



# **Superannuation (Productivity Benefit) Act 1988**

**No. 70, 1988**

## **Compilation No. 11**

<b>Compilation date:</b>	20 March 2015
<b>Includes amendments up to:</b>	Act No. 21, 2015
<b>Registered:</b>	8 April 2015

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## About this compilation

### This compilation

This is a compilation of the *Superannuation (Productivity Benefit) Act 1988* that shows the text of the law as amended and in force on 20 March 2015 (the **compilation date**).

This compilation was prepared on 30 March 2015.

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 ComLaw ([www.comlaw.gov.au](http://www.comlaw.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 ComLaw 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.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Interpretation .....	1
3AA	Closure of productivity benefit scheme from 1 July 2006 .....	10
3AB	Modification of productivity benefit scheme from 1 July 2005 .....	10
3A	Only one benefit in respect of a day of employment .....	11
3B	Rates of salary .....	12
3C	Continuing contributions .....	13
3D	Variation of Table .....	16
3E	Interest factors .....	16
3F	Qualified employees .....	16
4	Other employers may apply interim benefit .....	17
4A	Arrangements for certain employers .....	17
4B	Nominated fund .....	17
4C	Approved funds .....	17
4D	Nominated and approved superannuation funds to comply with standards .....	18
4E	Payments of equivalent benefit to declared funds .....	18
4EA	Payments of equivalent benefit to CSC .....	19
4F	Payments of contributions to declared funds .....	19
4G	Interest .....	20
4H	Certain employees to become members of nominated fund .....	20
5	Qualifying service .....	21
6	When benefit payable .....	22
7	Employers to pay interim benefit for their employees .....	24
8	Amount of interim benefit before 1 July 1990 .....	25
8A	Amount of interim benefit from 1 July 1990 .....	25
9	Assignment of benefit .....	27
9A	Declarations .....	27
9B	Legislative instruments disallowable .....	27
9C	Delegation by Minister .....	27
9D	Minister to comply with the <i>Superannuation Industry (Supervision) Act 1993</i> .....	27
9E	Source of payments .....	27
9F	Employers to ensure membership of funds .....	28
10	Regulations .....	28

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<b>Schedule—Table of continuing contributions</b>	29
<b>Endnotes</b>	30
<b>Endnote 1—About the endnotes</b>	30
<b>Endnote 2—Abbreviation key</b>	31
<b>Endnote 3—Legislation history</b>	32
<b>Endnote 4—Amendment history</b>	35

# **An Act to make provision for superannuation benefits for certain persons**

## **1 Short title**

This Act may be cited as the *Superannuation (Productivity Benefit) Act 1988*.

## **2 Commencement**

This Act shall be taken to have commenced on 1 January 1988.

## **3 Interpretation**

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

***anniversary of birth*** has the same meaning as in the Superannuation Act.

***annual rate of contribution***, in relation to a qualified employee, means:

- (a) for the year commencing on 1 January 1988:
  - (i) if the employee's annual rate of salary is less than \$19,934—\$299;
  - (ii) if the employee's annual rate of salary is \$19,934 or more but less than \$31,201—1.5% of the person's annual rate of salary;
  - (iii) if the employee's annual rate of salary is \$31,201 or more but less than \$46,801—\$468; or
  - (iv) if the employee's annual rate of salary is \$46,801 or more—1% of the person's annual rate of salary; and
- (b) for each subsequent year—the amount prescribed by, or ascertained in accordance with, the regulations.

***annual rate of salary***, in relation to a qualified employee in relation to a particular day, means:

- (a) if the person is an eligible employee for the purposes of the Superannuation Act—the rate that would be the person’s final annual rate of salary for the purposes of that Act if the person had ceased to be such an eligible employee on that day; or
- (b) in any other case—the rate that would be the annual rate of salary of the person under that Act on that day if that Act applied to the person.

**approved authority** means an authority or body that is an approved authority for the purposes of the Superannuation Act or the new Superannuation Act.

**approved deposit fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**approved fund** means a superannuation fund that is an approved fund because of a declaration in force under section 4C.

**average annual rate of contribution**, in relation to a person in respect of whom an interim benefit is payable in relation to the year commencing on 1 January 1988 or a subsequent year, means half of the sum of:

- (a) the annual rate of contribution of the person based on the person’s annual rate of salary at the commencement of that year or at the commencement of the person’s service relevant to that interim benefit, whichever is the later; and
- (b) the annual rate of contribution of the person based on the person’s annual rate of salary at the end of that year or, if the interim benefit became payable in respect of the person in that year, immediately before the day on which the interim benefit became payable.

**class employee** means a qualified employee in a class in respect of which a declaration is in force under section 4A.

**continuing contribution**, in relation to a fund employee, has the meaning given by section 3C.

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

**declared first interest factor**, in relation to a financial year, means the factor that is the declared first interest factor for that year because of a declaration in force under paragraph 3E(a).

**declared fund** means the nominated fund or an approved fund.

**declared second interest factor**, in relation to a financial year, means the factor that is the declared second interest factor for that year because of a declaration in force under paragraph 3E(b).

**Department** means:

- (a) an Agency within the meaning of the *Public Service Act 1999*; or
- (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*.

**designated employer**, in relation to a qualified employee, means:

- (a) where the employee is a permanent employee, or temporary employee, other than an employee employed by an approved authority:
  - (i) if the remuneration in respect of his or her employment is paid wholly or principally 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 principally out of money appropriated under an Act other than an annual Appropriation Act—such Department as is determined by the Minister; or
- (b) where the employee is a holder of a statutory office:
  - (i) if the remuneration in respect of that office is paid by an approved authority—that authority; or
  - (ii) if subparagraph (i) does not apply—such Department or person as is determined by the Minister; or

- (c) where the employee is employed by an approved authority—  
that authority; or
- (d) in any other case—such person as is determined by the  
Minister.

***Finance Department*** means the Department administered by the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

***Fund*** has the same meaning as in the new Superannuation Act.

***fund employee*** means a remainder employee who is a member of a declared fund.

***interim arrangement employee*** means a remainder employee who is not a fund employee.

***interim benefit*** means a benefit payable in accordance with this Act.

***long term bond rate***, in relation to a calendar year, means:

- (a) in the case of the year commencing on 1 January 1988—  
0.1286; or
- (b) in the case of a subsequent year—the rate, expressed as a fraction, that is the assessed secondary market yield last published by the Reserve Bank before 1 January in that year in respect of 10-year non-rebate Treasury bonds or, if such a yield had not been published by the Reserve Bank in the period of 3 months ending on that day, the rate fixed by the Minister by notice published in the *Gazette* in relation to that year.

***new Superannuation Act*** means the *Superannuation Act 1990*.

***nominated fund*** means the superannuation fund that is the nominated fund because of a declaration in force under section 4B.

***pay period***, in relation to a person who is, or has been, a qualified employee, means a period in respect of which the person would ordinarily receive salary.



***permanent employee*** means any person employed in a permanent capacity by the Commonwealth or by an approved authority.

***PSSAP*** means the Public Sector Superannuation Accumulation Plan within the meaning of the *Superannuation Act 2005*.

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

***qualified employee*** means:

- (b) a person employed by the Commonwealth; or
- (c) a person who is the holder of an office established by an Act, by regulations under an Act or by an Ordinance of the Australian Capital Territory;
- (d) a person who is employed by a body that is an approved authority, being a body that does not provide superannuation benefits (other than superannuation benefits approved under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*) to any of its employees otherwise than under the Superannuation Act or the new Superannuation Act;
- (e) a person who is an eligible employee for the purposes of the Superannuation Act and is employed by a body that is an approved authority, being a body that provides superannuation benefits to some of its employees otherwise than under that Act;
- (f) a person to whom subsection 3(5A) or (6) of the Superannuation Act applies; or
- (g) a person who, under the regulations or a declaration under subsection 3F(1), is a qualified employee;

but, subject to regulations and declarations made for the purposes of paragraph (g), does not include:

- (h) a person who is an employee of the Northern Territory or of an authority of the Northern Territory;
- (j) a person who is not an eligible employee for the purposes of the Superannuation Act but is a member of a superannuation scheme or has superannuation benefits funded by the person's employer or partly by the person's employer and partly by contributions from the person and other employees;

- (k) a person who is a member of the Defence Force;
- (m) a person who is engaged or appointed for employment outside Australia only;
- (n) a member of the Parliament;
- (o) a person who is a judge for the purposes of the *Judges' Pensions Act 1968*; or
- (p) a person who, under the regulations or a declaration under subsection 3F(2), is not a qualified employee.

Note 1: See also section 3AA (closure of productivity benefit scheme from 1 July 2006).

Note 2: See also section 3AB (modification of productivity benefit scheme from 1 July 2005).

***qualifying pay period***, in relation to a person in respect of whom an interim benefit is payable, means:

- (a) in the case of a person who, immediately before the benefit became payable, was an eligible employee for the purposes of the Superannuation Act and was employed by a body that was at that time an approved authority for the purposes of that Act—a pay period in respect of which the person was paid salary by that body, or received ongoing compensation payments in respect of the person's employment with that body, as a qualified employee for more than half of the person's normal working hours for a pay period that includes no public holidays; or
  - (b) in any other case—a pay period in respect of which the person was paid salary or wages as a qualified employee other than a qualified employee of the kind referred to in paragraph (a), or received ongoing compensation payments in respect of the person's employment as such an employee, for more than half of the person's normal working hours for a pay period that includes no public holidays;
- other than a pay period that has been taken into account in determining the amount of another interim benefit payable in respect of the person.

***qualifying pay period value***, in relation to a qualifying pay period of a person, means:

- (a) if paragraph (b), (c) or (d) does not apply—one;
- (b) if the person was paid on a part-time basis throughout the pay period, including ongoing compensation payments on such a basis—the fraction obtained by dividing the amount of salary that the person received in respect of that period by the amount that the person would have received in respect of that period if the person had been paid or received those compensation payments on a full-time basis throughout that period;
- (c) if the person received reduced salary throughout the pay period—the fraction obtained by dividing the amount of salary that the person received in respect of the pay period by the amount that the person would have received if the person had not received reduced salary; or
- (d) if the person was paid on a part-time basis throughout the pay period and received reduced salary throughout the pay period—the fraction obtained by dividing the amount of salary that the person received in respect of that period by the amount that the person would have received in respect of that period if the person had been paid on a full-time basis throughout that period and had not received reduced salary.

***quarter*** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

***rate of salary***, in relation to a remainder employee and a pay period of the employee, has the meaning given by section 3B.

***reduced salary*** means reduced salary during a period of sick leave or long service leave.

***remainder employee*** means a qualified employee who is neither:

- (a) a scheme employee; nor
- (b) a class employee.

***RSA*** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**salary** includes wages and allowances that are paid regularly but does not include payments for working overtime.

**scheme employee** means:

- (a) a qualified employee who is an eligible employee within the meaning of the Superannuation Act; or
- (b) a qualified employee who is a member of the superannuation scheme within the meaning of the new Superannuation Act.

**Superannuation Act** means the *Superannuation Act 1976*.

**superannuation fund** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**temporary employee** means any person employed, otherwise than in a permanent capacity, by the Commonwealth or by an approved authority, but does not include a person who is engaged or appointed for employment outside Australia only.

**yearly interest factor**, in relation to a qualified employee in respect of whom an interim benefit is payable in relation to the year commencing on 1 January 1988 or a subsequent year, means the number ascertained in accordance with the formula:

$$1 + \frac{LTBR}{2} \times \frac{PPE}{PP},$$

where:

**LTBR** is the long term bond rate for that year;

**PPE** is the number of pay periods ending during the person's period of employment as a qualified employee in that year in respect of that benefit (including any period during which the person was on leave without pay); and

**PP** is the number of pay periods ending in that year.

**yearly pay period value**, in relation to the year commencing on 1 January 1988 or a subsequent year in relation to a person in respect of whom an interim benefit is payable, means the number

obtained by dividing the sum of the qualifying pay period values of the person for that year in respect of that benefit by the number of pay periods ending in that year.

- (2) For the purposes of this Act, a former qualified employee shall be taken to have retired voluntarily if:
- (a) the person retired after attaining the maximum retiring age applicable to the person; or
  - (b) the person was retired at his or her own request or resigned his or her office, position or employment and had, at that time, attained the minimum retiring age applicable to the person.
- (3) Where:
- (a) an interim benefit is payable in respect of a person in a year; and
  - (b) the benefit became payable in a pay period that ends in the following year;
- the pay period shall, for the purpose only of determining the number of pay periods ending during the person's period of employment as a qualified employee in the first-mentioned year in respect of that benefit, be taken to end in the first-mentioned year.
- (4) For the purposes of the definitions of ***annual rate of contribution*** and ***average annual rate of contribution*** in subsection (1), if a person's annual rate of salary on a particular day is later adjusted with retrospective effect to that day, that adjustment shall be taken into account.
- (5) For the purposes of this Act:
- (a) no account shall be taken of overtime worked by a person; and
  - (b) if the pay periods of a person during a year are not all of the same length, the person shall be taken to have been paid during the year on the basis of pay periods of a length that is the shorter or shortest of the person's pay periods.

- (6) The *Superannuation Benefits (Supervisory Mechanisms) Act 1990* does not apply to:
- (a) benefits payable because of contributions payable under this Act into a declared fund; and
  - (b) arrangements applying because of a declaration under subsection 4A(2) and benefits payable under such arrangements; and
  - (c) interim benefits;
- and the provision of benefits referred to in paragraph (a), (b) or (c) is not taken to be the provision of a superannuation scheme for the purposes of regulations or determinations under the Superannuation Act or the new Superannuation Act.

### **3AA Closure of productivity benefit scheme from 1 July 2006**

- (1) This section applies to a person if, assuming that this section had not been enacted, the person would have become a qualified employee on or after 1 July 2006.
- (2) The person is not a qualified employee on a day that occurs on or after 1 July 2006.
- (3) Subsection (2) has effect despite anything in any other provision of this Act.

### **3AB Modification of productivity benefit scheme from 1 July 2005**

- (1) This section applies if:
  - (a) at a particular time (the *PSSAP cessation time*) during the financial year beginning on 1 July 2005, a person ceased to be an ordinary employer-sponsored member of PSSAP; and
  - (b) immediately before the PSSAP cessation time:
    - (i) the person was in particular employment or held a particular statutory office (within the meaning of the *Superannuation Act 2005*); and
    - (ii) the person was eligible to be a member of PSSAP because of that employment or holding that office; and

- (iii) assuming that the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) had made a basic employer contribution (within the meaning of the *Superannuation Act 2005*) to PSSAP for the benefit of the person, the employer would have relied on subsection 32C(2) or (6) of the *Superannuation Guarantee (Administration) Act 1992* to satisfy the choice of fund requirements in relation to the contribution; and
- (c) at a time after the PSSAP cessation time:
  - (i) the person is in that employment or held that office; and
  - (ii) the person is eligible to be a member of PSSAP because of that employment or holding that office; and
  - (iii) the person is a member of a fund (within the meaning of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*) other than PSSAP; and
  - (iv) the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) makes a contribution to that fund for the benefit of the person; and
  - (v) the person's employer (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) would rely on subsection 32C(1), (2) or (6) of that Act to satisfy the choice of fund requirements in relation to that contribution.
- (2) The person is not a qualified employee after the PSSAP cessation time.
- (3) Subsection (2) has effect despite anything in any other provision of this Act.

### 3A Only one benefit in respect of a day of employment

- (1) In this section:
  - employment event***, in relation to a person, means:
    - (a) the person ceasing to be a qualified employee; or

- (b) another change in the person's employment.
- (2) Where (whether before or after the commencement of this section) a person was a qualified employee on a day for the purpose of ascertaining the amount of an interim benefit payable in respect of the person because of an employment event, the person is taken not to have been a qualified employee on that day for the purpose of ascertaining the amount (if any) of:
  - (a) an interim benefit payable in respect of the person because of a later employment event; or
  - (b) what, for the purposes of this Act, the Superannuation Act or the new Superannuation Act, would have been the interim benefit payable in respect of the person if a later employment event had occurred.
- (3) Where a person was a qualified employee on a day for the purpose of ascertaining the amount of what, for the purposes of this Act, the Superannuation Act or the new Superannuation Act, would have been the interim benefit payable in respect of the person if an employment event had occurred, the person is taken not to have been a qualified employee on that day for the purpose of ascertaining the amount (if any) of:
  - (a) an interim benefit payable in respect of the person because of a later employment event; or
  - (b) what, for the purposes of this Act or one of those other Acts, would have been the interim benefit payable in respect of the person if a later employment event had occurred.

### **3B Rates of salary**

- (1) For the purposes of this Act, the rate of salary of a remainder employee for a pay period of the employee is taken to be:
  - (a) where the employee worked on a full-time basis for the whole of his or her first pay period after whichever is the later of the commencement of his or her employment by his or her current designated employer or the last anniversary of the employee's birth—the employee's rate of salary for that first pay period; or



- (b) in any other case—what would have been the employee's rate of salary for that first pay period if he or she had worked on a full-time basis for the whole of it at the same hourly or other rate as that at which he or she was paid.
- (1A) In working out under subsection (1) the rate of salary of a remainder employee for a pay period, any ongoing compensation payments received by the employee in respect of his or her employment as such an employee during the first pay period mentioned in that subsection are taken to be salary paid to the employee.
- (2) Where a remainder employee is re-employed by a designated employer:
  - (a) later than 12 months after the employee last ceased to be employed by the employer; or
  - (b) for the performance of duties that are not the same as, nor similar to, the duties he or she performed when last employed by the employer;then, for the purposes of subsection (1) in relation to a pay period after the re-employment, the employee is taken to have commenced employment with the employer when he or she commenced re-employment.

### **3C Continuing contributions**

- (1) Subject to this section, where a fund employee is employed on a full-time basis, the continuing contribution in respect of the employee for a pay period of the employee is:
  - (a) where the period is a week—the amount ascertained in accordance with the Table in the Schedule; or
  - (b) where the period is a fortnight—the amount ascertained in accordance with that Table as if the sums of money specified in it were multiplied by 2; or
  - (c) where the period is half a month—the amount ascertained in accordance with that Table as if those sums were multiplied by  $2\frac{1}{6}$ ; or

- (d) where the period is 4 weeks—the amount ascertained in accordance with that Table as if those sums were multiplied by 4; or
  - (e) where the period is a month—the amount ascertained in accordance with that Table as if those sums were multiplied by  $4\frac{1}{3}$ .
- (2) Subject to this section, where a fund employee is employed on a part-time basis, the continuing contribution in respect of the employee for a pay period of the employee is the amount calculated using whichever of the following formulas the employee's designated employer considers to be convenient:

$$\frac{\text{Actual salary}}{\text{Full-time salary}} \times \text{Full-time continuing contribution}$$

$$\frac{\text{Part-time hours}}{\text{Full-time hours}} \times \text{Full-time continuing contribution}$$

where:

**Actual salary** means the salary payable to the employee for the pay period.

**Full-time salary** means the salary that would have been payable to the employee for the period if he or she performed his or her duties on a full-time basis.

**Full-time continuing contribution** means the amount that would be the continuing contribution in respect of the employee for the pay period if he or she performed his or her duties on a full-time basis.

**Part-time hours** means the number of hours in the pay period for which the employee is paid.

**Full-time hours** means the number of hours that the employee would work in the pay period if he or she performed his or her duties on a full-time basis.

- (2A) Subject to this section, where a fund employee who is employed on a full-time basis is on leave without pay during the whole or part of a pay period of the employee, the continuing contribution in respect of the employee for the pay period is:
- (a) if the employee is on leave without pay during the whole of the pay period—nil; or
  - (b) if the employee is on leave without pay for part only of the pay period—the amount worked out using the formula:

$$\frac{\text{Actual salary}}{\text{Full-time salary}} \times \text{Full-time continuing contribution}$$

where:

**Actual salary** means the salary payable to the employee for the pay period.

**Full-time salary** means the salary that would have been payable to the employee for the period if he or she had not been on leave without pay.

**Full-time continuing contribution** means the amount that would be the continuing contribution in respect of the employee for the pay period if he or she had not been on leave without pay.

- (3) Where the Minister makes a declaration under section 3D in relation to a period, the Table set out in the Schedule has effect in relation to that period as if it had been varied in accordance with the declaration.
- (4) Where an amount that, but for this subsection, would be a continuing contribution for a fund employee for a pay period 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.

### **3D Variation of Table**

The Minister may, by legislative instrument, before the commencement of a period (which may be a period commencing on 1 July 1990), declare that the Table in the Schedule 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).

### **3E Interest factors**

- (1) For the purposes of section 8A, the Minister, before each financial year, is to declare, by legislative instrument:
  - (a) the factor ascertained using a specified formula to be the declared first interest factor for that year; and
  - (b) the factor ascertained using a specified formula to be the declared second interest factor for that year.
- (2) A formula:
  - (a) is to involve the use of a rate specified in the declaration; and
  - (b) may contain a variable that depends on the period, or another aspect, of the employment of the person in relation to whom the factor is to apply.

### **3F Qualified employees**

- (1) The Minister may, by legislative instrument, declare that a specified class of persons is a class of persons who are qualified employees.
- (2) The Minister may, by legislative instrument, declare that a specified class of persons is a class of persons who are not qualified employees.
- (3) A declaration under subsection (1) or (2) takes effect from such day, not earlier than 1 January 1988, as is specified in it.

#### **4 Other employers may apply interim benefit**

Nothing in this Act prevents an employer of persons who are not qualified employees paying in respect of those persons benefits that are calculated and preserved on the basis set out in this Act.

#### **4A Arrangements for certain employers**

- (1) The Minister may, by legislative instrument, declare that a specified class of qualified employees is a class of employees who are neither fund employees nor interim arrangement employees.
- (2) The Minister may, by legislative instrument, declare that specified arrangements about superannuation or similar benefits are to apply to a declared class.
- (3) A declaration under subsection (1) or (2) takes effect from such day, not earlier than 1 January 1988, as is specified in it.

#### **4B Nominated fund**

- (1) Subject to subsection (2) and section 4D, the Minister may declare a superannuation fund to be the nominated fund for the purposes of this Act.
- (2) The Minister is not to make a declaration under subsection (1) while another such declaration is in force.
- (3) The Minister is to ensure that there is a nominated fund at all times after the first declaration under subsection (1) is made.

#### **4C Approved funds**

- (1) Subject to section 4D, the Minister may declare a superannuation fund to be an approved fund for the purposes of this Act.
- (2) A remainder employee may, by notice in writing to the employee's designated employer, elect to be a member of an approved fund.

- (3) A fund employee who has made an election may revoke the election.
- (4) While an election by a fund employee is in force, the employee is, for the purposes of this Act, taken to be a member of the fund to which the election applies and not to be a member of any other approved fund of which he or she has been a member or of the nominated fund.

#### **4D Nominated and approved superannuation funds to comply with standards**

The Minister is not to declare a superannuation fund to be the nominated fund or an approved fund unless the fund is a complying superannuation fund within the meaning of the *Income Tax Assessment Act 1997*.

#### **4E Payments of equivalent benefit to declared funds**

Where an interim arrangement employee becomes a member of a declared fund, his or her designated employer must pay into that fund:

- (a) a contribution in respect of the employee equal to the amount of the interim benefit that would have been payable in respect of the employee if he or she had ceased to be a qualified employee on the day immediately before the day on which he or she became a member of the fund; and
- (b) where that amount is not paid on the day on which he or she becomes a member—a contribution in respect of the employee of interest, fixed under section 4G in relation to the fund, on the amount in respect of each day in the period commencing on the day on which the amount should have been paid and ending on the day immediately before the day when the amount is paid.

**4EA Payments of equivalent benefit to CSC**

Where an interim arrangement employee becomes a scheme employee, his or her designated employer must pay to CSC:

- (a) a contribution in respect of the employee equal to the amount of the interim benefit that would have been payable in respect of the employee if he or she had ceased to be a qualified employee on the day immediately before the day on which he or she became a scheme employee; and
- (b) where that amount is not paid on the day on which he or she becomes a scheme employee—a contribution in respect of the employee of interest, fixed under section 4G in relation to the Fund, on the amount in respect of each day in the period commencing on the day on which the amount should have been paid and ending on the day immediately before the day when the amount is paid.

**4F Payments of contributions to declared funds**

- (1) Subject to this section, the designated employer of a fund employee is to pay into the declared fund of which the employee is a member:
  - (a) continuing contributions in respect of the employee in respect of each pay period occurring while the employee is a member of the fund; and
  - (aa) in respect of the employee in respect of each quarter occurring while the employee is a member of the fund—any contribution that is required to ensure (after taking into account the total contributions paid, under paragraph (a), in respect of the employee and the quarter) that the employer does not have an individual superannuation guarantee shortfall (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the employee for the quarter; and
  - (b) where a contribution under paragraph (a) or (aa) is not paid on or before the day on which it is payable under subsection (2)—a contribution in respect of the employee of interest, fixed under section 4G in relation to the fund, on the

contribution in respect of each day in the period commencing on the day on which the contribution should have been paid and ending on the day immediately before the day when the amount is paid.

- (2) A contribution under paragraph (1)(a) or (aa) in respect of a fund employee payable to a fund is payable:
  - (a) where there are arrangements between the employer and the trustees of the fund fixing a day for payment—on that day; or
  - (b) in any other case:
    - (i) for a continuing contribution made under paragraph (1)(a) for a pay period—on the day on which salary for that pay period is payable; or
    - (ii) for a contribution made under paragraph (1)(aa) for a quarter—by the end of the period of 28 days after the end of the quarter.
- (3) A designated employer of a fund employee is not required to make a payment of continuing contributions before the first day on which salary is payable to the employee on or after 1 July 1990.

#### **4G Interest**

- (1) For the purposes of sections 4E and 4F, the interest fixed under this section in relation to a fund on a day is the interest calculated in a way determined by the Minister by legislative instrument.
- (2) For the purpose of section 4EA, the interest fixed under this section in relation to the Fund on a day is the interest calculated in a way determined by the Minister by legislative instrument.

#### **4H Certain employees to become members of nominated fund**

- (1) Where the designated employer of an interim arrangement employee becomes aware that the employee is not about to cease to be such an employee by becoming a member of an approved fund or otherwise, the employer must pay into the nominated fund the contribution that would be required to be paid in respect of the



employee under paragraph 4E(a) if the employee had become a member of the fund on the day of payment, and, where the employer does so, the employee becomes a member of the fund.

- (2) Where a superannuation fund ceases to be an approved fund, a fund employee who is a member of that fund becomes a member of the nominated fund unless he or she has elected to be a member of another approved fund.
- (3) Where a fund employee revokes his or her election to be a member of an approved fund without electing to be a member of another approved fund, he or she becomes a member of the nominated fund.
- (4) Where a fund ceases to be the nominated fund, then, for the purposes of this Act, all remainder employees who were members of it immediately before it ceased are taken not to remain members of it and are taken to become members of the nominated fund that, because of subsection 4B(3), replaces it.

## **5 Qualifying service**

- (1) An interim benefit is not payable in respect of a qualified employee unless, at the time when that benefit would be payable in respect of the employee, the employee has completed at least 3 months continuous service:
  - (a) in the case of an employee who, immediately before the benefit became payable, was an eligible employee for the purposes of the Superannuation Act and was employed by a body that was at that time an approved authority for the purposes of that Act—with the body by which the person was employed; or
  - (b) in any other case—as a qualified employee other than an employee to whom paragraph (a) applies;whether or not that service commenced before the commencement of this subsection.
- (2) For the purposes of this section:

- (a) a period of leave without pay shall be ignored for the purposes of calculating the length of service of the person, and for the purposes of determining whether the person has had a continuous period of service with an employer;
- (b) a break in employment for a period not exceeding 6 months by a person included in a prescribed class shall be ignored for the purposes of determining whether the person has had a continuous period of service with an employer; and
- (c) if a person is employed during a period on a part-time basis, including a period during which the person receives ongoing compensation payments on such a basis in respect of the person's current employment, the person's service during that period shall be reduced by multiplying the number of days in that period by the fraction obtained by dividing the amount of salary, or compensation payments, that the person received in respect of that period by the amount that the person would have received in respect of that period if the person had been paid or received compensation payments on a full-time basis throughout that period.

## **6 When benefit payable**

- (1) Subject to subsection (2) and section 5, where an interim arrangement employee:
  - (a) ceases to be a qualified employee; or
  - (b) in the case of an employee who is employed by an approved authority—ceases to be employed by that authority; or
  - (c) in the case of an employee who is not employed by an approved authority—becomes employed by an approved authority;an interim benefit becomes payable in respect of the person.
- (2) An interim benefit does not become payable in respect of a person where:
  - (a) the person takes up different employment as part of an interchange or similar scheme and is expected to resume his or her previous employment; or

- (b) the person is expected to be employed again by the person's employer in the same capacity within 6 months of ceasing that employment and becomes employed again by the person's employer within that period.
- (3) Where:
  - (a) an interim benefit is payable in respect of a person because the person retired voluntarily or retired on the ground of permanent incapacity or permanent invalidity; or
  - (b) the amount of the benefit is less than \$500;the benefit is payable to the person at the time when the benefit becomes payable in respect of the person.
- (4) Where an interim benefit is payable in respect of a person following the death of the person, the benefit shall be paid to the person's personal representative.
- (5) Where:
  - (a) an interim benefit becomes payable in respect of a person otherwise than in the circumstances mentioned in subsection (3) or (4); and
  - (b) the person is about to leave Australia permanently;the benefit is payable to the person.
- (6) Where an interim benefit becomes payable in respect of a person otherwise than in the circumstances mentioned in subsection (3), (4) or (5), the benefit shall be preserved in accordance with subsection (7) until:
  - (a) the person retires from the workforce after attaining the age of 55 years;
  - (b) the person retires from the workforce before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity;
  - (c) the person leaves Australia permanently;
  - (d) the person dies; or
  - (e) such other circumstances (if any) as the Australian Securities and Investments Commission approves prevail.

- (7) An interim benefit payable in respect of a person that is required by subsection (6) to be preserved shall:
- (a) be paid to, for preservation in relation to the person:
    - (i) a superannuation fund nominated by the person, being a superannuation fund of which the person is, or intends to become, a member and that is required to preserve superannuation benefits in accordance with standards prescribed by regulations under the *Superannuation Industry (Supervision) Act 1993*; or
    - (ii) an approved deposit fund nominated by the person, being a fund that is required to preserve superannuation benefits in accordance with standards prescribed by those regulations; or
    - (ia) an RSA nominated by the person, being an RSA that is held by the person; or
    - (iii) a deferred annuity nominated by the person, being an annuity that cannot be surrendered or assigned before the person attains the age of 55 years and that does not pay benefits except in the circumstances mentioned in subsection (6); or
  - (b) if the person does not make such a nomination within 2 months after the benefit becomes payable in respect of the person—be paid to such a superannuation fund approved deposit fund or RSA nominated by the person’s employer.
- (8) An employer may, before paying an interim benefit to a person, seek evidence as to the circumstances in which that benefit becomes payable to the person under this Act.

## **7 Employers to pay interim benefit for their employees**

An interim benefit that is payable in respect of a person is payable by the person who was, immediately before the benefit became payable, the person’s designated employer.

## 8 Amount of interim benefit before 1 July 1990

- (1) The amount of an interim benefit that accumulates in respect of service by a qualified employee in a year commencing on 1 January 1988, 1 January 1989 or 1 January 1990 is the amount calculated in accordance with the formula:

$$(AARC \times YPPV \times YIF) + (LTBR \times \frac{PPE}{PP} \times PA), \text{ where:}$$

*AARC* is the average annual rate of contribution of the person for that year;

*YPPV* is the yearly pay period value of the person for that year;

*YIF* is the yearly interest factor for that person for that year;

*LTBR* is the long term bond rate for that year;

*PPE* is the number of pay periods ending during the person's period of employment as a qualified employee in that year in respect of that benefit (including any period during which the person was on leave without pay);

*PP* is the number of pay periods ending in that year; and

*PA* is the sum of the amounts (if any) that accumulated under this subsection in respect of the person in respect of that benefit in the preceding years.

- (2) Where an interim benefit becomes payable in respect of a person in a year and before 1 July 1990, the amount of that benefit is the sum of the amount that accumulated in respect of service by the person under subsection (1) in respect of that year and the amounts (if any) that accumulated under that subsection in respect of the person in the preceding years.

## 8A Amount of interim benefit from 1 July 1990

- (1) In this section:

**notional interim benefit**, in relation to a person, means the amount of the interim benefit that, under section 8, would have been payable in respect of the person if he or she had ceased to be a qualified employee on 30 June 1990.

- (2) The amount of interim benefit that accumulates in respect of service by an interim arrangement employee in the year commencing on 1 July 1990 or a subsequent year is the amount calculated using the formula:

$$\text{Notional contributions} + (\text{First factor} \times \text{Notional contributions}) \\ + \text{Second factor} \times (\text{Notional benefit} + \text{Past accumulations})$$

where:

**Notional contributions** means the sum of what would have been the contributions made under paragraphs 4F(1)(a) and (aa) for the employee in respect of the employee's pay periods and quarters in the year if he or she had been a fund employee in the year.

**First factor** means the declared first interest factor for the year applied in relation to the employee.

**Second factor** means the declared second interest factor for the year applied in relation to the employee.

**Notional benefit** means the employee's notional interim benefit (if any).

**Past accumulations** means the amounts (if any) that accumulated under this subsection in respect of the employee in the preceding years.

- (3) Where an interim benefit becomes payable in respect of a person in a financial year commencing on or after 1 July 1990, the amount of that benefit is the sum of:
- (a) the person's notional interim benefit (if any); and
  - (b) the amount that accumulated in respect of service by the person under subsection (2) in respect of that year; and

- (c) the amounts (if any) that accumulated under that subsection in respect of the person in the preceding years.

## **9 Assignment of benefit**

An interim benefit is not capable of being assigned or charged.

### **9A Declarations**

Declarations, and determinations, under this Act by the Minister are to be in writing signed by the Minister.

### **9B Legislative instruments disallowable**

Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a declaration, or determination, under this Act that is a legislative instrument.

### **9C Delegation by Minister**

The Minister may, by signed instrument, delegate all or any of his or her powers under section 4C or for the purposes of the definition of *designated employer* in section 3 to an officer of the Finance Department.

### **9D Minister to comply with the *Superannuation Industry (Supervision) Act 1993***

The Minister is not to exercise his or her powers under this Act in relation to superannuation funds in any way that would be inconsistent with the *Superannuation Industry (Supervision) Act 1993* or regulations made under that Act.

### **9E Source of payments**

A designated employer of a remainder employee may make payments under this Act in respect of the employee out of any money in the employer's control that is available for the purpose.

## 9F Employers to ensure membership of funds

Without limiting subsection 4H(1), a designated employer employing a remainder employee on 1 July 1990 must take all reasonable steps to ensure that the employee becomes a fund employee before 30 June 1991.

## 10 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may determine that that part of the interim benefit that is calculated by reference to the period commencing on 1 January 1989 should be calculated by reference to a year commencing on an earlier day specified in the regulations and, if such a determination is made, the regulations may make such modifications, omissions and additions to this Act as are necessary to give effect to that determination.
- (3) Regulations made for the purposes of subsection (2) take effect from such day, not earlier than 1 January 1988, as is specified in the regulations.
- (4) Regulations made for the purposes of paragraph (g) of the definition of *qualified employee* in subsection 3(1) take effect from 1 January 1988.
- (5) Regulations made for the purposes of paragraph (p) of the definition of *qualified employee* in subsection 3(1) take effect from such day, not earlier than 1 January 1988, as is specified in the regulations.



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## Schedule—Table of continuing contributions

Section 3C

<b>Pay period rate of salary</b>	<b>Pay period contribution</b>
Less than \$423	\$12.70
\$423 or more but less than \$650	The amount that is 3% of the employee's pay period rate of salary
\$650 or more but less than \$975	\$19.50
\$975 or more	The amount that is 2% of the employee's pay period rate of salary

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Benefit (Interim Arrangement) Act 1988	70, 1988	15 June 1988	1 Jan 1988 (s 2)	
Superannuation Amendment Act 1988	130, 1988	14 Dec 1988	14 Dec 1988 (s 2)	—
Superannuation Legislation Amendment Act 1990	40, 1990	7 June 1990	s 94 and 98: 7 June 1990 (s 2 item (1)(a)) s 95–97 and 99–106: 1 July 1990 (s 2 item 3)	—
Superannuation Legislation Amendment Act 1991	130, 1991	2 Sept 1991	s 81: 2 Sept 1991 (s 2(1)) s 82–84: 1 July 1990 (s 2(3))	—
Superannuation Legislation Amendment Act 1992	187, 1992	18 Dec 1992	s 66, 69, 70: 18 Dec 1992 (s 2(1)) s 67 and 68: 1 July 1990 (s 2(3))	—
Superannuation Industry (Supervision) Consequential Amendments Act 1993	82, 1993	30 Nov 1993	(s 60–64): 1 Dec 1993 (s 2(1))	s 64
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 111): 1 July 1990 (s 2(2))	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	Sch 6: 2 June 1997 (s 2 and gaz 1997, No S202)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (item 192): 1 July 1998 (s 2(2) and gaz1998, No S316)	

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 902–907): 5 Dec 1999 (s 2(1), (2)) and gaz 1999, No S584)	—
Superannuation (Consequential Amendments) Act 2005	81, 2005	29 June 2005	Sch 3: 1 July 2005 (s 2(1) item 6(a))	—
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 365, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2)	Sch 1 (item 406(1)–(3))
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 2 (items 33–38): 23 June 2008 (s 2(1) item 5) Sch 4 (items 3–7): 1 July 2008 (s 2(1) item 7)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (items 105, 106, 136): 19 Apr 2011 (s 2(1) item 17)	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 240–242): 1 July 2011 (s 2(1) item 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (item 171) and Sch 14 (items 1–4): 1 July 2014 (s 2(1) item 6, 14)	Sch 14 (items 1– 4)

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 7 (item 32): 20 Mar 2015 (s 2(1) item 15)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title .....	am No 40, 1990
s 1 .....	am No 40, 1990
s 3 .....	am No 130, 1988; No 40, 1990; No 130, 1991; No 187, 1992; No 82, 1993; No 62, 1997; No 146, 1999; No 81, 2005; No 26, 2008; No 5, 2011; No 58, 2011; No 62, 2014
s 3A.....	ad No 40, 1990
s 3AA.....	ad No 81, 2005
s 3AB.....	ad No 81, 2005
	am 21, 2015
s 3B.....	ad No 40, 1990
	am No 187, 1992
s 3C.....	ad No 40, 1990
	am No 187, 1992
s 3D.....	ad No 40, 1990
	am No 26, 2008
s 3E.....	ad No 40, 1990
	am No 26, 2008
s 3F.....	ad No 40, 1990
	am No 26, 2008
s 4A.....	ad No 40, 1990
	am No 187, 1992; No 26, 2008
s 4B.....	ad No 40, 1990
s 4C.....	ad No 40, 1990
s 4D.....	ad No 40, 1990
	am No 15, 2007
s 4E.....	ad No 40, 1990
s 4EA.....	ad No 130, 1991
	am No 58, 2011
s 4F.....	ad No 40, 1990
	am No 26, 2008

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 4G.....	ad No 40, 1990 am No 130, 1991; No 26, 2008
s 4H.....	ad No 40, 1990
s 5 .....	am No 40, 1990
s 6 .....	am No 40, 1990; No 82, 1993; No 62, 1997; No 48, 1998
s 7 .....	am No 40, 1990
s 8 .....	am No 40, 1990
s 8A.....	ad No 40, 1990 am No 26, 2008
s 9A.....	ad No 40, 1990
s 9B.....	ad No 40, 1990 am No 43, 1996 rs No 26, 2008
s 9C.....	ad No 40, 1990 am No 5, 2011
s 9D.....	ad No 40, 1990 am No 82, 1993
s 9E.....	ad No 40, 1990
s 9F .....	ad No 40, 1990
Schedule .....	ad No 40, 1990