect of the employee during that period.

110J Source of productivity contributions

A designated employer of a productivity employee may pay productivity contributions in respect of the employee out of any money under the employer's control that is available for the purpose.

110K Repayment of interim benefits

(1) Subject to subsection (2), where, before 1 July 1990, a productivity employee received, or became entitled to receive, an interim benefit within the meaning of the *Superannuation (Productivity Benefit) Act 1988* without ceasing to be an eligible employee:

(a) where the benefit has neither been preserved in a fund nor used to buy a deferred annuity—the employee may pay to CSC all or part of the amount of that benefit; or

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(b) where the benefit has been preserved in a fund—all or part of the amount of that benefit and the amount of any interest accruing on that benefit while preserved in the fund may be transferred, or paid, to CSC; or

(c) where the benefit has been used to buy a deferred annuity that has not become payable and an amount has been received by the employee because of the annuity—the employee may pay to CSC the amount received.

(2) A payment to CSC may only be made within the period of 3 months commencing on 1 July 1990 or such longer period as CSC allows for the particular payment.

110L Payments of certain benefits to Fund by new productivity employees

(1) Subject to subsection (2), where a person who becomes a productivity employee became entitled to receive from a superannuation scheme an amount by way of a productivity related benefit:

(a) where the benefit has neither been preserved in a fund nor used to buy a deferred annuity—the person may pay to CSC all or part of the amount of that benefit; or

(b) where the benefit has been preserved in a fund—all or part of the amount of that benefit and the amount of any interest accruing on that benefit while preserved in the fund may be transferred, or paid, to CSC; or

(c) where the benefit has been used to buy a deferred annuity that has not become payable and an amount has been received by the person because of the annuity—the employee may pay to CSC the amount received.

(2) A payment to CSC may only be made within the period of 3 months commencing on the day on which the person became a productivity employee or such longer period as CSC allows for the particular payment.

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110M Payments of certain benefits to Fund by productivity employees

(1) Where a productivity employee:

(a) has, while such an employee, been a member of a superannuation scheme that provided for a productivity related benefit in respect of the employee; and

(b) is paid an amount by way of that benefit;

he or she may pay to CSC all or part of the amount.

(2) A payment to CSC may only be made within the period of 3 months commencing on the day on which the amount was paid to the employee or such longer period as CSC allows for the particular payment.

110MA Payments of productivity related benefits to Fund by certain eligible employees

(1) If:

(a) an eligible employee, while an eligible employee but not a productivity employee, has been a member of a government body scheme within the meaning of Part VIAA that provided for a productivity related benefit in respect of the eligible employee; and

(b) an amount is paid to or in respect of the eligible employee by way of that benefit;

the eligible employee may pay that amount to CSC.

(2) A payment to CSC may only be made within the period of 3 months commencing on the day on which the amount was paid to or in respect of the employee or such longer period as CSC allows for the particular payment.

110N CSC to pay Fund

(1) CSC must pay to the Fund all amounts received by him or her under section 110H, 110K, 110L, 110M or 110MA.

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110P Productivity benefit

(1) Where a person:

(a) ceases to be an eligible employee; and

(b) was a productivity employee immediately before so ceasing or earlier;

a productivity benefit becomes payable in respect of the person.

(1A) If:

(a) the person's surcharge debt account is in debit when the productivity benefit becomes payable; and

(b) the productivity benefit is to be paid to the person or preserved in a preservation fund;

the amount of the benefit is equal to the difference between the amount of the accumulated employer contributions in respect of the person (***basic amount***) and:

(c) if paragraphs (d) and (e) do not apply—the person's surcharge deduction amount; or

(d) if part of the person's surcharge deduction amount has, under another provision of this Act, been deducted from a benefit payable to the person—the balance of the surcharge deduction amount; or

(e) if the person's surcharge deduction amount, or the balance of the surcharge deduction amount referred to in paragraph (d), is greater than the basic amount—so much of the surcharge deduction amount, or of the balance of the surcharge deduction amount, as is equal to the basic amount.

In any other case, the productivity benefit is equal to the accumulated employer contributions in respect of the person.

(1B) Subsection (1A) does not apply if the whole of the person's surcharge deduction amount has, under another provision of this Act, been deducted from a benefit payable to the person.

(2) Payment of a productivity benefit that becomes payable in respect of a person under this section may be postponed under Part VIB.

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110Q Accumulated employer contributions

(1) For the purposes of this Act, the accumulated employer contributions in respect of a person who ceases to be an eligible employee are the sum of:

(a) an amount equal to the difference between the sum of the productivity contributions paid or payable in respect of the person and the sum of any amounts in the nature of income tax relevant to those contributions; and

(b) interest on the amount mentioned in paragraph (a); and

(c) where the person:

(i) was an eligible employee on, and at all times after, 30 June 1990; and

(ii) was a productivity employee on 1 July 1990;

an amount equal to his or her notional interim benefit; and

(d) interest on the amount mentioned in paragraph (c); and

(e) if an amount has been paid or transferred to the Commissioner or CSC under section 110K, 110L, 110M or 110MA in respect of the employee—the amount paid or transferred less such amount (if any) in the nature of income tax that is relevant to that amount; and

(f) interest on the paid or transferred amount mentioned in paragraph (e).

(1A) For the purposes of subsection (1), an amount in the nature of income tax relevant to a productivity contribution or to an amount paid or transferred to the Commissioner or CSC to which paragraph (1)(e) applies is such amount as is calculated in accordance with a determination made by CSC for the purposes of this section.

(1B) A determination by CSC under subsection (1A) takes effect from:

(a) a specified day; or

(b) if no day is specified in the determination—the day of the making of the determination;

and must be published in the *Gazette*.

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(2) For the purposes of paragraph (1)(c), where deferred benefits became applicable in respect of a person on the person ceasing to be an eligible employee, the person is taken not to have so ceased.

110R Payment of productivity benefit

(1) Subject to subsection (2) and section 110S, if a productivity benefit becomes payable in respect of a person, the benefit is to be treated as a preserved benefit under the SIS Act and dealt with accordingly.

(2) If:

(a) the productivity benefit has become payable because of any of the following:

(i) the person ceased to be an eligible employee on or after reaching the age of 60 years;

(ii) if the person has reached the age of 55 years—the person is taken, under subsection 58(2), to have retired voluntarily;

(iii) if the person has reached the age of 55 years and has not made an election under section 137—the person is taken, under subsection 58(3), or under section 58A or 58B, to have retired involuntarily;

(iv) the person retired on the ground of invalidity; and

(b) the person is entitled to receive an additional age retirement pension or an additional early retirement pension; and

(c) the person has not made an election under section 64 to commute his or her pension into a lump sum benefit;

the person may elect to have applied, for the provision of additional age retirement pension or additional early retirement pension, so much of the productivity benefit as will not result in the base amount within the meaning of section 57, 57AA, 61 or 61AB (whichever is applicable) being greater than the maximum amount within the meaning of section 57, 57AA, 61 or 61AB (whichever is applicable).

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(3) Where a person has, under subsection (2), elected to have the benefit applied for the provision of additional age retirement pension or additional early retirement pension and, after it has been so applied, that pension is commuted under section 64, any part of the productivity benefit applied for the provision of the additional pension is taken to be accumulated contributions.

110S Productivity benefits payable to spouses etc.

(1) Where, because of a person's death:

(a) a productivity benefit becomes payable in respect of the person; and

(b) Part VI applies;

then:

(c) that Part so applies as if the accumulated employer contributions in respect of the person were accumulated supplementary contributions in respect of the person; and

(d) where the person is survived by a spouse:

(i) the spouse may elect that the benefit is not to be treated for the purposes of section 91 as if it were part of the accumulated contributions in respect of the person; and

(ii) where the spouse so elects—the benefit is payable to the spouse.

(2) Where, because of a person's death:

(a) a productivity benefit becomes payable in respect of the person; and

(b) Part VI does not apply;

the benefit is payable to the person's legal personal representative or, if no legal personal representative can be found, to any individual or individuals that CSC determines.

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